

**Republic of Serbia
Ministry of Justice**



**EX-ANTE ANALYSIS OF THE SITUATION IN THE FIELD
OF PROSECUTION OF WAR CRIMES IN THE REPUBLIC
OF SERBIA**

- for the purposes of drafting the National Strategy for War Crimes Prosecution for
the period 2021-2026 -

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1. INTRODUCTION

1.2. Background and Objectives

In February 2016, the Government of the Republic of Serbia adopted the National Strategy for the Prosecution of War Crimes (hereinafter: the Strategy) as an umbrella policy document outlining reform steps in this area. The adoption of the Strategy was preceded by a nine-month work of the working group, as well as a consultative process with all interested institutions, organizations and individuals.

The decision to start drafting and adopting such a strategic document was determined by the need to adequately address the recommendations contained in the Screening Report for Chapter 23, as well as measures and activities from the Action Plan for the same negotiating chapter which, although officially adopted in April 2016 (after the adoption of the Strategy) in early 2015, in its working versions, traced the principles later elaborated in the Strategy.

When it comes to the content of the Strategy, it is important to note that after the introductory chapters which, in the General Part, provide an overview of the current situation and define the vision and commitment of the Republic of Serbia, planned goals and activities for the implementation of the Strategy are contained in thematic units / objectives:

- Increasing the efficiency of war crimes proceedings before the authorities of the Republic of Serbia;
- Protection of witnesses and victims;
- Support for witnesses and victims;
- Legal representation of the defendant;
- War crimes trials and the issue of missing persons;
- Cooperation with the International Criminal Tribunal for the Former Yugoslavia;
- Regional and wider international cooperation;
- Improving the overall public attitude towards war crimes trials.

It is important to note that, having in mind the chronological sequence of events within the accession negotiations process, the 2016 Strategy was not based on the content of the transitional criteria contained in the Negotiating Position for Chapter 23 adopted in July 2016. Also, in August 2020, the Government of the Republic of Serbia adopted the Revised Action Plan for Chapter 23, based on the results achieved in the first four years of implementation of this strategic document, but also on the transitional benchmarks from the Negotiating Position for Chapter 23.

In December 2020, the Ministry of Justice recognized the need to initiate a process of ex-ante analysis of the situation in the field of war crimes proceedings in the Republic of Serbia, as a precursor to the formation of a working group and a new public policy document in this area. In this way, the Ministry acted in accordance with the obligations prescribed by Art. 2, 31, 33 and 37 of the Law on Planning System of the Republic of Serbia.

With this in mind, the aim of the Analysis is to review the current situation in the field of war crimes prosecution, possible measures to overcome the identified problems; possible risks in their implementation and ways to overcome them, all with the aim of providing objective and comprehensive inputs for the needs of the future public policy document in this area, based on the current situation in the field and the requirements of the negotiation process under Chapter 23.

1.2. Methodology

The analysis was conducted in the period December 2020-April 2021. For the purposes of conducting the analysis, all relevant institutions/stakeholders appointed their representatives, while the preparation of the analysis itself was entrusted to Prof. Dr. Milica Kolaković-Bojović from the Institute of Criminological and Sociological Research. Administrative and technical support for the preparation of the Analysis was provided by the Ministry of Justice.

The analytical process took place in **two phases**:

In phase I: Prof. Dr. Milica Kolaković-Bojović developed the methodological framework of the Analysis and prepared tailor-made questionnaires for all institutions that were in charge of implementing the Strategy, after which the institutions submitted the required information, based on which the draft analysis was prepared.

In phase II: Representatives of the institutions discussed the preliminary findings of the Analysis and the possible directions for future action.

The analytical process itself involved the collection and processing of quantitative and qualitative data that could in principle be divided into two categories:

- Data relevant for ex-post analysis of the impact of the Strategy;
- Additional data of importance for a comprehensive view of the situation in the sector, before defining priorities for future action.

When it comes to quantitative data, the aim was to see not only the current situation, but also five-year statistical trends, as well as clearer and more accurate graphical presentation of findings, including data on the total number of cases in the work, efficiency in all stages of the procedure. administrative capacity, infrastructure resources, etc.

When it comes to qualitative data, they primarily refer to the perception of employees in the Ministry of Interior and Justice, who act in war crimes cases, in terms of available capacities in the observed period, as well as the assessment of the achieved progress. In addition, their role in identifying additional issues that were not addressed by the Strategy, as well as possible ways to overcome them, was crucial in defining priorities and identifying risks. In addition to the above data, the source of which were institutions that have the authority to detect and prosecute war crimes, prof. Dr. Milica Kolaković-Bojović analysed the situation in the sector in terms of commitments undertaken under Chapter 23 in the accession negotiations with the EU, as well as in the context of addressing other commitments undertaken through ratification and implementation of international agreements, primarily in the context of harmonizing relevant legislation referring to the rights of victims and the rights of missing persons. In that sense, the issue of more efficient coordination with other relevant initiatives regarding the change and implementation of public policies was considered, primarily in the context of implementing the National Strategy for Exercising the Rights of Victims and Witnesses of Crimes in the Republic of Serbia for 2012-2025. and the accompanying Action Plan, as well as planned changes to

criminal and judicial-organizational legislation, but also the drafting and adoption of the Law on the Rights of Missing Persons.

All conclusions and recommendations were defined only after a comprehensive review of quantitative and qualitative parameters.

2. ENHANCING THE EFFICIENCY OF WAR CRIMES PROCEEDINGS BEFORE THE AUTHORITIES OF THE REPUBLIC OF SERBIA

Besides making the core part of the Strategy, the improvement of investigations and war crimes trials was also identified in the Negotiating Position for Chapter 23, envisaging the following within benchmark 19: “Serbia effectively demonstrates adequate investigations of allegations and equal treatment of suspects avoiding giving the impression that anyone is above the law, regardless of their nationality or ethnicity, or that of the victims; Serbia provides an initial track record of investigation, prosecution and adjudication of a higher number of cases including against high level suspects as well as of cases transferred from the ICTY to Serbia; Serbia ensures proportionality of sentences and a sentencing policy in line with international criminal law standards.“

The NSWCP divided the measures for improving the efficiency of war crimes proceedings into two sets of activities geared towards:

- Investigation and indictment phase;
- Trial phase.

2.1. Investigations and issuance of indictments

A) An overview of implementation of the measures from the NSWCP

Regarding the improvement of the process of investigation and indictment in war crimes proceedings, the NSWCP correctly recognized that the complexity of this task required the passage (during the first quarter of 2016) and implementation of a special planning document of the OWCP, i.e. the Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia (hereinafter: the Prosecutorial Strategy) in accordance with the objectives and deadlines envisaged by the NSWCP, Action Plan for Chapter 23 and with consideration for the Concluding Strategy of the International Criminal Tribunal for the former Yugoslavia (hereinafter: the ICTY’s Concluding Strategy). Besides, it was requested that the Prosecutorial Strategy be developed and endorsed through a transparent and consultative process based on the following principles:

- Equal treatment of every suspect, irrespective of their position, status or background. That applies to victims too;
- Complete alignment to the ICTY Concluding Strategy, Action Plan for Chapter 23 and the National Strategy;
- Precisely defined indicators of impact and outcomes of the Prosecutorial Strategy implementation;

- Clearly defined reporting model of The Republic Public Prosecutor's Office and the Council for Implementation of the Action Plan for Chapter 23 on the implementation of the Prosecutorial Strategy, as well as
- Efficient and sustainable model of reporting to the public.

An identical requirement is included in the interim benchmark 17 from the Negotiating Position for Chapter 23, with an additional requirement that the implementation of the Prosecutorial Strategy be monitored and its impact assessed.

As one of the main tasks of the Prosecutorial Strategy, the NSWCP identified the need to define the selection criteria of war crimes cases and creation of the list of priority war crimes cases and highly important ones to be prosecuted¹.

The Office of the War Crimes Prosecutor (hereinafter: OWCP) met the obligation from the NSWCP with a certain delay (in March 2018), which is undoubtedly related to the fact that the procedure of election of War Crimes Prosecutor lasted longer than usual and slowed down the implementation of the OWCP from the NSWCP and the Prosecutorial Strategy for War Crimes Investigation and Prosecution².

Regarding the transparency and inclusivity of the process of developing the Prosecutorial Strategy, it is important to mention that its endorsement was preceded by a meeting organized in order to present the working version of the text, as well as that the interested public was invited to submit comments. Yet, it should be noted that the deadline for submission of comments and suggestions was met and that the Prosecutorial Strategy was passed. Regardless of that, in the future period more time should be dedicated to preparation, discussion and adoption of strategic documents.

Regarding the **monitoring and reporting on the implementation of the Prosecutorial Strategy**, as most of its activities coincide with the NSWCP and the Action Plan for Chapter 23, the Prosecutor's Office has reported on the implementation of the Prosecutorial Strategy in the context of reporting on the implementation of both strategic documents, as well as within the annual report submitted to the Republic Public Prosecutor's Office, available to the public on the RPPO's website.

¹ The NSWCP suggested that some of the prioritization criteria could be as follows: the consequences of war crimes: criminal offences with a high number of victims, i.e. offences where perpetrators act in a particularly cruel way, should have the priority in investigation; the cases against the high-rank accused, *de jure* or *de facto*, should be prioritized in the prosecutors' work; the availability of evidence, of the accused, witnesses and victims should be taken into consideration when the prosecutor decides whether to issue indictment against one or more of them, or transfer the case to another war crimes prosecutor in the region. When taking such decisions, prosecutors should also bear in mind the need to keep good neighbourly relations with other countries and the regional stability on the whole, on the grounds of knowledge whether there are already criminal proceedings conducted against the same person for the same or similar acts or the same person has already been convicted. The Government shall provide absolute support to the practice of avoiding trials *in absentia*; the impact of an offence which is the subject of the proceedings on the local community should also be taken into consideration.

² The Prosecutorial Strategy for War Crimes Investigation and Prosecution, available at: https://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_sr/2018-05/strategija_trz_srb.pdf, accessed 3rd February 2021.

According to the revised Action Plan for Chapter 23, in keeping with the Prosecutorial Strategy, the OWCP publishes quarterly reports on the implementation of the Prosecutorial Strategy.

Since the adoption of the Prosecutorial Strategy, there haven't been any round table discussions on the outcomes of this strategic document's implementation, but the OWCP replied to submitted requests for access to information of public importance and organized bilateral meetings. In that sense, there is room for improvement of the practice in the forthcoming period.

Regarding the contents, the Prosecutorial Strategy included the principles defined in the NSWCP and governs more specifically some issues envisaged as the OWCP's obligations. Besides, it has provided the criteria to be applied by the OWCP in prioritization, invoking the principle of equality before the law and the fact that all cases processed by the OWCP are complex.

Regarding other activities envisaged by the NSWCP, relevant for the phase of investigation and indictment, one of the very significant obligations envisaged by the NSWCP was establishment and maintenance of a precise register of events that may be qualified as unresolved cases, with which priority cases shall be determined against clearly defined criteria, and a five-year plan of action shall be developed by the end of 2016, as well as registration and transfer of all war crimes cases still with the regular domestic courts, within the same time frame.

From February 2016 until the end of 2020, the OWCP took over a total of 2,853 cases from higher prosecutorial offices in Nis, Vranje, Leskovac, Pozarevac and from the District Court in Prishtina, Pec and Prizren. The activity of registration and transfer of war crimes cases from general prosecutors' offices is completed. After detailed considerations and processing of all transferred cases, the OWCP retained a total of 1,731 cases, and the rest were returned to the competent prosecutor offices.

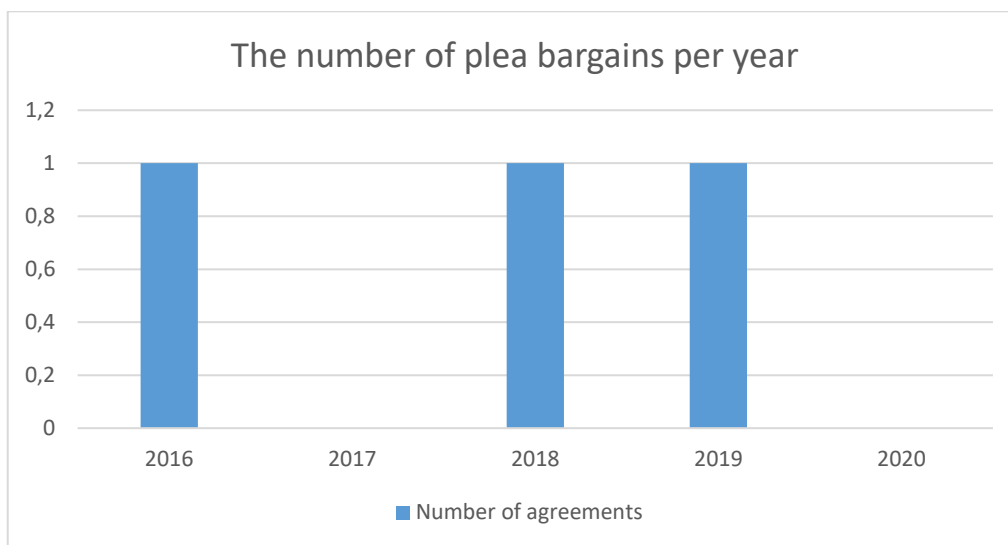
Besides, the NSWCP envisages in principle, and then the Prosecutorial Strategy does so in more detail, the regulation of the issue of **measures for enhancing the efficiency of the OWCP's work**, from two angles:

- Enhancing the efficiency of work with the existing capacities, including broader implementation of plea bargain; improving confidentiality of investigation process; examining during investigation whether the suspects own any assets obtained through perpetration of war crimes and, if so, submit an appropriate request to the court, pursuant to the Law on Seizure of Assets Derived from Criminal Offences.
- Enhancing the capacities of the OWCP through increasing the number (primarily of deputy prosecutors) and improving the expertise of staff in accordance with the Action Plan for Chapter 23.

Since one of the mechanisms for monitoring the enhancement of efficiency is envisaged to be **broader application of plea bargains**, the data from Chart 1 indicate, based on absolute figures, that the application of such agreements is not widespread in this type of criminal proceedings. Yet, taking into account the total number of first-instance judgments in the observed period, it becomes clear that 17% were taken on the basis of plea bargains, which makes a significant share³.

³ During the year 2016, an agreement with one convicted person was reached, where the competent court made a judgment sentencing the defendant to imprisonment of 10 years for perpetration of the criminal offence of war crime

Chart 1: The number of plea bargains per year for the period 2016-2020



In order to improve the **confidentiality of investigation**, in accordance with the obligation from the NSWCP, the OWCP has taken steps to protect data from unauthorized access, publication and any other abuse, in accordance with the Law on Protection of Personal Data. All the OWCP employees have signed a non-disclosure declaration for secret and confidential data in terms of the Law on Data Secrecy and other laws and by-laws. The instruction on the obligation of protection and non-disclosure of secret and confidential data delivered to the employees is part and parcel of this declaration. In the instruction, an overview of substantive legal acts on secret and confidential data is provided, as well as a list of penal provisions in cases of elected, appointed or employed persons acting in contravention of defined obligations. In order to consistently respect the obligations of data secrecy and confidentiality by all the OWCP employees, the supervision of the implementation of laws and by-laws in this area is conducted by the war crimes prosecutor.

Since the lack of administrative capacities was one of the most frequently identified problems in the OWCP efficiency during the development of the NSWCP, it is extremely important to emphasise that in the observed period, the OWCP received significant strengthening of human resources (a total of 14 persons).

- During 2017, a new war crimes prosecutor assumed office (on 31 May 2017). That year, one prosecutorial assistant was also recruited.
- During 2018, six deputy war crimes prosecutors came in office, as well as one prosecutorial assistant and the Office's secretary general and one military analyst.
- During 2019, one deputy prosecutor was referred to the OWCP for the period of four years, one prosecutorial assistant and one civil servant employed.

against civilian population, under Article 142 Para.1 of the FRY Criminal Law. During the year 2018, an agreement was concluded with one convict, upon the competent court pronouncing the sentence of eight years and two months in prison for the war crime against civilian population under Art.14 Para. 1 of the FRY Criminal Law; During the year 2019, an agreement was concluded with one persons convicted of one year and six months in prison for perpetrating war crime against civilian population under Art.142 Para.1 of the FRY Criminal Code.

- During 2020, two civil servants commenced contracts of service.

The OWCP set up teams of data processors by territorial principle, i.e. following the cases' connections to the place of criminal offence perpetration – Bosnia and Herzegovina, the Republic of Croatia, the AP Kosovo and Metohija.

In the observed period, a whole range of **training sessions** was conducted for the existing and new civil servants and deputy public prosecutor at the OWCP. The largest number of trainings presented in detail in the so-far reports on the implementation of the NSWCP concerned professional development in the area of support and protection of victims and implementation of the international criminal and international humanitarian law. Since these topics are most applicable to practice in war crimes proceedings, as well as being envisaged under the revised Action Plan for Chapter 23, it is necessary to carry on with them. In the area of support to victims and witnesses, trainings from the WINPRO programme were very valuable.

The training modes were different, both by number of participants and by forms of professional development. The trainings have so far mainly implied lectures followed by short discussion among the participants. Workshops were the least practiced form, although the practitioners' feedback has indicated this form of training as most useful.

As the best example of quality professional development, “Practical Training on Investigating and Prosecuting War-Related Sexual Violence as International Crime” conducted by the IRMCT and the Judicial Academy, delivered to the OWCP staff by the IRMCT experts. This training lasted for 5 days and was designed as a workshop. It implied voluminous material and interaction among the participants (moot courts etc.), analysing in detail the IRMCT/ICTY case law.

The National Strategy envisages particular attention to be paid in professional development to organizing training in the area of strategic planning, information technologies and project management in order to enable the streamlining of the internal processes and use of resources and for improving the process of planning and providing project support. Such trainings were not attended by the OWCP representatives in the period 2016-2020, so it would be useful to organise professional development in that area too. Also, it would be preferred to continue the training on reparation claims and plea bargains, because the OWCP is obliged to promote the implementation of these mechanisms.

Besides the measures geared towards improving the OWCP's efficiency, the NSWCP identified the need to **improve the work of the War Crimes Investigation Service (hereinafter: WCIS)** as a means of improving the efficiency of investigation. In that sense, the Strategy envisages specific action towards the improvement of the WCIS work to be preceded by analysis (report) on the legal and factual state and needs of the WCIS within the Ministry of the Interior, in order to identify the needs of reforming the Service, already in the first quarter of 2016⁴.

⁴ The WCIS envisaged paying special attention to the following issues: the position of the WCIS in the organisational chart of the Ministry of the Interior; whether the recruitment process of the should be reformed; bearing in mind to deploy competent and highly motivated experts and staff to the WCIS, based on clear and objective criteria, as well as the potential influence of the candidates' former participation in conflicts in the region of former Yugoslavia; whether incentives should be introduced in order to attract competent human resources; whether the WCIS has got

The analysis of legal and factual situation and needs of the WCIS, in order to reform it, was conducted (though delayed from the envisaged time frame) in 2017. Within the analysis, issues of importance for its work and actions were addressed and priorities defined for the years that ensued.

In order to enlarge its placement capacities and get adequate premises for physical data storage, the WCIS was relocated to TANJUG's building (IV, V and VI floor), at 2 Obilicev Venac Street in Belgrade.

The Service' staffing continued commensuration with the size and complexity of work. When recruiting new police officers to the WCIS, the Rulebook on Conducting Internal Competition among the MoI Staff is applied ("The RS Official Gazette", no. 73/16), as well as the Rulebook on Competencies for the MoI Staff ("The RS Official Gazette", no. 52/16), passed pursuant to the Law on Police ("The RS Official Gazette", no. 6/16).

While renewing the fleet in 2018, 8 new official vehicles were allocated to the WCIS, giving two to another service within the Crime Police Department.

The WCIS has improved its technical and material capacities thanks to the donation of IT equipment to the Ministry of the Interior – Crime Police Directorate – the WCIS from the US Department of Justice through the international crime investigation training assistance programme, ICITAP, at the US Embassy to the Republic of Serbia. In 2017, within the project "Support to Development Capacities for Strategic Management and European Integration Management at the Ministry of the Interior", the Swedish International Development Agency (SIDA) donated a server for work in "ZyLab" application to the WCIS. With this regard, the OSCE Mission to the Republic of Serbia and the ICITAP supported the training for the use of "Zy Lab" software programme for processing, archiving and searching data, as well as online training on the use of the new E-discovery platform.

For the needs of the WCIS, the Republic of Serbia's Ministry of the Interior extended the licence and purchased the upgraded software package of "ZyLab" needed for archiving and automated document search in 2019, and in 2020 they purchased computers and accompanying computer equipment, as well as commissioned a project on installing external and internal video surveillance of the facility where the working premises of the WCIS are.

Finally, the NSWCP envisaged the approval of joint internal rules on the work of the OWCP and the WCIS, as a mechanism to improve the efficiency of investigations, and the rules were approved in the second quarter of 2016 upon the OWCP initiative, in order to improve the cooperation between the Prosecutor's Office and the WCIS through:

- conducting joint trainings;
- creating a joint strategic team in order to define guidelines and directions for actions on issues of common importance;
- creating joint operation teams;
- periodical joint round table discussions in order to exchange experience and enhance joint actions.

enough staff members to conduct investigations and analysis and whether the methodology it applies is adequate; establishment of joint teams and working procedures between the OWCP and WCIS;

In the context of implementing these activities, upon the initiative of the War Crimes Prosecutor, the head of the WCIS and the war crimes prosecutor adopted joint internal rules of operations in 2018. Joint teams were created for working on each individual case and they hold regular meetings (on a weekly basis) in order to coordinate their activities. Besides, upon the War Crimes Prosecutor’s initiative, a strategic team was established to define the goals and decide on issues of common importance, consisting of the war crimes prosecutor and his deputies, as well as members of the WCIS – the head and the managers from the Department of Investigating Criminal Offences against Humanity and International Law and Search for Missing Persons.

Members of the WCIS, both independently and in cooperation with the OWCP, participated in many training sessions, seminars and workshops organized both in the country and abroad.

In organization of the WINPRO III project team and representatives of NI-CO (*Northern Ireland Co-operation Overseas*), a training on “Raising the Awareness of Stakeholders in Protection Programmes” – Cooperation in the Judiciary and Criminal Proceedings: “Strengthening the Protection of Witnesses in Countering Organised Crime, Terrorism and Corruption”. Also, organized by the WINPRO project team, a training was conducted on “The Basics of Communication with media” – interactive lecture. Within the project of the OSCE Mission to the Republic of Serbia, “Support to Monitoring Domestic War Crimes Trials (phase II)”, several training sessions were held: “The International Humanitarian Law and its Application in War Crimes Trial in the Republic of Serbia“, “Investigations in War Crimes Cases”, “Treatment of Witnesses and Injured Parties in War Crimes Cases”, a study visit to the Hague branch of the IRMCT and to the International Criminal Court at the Hague, “Non-Procedural Witness Protection”, “Efficient Communication and Public Relations in the Judiciary”, as well as the “IV Training“ within the OSCE’s other project of “Capacity building for the Serbian Police in Countering Corruption“.

B) Statistical parameters of efficiency in the context of investigations and indictments in war crimes proceedings

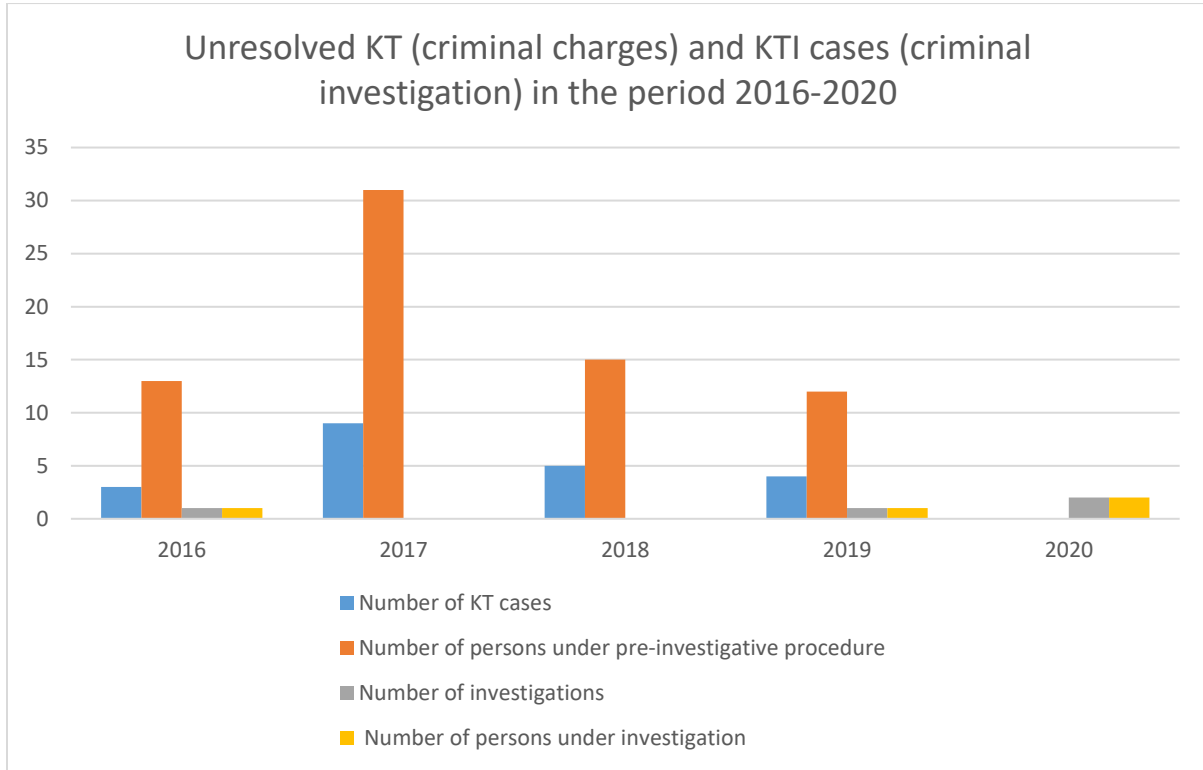
Regarding the statistical parameters related to the pre-investigative and investigative phases of war crimes prosecution in the period 2016-2020, it’s important to mention that in the reporting period 35 orders to conduct investigations against 45 persons were made, with investigations stayed against 22 persons in ten cases during the same period.

Table 1: The number of unresolved cases at the OWCP per year, in the period from 1 January 2016 to 31 December 2020

Year	KT (cases and persons)	KTI (cases and persons)
2016	3 cases; 13 persons	1 case; 1 person
2017	9 cases; 31 persons	/
2018	5 cases; 15 persons	/
2019	4 cases; 12 persons	1 case; 1 person
2020	/	2 cases; 2 persons
Total:	21 cases; 71 persons	4 cases; 4 persons

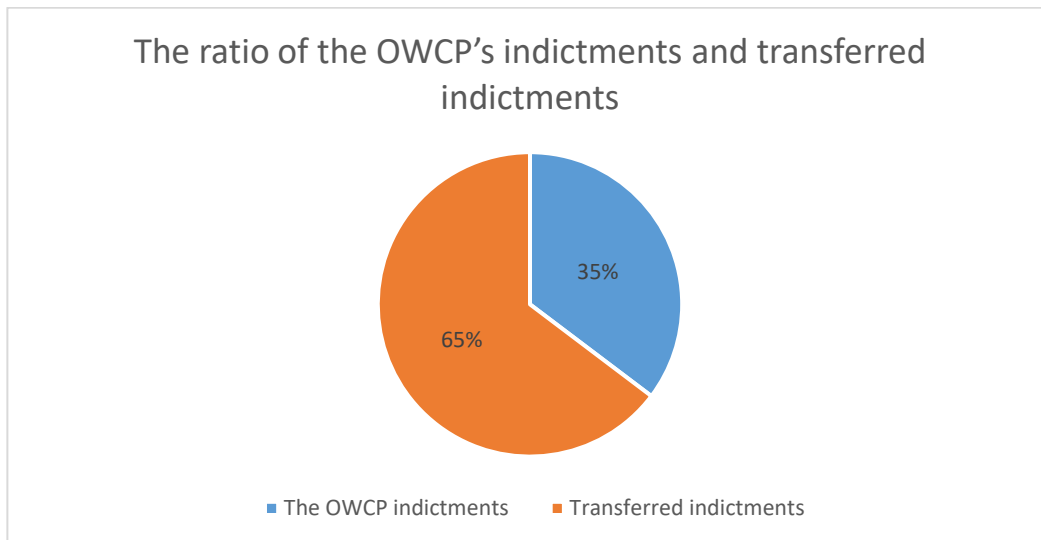
Based on the data presented in Table 1, Chart 2 presents the trends in number of unresolved cases per year, as well as number of persons covered by the cases.

Chart 2: Unresolved cases at the OWCP in the period from 1 January 2016 to 31 December 2020



Regarding the number of issued indictments in the observed period, the OWCP issued 34 indictments against 45 persons in the period 1 January 2016 to 31 December 2020. Of those, 22 indictments (65%) were transferred from Bosnia and Herzegovina, against 23 persons.

Chart 3: The ratio of the OWCP's indictments and transferred indictments



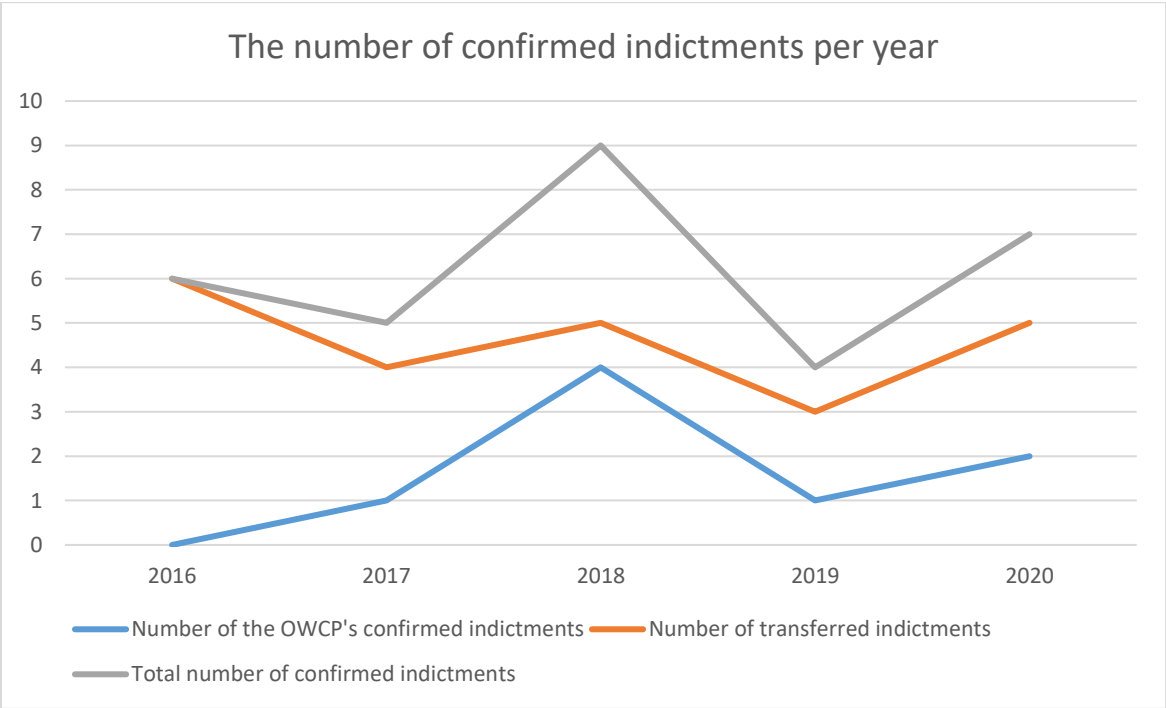
The number of confirmed indictments in the given period (Table 2) varied significantly, with the worst situation in 2016, when there were no confirmed indictments of the OWCP, but all the 6 indictments were transferred from the Bosnia and Herzegovina’s Prosecutor’s Office. This can to a great extent be explained by the prolonged duration of the procedure of appointing the War Crimes Prosecutor, thus the consequential problems in staffing and organizational set up, as identified in the process of the NSWCP development back in 2015.

Table 2: The number of confirmed indictments per year

Year	The number of OWCP’s own indictments confirmed	Total number of confirmed indictments	Total number of confirmed indictments
2016	0	6	6
2017	1	4	5
2018	4	5	9
2019	1	3	4
2020	2	5	7
Total	8	23	31

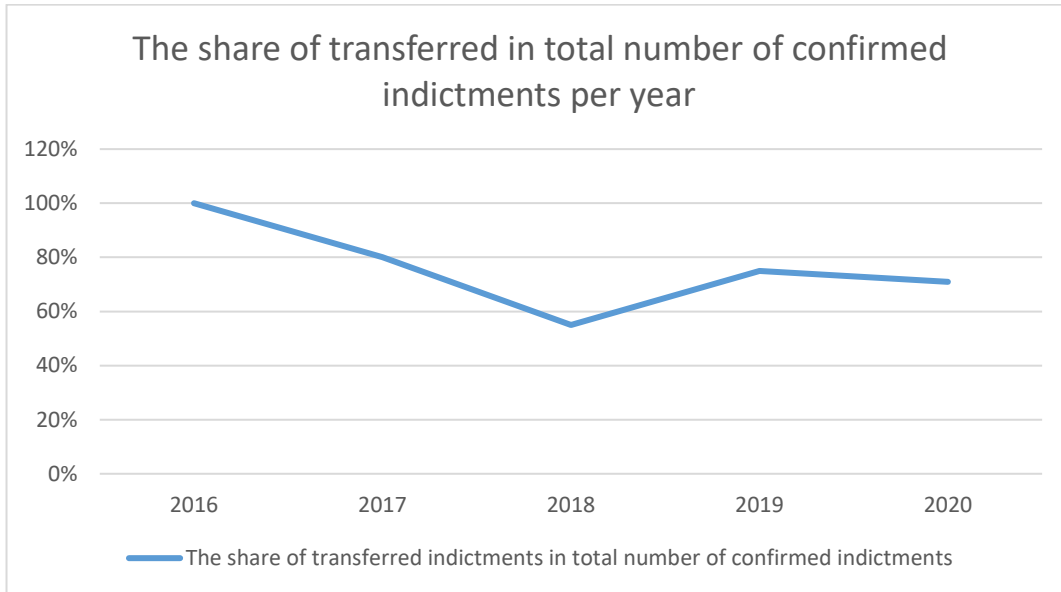
The trends concerning the number of confirmed indictments in the given period are visible in Chart 4 and indicate growth in 2017-2018, reaching maximum value in 2018, with nine confirmed indictments, followed by a somewhat weaker result in 2019 (four confirmed indictments) and with the situation considerably improved in 2020 (seven confirmed indictments).

Chart 4: The number of confirmed indictments per year



Yet, to get a more complete picture of the efficiency of the OWCP's work in the observed period, one should consider the data on the share of transferred indictments in the total number of confirmed indictments per year. Namely, Chart 5 indicates that this share was in the range from 100%, as in 2016, followed by a decreasing trend to the minimum rate of 55% in 2018, after which it remained steady at 70-75%.

Chart 5: The share of transferred in total number of confirmed indictments per year, for the period 2016-2020



Indubitably, these figures corroborate the point of efficient regional cooperation in war crimes prosecution, but also the expectation that significant capacity building of the OWCP in the observed period should result in new indictments.

The fact that there are more cases with confirmed indictments transferred from the Bosnia and Herzegovina's Prosecutor's Office, and, consequently, lower number of cases where the OWCP acted, can be accounted for by the following data:

The OWCP received a higher number of cases from the Bosnia and Herzegovina's Prosecutor's Office in a relatively short period of time, most of them well-processed and with already confirmed indictment. That implied shorter time for processing these cases, i.e. their adjustment to our procedural and substantive laws and referral to the War Crimes Department of the High Court in Belgrade.

Such type of priority in prosecution, vis-à-vis domestic cases that were mostly in pre-investigation or investigation procedure, is based on the reasons for faster, more efficient and cost-effective action, as well as reasonable procedural logic which requires that the cases that have already been processed to a higher extent should be completed first.

We consider such actions to be both justified and expedient, especially since in the taken over cases as well as in those conducted by the OWCP from the beginning, these are procedures that are identical in terms of consequences and rank of defendants.

2.2. The efficiency of war crimes trials

A) An overview of implementation of the measures from the NSWCP

Concerning the segment which refers to the efficiency of trials, a need has been identified for first-instance chambers to invest more efforts in reasoning their decisions for the part related to the length of sentence (aggravating, extenuating and particularly extenuating circumstances), in order to enable equality of court practice and also better understanding of domestic and international public for the penal practice and our criminal justice system. Besides, the NSWCP recognized the necessity to ensure continued improvement of expertise of judicial functions' holders and officers involved with war crimes cases, as well as adequate infrastructure for facilitating the trials' efficiency. Besides the above, the NSWCP identified the need to ensure continuity of the court chambers' composition, whereby the steadiness of the main trial would be ensured in keeping with the immediacy principle.

In the War Crimes Department of the Appeals Court the composition of the chamber has changed, due to retirement of the so-far president of the War Crimes Department, which is why a so-far member of the War Crimes Department's chamber was appointed new president, so no new judge was appointed to this Department and currently there are five acting judges, which still enables unimpeded work of this court, as second instance, for war crimes cases.

In the period from 2016 to 2020, no additional judges were assigned to the cases where the War Crimes Department of Belgrade's High Court is adjudicating, because no president of chamber has requested it from the chief justice in terms of Article 359 of the Criminal Procedure Code.

In order to harmonise the practice of the War Crimes Chamber, the Court Practice Department was established at the High Court in Belgrade, pursuant the Decision of the High Court President number Cy I-2 193/17, with ten judges in its composition and the president of the War Crimes Department is the head of case law for the War Crimes Department.

Regarding the uniformity of practice, the NSWCP envisaged the obligation of the War Crimes Prosecutor to initiate negotiations with the counterparts in the neighbouring countries on establishing consolidated database on all war crimes trials and make it electronically available to all courts and parties to the procedures, as well as to the general public, which would significantly contribute to harmonization of court practice.

In September 2018, the War Crimes Prosecutor initiated the establishment of joint records on war crimes cases at the regional level during the fourth regional consultations within UNDP's project "Strengthening Regional Cooperation in War Crimes Prosecution and Search of the Missing Persons (2017–2019)". The status of this activity's implementation has remained unchanged after this initiative; the register of the event has not been created yet.

Besides the above, at the Regional Prosecutors' Conference held in Belgrade, in May 2019, the conference participants – representatives of the OWCP and prosecutor offices from the region, as well as the IRMCT prosecutor, exchanged their opinions, views and experience with war crimes cases, taking stock of the public prosecutors' and court practice and pointing out to certain specificities they encountered in their work.

As the NSWCP recognized also the importance of **infrastructural prerequisites** for trial efficiency, it is important to mention that the Ministry of Justice is responsible for investment in

the infrastructure of special departments, while the OWCP is a direct budget beneficiary. Also, it is important to distinguish three types of infrastructural investment (buildings and facilities, equipment and maintenance, with Table 3 clearly indicating that in the observed period the total infrastructural investment for special departments amounted to 9,621,000.00 dinars (around 82,000 euros), with no investment in facilities, just equipment and maintenance⁵.

Table 3: Investment and maintenance – Special Department of High Court in Belgrade (2016-2020)

YEAR	PURPOSE		
	Buildings and facilities	Equipment	Maintenance
2016	0.00	267,000.00	145,000.00
2017	0.00	3,500,000.00	0.00
2018	0.00	0.00	0.00
2019	0.00	721,000.00	940,000.00
2020	0.00	986,000.00	3,062,000.00
Total 9,621,000.00	0.00	5,474,000.00	4,147,000.00

According to the data from the OWCP, in the observed period the investment in equipment purchase was 2,441,108.00 dinars total, and in maintenance 278,030.00 dinars.

Table 4: Investment and maintenance – the OWCP (2016-2020)

YEAR	PURPOSE		
	Buildings and facilities	Equipment	Maintenance
2016	0.00	207,100.00	55,279.00
2017	0.00	704,278.00	37,100.00
2018	0.00	549,792.00	68,277.00
2019	0.00	501,350.00	85,681.00
2020	0.00	478,588.00	31,693.00
Total 2,719,138.00	0.00	2,441,108.00	278,030.00

Regarding this segment of infrastructure that pertains to information technologies, it is important to mention that important steps have been made towards improving the electronic case management system at public prosecutors' offices (SAPO). The introduction of the SAPO electronic the system (Standardised Application for Prosecutors' Offices) into the OWCP started in late 2019. Technical equipment necessary for the use of this programme was delivered to the

⁵ Please note that besides the Special Department of Belgrade's High Court, the beneficiaries of these funds are other state authorities placed in the same building.

Office and its implementation was planned for 2021. The employees of the Prosecutor’s Office attend online trainings on developing and improving the SAPO software launched in July 2020.

Regarding the establishment of a training system on international criminal law and international humanitarian law, in the period of the Strategy’s implementation, under the auspices of the Judicial Academy, seven training sessions were held with as many as 94 participants, judges and judicial assistants from the War Crimes Department of Belgrade’s High Court and Appeals Court, as well as deputy prosecutors and prosecutorial assistants and secretary general of the OWCP.

The delivered trainings included the following topics:

- “The international humanitarian law and its implementation in war crimes trials in Serbia“;
- “Investigation in war crimes cases“;
- “Crime against humanity as a criminal offence and chain of command as a form of criminal liability and their application to the war crimes cases in Serbia and complicity in war crimes cases“;
- “Deciding on reparation claims of injured parties as part of the judgments in war crimes cases“;
- “Treatment of witnesses and injured parties in war crimes cases“;
- “Prosecuting the offence of sexual violence within the competences of the IRMCT“;
- “Sexual violence in war crimes cases – court –practice and treatment of witnesses and injured parties“.

The trainers in these training sessions were renowned experts on the relevant fields, with a very important note that an representation of experts of various backgrounds was ensured (judiciary, attorneys, support services for injured parties and witnesses, international organizations like the OSCE and International Committee of Red Cross, but also experts experienced in war crimes prosecution in the region both before the ICTY and IRMCT).

B) Statistical parameters of the efficiency of war crimes trials

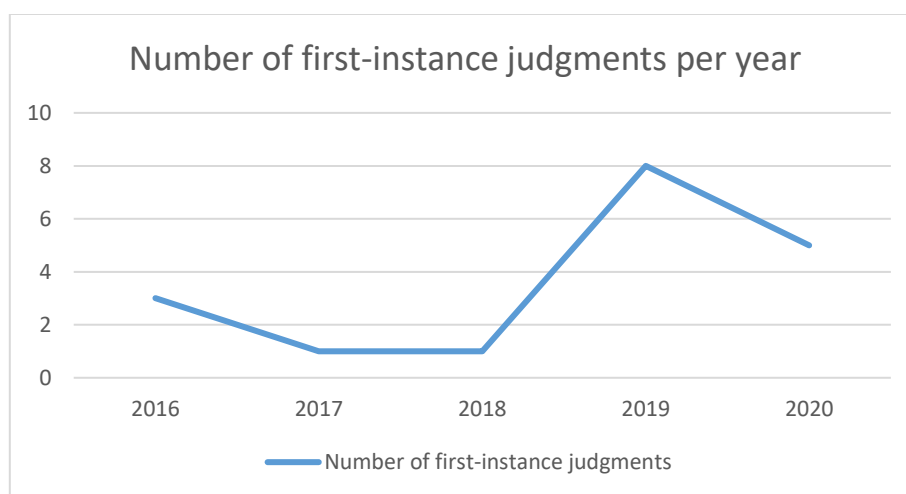
The statistical parameters of the efficiency of war crimes trials indicate that in the observed period the High Court in Belgrade made 18 first-instance judgments, and the number of judgments per year ranged from 1 to 8.

Table 5: Number of first-instance judgments per year in the period 2016-2020

Year	Number of first-instance judgments
2016	3
2017	1
2018	1
2019	8
2020	5
Total	18

The trends in number of first-instance judgments indicate a positive leap in 2019, when eight first-instance judgments were made, which marks the positive leap of confirmed indictments in 2018 and indicates the existing capacities of the High Court's Special Department to deal with the heightened inflow of war crimes cases.

Chart 6: Number of first-instance judgments per year



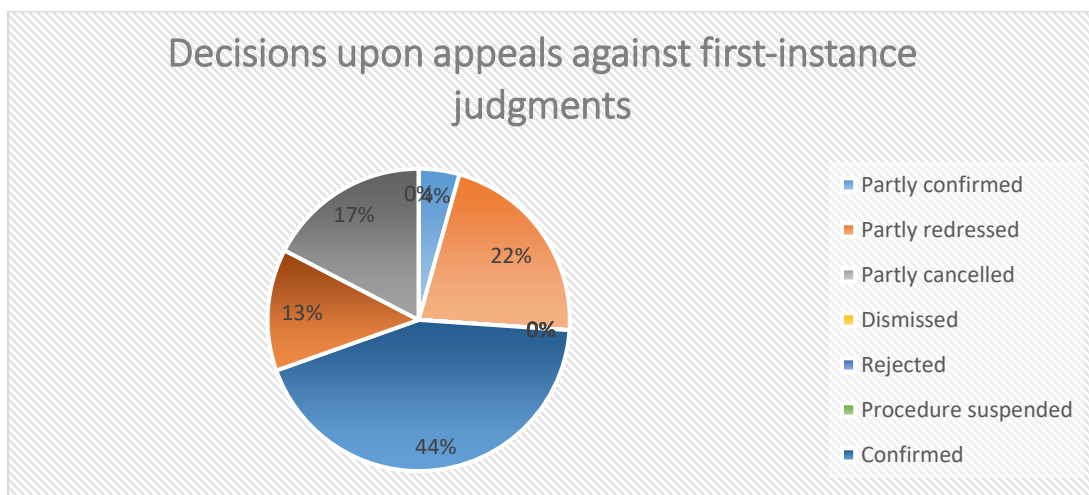
In the observed period, the Appeals Court in Belgrade made 23 decisions upon appeals submitted against the High Court judgments (Table 6).

Table 6: Appeals Court in Belgrade per type of decision for adjudicated cases within the reporting period from 1 January 2016 to 31 December 2020

	Kž Kž-Kre	Kž-r PO2	Kž-Po2-uo	Kž1 PO2	Kž2 PO2	Kž3 PO2	Rž k-Po2	Total
Partly confirmed	0	0	0	1	0	0	0	1
Partly redressed	0	0	0	5	1	1	0	7
Partly cancelled	0	0	0	0	0	0	0	0
Rejected	0	0	1	0	0	0	0	1
Refused	0	0	2	0	2	0	1	5
Procedure stayed	0	0	0	0	0	0	0	0
Confirmed	10	0	45	10	55	1	0	121
Redressed	0	0	5	3	6	0	0	14
Resolved in another manner	0	0	0	0	0	0	0	0
Decision rejecting the appeal as untimely	0	0	0	0	0	0	0	0
Cancelled	7	0	16	4	26	0	0	53
Sustained	0	2	0	0	0	0	0	2
Total	17	2	69	23	90	2	1	204

A significant parameter of efficiency of war crimes proceedings is the rate of cancelled judgments. If the rate of the cancelled judgments is observed within the five-year period, Chart 7 indicates that the share is around 17%. Besides, even 35% of first-instance judgments were completely or partly redressed.

Chart 7: The structure of the Appeals Court decisions upon appeals against the first-instance judgments in the period 2016-2020.



With the passage of the Strategy, operationalisation of activities from the AP 23 and the National Strategy was enabled, but in the coming period it is necessary to provide full transparency of the outcomes of its implementation and enhance the dialogue with stakeholders.

The completion of case transfer process from the general jurisdiction prosecutors' offices, the legal uncertainty was removed and prerequisites for further adjudication of these cases met.

The OWCP's capacities in the previous period have been significantly improved with increased number of deputy prosecutors and prosecutorial assistants, although this reinforcement should be viewed in the context of the parallel process of retirement of senior deputies and the time necessary for the newly elected deputy prosecutors to start working in full capacities and in new environment, which implies the necessary enhancement of the spatial capacity building and significant improvement of the OWCP's technical equipment". Yet, it is realistic to expect improved efficiency of the OWCP work in the upcoming period. This should be aided by joint teams formed for individual cases.

It is necessary to carry on with continued professional development of both deputy prosecutors and judges adjudicating the war crimes cases, especially in the area of deciding on reparation claims, which would enable the implementation of Guidelines approved by the Supreme Court of Cassation and also improve the prosecutorial practice in collecting evidence relevant for deciding on reparation claims in criminal proceedings.

The position, capacities and infrastructure of the WCIS, as well as its cooperation with the OWCP, have been significantly improved, and further investment in official vehicles and

modernization of computing equipment will be needed for unhindered work in the following period.

3. PROTECTION OF WITNESSES AND VICTIMS

Regarding the protection of witnesses and victims of war crimes in the Republic of Serbia, the commitment of the NSWCP were to aspire to harmonization, i.e. full implementation of principles enshrined in the UN SC Resolution 60/147(2005)⁶ and the European Parliament and Council Directive 2012/29/EU of 25 October 2012⁷ whereby minimum standards for the rights, support and protection of victims of criminal offences are established, in order to further strengthen the national system of witness and victims protection. The Strategy places the stress on enhancing the security of witnesses in the protection system and of the trust in the protection system, especially through the confidentiality of data on protected witnesses and witness protection. The same priorities were identified in the Interim Benchmark 18 of the Negotiating Position for Chapter 23.

The NSWCP approached the issue of **out of court protection of injured parties and witnesses** from the aspect of improving the regulatory framework, as well as from the angle of institutional capacity building and also improving the practice.

Regarding the first aspect, the NSWCP envisaged the Sectoral Working Group of the Ministry of Justice to develop an analysis of court practice in implementation of Article 102 of the Criminal Procedure Code during 2016, as well as the analysis of protection of participants in criminal proceedings and analysis of provisions and outcomes of the implementation of the Law on Protection Programme for the Participants in Criminal Proceedings and to formulate the conclusions and recommendations on the need to possibly amend the law or its implementing by-laws in order to improve the protection system, all for the purpose of identifying the needs to amend the law in order to ensure better protection of injured parties and witnesses.

Recognizing the importance and role of the Witness Protection Unit in this process, the Unit staff took a range of steps towards improving the regulatory framework in the given area. Since the endorsement of the NSWCP, the Witness Protection Unit has submitted:

- Initiative to amend the Law on Protection Programme for the Participants in Criminal Proceedings (the authorised proponent is the Ministry of Justice);
- Proposals of new by-laws: Instruction on the manner of implementing the Protection Programme for the Participants in Criminal Proceedings and the Instruction on the manner of using funds in implementation of the Protection Programmes for Participants in Criminal Proceedings and in performing other tasks of the Witness Protection Unit;

⁶ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

⁷ DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

- Initiative to set up a working body to include representatives of several competent institutions for preparation of proposals for passage of by-laws governing the procedure of issuing documents related to the procedure of implementing the protective measure of identity change, in terms of Article 45 of the Law on Protection Programme for Participants in Criminal Proceedings.

When drafting the initiative to amend laws and by-laws, the Witness Protection Unit drew on the experience from individual cases under the Protection Programme; problems in implementing individual prescribed protective measures; relations of other state authorities and organizations to the Witness Protection Unit and Protection Programme for Participants in Criminal Proceedings ; as well as legal arrangements enshrined in the legislation of individual surrounding countries. However, these regulatory activities have not been implemented yet.

Besides the above, in order to improve the regulatory framework, irrespective of amendments to the law and by-laws, the Witness Protection Unit has approved three operational procedures, in accordance with the Regulation on the Special and Specialised Police Units:

- Procedure for actions of police officers from the Protection Unit in implementation of Emergency Measures and Protection Programme for Participants in Criminal Proceedings;
- The procedure for actions of police officers of the Witness Protection Unit in implementing the measures of physical protection;
- Procedure of developing and applying the acts on risk assessment.

Speaking of institutional capacity building for protection of witnesses in war crimes proceedings, the NSWCP envisaged a two-phase action, with conducting analysis in the first and implementing the recommendations defined through the analysis in the second.

The Commission on Implementation of the Protection Programme completed the analysis of the position and needs of the Protection Unit in February 2016, including: the process of employees' engagement; the working methodology of the Unit and its technical capacities, as well as defining the sufficient number of employees and deployment to this Unit of competent and highly motivated experts, including psychologists, as well as other staff.

The analysis identified certain shortcomings and problems in the work of the Witness Protection Unit and provided recommendations for eliminating them, for improving the work and actions of this organizational unit. Most those recommendations were included in proposed activities of the Action Plan for Chapters 23 and 24.

In accordance with this analysis, over the period that ensued, the following activities were undertaken:

- through amendments to the Law on Police, the Witness Protection Unit was classified as a special police unit, whereby its status was significantly improved;
- the act on internal organization and job systematization was amended, and the human resources capacities of the Witness Protection Unit were improved accordingly, (with new recruitments: IT expert, psychologist, social worker and the total number of job positions in the Operations Department was increased);
- with the passage of the Decree on Special and Specialised Police Units, the selection and recruitment procedure was defined for the Witness Protection Unit;

- following the increased number of job positions, the recruitment procedure for new members of the Witness Protection Unit was conducted;
- in keeping with the Decree on Special and Specialised Police Units, the Specialist Training Programme for Work at the Witness Protection Unit was defined, to be attended by the new members;
- new premises were provided, meeting the necessary standards, with restricted and controlled access;
- in keeping with the Law on Data Secrecy, all members of the Witness Protection Unit were issued the certificate of access to secret data;
- by introducing the protective measures, in keeping with the law and by-laws governing the area of secret data protection, the data protection pertinent to the implementation of the Protection Programme for Participants in Criminal Proceedings and emergency measures implementation was improved;
- the Witness Protection Unit's technical capacities were improved by procurement of new vehicles, computing and other IT equipment, video cameras, mobile systems, video surveillance, navigation, servers, scanners, video surveillance system, access control system for official premises of the Unit, etc.;
- members of the Witness Protection Unit got new formation armament, protective supplies and other tactical equipment;
- in several cases, the protective measure of Identity Change was successfully applied, and, in relation to that, cooperation was established with relevant state authorities in order to issue the documents with altered identities of protected persons and to register these data.

Besides the above, the Witness Protection Unit staff participated in numerous training programmes, courses and seminars during the NSWCP's implementation, and took an active part in international and regional conferences within then ongoing EU Project WINPRO III – "Cooperation in Criminal Justice: Strengthening the Protection of Witnesses in Countering Organised Crime, Terrorism and Corruption".

The following trainings were conducted: Training of Trainers' course; Inception course on witness protection; Client assessment course; legend developing course; Basic course in close protection; Basic course in anti-countersurveillance; Basic course in first aid; Planning and decision-making course; Risk management course; Course on intelligence data and their collection from open sources; Course on psychological assessment and support; Course on personal and operational security; Advanced course on anti-countersurveillance; Advanced Witness Protection course; course on financing the Protection Programme for Participants in Criminal Proceedings; Exit Strategy course; Identity change workshop; Training on command and control.

Also, regular trainings following the training curricula for professional development of the Witness Protection Unit police officers were provided in continuity consisting of theoretical lectures and practical exercises in technical steps related to the measure of Physical Protection of Person and Property, as well as to exercising police officers' powers).

As the NSWCP envisages the improvement of the cooperation among the state authorities involved with the witness protection system, in order to improve the cooperation with relevant judicial

authorities with respect to the inclusion of participants in criminal proceedings and close persons into the Protection Programme for Participants in Criminal Proceedings, the Witness Protection Unit concluded Protocols on Cooperation with the OWCP⁸ and the Office of Organised Crime Prosecutor. Following the decision of the War Crimes Prosecutor, in order to have more efficient cooperation between the OWCP and Protection Unit, two contact-persons were designated for communication with witnesses and injured parties, who were at the same time the members of the Service for Support to Witnesses and Injured Parties.

In the previous period, the representatives of the OWCP and of the Protection Unit in alternation organized and held joint round table discussions in order to exchange experience and improve joint actions, as well as joint trainings. Besides the above, a joint strategic team was established for defining the guidelines and directions of action on issues of common importance, as well as a joint operations team. Besides, through The European Commission's WINPRO III Project, several training sessions were held, with joint participation of representatives of the Prosecutor's Office and the Witness Protection Unit.

With regards to the out of court protection of witnesses, despite the progress in improving the regulatory framework governing this form of witness protection falling short of the expectations, significant efforts were made to strengthen the institutional and administrative capacities of the Unit. Bearing in mind the above, it is necessary for the new strategic document to envisage a multi-sectoral approach to development of the necessity by-laws which would regulate the process of issuing documents related to the identity change, based on the best practices of the so-far cooperation among the relevant institutions.

The Strategy identified the need for more consistent implementation of the measures of procedural protection of injured parties and witnesses in accordance with the provisions of the Criminal Procedure Code, with an emphasis on observing the procedural discipline in terms of protection of injured parties and witnesses and the consequential reaction of the competent prosecutor, State Prosecutors' Council and relevant bar association. The analysis of data submitted by the State Prosecutors' Council and Serbian Bar Association indicates that, during the Strategy implementation period no piece of information was received from a president of chamber on reprimand under Article 374 of the Criminal Procedure Code, due to untimely or inappropriate action of public prosecutor or person substituting them, causing procrastination of the proceedings, nor has the Serbian Bar Association received any notification of an acting president of chamber to inform the Association of a reprimand pronounced to a lawyer for prolongation of the proceedings under Article 374 Paragraph 3 of the Criminal Procedure Code. These data may indicate that the level of procedural protection was meanwhile improved, so there was no need to activate the mechanism under Article 374 or that the said mechanism is still not applied despite the need for it. The representatives of the institutions interviewed during the process of conducting this Analysis held the position that there were no cases of violating procedural discipline in the observed period.

⁸The War Crimes Prosecutor and Minister of the Interior signed the Protocol on Cooperation in witness protection on 6 July 2017. The purpose of signing the Protocol was to improve the cooperation, joint activities and mutual relations of the OWCP and MoI of RS.

4. SUPPORT TO WITNESSES AND VICTIMS

The improvement of support to victims, witnesses and providers of information on war crimes, during and beyond criminal proceedings, was recognized as one of the main goals of the NSWCP, and the improvement of this area was considered at two levels:

- through the general improvement of the position of victims and witnesses of criminal offences in the Republic of Serbia;
- through special measures for improvement of the support to victims and witnesses in war crimes proceedings.

In relation to this segment, the activities envisaged by the NSWCP ought to be considered in the context of the activities envisaged, in this context, by the Action Plan for Chapter 23, so the planned reforms were, conditionally speaking, grouped in three phases, with the first one being analytic – referring to assessment of alignment of the national legislation to the relevant international standards, primarily to the Directive 2012/029/EU⁹; the second refers to adoption of a comprehensive strategic document to systematically govern the establishment of the National Network of Victim Support Services, amendments to the relevant legislation and passage of necessary by-laws, while the third phase would mark the actual establishment of the Network.

Regarding the degree of implementation of activities planned for phase one, it is important to mention that the Ministry of Justice, with support of the MDTF-JSS Project, as well as the OSCE Mission to the Republic of Serbia, conducted a comprehensive analysis of the criminal legislation's alignment to the Directive 2012/029/EU, as well as a comparative analysis of various models of organizational set up of victim support services in Europe.

Based on these analyses¹⁰, as well as on the previously conducted pilot project of the OSCE Mission to the Republic of Serbia and of the Republic Public Prosecutor's Office, the working group for developing the National Strategy for Improvement of the Position of Victims and Witnesses of Criminal Offences in the Republic of Serbia commenced in June 2018. The working group included the representatives of all relevant institutions, academic community and civil society, and its work was supported by the IPA 2016 Project "Support to Victims and Witnesses in the Republic of Serbia", implemented by the OSCE Mission to the Republic of Serbia¹¹. In August 2020, after two years of work of the Working Group and several rounds of consultative process and public discussion, the Government of the Republic of Serbia approved the National Strategy for Exercising the Rights of Victims and Witnesses of criminal Offences in the Republic of Serbia for the period 2020-2025 with its accompanying Action Plan for the period 2020-2022 (hereinafter: the Strategy for Victims).

Besides systematically processing the most important rights in accordance with Directive 2012/029/EU and paving the way for legislative amendments and institutionalization of support and assistance to injured parties and witnesses, the Strategy for Victims recognized the victims of

⁹ Directive of the European Parliament and Council 2012/29/EU of 25 October 2012 on establishing the minimum standards on rights, support and protection of victims of criminal offences, amending the Framework Decision of the Council 2001/220/JHA

¹⁰ All the said analyses are available at: <https://www.podrskazrtvama.rs/lat/dokumenti/izvestaji-i-analize.php>, accessed on 31 March 2021

¹¹ See more on: <https://www.podrskazrtvama.rs/o-projektu.php>, accessed on 31 March 2021

war crimes as an extremely vulnerable category of victims. Accordingly, this strategic framework identified the necessity of a which was created within the OWCP, in accordance with the General Mandatory Instruction of the Republic Public Prosecutor of 5 December 2016, on 3 April 2017. The manner of the Service's operations, goals, principles and work of persons responsible for the Service's functioning are defined by the Rulebook on the Work of the Service, passed on 29 March 2017. The assistance and support to injured parties and witnesses at the OWCP is provided by the Service for Information and Support to Injured Parties and Witnesses, established on 3 April 2017. The Service has currently got 10 staff members (3 deputy prosecutors, 5 prosecutorial assistants, an investigator and a secretary), following the decision of the War Crimes Prosecutor of 27 September 2019 to improve and strengthen the capacities of the Service acting with the primary task of providing psychological and logistic support to witnesses, as well as to enable them to access the court or another authority in the proceedings as easily and efficiently as possible. Also, in order to provide support to victims, in January 2021 a psychologist for recruited to the OWCP. Together with the Service for Assistance and Support to Injured Parties and Witnesses of Belgrade's High Court, this rounded a whole which enables continuity of support and assistance throughout the proceedings. Following this idea, the Strategy for Victims envisages this Service for Information and Support at the OWCP to be the only service functioning at a prosecutor's office, while the rest will be at high courts. At the same time, a range of measures is planned for the improvement of the work of these two previously formed services, in parallel with establishment of 25 new ones, at all high courts in the Republic of Serbia.

After the adoption of the Strategy for Victims¹², although two expert groups prepared a working text for amending the entire legislation on criminal justice and judicial organization, the Ministry of Justice has not set up its working groups to develop the draft amendments. Also, there has been no training on the rights of victims, after the training needs assessment conducted in 2019, followed by the training of trainers in February 2020, which was caused by the COVID-19 pandemic.

At the same time, although the need to strengthen the capacities of the Service for Assistance and Support to Injured Parties and Witnesses at Belgrade's High Court was identified also by the NSWCP, and despite the fact that in the period 2016-2020 support and assistance was provided in cases of the War Crimes Department for a total of 1,463 witnesses, out of whom 200 had the status of injured parties, still there is no significant progress identified in capacity building of this service.

The witness premises at 29 Ustanicka Street were refurbished back in 2006 and they need adaptation and refurbishing, especially given the number of persons who used the facilities of the Service in the capacity of witnesses or injured parties, both from war crimes cases and organized crime. The video conference equipment is outdated and was installed 17 years ago, which creates difficulties in witness examination, in form of frequent interruptions and considerably longer time of witness examination than necessary, as well as interruptions of the train of thought of witnesses and injured parties during their testimonies. Even five years after the NSWCP was adopted, the recruitment of experts on psycho-social protection at the Service for Assistance and Support to Injured Parties and Witnesses has not been approved in Job Systematisation.

¹² It is worth mentioning that in 2019 the Supreme Court of Cassation adopted the Guidelines on Improving Court Practice in Reparation Proceedings for the Victims of Severe Criminal Offences in Criminal Proceedings, making way for improving the practice in exercising this right in war crimes trials.

There are also serious delays in capacity building of support services at the OWCP and High Court, as the High Court service did not recruit new staff of assistive background during the period of implementing the National War Crimes Prosecution Strategy. Administrative capacity building in that aspect took place within the Protection Unit and the OWCP's Service, which hired one psychologist in February 2020 and January 2021 respectively, while the Witness Protection Unit engaged a social worker too.

For the needs of the staff at the Service for Assistance and Support to Injured Parties and Witnesses, the High Court in Belgrade, OWCP and Judicial Academy, with additional support, organised additional trainings on the rights of victims, including the following topics: "Sexual violence in war crimes cases – court practice and treatment of witnesses and injured parties", "Treatment of witnesses and injured parties in war crimes cases", "Prosecuting the crimes of sexual violence under the competences of the ICTY", and members of the Service for Assistance and Support to Witnesses and Injured Parties at the OWCP regularly participated in professional gatherings and trainings on support and protection of witnesses under the WINPRO III Programme (IPA 2015).

Regarding the improvement of regional cooperation in the area of support provision to witnesses and victims, in the period from 2016 to 2020, the Service for Assistance and Support to Witnesses participated directly in organization of 256 video conference calls, and 313 witnesses who testified upon letters rogatory received the Service's support. For the needs of courts and state attorney offices in the Republic of Croatia, support was provided to 156 witnesses, 142 witnesses testified upon letters rogatory from courts and prosecutors' offices of Bosnia and Herzegovina and 15 witnesses upon letters rogatory of state authorities of Montenegro. The Services had intensive cooperation with the Witness Department of the Ministry of Justice of the Republic of Croatia, Witness Department of the Cantonal Court in Bihac, District Court in Banja Luka, Basic Court in Brcko District, as well as with District Courts in Doboje, Prijedor, Trebinje and Bijeljina.

Within UNDP's Regional Project on War Crimes, supported by the Government of the United Kingdom, two regional meetings were held in November 2019 and June 2020 with providers of support to witnesses, attended by the representatives of services/departments for witness support in Bosnia and Herzegovina, Montenegro, Croatia and Serbia.

Having in mind that the adoption of the National Strategy for Exercising the Rights of Victims and Witnesses of Criminal Offences in the Republic of Serbia for the period 2020-2025 and its implementing Action Plan for the period 2020-2022 clearly defined the reform pathway in this area, it is necessary to work intensively on the implementation of these strategic documents in the coming period. Besides, it is very significant to provide additional resources for engaging professionals of assistive vocation for services of assistance and support to injured parties and witnesses. This administrative capacity building must be followed by infrastructural capacity building, in keeping with international standards.

The necessary segment is also standardization and institutionalization of training on the rights of victims.

A particular attention should be paid to continued implementation of the Guidelines for Improvement of Court Practice in Proceedings upon Reparation Claims of Victims of Serious Criminal Offences in Criminal Proceedings, as well as to conducting trainings on this topic for judicial function holders, acting upon war crimes cases.

Further improvement of regional cooperation of services for support to victims and witnesses, through more specific definition of protocols applied in this cooperation, but also continued exchange of experience, is of decisive importance for empowering the victims and witnesses and for the quality of their testimonies.

5. DEFENCE OF THE ACCUSED

Concerning the need to improve, i.e. enhance the quality of defence by duty and chosen defence in war crimes proceedings, the NSWCP envisaged the development of programmes and implementation of inception and continued training on international humanitarian law and international criminal law for attorneys representing the accused in war crimes cases, in cooperation of the Serbian Bar Association, War Crimes Department of Belgrade's High Court and Judicial Academy, commencing on 2016. This activity has not been undertaken and it is no less relevant in 2021.

Besides the above, the NSWCP envisaged also the improvement of financing the system of defence ex officio in war crimes cases, with specific measures for achieving this result made dependent on the outcomes of the implementation of the Rulebook on Remuneration for Attorneys Acting Ex Officio in War Crimes Cases, with recommendations for its potential amendments, the development of which was assigned to the working group set up by the Ministry of Justice. Although the conducting of this analysis was envisaged for 2016, this task was realized in 2017, when the working group¹³ took a position that the provisions of the Rulebook on Remuneration for Attorneys Acting Ex Officio in War Crimes Cases should not be amended, particularly taking into consideration that under Negotiating Chapter 3 all regulations relevant for attorneys would be amended, so all the amendments in this area should be made in a consolidated way.

6. WAR CRIMES TRIALS AND THE ISSUE OF MISSING PERSONS

The NSWCP approached the issue of missing persons in the context of war crimes trials from three strategic points:

- through improvement of regulatory framework relevant for determination of the fate of missing persons (more specifically, through implementation of the recommendations issued by the Committee on Enforced Disappearance and reports to the Committee on the results achieved);
- Improvement of institutional and administrative capacities of national authorities included in the process of investigating the fate of missing persons, as well as their mutual cooperation;
- Improvement of regional and broader international cooperation in the area of determining the fate of missing persons (related to the status of the International Commission on Missing Persons (hereinafter: ICMP)).

Regarding the improvement of the regulatory framework significant for determining the fate of missing persons by implementing the recommendations of the Committee on Enforced

¹³ Established upon Decision of the Minister of Justice no: 119-01-00249/2017-06

Disappearance (hereinafter: the Committee) and reports to the Committee on the achieved results, it is important to bear in mind that the focus of the Committee itself¹⁴ as on amendments to the Criminal Code, in terms of alignment to Articles 2, 4, 5, 6, 7 and 8 of the Convention.

This obligation was met only partly, given that by amendments to Article 371 of the CC enforced disappearance was recognized as act of perpetrating crime against humanity, but the basic form of enforced disappearance under Article 2 of the Convention was not incriminated and neither was the act of enforced removal of child under Article 25 of the Convention.

Besides, the recommendation to remove the obligation of certificate on death of the missing person as a prerequisite for family members to exercise their rights was not eliminated (Article 24, Paragraph 5 of the Convention).

Finally, actions to align the definition of victim in the Criminal Code and in the Criminal Procedure Code to that under Article 24 of the Convention have not been taken.

Regarding the capacity building and improving internal and regional cooperation in the process of investigating the fate of missing persons, it should be emphasised that the activities of the previous Government's bodies are carried on without intermissions, as those bodies were established in 1991 in order to resolve the issues of missing, imprisoned or demised persons during the armed conflicts in former SFRY. With this regard, the Mixed Commission was established in 1991, tasked to coordinate the activities of the ICRC's Investigation Service and, in 1994, the first Commission of the Federal Republic of Yugoslavia was established for humanitarian issues and missing persons. On the question of cooperation with the Republic of Croatia, i.e. its competent authority for seeking the missing persons, it was achieved by signing the Memorandum of Understanding on seeking the missing persons in 1995 in Dayton, as well as by signing the Protocol of Cooperation in 1996 in Zagreb. The cooperation with Bosnia and Herzegovina went on continuously, but it was officially confirmed by signing the Protocol on Cooperation in Seeking the Missing Persons between the Government of the Republic of Serbia and the Council of Ministers of Bosnia and Herzegovina, in 2015 in Sarajevo. The cooperation with interim institutions of self-government on the territory of the AP Kosovo and Metohija, in resolving the issues of missing persons, has been taking place within the mechanism of the Working Group for Persons Registered as Missing in Relation to the Events in Kosovo, within the Belgrade-Prishtina dialogue. The Working Group meetings take place under the auspices of the Special Representative of the UN Secretary General (hereinafter: the UNSGSR) in the context of Resolution 1244 (1999) of the UN Security Council. The Working Group is chaired by the International Committee of Red Cross (ICRC) and its members are from delegations of Belgrade and Prishtina. Representatives of the International Commission on Missing Persons (ICMP) also participate in the Working Group, and in the observer status the members of diplomatic core of the countries that have their missions in the AP KiM, OSCE and representatives of the associations of family members of missing persons from AP KiM. In accordance with the operational rules of the Working Group, in 2005 the Working Subgroup was established for forensic issues, and in 2017 the Analysis Team. The Working Group is the only and irreplaceable mechanism for resolving the issues of missing persons in the AP of Kosovo and Metohija, as it enables joint work and cooperation of Belgrade and Prishtina in resolving the cases of all missing persons.

¹⁴ Committee on Enforced Disappearance, Concluding observations on the report submitted by Serbia under Article 29 Paragraph 1 of the Convention, 12 February 2015.

In the observed period, eleven meetings of the Working Group for Missing Persons within the Belgrade-Prishtina dialogue were held, eight meetings of the Working Subgroup for Forensic Issues and six meetings of the Team for Analysis.

Joint activities of Belgrade and Prishtina delegations were undertaken, regarding field investigations and exhumation of remains of the persons registered as missing in AP KiM, in the following locations: near the mosque in Kosovska Mitrovica; Orthodox Christian cemetery in Prizren; the area of the Kovace village, municipality of Zubin Potok; bunker in Djakovica; GPR investigation handled by the UN expert from the global service centre (Kizevak and Jaloviste, Kacanik, Kisnica and Ugljare); near the village of Medevce, municipality of Medvedja; Karadak near Rudnica; Tusus, municipality of Prizren; Muslim cemetery in Kosovska Mitrovica; Jaloviste, municipality of Raska; Budisavce, municipality of Klina the mine of Kizevak, municipality of Raska; Kosare (vigilance); Kozarevo, Novi Pazar.

In the analysed period, the Commission participated in exhumations, re-exhumations, autopsies, re-associations, identifications and handover of remains of 43 persons related to the conflict in the AP KiM.

As part of the Berlin process, on 10 July 2018 in London, the European Union Member States and participants of the Western Balkan Summit signed the Joint Declaration on Missing Persons, at the level prime ministers. The Framework Plan for Resolving the Issues of Missing Persons from the Conflicts in The former Yugoslavia emanated from the Declaration and was signed at the level of competent authorities for investigation on missing persons (the Republic of Serbia, the Republic of Croatia, Bosnia and Herzegovina, Kosovo¹⁵ and Montenegro). In order to implement the activities envisaged by the Framework Plan, the Working Group for Missing Persons was set up (hereinafter: as well as the Operational Group for Resolving Unidentified Cases (hereinafter: NNOG) and the Operational Group for Database (hereinafter: the Database OG). A total of four meetings of NNOG and three meetings of the Database OG were held.

Pursuant to the Agreement and Protocol on Investigation on Missing Persons signed with the Republic of Croatia, one bilateral meeting was held in the analysed period and two working meetings. St the Institute of Forensic Medicine and Crime Investigation of the Medical Faculty in Zagreb, the Republic of Croatia, and identification of remains of thirty-three victims of Serbian ethnicity killed in the Republic of Croatia during the armed conflicts in the former Yugoslavia in the period 1991 – 1995, in presence of their family members. In the area of Lika-Senj District (Zupanija) and Karlovac District, the competent authorities of the Republic of Croatia conducted the exhumation process, from the remaining registered graves, where the remains of the ethnic Serb victims were buried after their death in the “Storm” (“Oluja”) action of the Croatian Army and police. On that occasion, the remains of 24 persons were exhumed. Upon the request of the Croatian side, field surveillance was conducted in the area of former industrial hemp facility in Bogojevo and in local cemeteries along the River Danube downstream of Smederevo.

¹⁵ This designation is without prejudice to status and is in accordance with the UN Security Council Resolution 1244 and the advisory Opinion of the International Court of Justice on the Declaration of Kosovo’s Independence.

On the basis of the signed Protocol on Cooperation in Search for Missing Persons with Bosnia and Herzegovina, in the reporting period one bilateral meeting was held. The Working Rules and Procedures for Implementation of the Protocol on Cooperation in Search for Missing Persons were signed between the Government of the Republic of Serbia and the Council of Ministers of Bosnia and Herzegovina. In local cemeteries of Kovin and Nova Bezanija, the remains of three persons were exhumed and delivered to the Bosnia and Herzegovina Institute for Missing Persons for final identification.

Bearing in mind the size, complexity and specificity of the tasks performed by the Commissariat for Refugees and Migration for the needs of the Commission on Missing Persons, all in order to ensure a comprehensive, professional and systematic approach to resolving this issue, an analysis of the organizational set up and position of the professional service was conducted, so, in accordance with the 2019 Rulebook on Internal Organisation and Systematisation of Job Positions, instead of the Division for Missing Persons, which had been part of the Sector for Reception, Sheltering, Readmission and Permanent Solutions, a new Department for Missing Persons was created, as a narrower internal unit outside the sector, with two narrower units in its composition: the Group for Missing Persons from the Territory of the AP Kosovo and Metohija and the Group for Missing Persons from the Territory of the former SFRY. The Department for Missing Persons consists of 9 executorial job positions. Bearing in mind that the number of officers has increased, the next step is to provide funds for the new positions in order to meet the legal conditions for conducting recruitment procedures.

In order to enhance the cooperation among state authorities involved with the process of war crimes investigation and prosecution, so that the exchange of data relevant for resolving the fate of missing persons could be expedited, the Expert Group for Resolving the Cases of Missing Persons in the Area of Former SFRY was formed and held four meetings within the reporting period. On 12 June 2018 in Belgrade, the President of the Commission on Missing Persons and War Crimes Prosecutor signed the Memorandum of Cooperation.

The Committee for Kosovo and Metohija of the National Assembly at the Tenth Session held on 19 October 2015 made a decision to establish the Working Group for Collecting Fact and Evidence in Resolving the Crimes against Members of Serbian Ethnicity and Other Ethnic Communities in KiM. It held six meetings during the observed period.

On 16 December 2015 at the Hague, the Serbian Ambassador to the Netherlands, on behalf of the Government, as representative of the Republic of Serbia, signed the Agreement between the Republic of Serbia and the International Commission on Missing Persons on status and function of the ICMP, which was ratified by the Serbian Parliament on 29 May 2017 and came into force in the Republic of Serbia on 20 August 2017.

The field search and exhumation of remains in Central Serbia are conducted upon orders of the OWCP and High Court, Department for War Crimes. The Commission on Missing Persons provides all logistic support for these activities as well as reimbursement of all costs, both from the budgetary funds allocated for the work of the Commission and from donor funds through approved projects.

With respect of establishment of special trust fund for support to relevant authorities in obtaining all available data on burial locations of persons still registered as missing, the Commission on Missing Persons conducts consultations and preparation of certain documents, in order to implement these activities in line with legal procedures.

Bearing in mind all the above, it is necessary to continue with alignment of the regulatory framework to the provisions of the International Convention on Protection of all Persons from Enforced Disappearance through:

- Amendments to the Criminal Code;
- Adoption of the Law on Missing Persons;
- Amendments to other relevant legislation;
- Consistent implementation of the National Strategy for Exercising the Rights of the Victims and Witnesses of Criminal Offences in the Republic of Serbia for the period 2020-2025 and its implementing Action Plan.

Besides the above, a final solution for the institutional status of the Professional Service of the Commission on Missing Persons, which would bring about the accord among the legal powers, administrative capacities and the role of the Commission in practice.

In accordance with the established mechanisms of cooperation and provisions of the Framework Plan emanating from the London Declaration, it is necessary to continue the cooperation in investigating the fate of missing persons.

7. COOPERATION WITH THE ICTY

7.1. An overview of implementation of the measures from the NSWCP

The NSWCP envisaged the Republic of Serbia's obligation to continue the cooperation with both the ICTY and with the IRMCT.

In the spirit of the measures envisaged by both the Strategy and the Interim Measure 21 from the Negotiating Position for Chapter 23, Serbia is obliged to cooperate with the ICTY (including complete acceptance and implementation of all judgments and decisions) and with the IRMCT.

The forms of cooperation with the Residual Mechanism to a great extent are specified by the Action Plan for Chapter 23 and the NSWCP.

The Prosecutor's Office of the Residual Mechanism has on several occasions transferred voluminous investigative materials to the OWCP, which were promptly delivered to deputy prosecutors for consideration and processing, which has yielded results because more proceedings have been initiated on the basis of those documents, especially in 2020, among others, against highly positioned perpetrators of criminal offences of war crimes.

One of the forms of effecting cooperation between these two prosecutors' offices runs through exchange of letters rogatory on mutual legal assistance.

In the observed period, the implementation of the joint project of the ICTY/IRMCT and European Commission continued, under the title "National Prosecutors Visiting", which enables the OWCP representatives to stay and work at the Prosecutor's Office of the ICTY/IRMCT as the so-called "liaison officers", continually searching the database of the ICTY/IRMCT upon self-initiative or upon request of case managers, taking and submitting documents and evidence relevant for the proceedings under the OWCCP's jurisdiction. Besides, case managers also regularly accessed the

EDS database of the ICTY and IRMCT Prosecutor's Office for the needs of the cases they managed.

Periodical working meetings were continually held to define specific steps in further cooperation and to agree on dynamics of the activities. The cooperation continued with meetings held at the level of chief prosecutors and other representatives of these institutions. The meetings were held at least twice a year within the preparations of semi-annual reports submitted by the chief prosecutor to the UN Security Council.

At the last chief prosecutors' meeting held in October 2020, the focus was on cases from Category 2, which was discussed earlier, during the last regional prosecutors' conference held in 2019 in Sarajevo.

The cooperation with the Residual Mechanism implies transfer of general and specific knowledge about specific cases, experience and strategies of the ICTY and IRMCT prosecutors with collected evidence and methods of using it. In a certain number of cases before the OWCP, which are using the documents transferred from the Residual Mechanism of ICTY, statements and transcripts of testimonies of victims and witnesses under protective measures were submitted, but certain parts of the documents were blurred or deleted in order to protect these persons' identities. Given the importance of these materials, deputy prosecutors submitted requests for alteration or abolition of protective measures in several cases, requesting for the original form of transcripts and statements, which was preceded by detailed assessment of the importance of those materials for proofs in the specific cases.

The NSWCP envisages support in conducting training in the area of prosecution of sexual violence as perpetration of criminal offences under the OWCP jurisdiction, as well as on applying the measures of witness protection, since a problem was identified in practice with granting such requests submitted by the OWCP, so trainings were conducted in 2019 and 2020 in accordance with this obligation, both in Serbia and in the Netherlands. During the training held at the Hague, the participants got acquainted with the Mechanism's modus operandi, preparation of complex cases in practice, actions upon requests for assistance and approach to solving important procedural issues that the trainers had encountered, in order to bring the work of the IRMCT Prosecutor's Office closer to them.

In 2020, due to the pandemic caused by COVID-19, there were no trainings conducted with representatives of the IRMCT.

All the training sessions held by the ICTY and IRMCT prosecutors are of exceptional importance for improving the work of the OWCP.

In early November 2020, a joint project was launched with several staff members of the OWCP and of the IRMCT, including a detailed analysis of all cases if positive cooperation among prosecutors' offices in analysing Category 2 cases, requests for assistance, cases concerning regional cooperation, cases with transferred evidence, documents and information, as well as cases with ensured witnesses.

Many transcripts made before the ICTY and IRMCT may have a priceless importance for the cases before the OWCP, as they abound in information and, besides the data on cases, they provide

formal data on evidentiary cases. In the next period, it is planned for the War Crimes Prosecutor to initiate again the issue of translating the transcripts into the Serbian language, in order to enable their use in cases adjudicated in the Republic of Serbia at the earliest convenience.

7.2. Statistical parameters on the efficiency of cooperation with the IRMCT

During the year 2016, the OWCP submitted the 8 requests for assistance to IRMCT, with all the requests granted. In the period from 2017 to the end of 2019, the OWCP sent 52 requests to the IRMCT, with majority requests granted. During the year 2020, the OWCP submitted 13 requests, with 9 of them granted, and 4 not granted.

The data on provided legal assistance are presented in Table 8, which indicates that the OWCP granted all the requests in the observed period.

Table 7: Data on legal assistance provided by the OWCP to the IRMCT in the period from 1 January 2016 to 31 December 2020

Data on legal assistance provided by the OWCP			
Year	Requested	Granted	Open cases
2016	1	1	0
2017	0	0	0
2018	0	0	0
2019	12	12	0
2020	8	8	0

In the observed period, intensive cooperation of the WVPO with the ICTY and IRMCT Prosecutors' Offices continued, through liaison officer programme, access to archives and training and legal assistance.

In the following period, it is necessary to continue and, if possible, step up this cooperation, especially in translating the ICTY transcripts to be used in proceedings conducted before the RS judicial authorities, and to continue the trainings with professionals who spent part of their careers working for the ICTY/IRMCT.

The OWCP should take a proactive approach to resolving the problem of initiating and conducting the proceedings for criminal offences related to contempt of the court and court proceedings for war crimes, before the IRMCT, taking into account the respect of legality principle.

8. REGIONAL AND BROADER INTERNATIONAL COOPERATION

Efficient regional cooperation, recognized as the prerequisite for efficient prosecution of war crimes both by the 2016 National Strategy and the Negotiating Position for Chapter 23, envisages the following in the Interim Benchmark number 20: “Serbia conducts constructive cooperation in investigation and determination of the fate of missing persons or their remains, including the cooperation through rapid information exchange. Serbia has achieved significant regional cooperation and good neighbourly relations in resolving the war crimes issues by avoiding conflicts in jurisdiction and ensuring discrimination-free war crimes prosecution. All unresolved issues with this respect must be completely resolved“.

8.1. An overview of implementation of the measures from the Strategy

Having in mind the above, the NSWCP envisaged the initiation of a regional conference to be held in order to reach an inter-governmental agreement (signed and ratified international treaty) with the Republic of Croatia, Bosnia and Herzegovina and Montenegro on the following open issues:

- 1) Setting the regional rules on division of jurisdiction for war crimes cases adjudication;
- 2) Enhancing regional cooperation in the area of acting upon letters rogatory in war crimes cases;
- 3) Establishing a facilitated procedure for obtaining evidence in the territory of another country by the defence council in war crimes cases;
- 4) Uniform approach of the countries from the region in resolving the fate of missing persons.

The said activity was not implemented as envisaged by the NSWCP, since such regional conference was not held. Yet, within the Berlin Process, significant progress was achieved in the area of regional cooperation in resolving the fate of missing persons, which is describe in detail in Chapter 6.

It should be mentioned that the Regional Prosecutors’ Conference was held in the period 20 to 22 May 2019 in Belgrade, organized by the OWCP and UNDP, in cooperation with the United Kingdom and Italy as form of continuation of the “Palic and Brioni Process“ launched in 2004. The conference was attended by the delegation of prosecutors’ offices from Bosnia and Herzegovina, Bosnia and Herzegovina Federation, Brcko District, Una-Sana Canton, State Attorney’s Office of the Republic of Croatia and its specialized district prosecutors’ offices Special State Prosecutor’s Office of Montenegro, The Mechanisms’ Prosecutor’s Office and the OWCP. The goal of the conference is to strengthen regional cooperation, exchange of experience, opinions and views among representatives of the prosecutors’ offices in the region and the IRMCT, in order to remove the obstacles occurring in the regional cooperation on war crimes cases so far, as well as its enhancement in order to bring the war crimes perpetrators to justice and to administer justice to the victims.

The topics for discussion and alignment of positions among the delegations concerned the cooperation of the regional prosecutors’ offices with the ICTY and IRMCT, criteria and standard in prosecution of war crimes perpetrators, strengthening regional cooperation in war rimes cases

and search for missing persons, as well as prosecution of conflict-related sexual violence as international crime.

Besides, significant progress was made in cooperation on support to victims and witnesses, and the regional meeting of the Services for Support to Victims and Witnesses, planned for March 2020 in Osijek, as part of the UNDP Regional Project of Support to War Crimes Trials, was postponed for June 2020 and held in online format due to the COVID-19 pandemic.

The Strategy also envisages improved action upon the requests of the Republic of Serbia submitted to the countries in the region and increased number of cases where evidence between the prosecutors' offices was exchanged through regional cooperation. In this segment, good results were achieved and their detailed overview is provided in part 8.2. (Statistical indicators).

The Strategy also envisaged the obligation of the OWCP to initiate the creation of joint records of war crimes cases at the regional level, the resolution of which started through regional cooperation, in order to enable the tracking of successful cooperation and also to work on establishing joint cross-border prosecutorial teams with the countries in the region as one of the ways to achieve better cooperation.

Joint teams were created for the needs of the "Srebrenica" and "Strpci" cases and they turned out to be a very important vehicle of cooperation among the regional prosecutorial offices. The benefits are reflected in improving the investigation coordination and immediate communication with the regional prosecutors, and the challenges due to the differences in implementation of criminal laws and procedures, protection of victims and witnesses. In the period from 2016 to 2020, a mutual, proactive and satisfactory cooperation was established with Bosnia and Herzegovina, both through joint teams and through frequent and open communication and data exchange in the proceedings before the prosecutors' offices of Serbia and Bosnia and Herzegovina, which can also be viewed as welcome, needed, useful and mutual.

Besides the above, the Strategy envisaged an active exchange of experience through the participation of judges and public prosecutors adjudicating war crimes cases, in seminars on international humanitarian law and in professional symposia, which is discussed in more detail in Chapters 2, 3 and 5.

Finally, the Strategy recognized the importance of translating the decisions in war crimes proceedings, so it is important to mention that all indictments are available on the OWCP's web page in English and can be accessed via the following link: <https>

8.2. Statistical indicators of regional and broader cooperation in war crimes prosecution

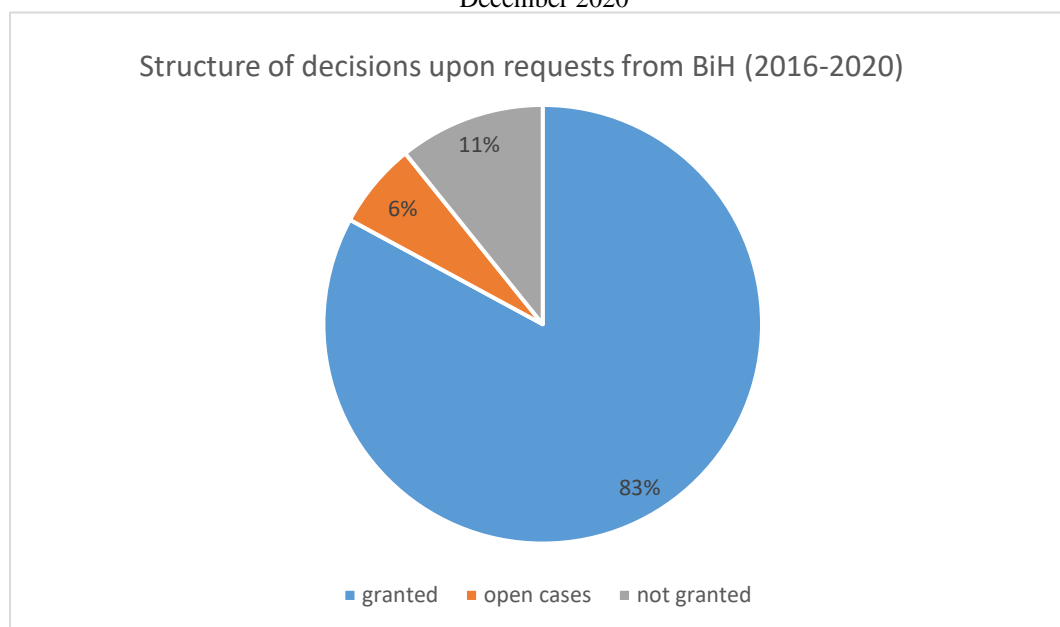
Besides the data given earlier, on transfer of indictments from Bosnia and Herzegovina, an important indicator of the efficiency of regional and broader international cooperation are statistical data of the OWCP on cooperation based on agreements and memoranda on cooperation, as well as data of the Ministry of Justice on cooperation based on letters rogatory for MLA.

Table 8: Data on legal assistance provided by the OWCP upon the request of the Bosnia and Herzegovina Prosecutor's Office for the period 1 January 2016 to 31 December 2020¹⁶

Year	Requested	Granted	Open cases	Not granted
2016	57	47	0	10
2017	57	46	0	11
2018	58	55	0	3
2019	48	42	3	3
2020	49	33	14	2
Total	269	223	17	29

Table 8 and Chart 8 present the data on legal assistance provided by the OWCP upon the requests of the Bosnia and Herzegovina Prosecutor's Office for the period from 01.01.2016 to 31.12.2020 and indicate that the OWCP granted the Bosnia and Herzegovina requests in as many as 223 of 269 requests (83%).

Chart 8: The structure of decisions on providing legal assistance of the OWCP upon the request of the Bosnia and Herzegovina Prosecutor's Office for the period from 1 January 2016 to 31 December 2020



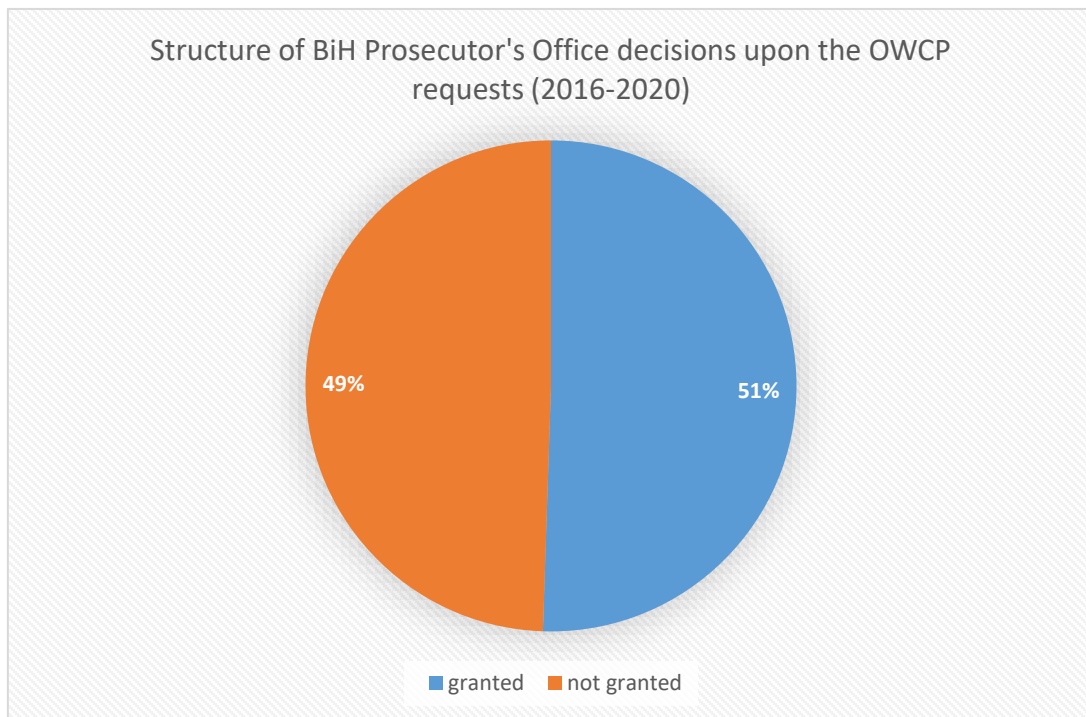
¹⁶ **NB:** The requests for legal assistance sent by the relevant Prosecutors' Offices in Bosnia and Herzegovina based on the Protocol were not granted for the reasons of formal shortcomings of the requests. Namely, the requests for legal assistance were not submitted in accordance with the contents prescribed by the Protocol.

At the same time, Table 9 and Chart 9 show that only 49% requests of the OWCP were granted by the Bosnia and Herzegovina Prosecutor’s Office, which is significantly lower than the above 83%.

Table 9. Data on legal assistance requested by the OWCP from the Bosnia and Herzegovina Prosecutor’s Office for the period from 1 January 2016 to 31 December 2020

Year	Requested	Granted	Not responded
2016	32	22	10
2017	42	23	19
2018	43	22	21
2019	61	46	15
2020	107	31	76
Total	285	144	141

Chart 9: The structure of decisions upon legal assistance requested by the OWCP from the Bosnia and Herzegovina Prosecutor’s Office for the period from 1 January 2016 to 31 December 2020

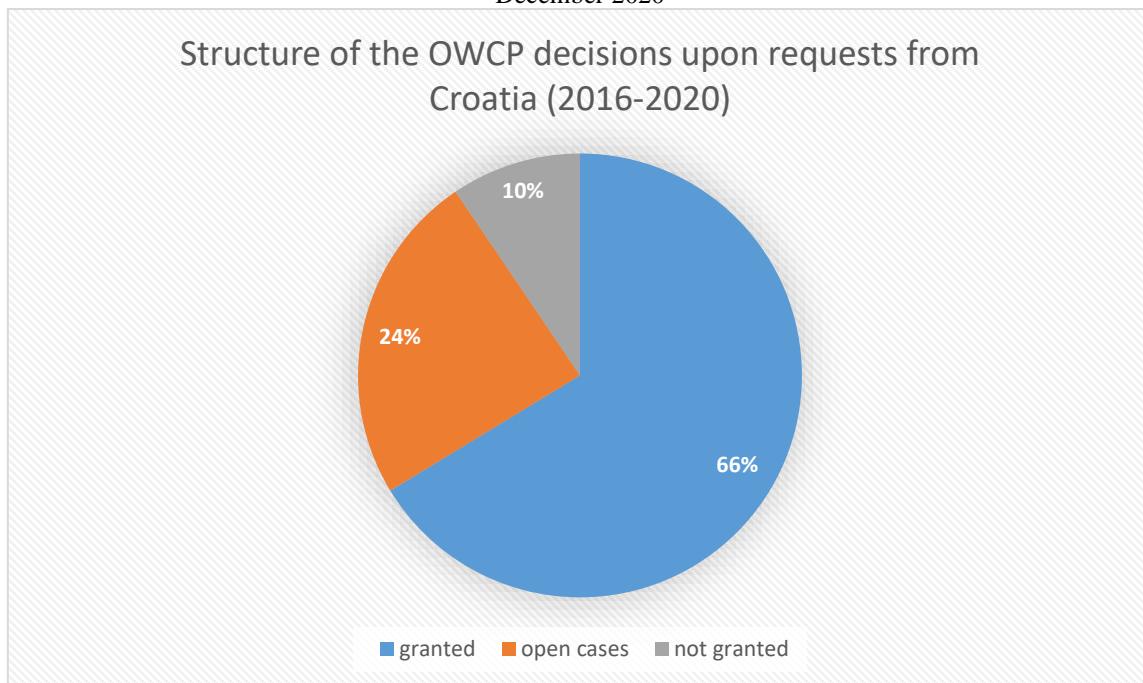


Regarding the results of the OWCP’s cooperation with the State Attorney’s Office of the Republic of Croatia, the data provided in Table 10 and Chart 10 indicate that the OWCP granted the requests received from the Republic of Croatia’s State Attorney in 73% cases.

Table 10. Data on legal assistance requested by the OWCP from the Bosnia and Herzegovina Prosecutor’s Office
 Data on legal assistance provided by the OWCP¹⁷
 upon requests of the Office of the Republic of Croatia’s State Attorney for the period from 1 January 2016 to 31
 December 2020

Year	Requested	Granted	Open cases	Not granted
2016	66	51	4	11
2017	28	19	8	1
2018	36	18	15	3
2019	39	25	11	3
2020	21	13	8	0
Total	190	126	46	18

Chart 10: The structure of decisions on providing legal assistance of the OWCP
 upon requests of the Office of the Republic of Croatia’s State Attorney for the period from 1 January 2016 to 31
 December 2020



At the same time, data presented in Table 11 and Chart 11 show the performance of the State Attorney’s Office of the Republic of Croatia upon the requests of the OWCP, as well as a significant increase in the number of requests submitted by the OWCP in 2020 – almost four times

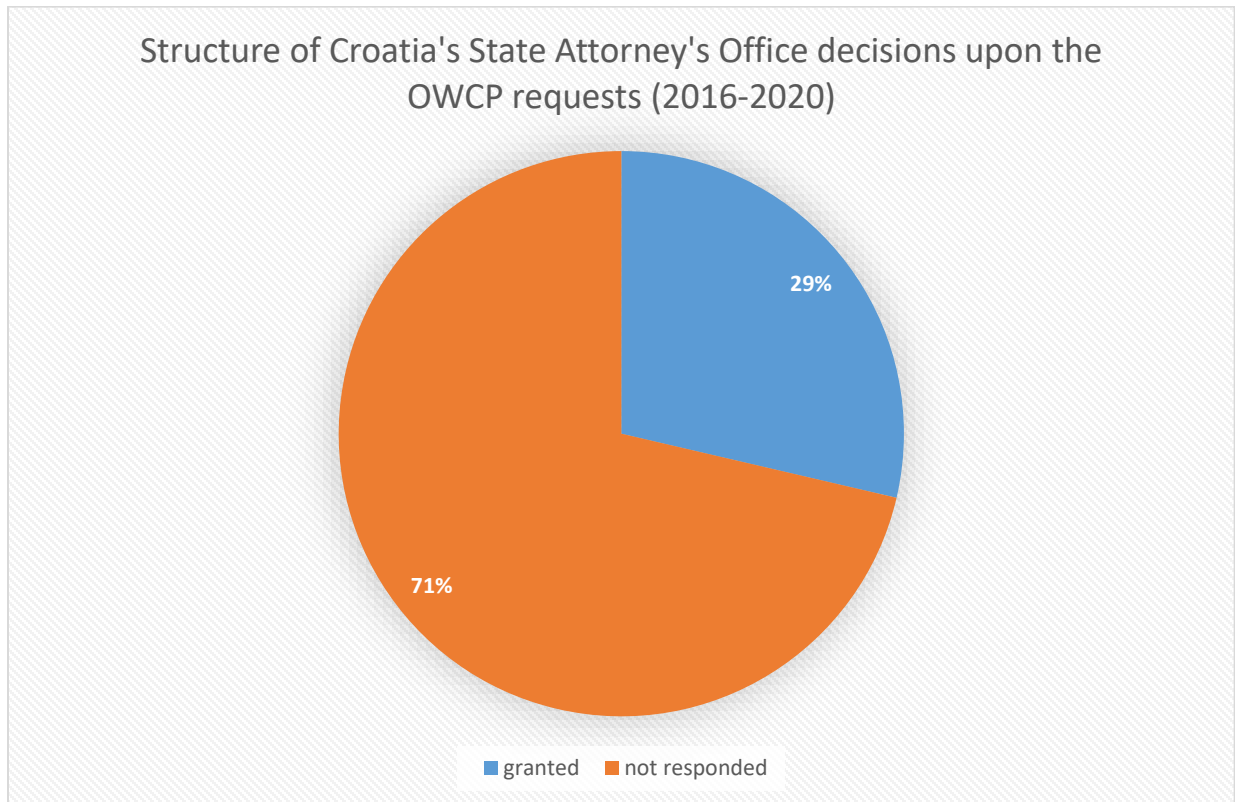
¹⁷ **NB:** The requests for legal assistance submitted by the Croatian State Attorney’s Office (DORH) upon the Memorandum and Agreement that were not granted had formal shortcomings in letters rogatory. Namely, they were not submitted in accordance with the contents of request as prescribed by the Memorandum and Agreement.

higher than in previous years. The data show that the Croatian State Attorney's Office granted only 29% requests of the OWCP.

Table 11: The data on legal assistance requested by the OWCP from the Republic of Croatia's Office of State Attorney in the period from 1 January 2016 to 31 December 2020

Year	Requested	Granted	Not responded
2016	27	12	15
2017	18	7	11
2018	26	12	14
2019	27	11	16
2020	101	15	86
Total	199	57	142

Chart 11: The structure of requested legal assistance from the Serbian OWCP to the Croatian State Attorney Office for the period from 1 January 2016 to 31 December 2020



Besides the above, in the observed period the OWCP granted one request of the competent prosecutor's office from Germany (2016) and two respective requests from the USA (2016),

Canada (2017), Slovenia (2016 and 2018) and Montenegro (2017), and did not grant a request of the Special State Prosecutor’s Office of Montenegro (2016).

At the same time, requests of the OWP for legal assistance were granted by Hungary (2017), Italy (2017), Montenegro (2020) and Germany (2020), while the competent prosecutor’s office of Slovenia did not reply to the OWCP’s request (2018).

Table 2 displays data on provided legal assistance to the EULEX Special Prosecutor’s Office in Prishtina (only one such request in 2018)

Table 12: Data on provided legal assistance of the OWCP upon request of the EULEX Special Prosecutor’s Office in Prishtina (based on the mutual legal assistance procedure) for the period from 1 January 2016 to 31 December 2020

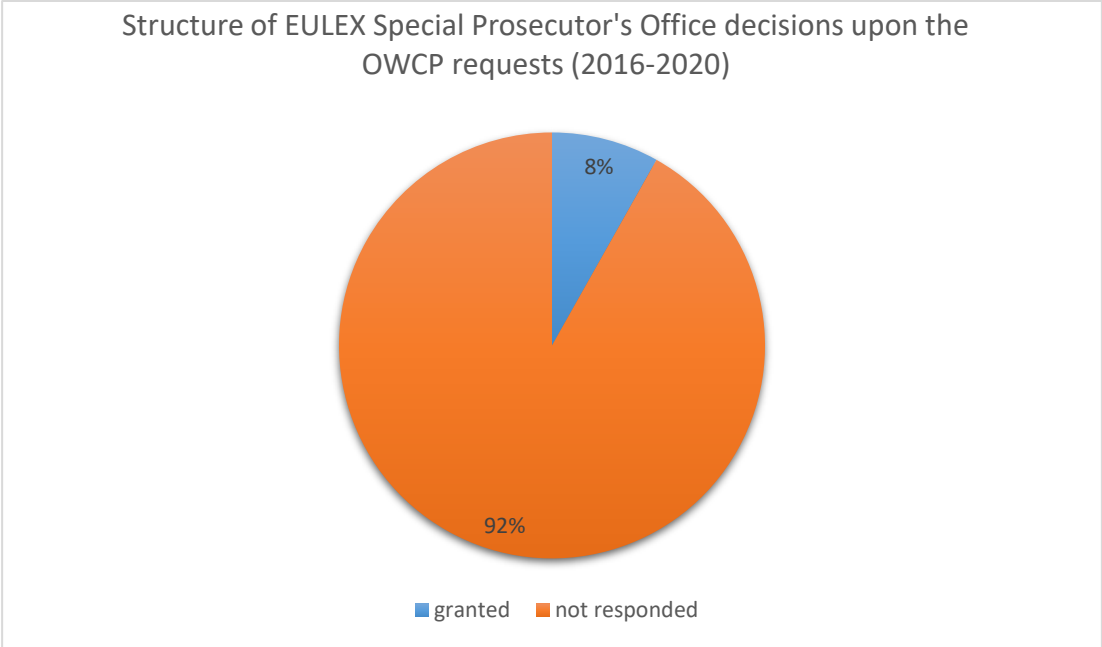
Year	Requested	Granted	Open cases	Not granted
2016	0	0	0	0
2017	0	0	0	0
2018	1	1	0	0
2019	0	0	0	0
2020	0	0	0	0
Total	1	1	0	0

Table 13 and Chart 12 present the disappointing results of the EULEX Special Prosecutor’s Office in Prishtina deciding on the OWCP’s requests following the mutual legal assistance procedures. Namely, of 98 requests sent in the observed five-year period, with constant incremental tendency of the number of requests from the OWCP, only 8 cases were granted, i.e. 92% were not.

Table 13: Data on requested legal assistance from the Office of the War Crimes Prosecutor to the EULEX Special Prosecutor’s Office in Prishtina (following the MLA procedure) for the period from 1 January 2016 to 31 December 2020

Year	Requested	Granted	Not responded
2016	9	0	9
2017	11	0	11
2018	28	3	25
2019	22	2	20
2020	28	3	25
Total	98	8	90

Chart 12: The structure of decisions upon legal assistance requested by the OWCP to the EULEX Special Prosecutor’s Office in Prishtina (following the MLA procedure) for the period from 1 January 2016 to 31 December 2020



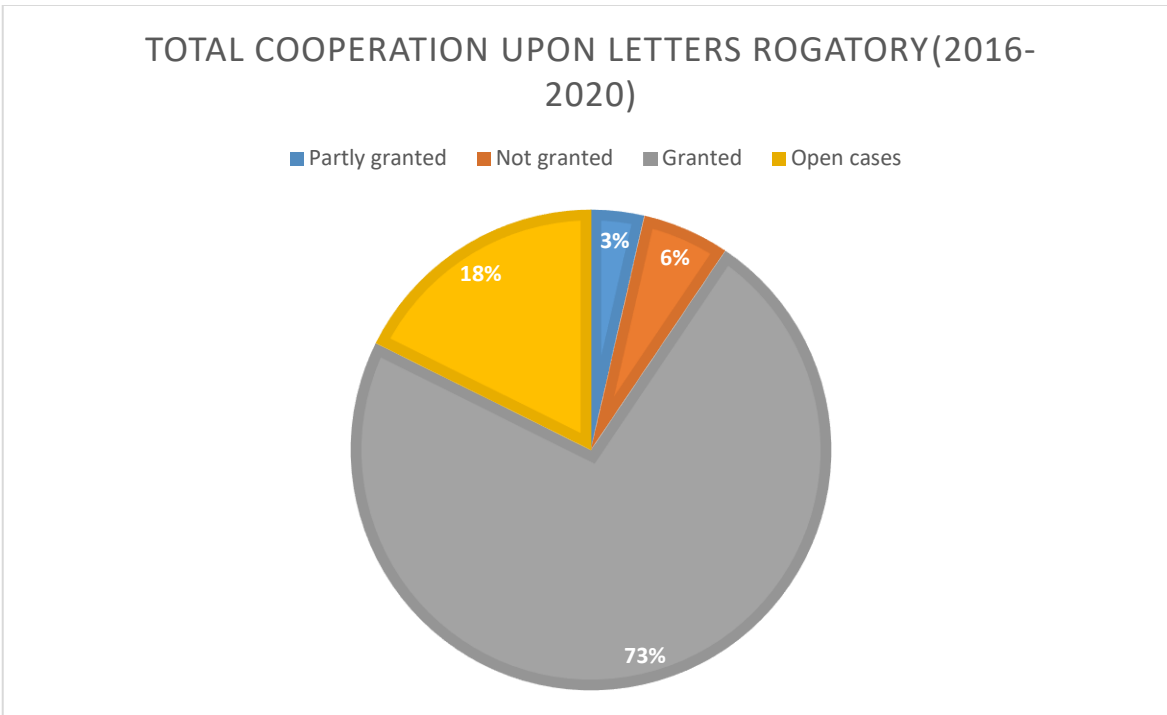
Regarding the regional cooperation through the mechanism of mutual legal assistance upon letters rogatory, it is visible from Table 14 that this form of cooperation was running intensively, with Serbia receiving 618 letters rogatory and sending 357 in the given period.

Table 14: Data on legal assistance per letters rogatory in 2016-2020

Letters rogatory	Partly granted	Not granted	Granted	In progress	Total
From Serbia	15	17	281	44	357
Bosnia and Herzegovina	11	9	97	34	151
The Republic of Croatia	4	8	178	10	200
Montenegro	0	0	6	0	6
To Serbia	20	40	429	128	617
Bosnia and Herzegovina	4	28	206	55	293
The Republic of North Macedonia	0	1	0	0	1
The Republic of Croatia	12	11	210	71	304
Montenegro	4	0	13	2	19
Total	35	57	711	172	975

The data shown in Chart 13 show that the process was successful, with a total of about 76% of the requests being partially or fully complied with, observed at the bilateral level.

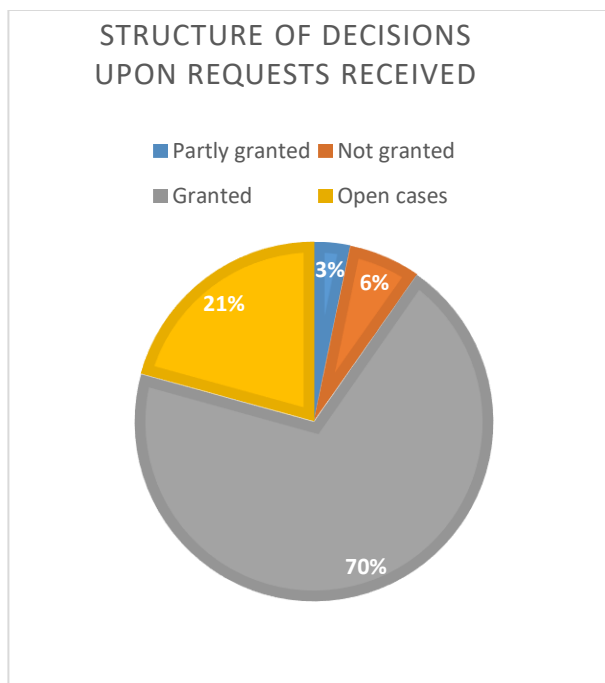
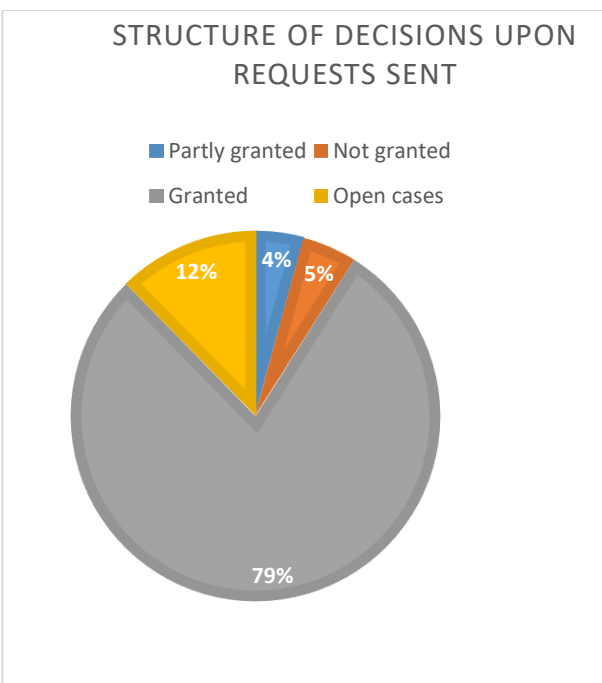
Chart 13: Total cooperation in letters rogatory on war crimes cases for the period 2016-2020



Comparing the structure of decisions upon received letters rogatory, presented in charts 14 and 15, a difference in structure of decisions upon requests received and sent is noticeable, in favour of positive decisions upon received requests, as the Republic of Serbia completely or partly granted the received requests in 83% cases, while the rate for letters rogatory sent by the Republic of Serbia is lower and amounts to 73%.

Chart 14: The structure of decisions per sent letters rogatory

Chart 15: The structure of decisions per received letters rogatory



The good practice examples in developing regional cooperation, identified in investigating the fate of missing persons, could be used as model of regional forum in aligning the work and improving cooperation in other areas relevant for war crimes prosecution.

Besides the above, there is additional room for improvement of cooperation in support to victims and witnesses.

Statistical data on legal assistance per memoranda and agreements show a lack of reciprocity and need to open a regional dialogue through which the obstacles to higher rate of granted requests sent by the OWCP would be identified and removed.

The mechanism of creating joint teams should be used in all cases where they could contribute to more efficient collection of evidence and exchange of information.

The exchange of experience of judges and public prosecutors acting in war crimes cases is invaluable for enhancing the efficiency and quality of their work.

9. IMPROVING THE OVERALL ATTITUDE OF THE PUBLIC TOWARDS WAR CRIMES TRIALS

The NSWCP's insistence on changing the society's overall attitude to war crimes is an important element of the transitional justice mechanism. The PSWCP approached this issue from several angles:

First, it was done through facilitated access to information on war crimes trials, by significantly improving the web pages of relevant authorities, especially of the OWCP, which, unlike the web pages of relevant courts, makes available all notifications, regulatory framework, reports and indictments in both Serbian and English. At the same time, the availability of translations of case law is still limited.

The second segment of improving public information is regular publication of reports on the work of judicial institutions competent for war crimes trials and reports on the implementation of all relevant strategic documents in the area of war crimes prosecution (Action Plan for Chapter 23, National Strategy, Prosecutorial Strategy for War Crimes Investigation and Prosecution in the Republic of Serbia).

In this segment, it is important to mention that the annual report on the work of courts in the Republic of Serbia¹⁸, published by the Supreme Court of Cassation in March each year, have been significantly improved lately and includes comprehensive statistics regarding the war crimes cases. Besides, this type of data is available in the reports on the implementation of the National

¹⁸ The 2020 annual report on the work of courts in the Republic of Serbia, available at: https://www.vk.sud.rs/sites/default/files/attachments/Godi%C5%A1nji%20izve%C5%A1taja%20za%202020%20FINAL_0.pdf, accessed on 11 April 2021

Strategy¹⁹ and the Action Plan for Chapter 23²⁰, which have been published in both Serbian and English during the entire implementation period of the NSWCP, on the web pages of the Ministry of Justice and OWCP²¹.

Although it was envisaged to regularly hold meetings of the representatives of institutions responsible for war crimes prosecution with civil society organizations, as a mechanism of cooperation through their occasional participation at the meetings of the National Convention for the EU, this practice existed only in the early stages of the Strategy's implementation and stopped in the recent years, which is necessary to change in the coming period.

An important segment of public relations in this field is capacity building for media employees on adequate coverage of war crimes trials, by conducting periodical courses, seminars and training sessions for journalists reporting on war crimes trials, in cooperation among media associations, judicial institutions and international organizations, where public prosecutors and independent experts would enable them to gain additional knowledge to facilitate their reporting to the public on war crimes proceedings. In the previous period, such practice was mainly based on project support of international institutions, so in the following period work should be done on its institutionalization through intensive cooperation between relevant authorities and media associations.

The NSWCP itself identified the need to include the topics on conflicts in the former Yugoslavia, war crimes perpetrated in that period and the norms of international humanitarian law in school curricula, in order to have continued control and improvement of the quality and contents of curricula in accordance with the mechanisms employed by the Ministry of Education, Science and Technological Development. In that sense, it should be mentioned that in the previous period the textbook market experienced liberalization and didactic tools approved by the relevant institutions were significantly enriched, which provides incentive to freedom of choice and pluralism of thought. Besides, in the previous period much has been done on introducing project courses conceived so as to unify inter-disciplinary approach through thematic units and enabling a comprehensive view of the events at hand through several courses (history, geography, civil instruction, etc).

The NSWCP also recognized the need to change public discourse in the segment shaped by the appearance of public officials on the topic of war crimes prosecution. With this regard, it is important to mention that the highest state institutions published the text of the National Strategy on their web pages²².

The NSWCP identified the need to respect the code of conduct for the Government members and MPs, in terms of refraining from comments on the work of judicial authorities which are not allowed. In that sense, it should be mentioned that the Government made a conclusion at its 192nd

¹⁹ See: <https://www.mpravde.gov.rs/tekst/17978/izvestaj-o-sprovodjenju-nacionalne-strategije-za-procesuiranje-ratnih-zlocina.php>, accessed on 9 April 2021

²⁰ See: <https://www.mpravde.gov.rs/tekst/26470/izvestaji-o-sprovodjenju-akcionog-plana-za-poglavlje-23.php>, accessed on 9 April 2021

⁵⁶ See: https://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_ci/2018-12/hronoloski_optuzbe_3.pdf, accessed on 9 April 2021

²² <https://testonja.studiob.rs/strategijom-do-efikasnijeg-procesuiranja-ratnih-zlocina/>, https://www.b92.net/info/vesti/index.php?yyyy=2016&mm=02&dd=28&nav_category=11&nav_id=1101717, accessed on 8 April 2020

session held on 23 January 2016, upon the proposal of the Ministry of Justice, to adopt the Code of Conduct for members of the Government on limits of permitted comments of court decisions and proceedings. The Code of Conduct was published in the “Official Gazette of the Republic of Serbia”, number 6/16 of 28 January 2016, while the Code of Conduct for members of Parliament on permitted limits of comments on court decisions and proceedings was adopted on 20 July 2017 and published in “The Official Gazette of the Republic of Serbia”, number 71/17. Besides, the High Judicial Council made a decision to amend the High Judicial Council’s Rules of Procedure, at the session held on 25 October 2016, published in “The Official Gazette of the Republic of Serbia” number 91/16. The above decision regulates the procedure of public response of the High Judicial Council to the cases of political influence on the work of courts. On 23 March 2017, the State Prosecutors’ Council adopted the Rules of Procedure of the State Prosecutors’ Council (the “RS Official Gazette”, number 29/17), establishing the institution of commissioner for independence and stipulating that this duty be performed by deputy president of the State Prosecutor’s Council in cases of political influence on the work of public prosecutors’ offices, on a regular basis (once a year) and in extraordinary situations (upon necessity). With this regard, the State Prosecutors’ Council made the Decision A no. 393/17, on 7 April 2017, whereby the manner of the Independence Commissioner’s acting in cases of political and other unlawful influence on the work of public prosecutors’ offices was defined, in accordance with Article 9 of the Rules of Procedure of the State Prosecutors’ Council (the “RS Official Gazette“, number 29/17).

Regarding the practice of state officials commenting on court decisions in this area, it must be noted that it is very diverse, from positive examples of voicing strong support to judicial authorities all the way to negative comments on individual judgments or actions of individual judges, where there is still no consistent practice in the reactions of the High Judicial Council and State Prosecutors’ Council, in accordance with the above-mentioned established procedures.

Although significant progress towards accessibility of information on war crimes proceedings was made with endorsement and implementation of the National Strategy, through regular publication of reports on the work of judicial authorities and on implementation of strategic documents, the dialogue with civil society and academic community should be enhanced in the coming period, as well as work on reporting on war crimes proceedings through training for journalists and organization of joint workshops with holders of judicial functions.

The improvement of the internet presentations of the High and the Appellate Court in Belgrade would be of high importance for professional and also general public, both in terms of systemisation and accessibility of case law and in terms of information on war crimes proceedings.

A contribution to public discourse on war crimes trials could be made by more consistent practice of the responses of the High Judicial Council and State Prosecutorial Council to improper statements of public officials interfering with the independence of the judiciary.

10. COMPARING THE OPTIONS TO ADDRESS IDENTIFIED ISSUES

Given all the identified problems and challenges the solution to which should be tackled in the coming period, the question posed is about the manner of doing this.

In that sense, three alternative options were considered as viewed from the aspect of capacities to meet the general goal. The options considered are as follows:

- 1) *Status quo* – This option implies that after the expiry of the NSWCP valid for the period from 2016 to 2020, no new planning documents should be approved, i.e. to keep the achieved level of development.
- 2) Option 1: This option would imply that, instead of passing a new national strategy, reform steps be paved by activities included in the Action Plan for Chapter 23.
- 3) Option 2: This option implies unification of reform steps in the area of war crimes prosecution into a single strategic document dedicated to war crimes prosecution.

In comparison of the options, a multi-criteria analysis was applied, using the following criteria for assessing the options:

- Effectiveness – the extent to which the general goal is achieved;
- Consistency – the extent to which the Government’s policies are mutually consistent, i.e. which option contributes to the highest level of consistency among the Government’s policies;
- Implementation costs – what are the costs of implementing the option;
- Sustainability – the probability of the selected model resulting in sustainable progress;
- Coordination level – the efficiency of monitoring the implementation, i.e. which option provides the best coordination mechanism.

The analysis applied the model assessing each option against the relevant criterion and vis-à-vis other options, on scale from 1 to 5 (5 being the highest mark). Also, it is defined what criteria are to be considered decisive, so, in that sense, effectiveness, sustainability and coordination level are defined as the most important criteria for assessing an option. Weights are defined in total score of 10, and the final ranking of an option is obtained by multiplying the weight with the mark given to each option.

Table 15: Comparison of options

Criteria/options	Weigh	<i>Status quo</i>	Option 1	Option 2
Effectiveness	3	X2	X3	X5
Consistency	1	X1	X3	X5
Implementation costs	1	X4	X3	X2
Sustainability	2	X2	X3	X5
Coordination level	3	X1	X2	X5
Score	10	18	27	47

Bearing in mind the results of comparing the options, a conclusion is inferred that the most appropriate way of responding to the previously identified challenges would be to develop a special strategic document on war crimes prosecution. Such decision is corroborated by the requirement of the Interim Benchmark 16 from the Negotiating Position on Chapter 23, envisaging

Serbia's obligation to effectively implement the measures from the National Strategy (2016-2020) and to simultaneously monitor the Strategy's implementation, assess its impact and revise it.

Regarding the type of public policy documents, in terms of Article 10 of the Law on the Planning System of the Republic of Serbia, it is important to mention that this document, by its nature, should be a **national, cross-cutting strategy** (Article 12 of the Law on the Planning System of the Republic of Serbia), bearing in mind that none of the existing strategic documents can be viewed as a sectoral strategy in this area, as it addresses both the issues pertinent to functioning of the judiciary and to the work of the Ministry of the Interior, as well as the position and rights of victims, rights of missing persons and their families, public discourse on war crimes themes, thus unifying the sectors of justice, interior affairs, social protection, education and culture.