



THE
HUMAN RIGHTS ACTION
REPORT

**Implementation of
the War Crimes Investigation Strategy
of the State Prosecutor's Office of Montenegro
2015-2021**



Implementation of the War Crimes Investigation Strategy of the State Prosecutor's Office of Montenegro 2015 - 2021

Human Rights Action – HRA

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IMPLEMENTATION OF THE WAR CRIMES INVESTIGATION
OF THE STATE PROSECUTOR'S OFFICE OF MONTENEGRO

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Introduction

In the past three decades, from 1992 to 2021, seven trials were conducted in Montenegro for war crimes committed in the former Yugoslavia during the wars of the 1990s.¹ 37 persons were indicted and 11 were convicted by final court decisions. All the persons indicted in the Klapuh² (5), Štrpci (1) and Zmajević (1) cases were convicted, as well as four of the six indictees in the Morinj case, while in the Deportation of Refugees, Bukovica and Kaluđerski Laz cases all 24 indicted persons were acquitted.

Below is a tabular overview of all the trials.

No.	Case	Trial period	Court decisions	Date of decision	No. of persons indicted	Number of persons convicted	Number of persons acquitted
1	Klapuh	1992–1996	1. Judgment, High Court in Podgorica, K. 20/93	30 Apr 1993	5	5	0
			2. Decision, Supreme Court of the Republic of Montenegro, Kž. 114/94	15 Jun 1995			
			3. Judgment, High Court of the Republic of Montenegro, K. 20/96	16 Dec 1996			
2	Štrpci	1998-2003	1. Judgment, High Court in Bijelo Polje, K. 5/98	9 Sept 2002	1	1	0
			2. Judgment, Supreme Court of the Republic of Montenegro, Kž.102/2003	19 Nov 2003			
3	Camp Morinj	2009-2014	1. Judgment, High Court in Podgorica, K. 214/08	15 May 2010	6	4	2
			2. Decision, Appellate Court of Montenegro, Kž-S. 20/10	25 Nov 2010			
			3. Judgment, High Court in Podgorica, Ks. 33/10	25 Jan 2012			
			4. Judgment, Appellate Court of Montenegro, Kžs. 24/12	6 Jul 2012			
			5. Judgment, High Court in Podgorica, Ks. 19/12	31 Jul 2013			
			6. Judgment, Appellate Court of Montenegro, Kž-S. 44/13	27 Feb 2014			
4	Deportation of refugees	2009-2015	1. Judgment, High Court in Podgorica, Ks. 3/09	29 Mar 2011	9	0	9
			2. Decision, Appellate Court of Montenegro, Ksž. 25/2011	17 Feb 2012			
			3. Judgment, High Court in Podgorica, Ks. 6/12	22 Nov 2012			
			4. Judgment, Appellate Court of Montenegro, Kžs. 18/2013	17 May 2013			
			5. Judgment, Supreme Court of Montenegro, Kzz. 4/15	23 Jun 2015			
5	Bukovica	2010-2012	1. Judgment, High Court in Bijelo Polje, Ks. 9/2010	21 Dec 2010	7	0	7
			2. Judgment, Appellate Court of Montenegro, Kž-S 13/2011	21 Jun 2011			
			3. Judgment, High Court in Bijelo Polje, K-S 6/2011	27 Sept 2011/ 3 Oct 2011			
			4. Judgment, Appellate Court of Montenegro,	22 Mar 2012			

¹ See B. Ivanišević, T. Gorjanc Prelević, *WAR CRIMES TRIALS IN MONTENEGRO (2009–2015)*, HRA, Podgorica, 2016, p. 6

² In the Klapuh case, four defendants were convicted *in absentia*, for additional information see 6.2.2.

			KŽ-S 1/2012				
6	Kaludjerski laz	2009-2014	1. Judgment, High Court in Bijelo Polje Ks. 1/08	6 Dec 2013	8	0	8
			2. Judgment, Appellate Court of Montenegro, KŽ-S 20/2014	8 Dec 2014			
7	Vlado Zmajević	2017-2020	1. Judgment, High Court in Podgorica, Ks. 2/17	5 Jun 2019	1	1	0
			2. Judgment, Appellate Court of Montenegro, KŽs. 14/2019	18 Nov 2019			
			3. Decision, Supreme Court of Montenegro, KŽ-S II. 2/20	9 Jun 2020			
			4. Decision, Supreme Court of Montenegro, KŽ-S II. 4/20	29 Sept 2020			
TOTAL					37	11	26

In 2015, the new Special State Prosecutor's Office took over the authority to process war crimes from the Supreme State Prosecutor's Office.³

It took on the burden of administering transitional justice in an environment where war crimes had previously been processed insufficiently and unprofessionally. In its reports ever since 2013, the European Commission continuously criticised the approach of the state prosecutor's office and courts to war crimes prosecution, pointing to the impunity of war crimes, lack of self-initiative of the prosecution, non-application of criminal law institutes such as complicity, aiding, abetting and command responsibility, as well as the misapplication of international humanitarian law.⁴ Other international organizations, i.e. international human rights monitoring bodies, also demanded an intensification of Montenegro's efforts to fight impunity for war crimes.⁵

Maurizio Salustro, former state prosecutor and judge from Italy who was hired by the European Commission to analyse, in the capacity of expert, the work of the Montenegrin state prosecutor's office and courts in processing war crimes, found in 2014 that in the last few years, since Montenegro became an independent state, Montenegrin state prosecutors did not initiate a single war crimes investigation on their own. He listed lack of strategic approach to the investigation and prosecution of war crimes as one of his main conclusions.⁶ He also criticised the way state prosecutors approached the indictment in the "Deportation" and "Bukovica" cases. He proposed that a strategy be adopted outlining the actions that had to be taken to improve the investigation of war crimes, such as e.g. identification of all the war crimes suspected to have been committed by Montenegrin citizens using all available and accessible sources.⁷

³ Law on Special State Prosecutor's Office, *Official Gazette of Montenegro*, nos. 10/2015 and 53/2016.

⁴ *Montenegro Progress Report for 2013*, European Commission, October 2012, p. 10; *Montenegro Progress Report for 2014*, European Commission, October 2014, p. 48; *Report on Montenegro for 2015*, European Commission, November 2015, p. 61; *Report on Montenegro for 2016*, European Commission, November 2016, p. 70; *Report on Montenegro for 2018*, European Commission, April, 2018, p. 19; *Report on Montenegro for 2019*, European Commission, May, 2019, p. 20 and *Report for Montenegro for 2020*, European Commission, October 2020, p. 24.

⁵ See B. Ivanišević, T. Gorjanc Prelević, *WAR CRIMES TRIALS IN MONTENEGRO (2009–2015)*, op. cit, p. 17-18.

⁶ *Peer-based Assessment Mission to Montenegro on the domestic handling of war crimes* (by Maurizio Salustro), 2014, p. 9, item 23.

⁷ *Ibid*, p. 18 item 58.

1. The War Crimes Investigation Strategy (2015)

1.1. Adoption of the Strategy

The adoption of the War Crimes Investigation Strategy was envisaged in the Action Plan for Chapter 23 as part of the process of accession to the European Union, on 19 February 2015.⁸ This happened several months later after the European Commission expert submitted a report on war crimes prosecution in Montenegro in which he proposed that such a strategy be adopted.⁹

On 8 May 2015, the Supreme State Prosecutor Ivica Stanković adopted the War Crimes Investigation Strategy (hereinafter referred to as: the Strategy).

1.2. Bodies responsible for the implementation of the Strategy and for monitoring its implementation

The Special State Prosecutor's Office, which is otherwise responsible for the investigation and prosecution of war criminals,¹⁰ thus became responsible for the implementation of the Strategy. The SSPO's remit also includes investigating and prosecuting perpetrators of acts of organised crime, high-level corruption, money laundering and terrorism.¹¹

The Supreme State Prosecutor is the only body responsible for overseeing the implementation of the Strategy.¹²

1.3. Start of implementation of the Strategy and reporting on its implementation

The Strategy stated that its implementation was to begin within two months from the establishment of the SSPO. Since the Chief Special Prosecutor Milivoje Katnić and other special prosecutors took the oath on 3 July 2015,¹³ September 2015 is viewed as the first month of the Strategy's implementation.¹⁴

⁸ Government of Montenegro, *ACTION PLAN FOR CHAPTER 23 - JUDICIARY AND FUNDAMENTAL RIGHTS*, area: Justice, measure 1.5.1.1, p. 64.

⁹ *Peer-based Assessment Mission to Montenegro on the Domestic handling of war crimes*, op.cit.

¹⁰ Law on Special State Prosecutor's Office, "Official Gazette of Montenegro" no. 10/15, Article 3 paragraph 1, item 5.

¹¹ Law on Special State Prosecutor's Office, Article 3, items 1, 2, 3 and 4.

¹² War Crimes Investigation Strategy, Section "Responsibility".

¹³ "Katnić and special prosecutors took the oath", *Vijesti*, 3 July 2015, <https://www.vijesti.me/zabava/174021/katnic-i-specijalni-tuzioci-polozili-zakletvu>.

¹⁴ Government of Montenegro, *Action Plan for Chapter 23. Judiciary and fundamental rights, semi-annual report, period July–December 2015*, 2016, p. 68.

The Strategy obliges the SSPO to submit reports to the Supreme State Prosecutor every two months regarding the actions taken based thereupon.¹⁵ This means that, in five years of implementing the Strategy, that is, at the end of 2020, there should have been 30 reports.

From September 2015 to the end of May 2021, SSPO has prepared 22 reports, which means that the obligation of bi-monthly reporting was not applied consistently. One report was prepared for the period September-end of December 2015, five in 2017 and five in 2018, while in 2016, 2019, and 2020 there were three in each year. In 2021, as of the end of June, there have been two reports.¹⁶

1.4. Content of the Strategy

The Strategy is a short document. It consists of two introductory sentences, the set tasks, four articles listing the activities to be undertaken, and five paragraphs under the following headings:

- “Possible problems during war crimes investigation”
- “Possible solutions to problems in war crimes investigation”
- “Necessary resources”
- “Start of implementation”, and
- “Responsibility”

The Strategy does not include deadlines for the activities and is not accompanied by an action plan.

At the end of the document, it is stated that the implementation of the strategy will be reported on every two months and that “failure to undertake activities and actions under this document entails responsibility of the competent prosecutor”.

The tasks and goals envisaged in the Strategy and their realisation are discussed in greater detail in Sections 1.6. and 1.7.

1.5. The Strategy and similar documents from the region

Compared to the strategies for investigating and prosecuting war crimes in the region, Montenegro’s is specific in many ways.

¹⁵ War Crimes Investigation Strategy, section “Responsibility”.

¹⁶ The Human Rights Action has obtained the above-mentioned reports by submitting a request for free access to information to the Supreme State Prosecutor’s Office.

First, it is the shortest. For example, the strategies of neighbouring countries average more than 30 pages,¹⁷ while Montenegro's has only three.¹⁸ The strategies of Serbia, Kosovo, Bosnia & Herzegovina (BiH) and Croatia all contain an extensive introductory section that provides a historical overview and reasons for adoption,¹⁹ as well as a cross-section of war crimes prosecution before the adoption of the strategy, which the Montenegrin Strategy does not include. Most of these strategies also contain informative and institutional frameworks for war crimes investigation, the financial aspect, and a much broader description of goals and activities.

Second, only the Montenegrin strategy is not accompanied by an action plan, that is, deadlines for its implementation and indicators for evaluating its success.

Third, unlike Montenegro and Serbia (where, in addition to the Government's National Strategy for War Crimes Prosecution, the War Crimes Prosecutor's Office also adopted a special Prosecutor's Strategy for Investigation and Prosecution of War Crimes), in other neighboring countries the strategy was adopted not only by the State Prosecutor's Office, but also the Ministry of Justice (in BiH and Croatia) and the Prosecutorial Council (in Kosovo).

Fourth, unlike in Montenegro, where the Supreme State Prosecutor has adopted the Strategy and is the only body in charge of overseeing its implementation, in other countries oversight is performed by bodies other than those that adopted the Strategy. In Serbia, it is the Working Group composed of 12 members "from all relevant institutions in the field of war crimes prosecution, the Negotiating Group for Chapter 23, the academia and civil society organisations",²⁰ while the Republic Public Prosecutor's Office and the Council for the Implementation of the Action Plan for Chapter 23²¹ are responsible for overseeing the implementation of the Prosecutorial Strategy. In BiH, it is the Supervisory Body, consisting of "representatives of the Ministries of Justice, Finance and Treasury of BiH, the Federation of BiH, Republic of Srpska and relevant institutions of the Brčko District of BiH, as well as the High Judicial and Prosecutorial Councils".²² In Kosovo, the Supervisory Body consists of the Chairman of the Prosecutorial Council - Chief State Prosecutor, Head of the Special Prosecutor's Office, Head of the EULEX Kosovo War Crimes Investigation Unit and a representative of the Ministry of Justice,²³ while in Croatia this body is composed of representatives of the State Prosecutor's

¹⁷ The only exception is the 14 page Strategy for Investigation and Prosecution of War Crimes Committed in the Period from 1991 to 1995 of the Republic of Croatia, from 11 February 2011.

¹⁸ National strategy for work war crimes cases of BiH (available at:

http://www.mpr.gov.ba/web_dokumenti/drzavna%20strategije%20za%20rad%20na%20predmetima%20rz.pdf); National Strategy for Investigating War Crimes of the Republic of Serbia, "Official Gazette of the Republic of Serbia" no. 19/16, <https://prokuroria-rks.org/sr/kpk/dokumente-publikime/86/121/122/122/>, accessed on 20 January 2021. In 2018, the Prosecutor's Office for Organised Crime of the Republic of Serbia adopted a 50 page long special strategy for the investigation and prosecution of war crimes (Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia, http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_sr/2018-05/strategija_trz_srb.pdf, accessed on 12 January 2021.

¹⁹ National Strategy for War Crimes Investigation of the Republic of Serbia pp. 1 and 5-6, National Strategy for Work on War Crimes Cases of BiH, pp. 3-4, Kosovo War Crimes Strategy, pp. 5-10, Croatian War Crimes Investigation and Prosecution Strategy, pp. 2-6.

²⁰ National Strategy, *op.cit.* p. 36.

²¹ Prosecutorial strategy for investigating and prosecuting war crimes, p. 46.

²² State Strategy, *op. cit.*, p. 34.

²³ War Crimes Investigation Strategy, p. 30.

Office, the Ministry of Justice and Administration, the Ministry of Internal Affairs and the Government.²⁴

The elements that are common to the Montenegrin Strategy and the strategies of the surrounding countries are: regional cooperation, data collection, and witness protection. However, unlike the others, the Montenegrin Strategy does not address these issues in any great detail; for example, regional cooperation is mentioned only indirectly, as part of the obligation to collect information on events and potential perpetrators “from all available sources”.²⁵ Compared to the strategies of other countries in the region, the War Crimes Investigation Strategy of Montenegro is certainly the least elaborated.

Specific to the Montenegrin Strategy is also the fact that it requires the review of old, legally completed war crimes cases. This is a consequence of past failures in the prosecution of war crimes that were recognised by the European Commission. In all its annual reports from 2013 to date, the Commission has complained to Montenegro that “charges of command responsibility, co-perpetration and aiding and abetting have so far not been brought” and that earlier verdicts “contained legal mistakes and shortcomings in the application of international humanitarian law”.²⁶ However, nowhere in the Strategy is it mentioned that it is based on any sort of analysis of the earlier work, or the results of earlier war crime trials.²⁷

1.6. Tasks and results

At the beginning of the Strategy, it is emphasised that war crimes must not go unpunished and that the fight against impunity must be “strengthened by more efficient investigation, trial and punishment in accordance with international standards”.²⁸

In essence, the Strategy obliges the SSPO to accomplish three basic tasks:

1) To identify events “in which Montenegrin citizens potentially might have been involved”,²⁹

²⁴ National Strategy, *op. cit.*, pp. 1 and 36; National Strategy, *op. cit.* pp. 3 and 34; Strategy, *op. cit.* p. 30 and Conclusion on the acceptance of the second Report on the implementation of the strategy for the investigation and prosecution of war crimes committed in the period from 1991 to 1995, “Official Gazette of the Republic of Croatia” no. 56/2011, Article 5.

²⁵ War Crimes Investigation Strategy, Article I, p. 1.

²⁶ *Charges of command responsibility, co-perpetration and aiding and abetting have so far not been brought...The judicial decisions reached so far have contained legal mistakes and shortcomings in the application of international humanitarian law.* Excerpt from the original version of the report on Montenegro for 2015, p. 52. For the same wording, see the European Commission’s 2014 Progress Report on Montenegro, p. 48. European Commission Report on Montenegro for 2015, p. 61; European Commission Report on Montenegro for 2016, p. 70; European Commission Report on Montenegro for 2018, p. 19; European Commission Report on Montenegro for 2019, p. 18; European Commission Report on Montenegro for 2020, p. 24

²⁷ For example, the strategy of the Serbian Prosecutor’s Office contains a special chapter entitled “Analysis of the Current Situation”, which indicates where the national strategy has identified the need to make progress in relation to perceived shortcomings in the prosecution of war crimes by the Prosecutor’s Office for Investigation and Prosecution of War Crimes in the previous period (Prosecutorial Strategy for Investigating and Prosecuting War Crimes in the Republic of Serbia, *op. cit.*, pp. 10-11)

²⁸ War Crimes Investigation Strategy, p. 1, see Appendix to this Report.

²⁹ *Ibid*, p. 1, item 3.1

2) To identify Montenegrin citizens “who may have participated in paramilitary groups that were active” during the war in former SFRY,³⁰ and

3) To review and inspect old cases (“Morinj”, “Bukovica”, “Deportation”, “Kaludjerski laz”, etc.) in order to identify new suspects, taking into account “all the models of criminal responsibility and all criminal offences”.³¹

The SSPO has achieved very little in relation to any of the three tasks. In the six years since the Strategy’s implementation, it has launched only one investigation, against one person, who was convicted. It was Vlado Zmajević, the man who was actually identified and suspected by the War Crimes Prosecutor’s Office of the Republic of Serbia, which conducted an investigation against him and then forwarded the case to Montenegro (see 2.3).³² Therefore, the only war crimes case processed in the last six years of the Strategy’s implementation was not the result of the SSPO acting on its own initiative (the so-called proactive action) as was recommended back in 2014 to the Montenegrin State Prosecutor’s Office by the European Commission expert, and as the European Commission expected it to act one year after another.³³ The investigation and prosecution of Zmajević are not a consequence of the implementation of the Strategy, since they certainly would have also happened without it.

In relation to the first task - the **identification of events**, there is no information in the reports that such identification has been done, i.e. that a list of events and possible perpetrators has been compiled (see Article II2 of the Strategy). At the meeting held with non-governmental organisations on 24 May 2021, representatives of the SSPO announced that they did create such a list; however, it was not included in the reports.

As for the second task - the **identification of Montenegrin citizens that were involved in war crimes**, based on the SSPO’s report on the implementation of the Strategy it can be concluded that this type of data was obtained by foreign countries and the United Nations’ International Residual Mechanism for UN Criminal Tribunals (hereinafter: the Residual Mechanism), which demanded that the Montenegrin prosecutor’s office conduct prosecution. After receiving documentation from the Residual Mechanism in November 2020, the Special Investigation Team identified persons suspected of having participated in the commission of war crimes.³⁴ However, it is not known who these persons are. Regarding the participation of Montenegrin citizens in paramilitary groups, apart from the prosecuted Zmajević, the only known information refers to a case the SSPO opened based on the submission by an unknown person about the participation of RTCG [Radio Television of Montenegro], other media outlets and unidentified persons in organising paramilitary units in Montenegro for the purpose of

³⁰ War Crimes Investigation Strategy, p. 1.

³¹ *Ibid*, p. 2, Article IV.

³² At the meeting held on 24 May 2021, representatives of the SSPO explained that Zmajević was suspected of another crime, robbery, and that investigative actions taken by the Montenegrin prosecutor’s office led to him being charged with war crimes.

³³ “Montenegro needs to further strengthen its efforts to combat impunity for war crimes through a proactive approach to effectively investigate, prosecute, prosecute and punish war crimes in accordance with international standards, and to prioritize such cases”, European Commission Report on Montenegro for 2019, p. 20.

³⁴ Report on the Implementation of the War Crimes Investigation Strategy of 7 May 2021, p. 2.

cimmitting war crimes on the territory of former Yugoslavia in 1992. No discoveries were made, and the case was therefore archived (see 2.2.7).

The SSPO dispatched letters to neighbouring countries' prosecutor's offices and the International Criminal Tribunal for former Yugoslavia (hereinafter: the Hague Tribunal) to inform them of potential Montenegrin suspects, but there is no evidence, apart from those letters, that the SSPO took any other action on its own initiative.

In the case of Vlado Zmajević, it was the Republic of Serbia that forwarded information about him to Montenegro and undertook pre-investigation activities of significance for his prosecution.

In addition to Zmajević, the SSPO questioned three other people as suspects, in three cases. As for the names of the suspects, we only know that one of them was Ranko Radulović. His interrogation was made possible by the letter rogatory that was sent from the Prosecutor's Office of BiH. The identities of the other two persons are not known, but they all have in common the fact that they were questioned based on letters rogatory sent by countries in the region.³⁵

In relation to the third task - the **review of old, legally completed cases**, the SSPO reports talk only about the submitted letters rogatory,³⁶ searching of databases in The Hague,³⁷ and analysing the existing data and verdicts,³⁸ none of which led to any results in six years. With regard to "all the models of criminal responsibility and all criminal offences", there is no information that the SSPO has taken action in any of the old cases to investigate command responsibility. Also, all the criminal charges concerning old cases were dismissed by the end of the reporting period (see 2.2).

1.7. Activities

1.7.1. Data collection

Article I of the Strategy stipulates that data should be collected on:

1) All events and possible perpetrators, from all available sources, including information from the state prosecutor's offices of neighbouring countries, reports of international and non-governmental organisations, newspaper articles and data, etc.;³⁹

³⁵ Report on the Implementation of the War Crimes Investigation Strategy of 2 August 2019, p. 2, item III; Report on the Implementation of the War Crimes Investigation Strategy of 2 November 2020, p. 1 and Report on the Implementation of the War Crimes Investigation Strategy of 5 February 2021, p. 2, Article I.

³⁶ Report on the Implementation of the War Crimes Investigation Strategy of 9 August 2017, item II, pp. 2-3.

³⁷ Report on the Implementation of the War Crimes Investigation Strategy of 5 February 2021, pp. 2-3.

³⁸ Report on the Implementation of the War Crimes Investigation Strategy of 21 December 2015, item IV, pp. 3-4.

³⁹ *Ibid*, p. 1, Article I, item 1.

- 2) Criminal groups from the war era, assuming their continuity in the form of today's organised criminal groups,⁴⁰
- 3) Police reports on field activities.⁴¹

The SSPO sent letters rogatory to prosecutor's offices in the region, the Hague Tribunal and the Residual Mechanism. Communication with the NGO sector was one-way, based on NGOs' requests for access to information and invitations to participate in meetings, without any initiative of the SSPO. The report does not contain any detailed data on other activities. The police generally acted on letters rogatory by collecting and verifying information, and by securing witnesses and their examination.⁴² A special police team arrested Vlado Zmajević on the order of the Special Prosecutor.⁴³

1.7.2. Analysis of collected data

Article II of the Strategy envisages the analysis of collected data, as well as the compilation of a list of events and potential perpetrators, potential witnesses-victims of war and cooperating witness in the region.⁴⁴ These lists are not mentioned in any of the annual reports or reports on the implementation of the War Crimes Investigation Strategy. At a meeting with NGOs, held on 24 May 2021, representatives of the prosecution said that the lists had been compiled.

1.7.3. Examination of witnesses, identification of cases, legal qualification and conducting investigations

Article III provided for: the examination of cooperating witnesses and victims-witnesses, identification of individual cases and, in relation to it, their legal qualification and determination of rights to be exercised (especially for acts that were not criminalised by domestic law at the time when they were perpetrated); the type of liability - direct, co-perpetration or aiding and abetting, and command liability as a separate criminal offence; and finally - conducting and completing investigations in line with the legal assessment.⁴⁵

It is not known exactly in how many cases the SSPO examined witnesses. It is only known that all the cases, with the exception of the Zmajević case, remained in the preliminary investigation phase.⁴⁶ It is unknown whether any of the witnesses that were examined were cooperating witnesses. These actions were also carried out mainly because of the letters rogatory from abroad requesting international legal assistance. Identification of cases, legal qualification and

⁴⁰ *Ibid*, p. 2, Article I, item 2.

⁴¹ *Ibid*, p. 2, Article I, item 3.

⁴² For additional information, see Chapter 4 - Protection of witness in war crimes cases.

⁴³ Report on the Implementation of the War Crimes Investigation Strategy of 5 August 2016, p. 1, item I.

⁴⁴ War Crimes Investigation Strategy, Article II.

⁴⁵ *Ibid*, Article III.

⁴⁶ Information was obtained by reviewing the reports on the implementation of the War Crimes Investigation Strategy, starting from 21 December 2015 and ending on 7 May 2021.

type of liability can only be discussed in the context of the Zmajević case, as the qualification was established and Zmajević was prosecuted.

1.8. “Possible problems encountered during war crimes investigation”

The Section of the Strategy entitled “Possible Problems Encountered During War Crimes Investigation” highlighted three such possible problems: 1) lack of trust in the police and the prosecutor’s office, 2) the problem of protecting victim-witnesses, and 3) lack of communication between the police and the prosecutor’s office.⁴⁷

As a possible solution to these problems, there is a plan to increase the transparency of criminal prosecution (to the extent that this would not jeopardise the “initiated investigations”), strengthen the “public commitment” of the prosecution to the investigation of crimes, improve the application of relevant techniques and skills used in examining witnesses, and organise less formal meetings of prosecutors and police officers working on war crimes cases.⁴⁸

However, the SSPO’s reports on the implementation of the Strategy do not provide any information on whether these problems have occurred and, if they did, how they were overcome.

The details of the activities of witness protection and cooperation between the prosecution and the police will be discussed in Chapter 4 - Witness Protection in War Crimes Cases. In the next chapter, we will discuss the transparency of the SSPO’s work. The increase in the transparency of prosecutions is questionable, as it was usually possible to obtain more information from the media and other sources than from the prosecutor’s office itself.

The level of public commitment to the investigation of war crimes was apparently low, judging by the end results, but also by the statements and public appearances of representatives of the prosecutor’s office, in which war crimes were minimally represented (see 2.1). Except in the Zmajević case, regarding which the SSPO appeared in order to talk about specific results, prosecutors spoke about war crimes in public only when they were invited to NGO rallies. Even then, they gave vague statements, saying that they had taken certain action in certain cases during the preliminary investigation phase.

Special Prosecutor Lidija Vukčević, in charge of war crimes cases, did not accept the invitation to explain - at the panel organised by the HRA on 27 May 2019, on the anniversary of the crime of Deportation of Refugees - whether the SSPO had taken any action in that case pursuant to the Strategy.⁴⁹ On 5 August 2020, she agreed to talk with the representatives of the HRA about

⁴⁷ War Crimes Investigation Strategy, section “Possible Problems Encountered During War Crimes Investigation”.

⁴⁸ *Ibid.*

⁴⁹ HRA: Announcement of the panel discussion: The ‘Deportation’ crime 1992 – *post factum* 2019, 26 May 2019, available at: <https://www.hracion.org/2019/05/26/26-5-2019-najava-panel-diskusije-zlocin-deportacija-1992-post-factum-2019/>.

the implementation of the Strategy, and on that occasion we received some information about the work of the prosecutor's office. However, it did not concern the reopening of old cases, or the Deportation case.

1.9. The establishment of prosecutor-police teams

The Section of the Strategy entitled "Necessary Resources" envisions the establishment of a team for each case, composed of "one prosecutor and two or three police officers" who would be tasked with investigating war crimes.⁵⁰

The reports on the implementation of the Strategy state that only one Special Investigation Team for War Crimes Cases has been formed, no less than five years after the adoption of the Strategy, on 13 November 2020, when documents arrived from the International Residual Mechanism.⁵¹ The team consists of a special prosecutor, an associate in the SSPO, and authorised police officers of the Special Police Department.⁵² The only thing that is known is that the team has worked on the "identification of Montenegrin citizens who are suspected of having participated in the commission of war crimes on the territory of former SFRY."⁵³ However, at the meeting with the representatives of the State Prosecutor's Office on 24 May 2021 it was explained that investigation teams had also been established earlier, although this was not reported.

⁵⁰ War Crimes Investigation Strategy, p. 3.

⁵¹ Report on the Implementation of the War Crimes Investigation Strategy of 5 February 2021, pp. 2-3.

⁵² Report on the Implementation of the War Crimes Investigation Strategy of 5 February 2021, pp. 2-3.

⁵³ Report on the Implementation of the War Crimes Investigation Strategy of 7 May 2021, p. 2.

2. Review of the Actions of the Special State Prosecutor's Office Based on the War Crimes Investigation Strategy (May 2015 - May 2021)

2.1. Press releases, media and public appearances

From 2 February 2016 (when it published the first statement) until 1 June 2021, the SSPO published a total of 162 statements on its website, of which only four (2.5%) were dedicated to war crimes. Of these four statements, two concerned the Zmajević case, while one was the extorted response to the claims of MP Nebojša Medojević about the participation of the Chief Special Prosecutor Milivoj Katnić (Chief Special Prosecutor) in war crimes that were committed on the Dubrovnik battlefield, and one about the meeting in the Prosecutor's Office of BiH, which also concerned cooperation in the processing of war crimes⁵⁴

The HRA also analysed other press releases and public presentations of Chief Special Prosecutor and Special Prosecutor Lidija Vukčević, who was in charge of war crimes cases. According to these data, from 24 June 2015 until 1 June 2021, out of 31 registered media and public appearances, Chief Special Prosecutor spoke of war crimes only on two occasions, both times almost immediately after the establishment of the SSPO, in statements made for TV Vijesti. As for Prosecutor Vukčević, from 26 March 2016 until 1 June 2021, out of a total of 15 media and public appearances, she gave six statements that referred to war crimes, at rallies that were organised by non-governmental organisations or at the initiative of non-governmental organisations (the Human Rights Action, the Centre for Civic Education and the Youth Initiative for Human Rights), as well as one response to a question that was posed to her in an interview for the daily "Pobjeda".⁵⁵

2.2. Preliminary investigations, investigations and charges

The expert hired by the European Commission, Maurizio Salustro, pointed out in his 2014 report that "the Montenegrin prosecution has failed to organise its war crimes investigation efforts" and that "there is a lack of a proactive approach in trying to identify potential suspects".⁵⁶ Therefore, the SSPO was expected to show an approach to investigating war crimes that was far more active than that which had been shown, prior to the SSPO's establishment in 2015, by the Supreme State Prosecutor's Office.

From May 2015 to the end of May 2021, the SSPO issued only one order to conduct an investigation and filed only one indictment in the same case, against Vlado Zmajević, a Yugoslav Army reservist who was charged with committing a war crime against civilians in Kosovo and Metohija in 1999. Using the legally prescribed procedure, the Prosecutor's Office for War

⁵⁴ Information obtained from : <https://sudovi.me/spdt/kategorija/Qa>

⁵⁵ Information obtained from : <https://sudovi.me/spdt/kategorija/Qa>

⁵⁶ Peer-based Assessment Mission to Montenegro, on the Domestic handling of war crimes (by Maurizio Salustro), 2014, p. 1.

Crimes of the Republic of Serbia ceded the criminal prosecution of Zmajević to the SSPO.⁵⁷ The SSPO investigated, indicted and prosecuted the case before the High Court in Podgorica (for more information, see 2.3).

It is not known exactly how many cases the SSPO opened in this period while conducting preliminary investigation into war crimes, because this cannot be precisely concluded from its published report.

2.2.1. Year 2015

No indictments were filed, nor were there any orders to launch an investigation into a war crime in 2015. No criminal charges were filed or dismissed. In one unknown case from the earlier period, an unresolved investigation was completed by terminating the proceedings.⁵⁸ That year, the SSPO opened one new case, for war crimes committed against civilians. The report did not state which case it was, nor can this be found from other sources.⁵⁹

Following the criminal report that journalist and publicist Šeki Radončić filed against Slobodan Pejović on 18 April 2011 for war crimes committed against civilians, in the case of Deportation of Refugees, the necessary evidence, data and information were collected and the case was in the decision-making phase.⁶⁰ Regarding the same event, and in connection with the second criminal report which Radončić filed on 18 March 2015 together with Jasenko Perović against Slobodan Pejović and unidentified persons for war crimes against civilians and failure to report both the crime and the perpetrator,⁶¹ certain data and notifications were also collected and the case was in the decision-making stage.

Regarding the criminal report of Elsana Nurković against unidentified persons, for war crimes committed against civilians under Article 142 paragraph 1 of the Criminal Code of the FRY, regarding the disappearance of her father Halit Nurković, who was a taxi driver in Kosovo in 1999,⁶² the SSPO collected data and submitted them to the State Prosecutor's Office of Kosovo, since a case related to that event had already been opened by that Prosecutor's Office.⁶³

The following criminal reports from the previous period remained unresolved: the criminal report of Milan Popović, Professor at the Faculty of Law at the University of Montenegro, of Esad Kočan, editor-in-chief of the Montenegrin weekly "Monitor", and that of Koča Pavlović,

⁵⁷ Report on the Implementation of the War Crimes Investigation Strategy of 12 May 2016, p. 2, item 9.

⁵⁸ Report on the work of the Special State Prosecutor's Office for 2015, p. 11.

⁵⁹ *Ibid.*

⁶⁰ Report on the Implementation of the War Crimes Investigation Strategy of 21 December 2015, p. 1 item 2. For additional information about these criminal reports, see section 3.2.3.1.

⁶¹ The report was filed because it was noted that, in the show "Without Borders" on TV Vijesti, Slobodan Pejović said that he knew that refugees were murdered during the war in Orjen and that he knew who was responsible for those murders. However, he refused to name the person (the source of information is the criminal report which the HRA had access to).

⁶² "KOSOVO PROSECUTOR'S OFFICE SUBMITS EVIDENCE RELATING TO THE INVESTIGATION OF THE DISAPPEARANCE OF A TAXI DRIVER FROM ROŽAJE, HALIT NURKOVIC", *Dan*, 26 August 2018, available at: <https://www.dan.co.me/?nivo=3&rubrika=Hronika&clanak=660333&datum=2013-01-26&najdatum=2018-08-26>.

⁶³ Report on the Implementation of the War Crimes Investigation Strategy of 21 December 2015, pp. 1-2 item 3

MP in the Montenegrin Parliament, filed against the Prime Minister of Montenegro Milo Djukanović and five other persons from the Supreme State Prosecutor's Office, for the criminal offence of genocide committed in the territory of Montenegro from 1994 to 2014, in connection with the case of Ibrahim Čikić.⁶⁴ However, according to the applicants' press release of 9 December 2014, the Supreme State Prosecutor's Office had informed them that "there were no grounds for prosecuting any person for any criminal offence that is prosecuted *ex officio*".⁶⁵ However, the Supreme State Prosecutor's Office subsequently corrected that decision and returned the case to the then Special Department for the Suppression of Organised Crime and Corruption, Terrorism and War Crimes, so that it could take additional action.⁶⁶

Based upon a letter rogatory submitted by the Prosecutor's Office of BiH, requesting a takeover of criminal prosecution regarding the investigation against Ranko Radulović, a controversial businessman from Nikšić and former owner of the football club "Čelik" from the same city, for crime against humanity under Article 172 of the Criminal Code of BiH, the data requested by the Police Directorate were verified and submitted to the Prosecutor's Office of BiH.⁶⁷ Radulović was charged with taking part, in July and August 1992 in Foča, in an attack and persecution of civilians, hostage-taking and unlawful, arbitrary and from the military standpoint unjustified large-scale destruction of property. It was also stated that he participated in unlawful detention of civilians, assisted in forcing Bosniak girls to have sexual intercourse or equivalent sexual acts i.e rape, and that he himself raped several victims multiple times".⁶⁸ Regarding the 2020 epilogue, see section 2.2.6.

2.2.2. Year 2016

In 2016, the SSPO opened two new cases for crimes against humanity and war crimes.⁶⁹

The first case referred to Vlado Zmajević, and in that case the order to conduct an investigation was issued on 5 August 2016.⁷⁰ The SSPO also submitted a motion to order detention for Zmajević, which was adopted. Detention was extended, and the investigation continued.⁷¹

The second case was opened based on information of the Association of War Veterans of the 1990s, dated 24 May 2016, regarding the murder of 24 members of the YNA in the areas of Čepikuć, Ivanjica, Osojnik and Grab in Croatia in October 1991, and the circumstances related to the disappearance and death of seven members of the YNA in the Crnoglava region near Neum,

⁶⁴ Report on the work of the Special State Prosecutor's Office for 2015, *op. cit.*

⁶⁵ "Popović, Kočan and Pavlović: Stankovic is helping genocide suspects evade justice", *Vijesti*, 9 December 2014, available at: <https://www.vijesti.me/zabava/205514/popovic-kocan-i-pavlovic-stankovic-pomaze-osumnjicenima-za-genocid-da-izbjegnu-pravdu>.

⁶⁶ "Stankovic corrects the decision, the case of Ibrahim Čikić once again active", *Vijesti*, 11 December 2014, available at: <https://www.vijesti.me/vijesti/drustvo/205128/stankovic-korigovao-odluku-slucaj-ibrahima-cikica-opet-aktivan>.

⁶⁷ Report on the Implementation of the War Crimes Investigation Strategy of 21 December 2015, p. 3 item 10.

⁶⁸ "INDICTMENT ISSUED FOR CRIME AGAINST HUMANITY IN THE AREA OF FOČA", *Prosecutor's Office of Bosnian and Herzegovina*, 3 September 2020, available at: <http://www.tuzilastvobih.gov.ba/index.php?id=4587&jezik=b>.

⁶⁹ Report on the work of the Special State Prosecutor's Office for 2016, p. 11.

⁷⁰ Report on the Implementation of the War Crimes Investigation Strategy of 5 August 2016, item I, p. 1.

⁷¹ Report on the Implementation of the War Crimes Investigation Strategy of 5 August 2016, p. 1 item I, and 5 December 2016, p. I item I.

in the territory of BiH, on 23 April 1992. At year's end, the case was still in the preliminary investigation phase.⁷²

There were no new developments regarding the criminal report of Elsana Nurković concerning the disappearance of her father Halit Nurković,⁷³ or the criminal reports of Šeki Radončić concerning the deportation of refugees.⁷⁴

According to the Report on the Work of the SSPO for 2016, "Six cases that were opened in the earlier period, relating to war crimes suspected of having been committed in Croatia, Montenegro and Bosnia & Herzegovina in 1991, 1992 and in 1993, are in the preliminary investigation phase". It was not explained which cases these were.⁷⁵ For all of them, it was briefly stated that the data on them were collected from local state and judicial authorities of the countries of the region using international legal assistance and, finally, by searching the database and sending letters rogatory in order to obtain relevant data from the Hague Tribunal.

At the end of the reporting period, criminal reports of Esad Kočan, Milan Popović and Koča Pavlović against Milo Djukanović and five persons from the Supreme State Prosecutor's Office for genocide under Article 426 of the Criminal Code of Montenegro were still unresolved.

From 14 to 18 November, a special prosecutor and an adviser from the SSPO paid an official visit to the Hague Tribunal (ICTY), where they searched the database in an attempt to collect data and evidence relating to SSPO's preliminary investigations, as well as those that concerned the cases of "Bukovica", "Morinj", "Kaludjerski Laz" and "Deportation", all with the aim of establishing whether Montenegrin citizens had participated in them. It was agreed to exchange data and evidence with the Special Prosecutor's Office as well.⁷⁶

2.2.3. Year 2017

No new cases have been opened this year, nor have any new criminal charges been filed.

Three criminal reports were rejected: one was filed by Esad Kočan, Milan Popović and Koča Pavlović against Milo Djukanović and five persons from the Supreme State Prosecutor's Office for the criminal offence of genocide, in connection with the case of Ibrahim Čikić;⁷⁷ the second was filed by Šeki Radončić and Jasenka Perović against an unidentified person and Slobodan Pejović, for war crimes against civilians and failure to report both a criminal offence and the

⁷² Report on the Implementation, *op. cit.* of 5 December 2016, p. 2 item II and "Why is Montenegro avoiding investigation of the crimes committed in Lora", *Politika*, 6 June 2016, available at: <http://www.politika.co.rs/sr/clanak/356571/Zasto-Crna-Gora-izbegava-istragu-zlocina-u-Lori>.

⁷³ Report on the Implementation of the War Crimes Investigation Strategy of 12 May 2016, pp. 1-2, item 3.

⁷⁴ *Ibid*, p. 1, item 2 and p. 2, item 5.

⁷⁵ Report on the work of the Special State Prosecutor's Office for 2016, p. 11.

⁷⁶ Report on the Implementation of the War Crimes Investigation Strategy of 5 December 2016, p. 2 item III.

⁷⁷ Report on the work of the Special State Prosecutor's Office for 2017, p. 19.

perpetrator, in connection with the alleged killings of refugees in Orjen in 1992;⁷⁸ while the third was filed by Radončić against Slobodan Pejović for war crimes against civilians due to his alleged involvement in the arrest of refugees.⁷⁹

According to the three persons who had failed the first rejected report, the prosecution did not notify them until December 2017 regarding the criminal report they had filed against Djukanović and persons from the Supreme State Prosecutor's Office for war crimes against civilians, in connection with the 1992 refugee deportation case.⁸⁰

In the case that was opened based on the information obtained from the Association of War Veterans from 1990s of Montenegro, regarding the murder of 24 members of the YNA in October 1991 and the disappearance of seven members of the YNA in April 1992, documentation was collected from the Ministry of Defence of Montenegro and a letter rogatory was dispatched to the Hague Tribunal and the Serbian Prosecutor's Office for War Crimes for the purpose of obtaining information.⁸¹

Regarding the report of the disappearance of Halit Nurković (see 2.2.1), after collecting data from the Kosovo Prosecutor's Office, the SSPO searched the ICC database for former Yugoslavia and then sent a letter rogatory requesting submission of these data.⁸² The data was received, analysed⁸³ and a request for submission of data was submitted to the Supreme State Prosecutor's Office of Kosovo.⁸⁴

2.2.4. Year 2018

There were no new criminal reports that year, nor were any charges from the previous period rejected.⁸⁵

The trial of Vlado Zmajević was upending, based on the indictment for the criminal offence of war crimes against civilians from Article 142 paragraph 1 of the Criminal Code of the FRY, in connection with the killing of civilians in Kosovo.⁸⁶

SSPO opened four cases based on the letter rogatory of the Prosecutor's Office of BiH.⁸⁷ It is not known which cases were involved.

⁷⁸ Report on the Implementation of the War Crimes Investigation Strategy of 11 April 2017, pp. 1-2.

⁷⁹ Report on the Implementation of the War Crimes Investigation Strategy of 27 November 2017, p. 2.

⁸⁰ "SPECIAL PROSECUTOR'S OFFICE REJECTS CRIMINAL REPORT AGAINST ĐUKANOVIĆ FOR GENOCIDE": Šegrti, *Monitor*, 1 December 2017, available at: <https://www.monitor.co.me/specijalno-tuilstvo-odbilo-krivinu-prijavu-protiv-ukanovia-za-genocid-egrti/>

⁸¹ Report on the Implementation of the War Crimes Investigation Strategy of 27 January 2017, p. 3 item 7; Report on the Implementation of the War Crimes Investigation Strategy of 11 April 2017, p. 3, item 6; Report on the Implementation of the War Crimes Investigation Strategy of 9 August 2017, p. 2, item 6 and Report on the Implementation of the War Crimes Investigation Strategy of 27 November 2017, p. 2 item III.

⁸² Report on the Implementation of the War Crimes Investigation Strategy of 27 January 2017, p. 2, item 3.

⁸³ Report on the Implementation of the War Crimes Investigation Strategy of 11 April 2017, p. 2, item 3.

⁸⁴ Report on the Implementation of the War Crimes Investigation Strategy of 9 August 2017, p. 2, item 3.

⁸⁵ *Ibid*, p. 3.

⁸⁶ Report on the work of the Special State Prosecutor's Office for 2018, p. 31.

⁸⁷ Report on the Implementation of the War Crimes Investigation Strategy of 14 December 2018, p. 2, item III.

In the case related to the disappearance and murder of members of the YNA in Croatia and BiH in 1991 and 1992, the data obtained from the Hague Tribunal and the Prosecutor's Office for War Crimes of Serbia were analysed at the end of the year.⁸⁸

In the case of the report of the disappearance of Halit Nurković (2.2.2), after the translated version was obtained from the competent authorities of Kosovo and data were analysed, the SSPO concluded that it was no longer competent because there was no basis for suspicion that the crime was committed by a Montenegrin citizen and found that a case was already opened in Kosovo regarding this event. The case is in the preliminary investigation phase.⁸⁹

Organised by UNDP on 3 April, within the project "Strengthening Regional Cooperation in War Crimes Prosecution and Search for Missing Persons", a bilateral meeting was held in Sarajevo, BiH between representatives of the SSPO and the Prosecutor's Office of BiH, where data on specific cases were exchanged for the purpose of eventual transfer of criminal prosecution.⁹⁰

On July 10, a bilateral meeting was held in Split between representatives of the SSPO and the Croatian Prosecutor's Office to exchange information on the case involving the death of members of the so-called "Nikšić-Šavnik" group, opened by the State Prosecutor's Office of the Split County, in which Montenegrin citizens were the injured parties.⁹¹

2.2.5. Year 2019

There has been no progress regarding new cases, investigations or charges. According to a report on the work of SSP, there were no new criminal reports, nor were any old reports rejected.⁹²

However, on 31 January 2019, the SSP informed Professor Milan Popović that it had rejected the criminal charges filed by him, editor of *Monitor* Esad Kočan and MP Koča Pavlović in 2012 against Milo Đukanović, the Prime Minister of the Federal Republic of Montenegro in 1992, and the Supreme State Prosecutor Ranka Čarapić and her associates in the Supreme State Prosecutor's Office, for the war crime of deportation (see 3.2.3.1).⁹³ The SSP informed Popović, at his request, that the criminal charge was rejected because "there are no grounds for suspicion that the reported persons committed the reported criminal offence, or any other offence that is prosecuted *ex officio*".⁹⁴

⁸⁸ Report on the Implementation of the War Crimes Investigation Strategy of 13 June 2018, p. 2, item II.

⁸⁹ *Ibid*, pp. 1-2, item II.

⁹⁰ *Ibid*, p. 2, item III.

⁹¹ Report on the Implementation of the War Crimes Investigation Strategy of 19 September 2018, p. 2, item III.

⁹² Report on the work of the Special State Prosecutor's Office for 2019, p. 30.

⁹³ SSP notice, Ktr.-S. no. 87/12 from 31 January 2019.

⁹⁴ *Ibid*.

In the case of Zmajević, the High Court in Podgorica issued the first instance conviction on 5 June. It was confirmed by the Court of Appeals on 18 November 2019, making the verdict final.⁹⁵

In the case of YNA members killed and missing in Croatia and BiH, letters rogatory were sent to the State Prosecutor's Office of Croatia and the District Prosecutor's Office in Doboj. Additional information was also collected from the Ministry of Defence of Montenegro.⁹⁶

Acting on the letter rogatory submitted by the Prosecutor's Office of BiH, SSPO questioned Ranko Radulović in the capacity of the accused, on suspicion that he had committed – in Foča, in 1992 – the criminal offence crime against humanity under Article 172 of the Criminal Code of BiH, and submitted the record of that hearing to the Prosecutor's Office of BiH.⁹⁷ During the questioning, Radulović was in custody because of another criminal offence.⁹⁸ Subsequently, upon a letter rogatory of the Prosecutor's Office of BiH, the SSPO requested that Special Police Department collect data in order to proceed with the questioning of the witness.⁹⁹

2.2.6. Year 2020

There were no criminal reports, no new investigations, and no charges.¹⁰⁰

Regarding the case against Ranko Radulović, the SSPO submitted certain information to the Prosecutor's Office of BiH.¹⁰¹ The case cannot be handed over to the Montenegrin prosecutor's office because the injured parties refused to have the procedure conducted before Montenegrin institutions, and Radulović cannot be tried in BiH because the laws of that country do not allow persons to be tried *in absentia*.¹⁰² The Prosecutor of the Special Department for War Crimes of the Prosecutor's Office of BiH filed an indictment against Radulović on 3 September 2020.¹⁰³ The indictment was partially confirmed by the Court of BiH,¹⁰⁴ and the SSPO, acting on a letter rogatory of the Prosecutor's Office of BiH, proceeded to submit certain documentation to Radulović and his defense counsel.¹⁰⁵

The SSPO also acted on the letter rogatory of the State Prosecutor's Office of the Split County and questioned, in the capacity of a defendant, one D.Lj, whose identity is unknown but who

⁹⁵ Report on the work of the Special State Prosecutor's Office for 2019, p. 30. Also, see the judgment of the High Court in Podgorica no. Ks. 2/17 of 6 June 2019 and the judgment of the Appellate Court no. Kžs. no. 14/2019 of 18 November 2019.

⁹⁶ Report on the Implementation of the War Crimes Investigation Strategy of 2 August 2019, p. 2, item II and Report on the Implementation of the War Crimes Investigation Strategy of 27 December 2019, p. 2 item II.

⁹⁷ Report on the Implementation of the War Crimes Investigation Strategy of 2 August 2019, p. 2, item 3.2.

⁹⁸ "Radulovic was questioned on suspicion of committing war crimes, denies guilt", *Vijesti*, 1 August 2019, available at: <https://www.vijesti.me/vijesti/crna-hronika/395657/saslusavaju-radulovica-zbog-sumnje-da-je-pocinio-ratne-zlocine>.

⁹⁹ Report on the Implementation of the War Crimes Investigation Strategy of 27 December 2019, p. 2.

¹⁰⁰ Report on the work of the Special State Prosecutor's Office for 2020, p. 31.

¹⁰¹ Report on the Implementation of the War Crimes Investigation Strategy of 15 April 2020, p. 1, item I.

¹⁰² Detailed information on this case was obtained at the meeting with Special Prosecutor Lidija Vukčević held on 5 August 5, 2020.

¹⁰³ INDICTMENT ISSUED FOR CRIME AGAINST HUMANITY IN THE ARE OF FOČA, *op.cit*.

¹⁰⁴ "Partially confirmed indictment in the Ranko Radulović case", *Court of BiH*, 18 March 2021, available at: <http://www.sudbih.gov.ba/vijest/djelimino-potvrena-optunica-u-predmetu-ranko-radulovi-21497>.

¹⁰⁵ Report on the Implementation of the War Crimes Investigation Strategy of 2 November 2020, p. 1.

has been charged with the war crimes committed against civilians.¹⁰⁶ In three cases, the SSPO acted on letters rogatory from the State Prosecutor's Office of Zagreb County, the Serbian War Crimes Prosecutor's Office and the BiH Prosecutor's Office to collect data through the Special Police Department.¹⁰⁷

The SSPO is investigating the murder of a Montenegrin citizen that was committed by members of the YNA in the territory of Croatia (Cavtat), for which there was no report and the procedure was thus initiated based on information obtained from an unknown source.¹⁰⁸ Preliminary investigation was conducted in another case against a Montenegrin citizen on suspicion that he had committed a war crime, and the procedure against him was initiated based on documents obtained from BiH. However, no indictment was filed.

The prosecutor of the International Residual Mechanism handed over to the Montenegrin authorities a file relating to „more than 15 suspects who can now be investigated for serious crimes, including sexual violence“. ¹⁰⁹ Based on this, at the end of the year the SSPO opened a new case, which is currently in the preliminary investigation phase.¹¹⁰

2.2.7. Year 2021

By 20 May 2021, the SSPO had adopted two reports on actions that were taken since the beginning of the year. No new investigations have been launched, nor have any indictments been filed.

Based on an unknown person's submission from 5 February 2021, the SSPO opened the case on the alleged participation of Radio Television of Montenegro, other media outlets and some unidentified persons in organising paramilitary units for the purpose of committing war crimes in the former SFRY in 1992. After gathering information and questioning an unknown person, the SSPO "assessed that there were no grounds for undertaking criminal prosecution against any person for any criminal offence that falls under the purview of this prosecutor's office". The case was therefore archived on 5 April 2021, and the applicant was informed thereof.¹¹¹

The SSPO opened another case based on an online meeting with the Prosecutor's Office of BiH, a legal advisor from the Office of the Prosecutor of the International Residual Mechanism and representatives of the NGO "Trial International" from BiH, where it received data and evidence from criminal proceedings that were pending before the competent authorities of BiH, in which

¹⁰⁶ *Ibid*, pp. 1-2.

¹⁰⁷ *Ibid*, p. 2.

¹⁰⁸ Information was obtained at the meeting with Prosecutor Vukčević, 5 August 2020.

¹⁰⁹ "Prosecutor Serge Brammertz addresses the United Nations Security Council, *United Nations, International Residual Mechanism for Criminal Courts*, 14 December 2020, available at: <https://www.irmct.org/bcs/novosti/20-12-15-tuzilac-serge-brammertz-se-obraatio-vijecu-sigurnosti-ujedinjenih-nacija>.

¹¹⁰ "Vukčević: The case is in the preliminary investigation phase", *Mina*, 16 December 2020, available at: <https://mina.news/crnagora/vukcevic-predmet-se-nalazi-u-fazi-izvidaja/>.

¹¹¹ Report on the Implementation of the War Crimes Investigation Strategy of 7 May 2021, p. 1.

the defendant was a Montenegrin citizen, all for the purpose of holding a meeting in the Prosecutor's Office of BiH to examine the fulfilment of the conditions that were required for the case to be transferred to the SSPO (see 6.2.1.)¹¹² This meeting in BiH took place on 19 May 2021.¹¹³

During the reporting period, the SSPO took over data and evidence from the Residual Mechanism to determine the participation of Montenegrin citizens in war crimes committed in the 1990s, which led to the establishment of the Special Investigation Team¹¹⁴ (see Chapter 1.9 above). The Special Investigation Team then identified persons who were suspected of having participated in the commission of war crimes, and sent a letter rogatory requesting international legal assistance to the Prosecutor's Office of BiH and the Residual Mechanism in The Hague. The Prosecutor's Office of BiH submitted the data, but it is not known what these data were. The procedure in the Residual Mechanism is still under way.¹¹⁵

The SSPO acted in 8 cases upon letters rogatory from prosecutor's offices from countries in the region requesting international legal assistance.¹¹⁶ Of these 8 letters rogatory, one referred to the questioning of one person¹¹⁷ in the capacity of defendant, one to the questioning of two persons in the capacity of witnesses,¹¹⁸ four to the identification of persons with knowledge of war crimes or knowledge of who should be questioned as a witness,¹¹⁹ and two to the collection of certain data from the Special Police Department.¹²⁰

2.3. The Zmajević case - the processed case

The Zmajević case is the only war crimes case that was prosecuted by the SSPO in 6 years of implementation of the Strategy.

The SSPO opened a case against Vlado Zmajević from Nikšić, a reservist in the Yugoslav Army (YA) for war crimes committed in Kosovo against civilians under Article 142, paragraph 1 of the FRY Criminal Code after the War Crimes Prosecutor's Office of the Republic of Serbia,¹²¹ upon a letter rogatory submitted by the War Crimes Department of the High Court in Belgrade, ceded criminal prosecution. Prior to that, the judicial authorities of Serbia conducted a preliminary investigation and investigative actions against Zmajević, and collected material and personal evidence (witness statements).¹²²

¹¹² *Ibid*, pp. 1-2.

¹¹³ Meeting of the Chief Prosecutor of the Prosecutor's Office of BiH with senior officials of the SSP of Montenegro, the Prosecutor's Office of BiH: <http://www.tuzilastvobih.gov.ba/index.php?id=4901&jezik=e>.

¹¹⁴ *Ibid*, pp. 2-3.

¹¹⁵ *Ibid*, p. 2.

¹¹⁶ Report on the Implementation of the War Crimes Investigation Strategy of 5 February 2021 and Report on the Implementation of the War Crimes Investigation Strategy of 7 May 2021, p. 2.

¹¹⁷ Report on the Implementation of the War Crimes Investigation Strategy of 5 February 2021, p. 2.

¹¹⁸ *Ibid*.

¹¹⁹ *Ibid*.

¹²⁰ Report on the Implementation of the War Crimes Investigation Strategy of 7 May 2021, p. 2, item II.

¹²¹ Report on the Implementation of the War Crimes Investigation Strategy of 12 May 2016, p. 2, item 9.

¹²² Report on the Implementation of the War Crimes Investigation Strategy of 5. August 2016, p. 1. Also, it follows from the motion of the defense counsel to file a request for protection of legality – which, together with other documentation in this case, was submitted to the HRA

The disputed event took place at the end of March 1999, during an armed conflict between the NATO coalition forces and members of the armed military organisation known as the Kosovo Liberation Army (KLA), and members of the Army of Federal Republic of Yugoslavia - YA.¹²³ As a volunteer in the YA, Zmajević was sent to Kosovo and Metohija, to the watchtower near the border with Macedonia. He was accused of killing - while returning from the watchtower on 30 March 1999 - first Imer Kadriu in the village of Dunav, and then Ćazim Haziri, Mijazim Idrizi and Ćamila Haziri in the village of Žegra (both villages are in the municipality of Gnjilane). All the persons were civilians of Albanian nationality.¹²⁴

In the investigative procedure before the Military Court at the Pristina Corps Command, which was conducted against Zmajević and other defendants (two of whom were witnesses in this case)¹²⁵ for the criminal offence of aggravated robbery and robbery,¹²⁶ Zmajević admitted that he had murdered three people, out of four regarding which he was later convicted in Montenegro.

The SSPO issued an order to conduct an investigation against Zmajević on 5 August 2016¹²⁷ and filed an indictment against him on 2 February 2017. The indictment was confirmed by the High Court on 3 March of that year.¹²⁸

According to the original indictment, which was confirmed by the Extrajudicial Chamber of the High Court in Podgorica, Zmajević was charged with the murder of 7 civilians, but the number was subsequently reduced to four.¹²⁹

In this case, which included the testimony of 13 witnesses, three expert reports and numerous other documents, Zmajević was found guilty by the decision of the High Court in Podgorica of 5 June 2019 and sentenced to 14 years in prison - the longest prison sentence ever imposed for war crimes in Montenegro.¹³⁰ The Court of Appeals confirmed that decision with the verdict of 18 November 2019.¹³¹

for inspection by attorney Predrag Ćetković, one of Zmajević's attorneys - shows that he is against Zmajević and other persons, some of whom testified. at Zmajević's trial before the High Court in Podgorica, an investigation was initiated before the Military Court at the PRK Command in 1999 for the criminal offence of aggravated robbery and robbery under Article 169 paragraph 2 in conjunction with Article 168 paragraph 1 of the Criminal Code of the Republic of Serbia, and in conjunction with Article 22 of the Criminal Code of FRY. During two hearings, on 3 April 1999 and 14 April 1999, Zmajević denied having committed robbery, but admitted having committed murder of three of the four civilians for which he was later charged by the SSPO, and for which he was convicted by a final court decision. Zmajević's statements before the Military Court at the PRK Command from 1999 were used in the proceedings against Zmajević before the High Court in Podgorica.

¹²³ Page 2 of the judgment of the High Court in Podgorica no. Ks. 2/17.

¹²⁴ *Ibid.*

¹²⁵ Judgment of the High Court in Podgorica no. Ks. 2/17 of 5 June 2019, p. 5.

¹²⁶ *Ibid.*, p. 36.

¹²⁷ Report on the Implementation of the War Crimes Investigation Strategy of 5 August 2016, p. 1.

¹²⁸ Report on the Implementation of the War Crimes Investigation Strategy of 11 April 2017, p. 1.

¹²⁹ Zmajević's attorney in the first-instance procedure, Ljiljana Koldžić, said that this was done because of the "embarrassment concerning the data that were provided to them by their colleagues from Serbia, in the form of a document of the Military Intelligence Agency (VBA) and an empty file that did not contain any evidence", taken from Amnesty for Order Givers, *op. cit.*

¹³⁰ Judgment of the High Court in Podgorica no. Ks. 2/17 of 5 June 2019.

¹³¹ Judgment of the Appellate Court no. KŽ-S 14/2019 of 18 November 2019.

Challenging the verdict of the Appellate Court, on 10 January 2020 Zmajević's defence attorney submitted a proposal to file with the Supreme State Prosecutor's Office a request for the protection of legality.¹³² It was rejected by a decision of 22 April 2020, only to be revoked - after the appeal was filed against the Supreme State Prosecutor's Office's decision by the defence attorney - by a decision of the Supreme Court of 9 June 2020. The case was thus returned to the Supreme State Prosecutor's Office for repeated deciding.¹³³ However, in a new decision of 7 July 2020¹³⁴ the prosecution once again rejected the proposal to file a request for the protection of legality. This decision was followed by a new appeal to the Supreme Court on 15 July 2020, which was rejected.¹³⁵ Although the defence attorney complained during the proceedings of the violation of the right to defence, unequal treatment of evidentiary proposals and the questionable mental state of the defendant, the constitutional appeal was never filed.

3. Overview of Old War Crimes Cases after the Adoption of the War Crimes Investigation Strategy

3.1. Commitment overview

The European Commission has included the same observation in all the reports on Montenegro that were published since 2013, namely that previous war crimes verdicts have not been in line with international humanitarian law and that there has been no full application of domestic criminal law, that a more proactive approach to the investigation, prosecution and punishment of war crimes should be taken, and that indictments for command responsibility, co-perpetration, aiding and abetting have not yet been filed.¹³⁶ In its latest resolution on Montenegro of 19 May 2021, the European Parliament expressed concern over the lack of progress in the prosecution of war crimes and called on the authorities to intensify efforts to punish those crimes.¹³⁷ Therefore, the European Union is constantly expecting Montenegro to correct its omissions in the processing of war crimes.

In Article IV, the Strategy prescribes a specific task for the SSPO:

¹³² Decision of the Supreme State Prosecutor's Office Ktz. no. 1/20 of 22 April 2020.

¹³³ Judgment of the Supreme Court Kž-S II.no. 2/20 of 9 June 2020.

¹³⁴ Judgment of the Supreme Court Ktz. no. 1/20 of 7. July 2020.

¹³⁵ Judgment of the Supreme Court Kž-S II no. 4/20 of 29 September 2020.

¹³⁶ *Montenegro Progress Report 2013*, European Commission, October 2013, p. 75, etc.

¹³⁷ "51. Strongly condemns any attempts by politicians in Montenegro and elsewhere in the region to deny the Srebrenica genocide or any other war crimes that took place in the former Yugoslavia; welcomes the signing of a protocol on cooperation in the search for missing persons between the Governments of Bosnia and Herzegovina and Montenegro as a good example of cooperation in investigating cases of missing persons; **is concerned by the lack of progress in dealing with war crimes committed in Montenegro and calls on the authorities to intensify their efforts to punish war crimes...**", European Parliament resolution of 19 May 2021 on the 2019-2020 Commission Reports on Montenegro, available at: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0244_EN.html

“Review old cases (*Morinj, Bukovica, Deportation, Kaludjerski laz*, etc.) to find out whether it is possible to identify some more suspects, taking into account all the models of criminal responsibility and all criminal acts.”

3.2. The “Deportation of Refugees” case

3.2.1. Case description

In May and June 1992, at least 66 Muslim refugees from Bosnia and Herzegovina were illegally arrested in the territory of Montenegro and handed over to members of the (enemy) Bosnian Serb army in BiH, who killed most of them. Only twelve managed to survive concentration camps. In addition to Muslims from BiH, 33 Serb refugees were also arrested in the territory of Montenegro at the same time, and they were returned to the Bosnian Serb Republic to be mobilised. Unlike Muslim refugees, deported Serb refugees were not treated as hostages, nor are any of them known to have died as a result of the immediate consequences of deportation. Most of the arrested refugees were brought to the Herceg Novi Security Centre, which served as a collection centre. From there, they were transported on May 25 and 27 by bus, in an organised fashion, to the “Foča KPD” concentration camp, that is, to an unspecified location in eastern BiH (Bosnian Serb Republic). Only a few managed to survive deportation to the Foča camp, but among them were none of the persons that were deported by bus on 27 May 1992. Several remains of the people from that bus were found in the cemetery in Sremska Mitrovica, where they were brought by the river Drina. The remains of all the victims have not yet been found. Other Muslim refugees were arrested in Bar, Podgorica or in the area near the BiH border, also in late May 1992, and deported individually to the camp in Foča or handed over to Bosnian Serb agents, after which they were never heard of again.¹³⁸

The characteristic of this case is that it is well documented, which is a rarity in war crimes cases.

3.2.2. Processing

The processing of the case was presented in detail and commented on in the Human Rights Action’s report entitled “War Crimes Trials in Montenegro (2015-2019)”.¹³⁹ Here, we will recall some of the main facts that are relevant to the implementation of Article IV of the Strategy after the year 2015.

¹³⁸ For additional information see “War Crimes Trials in Montenegro”, Human Rights Action, 2013, p. 22 and “War Crimes Trials in Montenegro (2009-2015)”, B. Ivanišević, T. Gorjanc-Prelević, Human Rights Action, Podgorica, 2016, p. 30, available at: <https://www.hraction.org/wp-content/uploads/2017/05/Sudjenja-za-ratne-zlocine-u-Crnoj-Gori-2009-2015-1.pdf>.

¹³⁹ *Ibid.*

The investigation was opened in February 2006, while the indictment against 9 former MoI officers for war crimes against civilians caused by “illegal relocation” was filed in 2009 and confirmed by the panel of judges of the High Court in Podgorica. Among all the accused, two former assistant interior ministers for public and state security had the highest rank.

The indictment was signed and represented by Deputy Special Prosecutor Lidija Vukčević.

The High Court first acquitted all the defendants in 2011. This verdict was revoked because the character of the conflict in BiH was defined differently in two places - in one place it was stated that the conflict in BiH was of an international character and that the FRY (Serbia & Montenegro) was in conflict with the Government of BiH. The Appellate Court especially questioned the claim about the international character of the conflict.

The second judgment, handed down in 2012, was almost identical to the first, except that the conflict in BiH was found to be of non-international character, in line with the official political narrative which the state prosecution supported by appropriately amending the indictment.¹⁴⁰ This judgment became final when the Appellate Court upheld it in 2013. In 2015, the Supreme Court of Montenegro rejected the request for the protection of legality which was filed against the judgment by the Supreme State Prosecutor’s Office.

All the defendants were acquitted because it was established that *it had not been proven that, as members of the MoI, they belonged to the FRY armed forces or that they were in the service of any of the parties to the conflict and were thus active participants in the armed conflict, in which case they would have been binded by the rules of international law, and therefore their activity cannot be viewed and evaluated in terms of performance of acts provided for in Article 142 of the FRY Criminal Code in violation of the rules of international law, because of the absence of a specific feature – membership in the armed forces or acting in the service of one of the parties to the conflict.*¹⁴¹

Thus, according to the judges who participated in the passing of this judgment, the defendants did not have the necessary “feature” to be held accountable for a war crime in the form of “belonging to a military, political or administrative organisation of a party to the conflict”, nor did they “act in the service of a party to the conflict”.¹⁴² The Court concluded that the Ministry of Interior of the Republic of Montenegro was not a party to the conflict, and that its accused officers did not act in the service of any of the parties to the conflict in BiH either.

At the same time, the judgment legally established that the refugees were indeed handed over to members of the armed forces of the Bosnian Serb Republic as hostages to be used for the

¹⁴⁰ The opposite view, that the conflict in BiH was of an international character, was taken by the International Criminal Tribunal for the former Yugoslavia (ICTY) in the Tadić judgment, see the judgment of the Appeals Chamber in the Tadić case (15 July 1999), paras. 150-160.

¹⁴¹ Judgment of the High Court in Podgorica in the case Ks. no. 3/09, 29 March 2011, p. 94.

¹⁴² *Ibid*, p. 26. Judgment of the High Court in Podgorica, case Ks. no. 6/12, 22 November 2012, p. 214, presiding judge Milanka Žižić and judges Ratko Ćupić and Dragica Vuković. Judgment was upheld by the panel of the Appellate Court, presiding judge Radmila Mijušković and judges Dragiša Rakočević and Zoran Smolović (Kžs. 18/2013) and a panel of the Supreme Court, presiding judge tanka Vučinić and judges Hasnija Simonović and Radule Kojović (Kzz. no. 4/15).

exchange of prisoners of war, although Deputy Special Prosecutor Lidija Vukčević had qualified as the criminal act just the “illegal relocation of civilians of Bosnia and Herzegovina of Muslim and Serb nationality with refugee status”.¹⁴³ The court unequivocally found that the defendants also committed other war crimes against civilians (Article 142, paragraph 1 of the FRY Criminal Code) - unlawful detention,¹⁴⁴ hostage-taking¹⁴⁵ and deprivation of the right to a fair and impartial trial.¹⁴⁶

In short, the court did determine what actually happened, but it did not find it to be a war crime since Montenegro was not officially at war with BiH. Also, the fact that refugees were arrested in Montenegro and handed over to the benefit of one side in the conflict - the Bosnian Serb Republic - as if they were prisoners of war or soldiers, did not mean that the officials of Montenegro, who arrested and extradited them, acted in the service of that party to the conflict.

This position of the court was criticised by the expert of the European Commission, Maurizio Salustro, as “obviously incorrect” and “unprecedented”.¹⁴⁷ He pointed out that all that was established by the judgment was that “Montenegrin authorities acted as an extended arm of the Bosnian Serbs...”,¹⁴⁸ and that the conclusion reached by the Montenegrin courts did not follow from the text of the provision on war crime against civilians, nor from the practice of courts in the world, because it is generally known that for the existence of a war crime it is enough for some prohibited act to have been committed against a protected person during the war and in close connection with the armed conflict – *nexus*.¹⁴⁹ Salustro noted that the defendants had acted on the order of the Ministry of Interior of the Republic of Montenegro, “as requested by the Minister of Interior of the Republic of Srpska of BiH”, and that the High Court in Podgorica ruled that there was evidence that the victims were civilians, that they were “unlawfully returned to BiH so that those that were Muslims could be used in exchange for Serb prisoners”, and that “in such a proven situation, the existence of a connection to the armed conflict cannot be reasonably disputed”.¹⁵⁰

It is also interesting that, in this entire matter, not all judges thought and did the same. Judge Miroslav Bašović, who in this case ruled on the conduct of the investigation, assessed in the decision that “it is a well-known fact that the then FRY, and therefore the Republic of Montenegro as its member, was involved in armed conflicts in the territory of BiH, helping one side”.¹⁵¹ It is, however, also obvious that judges of the High Court in Podgorica, who confirmed the indictment, failed to see anything disputable in that regard.

¹⁴³ Indictment KTS, 17/08, 19 January 2009.

¹⁴⁴ Judgment of the High Court in Podgorica, case Ks. no. 6/12, 22 November 2012, pp. 179 and 184.

¹⁴⁵ *Ibid*, pp. 179–80 and 211–12.

¹⁴⁶ *Ibid*, p. 184.

¹⁴⁷ *Peer-based Assessment Mission to Montenegro, on the Domestic handling of war crimes (by Maurizio Salustro)*, 2014, pp. 14 and 16.

¹⁴⁸ *Ibid*, p. 15, para. 46.

¹⁴⁹ *Ibid*, p. 14.

¹⁵⁰ *Ibid*, pp. 11 and 14.

¹⁵¹ High Court in Podgorica, Ki. no. 239/05, 18 February 2006, Judge Miroslav Bašović.

The Montenegrin government, led by Milo Djukanovic, paid compensation to almost all the aggrieved families of the victims of deportation. It also paid compensation to 12 survivors of torture in the camps of the Bosnian Serb Republic, after a four-year trial and a court settlement, for the unlawful acting of the Montenegrin police with tragic consequences. It should be borne in mind that the Hague Tribunal, in the case against Milorad Krnojelac (manager of the camp in Foča), previously also established that the refugees were illegally arrested in Montenegro and handed over as hostages or prisoners of war to the enemy army of the Bosnian Serb Republic.¹⁵²

All in all, after such a court outcome, it is not surprising that the European Union keeps warning Montenegro that earlier war crimes judgments have contained errors in the application of the law.

Special Prosecutor Lidija Vukčević, who represented the indictment, dropped the higher number of injured parties that was originally contained in the indictment because they did not respond to the court's summons to testify, which is why they could no longer be considered injured parties.¹⁵³ According to the Criminal Procedure Code, "if the injured party is not present at the main hearing despite being duly summoned, or could not be served due to failure to report to the court a change of permanent or temporary address, it shall be deemed that s/he does not wish to continue with prosecution" (Article 60, paragraph 2). One of such injured parties was Sadik Demirović, who has lived in Sweden since the 1990s, and who reported his address to Montenegro in a civil procedure in which he received compensation for the consequences of unlawful deportation from Montenegro to a camp in the Bosnian Serb Republic. He claimed that he never received a summons for a criminal trial. The question now is whether a new trial could be held for the way he and others were treated, as, in the end, in this case they were not treated as injured parties, in the criminal-law sense of the word, regardless of the fact that they undoubtedly were.

In the context of expectations on the part of the state prosecutor's office, it is important to point out that the expert of the European Commission, in addition to criticising the actions of the courts, also criticised the strategy of the prosecution that was applied by the prosecutor's office in this case. He pointed out that defendants should have been accused of specific actions of taking hostages and unlawfully depriving them of liberty, which have been proven, in the capacity of co-perpetrators or at least facilitators.¹⁵⁴ He also pointed out that the indictment did not take a clear position regarding the fact that, during an armed conflict, protected persons (civilians, refugees) enjoy protected status wherever they may be, and that war crimes can consequently be committed against them anywhere, as long as such conduct is connection with the armed conflict, which, according to Common Article 3 of the Geneva Conventions, may also be of a non-international character.¹⁵⁵

¹⁵² ICTY, case IT-97-25, item 191, etc: <https://www.icty.org/x/cases/krnjelac/tjug/en/krn-tj020315e.pdf>.

¹⁵³ One of them was the injured party Sadik Demirović, who received compensation from the state as a survivor of that crime, and who has a certificate, in his own name, that he was arrested in Herceg Novi and taken to the camp in Foča, from which he managed to escape after months of torture suffered in the camp.

¹⁵⁴ *Peer-based Assessment Mission to Montenegro, on the Domestic handling of war crimes* (by Maurizio Salustro), 2014, p. 12.

¹⁵⁵ *Peer-based Assessment Mission to Montenegro, on the Domestic handling of war crimes* (by Maurizio Salustro), 2014, pp. 14 and 16.

3.2.3. What has been done after the adoption of the Strategy

Since the adoption of the Strategy in May 2015, this war crime case has not been re-opened. No request for an investigation has been made, nor are there any indications that anything serious has been done “to find out whether it is possible to identify any other suspects, taking into account all the models of criminal responsibility and all criminal offences”, as set out in Article IV of the Strategy.

The Strategy clearly did not provide for consideration of the possibility of re-trial of the same defendants, probably under the influence of the *ne bis in idem* principle, but only consideration of the possibility of identifying new suspects. Both possibilities will be discussed below.

3.2.3.1. Prosecution of new defendants

On the basis of a more substantial and precise indictment, the SSPO could have also prosecuted, for the same crime, persons that have not been charged to date. However, there is no indication that such a possibility was ever seriously considered.

In the context of this case, three criminal charges that referred to possible new perpetrators have been rejected to date.

One was filed on 3 May 2012 by the editor-in-chief of the weekly “Monitor”, Esad Kočan, MP Koča Pavlović, and Milan Popović, professor at the Faculty of Law at the University of Montenegro, against Milo Djukanović, who was the Prime Minister of Montenegro at the time of deportation, i.e., as stated, against the “then, and for the most part today’s, top members of the Montenegrin government”, and against the Supreme State Prosecutor Ranka Čarapić and her associates in the Supreme State Prosecutor’s Office, “for complicity in helping the perpetrators of this crime to avoid justice”.¹⁵⁶ According to the notification from 2019, this criminal report was rejected by the Special State Prosecutor’s Office because it was assessed that “there is no reasonable suspicion that the reported persons committed the criminal offence for which they were reported, or any another criminal offence that is prosecuted *ex officio*”.¹⁵⁷ No other explanation was provided, nor was it explained what the SSPO did to verify the allegations from the report or examine the responsibility of those reported, that is, on the basis of which facts it had reached its conclusion.

The SSPO also rejected two criminal reports that investigative journalist and publicist Šeki Radončić filed against Slobodan Pejović, former MoI official and witness in the investigation and trial of defendants accused of deportation and other unidentified persons.

¹⁵⁶ “Criminal charges filed against Djukanovic and Ms Čarapić for deportation”, *Vijesti*, 3 May 2012.

¹⁵⁷ Notification that SSPO prosecutor Lidija Vukčević submitted to Professor Milan Popović, at his request, 31 January 2019, Ktr-S. no. 87/12.

Radončić first reported that Pejović had participated in the unlawful arrests of refugees, and that he falsely stated that he had freed them. In support of his claims, he submitted a documentary film, in which he had recorded two members of the Montenegrin police saying that Pejović had participated in at least one arrest, of a sister whose three brothers were already arrested and deported, and who claimed to remember that Pejović had participated in their arrest, and of persons who claimed to have been arrested in the 1992 police operation in Meljine (about which Pejović testified), and who were later released but no thanks to him.¹⁵⁸ This report was rejected by the SSPO in 2017 in a decision also assessing that “there are no grounds for suspicion that he committed the reported criminal offence, or any other offence that is prosecuted *ex officio*”.¹⁵⁹ It remains unknown whether the SSPO did anything to verify Radončić’s allegations, and if so, what it did and what the outcome was.¹⁶⁰

In the second report, Radončić reported unidentified persons because they allegedly killed one or more refugees from BiH on Mount Orjen in 1992, while he reported Pejović for failing to report the perpetrator of that crime, as well as for the things he said on the Vijesti television show “Without borders”, on 2 March 2015 - that he knew who the perpetrator of the murders on Orjen was, refusing to provide his name.¹⁶¹ This report was also rejected, more than two years after it was submitted, also using the standard wording that “there are no grounds for suspicion that any person has committed any criminal offence that is prosecuted *ex officio*” and without any explanation.¹⁶² It was stated that the report was rejected “following the assessment of the allegations contained in the report and its addenda, and the assessment of the collected evidence and information”. However, neither the submitters nor the public were ever informed about the evidence and information that was collected by SSPO, on the basis of which it concluded that the report was unfounded.

Despite the extensive evidence that were gathered during the investigation and trial, there is **no indication that SSPO has investigated command responsibility** for this crime, given the position of the suspects, their role in the disputed events, and the fact that the European Commission repeatedly criticised Montenegro precisely because of the failure to file charges for command responsibility, complicity and aiding and abetting.¹⁶³

Both the investigation and the indictment for the crime of deportation of refugees were selective and, in a personal sense, reduced to a narrow circle of persons which, although it did include the then assistants of the late Interior Minister for state and public security Pavle Bulatović, Boško Bojović and Milisav Marković, did not include the following persons:

¹⁵⁸ “The Hero of Our Time”, author Šeki Radončić, 2011: <https://www.youtube.com/watch?v=Ts2YPR4kID0>

¹⁵⁹ SSPO, Kt-S no. 10/15 of 24 November 2017. Radončić received only a short notice, without explanation, registered under the same number as the decision.

¹⁶⁰ In relation to that report, it is known only that Radončić was questioned in the prosecutor’s office on 17 March 2015.

¹⁶¹ In his report to the Supreme State Prosecutor’s Office of Montenegro, Radončić submitted a recording and transcript of the interview in which Pejović said that murders were committed by a “gang” whose “boss was a well-known doctor from Herceg Novi” who was the head of a paramilitary unit and a reserve member of the Montenegrin police (the source of information is the criminal report filed by Šemsudin Šeki Radončić and Jasenka Perović with the Supreme State Prosecutor’s Office on 17 March 2015, which the HRA had access to).

¹⁶² SSPO, Ktr-S. no. 61/15, Podgorica, 7 April 2017. Radončić received only a short notice, without explanation.

¹⁶³ For example, see the European Commission Report on Montenegro 2020, p. 24

- Deputy Minister of Interior, Nikola Pejaković, who became a minister shortly after the deportation, and who precisely described, in a letter to the wife of the deported Alenko Titorić of 18 August 1992, the war crime that was committed against him and others;

- Supreme State Prosecutor Vladimir Šušović, for whom there is written evidence that he approved the police deportation action,¹⁶⁴ as well as the testimony of Momir Bulatović;¹⁶⁵

- The Prime Minister of the Republic of Montenegro, Milo Djukanović, who *ex officio* received daily police bulletins and had the legal authority to issue binding orders;¹⁶⁶

- Members of the Presidency of the Republic of Montenegro, Svetozar Marović and Milica Pejanović Djurišić, who also received daily police bulletins, as well as the late Momir Bulatović, who was the President of the Presidency of the Republic of Montenegro and who publicly testified that the deportation was a “state mistake”;¹⁶⁷

- Some other people from the MoI, regarding whom Momir Bulatović said in his testimony before the court that they were also involved in the deportation action.¹⁶⁸

Neither the public nor the submitters of the criminal report were provided with an explanation as to why the state leadership of the then Republic of Montenegro was not held responsible for this crime. The SSPO rejected the criminal report filed against the top leadership without an explanation, using a typical phrase - lack of reasonable suspicion that any criminal offence was committed in connection with this case.¹⁶⁹

At a investigation hearing before the High Court in Podgorica in 2008, Milo Djukanovic denied that he had given his consent to the police action to arrest refugees, noting that “certain people from the MoI” did not consult with him as prime minister, or with Bulatović, who was the head of state, or with the President of the Assembly Risto Vukčević, or with the State Prosecutor Vladimir Šušović.¹⁷⁰ He testified that he was informed of this by the Speaker of the Assembly, Vukčević, and that it was then ordered that said action be immediately terminated. Djukanović was not mentioned in the indictment as a witness either, and the court rejected the defence’s proposal that he testify at the trial.¹⁷¹ Such a course of events could only raise doubts about the

¹⁶⁴ Answer to the parliamentary question, Cabinet of the Minister of Interior of the Republic of Montenegro Nikola Pejaković, no. 278/2, dated 8 April 1993 (presented as evidence at the trial and mentioned in the final judgment Ks. 6/12 of the High Court in Podgorica).

¹⁶⁵ Momir Bulatović’s testimony from the trial - that the police and he Supreme State Prosecutor Šušović were in “non-stop” contact at the time, and that “everything was done with the approval of the then state prosecutor Vladimir Šušović” – were reported by the media: “Deportations were a state affair and a state mistake”, *Vijesti*, 13 November 2010; “Deportations were the fault of the state”, *Pobjeda*, 13 November 2010; “The state is to blame”, *Dan*, 13 November 2010.

¹⁶⁶ Witness testimony.

¹⁶⁷ “Deportations were a state affair and a state mistake”, *Vijesti*, 13 November 2010; “Deportations were a state mistake”, *Pobjeda*, 13 November 2010; “The state is to blame”, *Dan*, 13 November 2010.

¹⁶⁸ “Deportations were a state affair and a state mistake”, *Vijesti*, 13 November 2010, <http://www.bosnjaci.net/prilog.php?pid=39585>

¹⁶⁹ It is about the above report of the editor of „Monitor“, Esad Kočan, professor of the Faculty of Law of the University of Montenegro Milan Popović and MP Koča Pavlović.

¹⁷⁰ “DJUKANOVIĆ: The police did not consult the government”, *Danas*, 25 June 2008, available at: <https://www.danas.rs/drustvo/djukanovic-policija-nije-konsultovala-vladu/>.

¹⁷¹ “Pavlović: Not only lower ranking police officials are to blame for the deportation of Bosniaks”, *Vijesti*, 9 February 2011, available at: <https://www.vijesti.me/vijesti/politika/372418/pavlovic-za-deportaciju-bosnjaka-nisu-krivi-samo-nizi-policijski-funkcioneri>.

concealment of his responsibility, especially having in mind his high state function and political influence, but also evidence that required that his actions at that time be thoroughly investigated.

First, there is an official letter, whose authenticity is beyond any doubt, that was written by the Minister of the Interior of the Republic of Montenegro, Nikola Pejaković, “at the request of Prime Minister, comrade Milo Djukanović” on 18 August 1992, stating that one of the deportees was arrested “at the request of the Bosnian Serb Republic and handed over to the authorised officers of the Srebrenica Police, Petar Mitrović and Predrag Perendić ... to be exchanged for captured Serb members of the Territorial Defence”.¹⁷² This letter is written evidence that a war crime was committed.

Second, it is a well known fact that, at that time, bulletins were drafted on a daily basis concerning all major security events, including arrests. One of the witnesses, who was questioned both during the investigation and at the trial, explained it the following way: “Operations On-Call Centre existed at the level of the Republic at the time, and every morning, before the start of business hours, the Centre would be informed by the on-call services of centres or departments about everything that happened in the previous 24 hours... Based on these data, the Centre would compile a daily bulletin on all interesting information, occurrences and events in the territory of Montenegro. ... Therefore, the top of the police had to know what was happening in Montenegro because the information contained unpaid fines, let alone more important things. ... The daily bulletin was dispatched to the highest officials of the state, the Prime Minister, the Speaker of the Assembly, the President of the Republic”.¹⁷³

Third, although Djukanović claimed that no one who carried out the arrest operation had consulted with him or the Supreme State Prosecutor Vladimir Šušović, there is a document from that time stating that the action of arrest and deportation of refugees was carried out “with the consent of the competent prosecutor’s office”,¹⁷⁴ and there is the testimony of Momir Bulatović that the police and the Supreme State Prosecutor Šušović were in “non-stop” contact at the time¹⁷⁵. In her closing arguments at the trial, Deputy Special Prosecutor Lidija Vukčević said that Bulatović’s claim that the police was in constant consultation with the Supreme State Prosecutor during the deportations was incorrect.¹⁷⁶

Apart from Milo Djukanović as Prime Minister and the late Momir Bulatović as President of Montenegro, members of the Montenegrin Presidency at the time of the deportations were Svetozar Marović and Milica Pejanović-Djurišić; Minister of the Interior was the late Pavle

¹⁷² The letter to Danijela Stupar, the wife of Alenko Titorić, was presented as evidence at the trial, see judgment Ks. 6/12, pp. 17, 62, 63 and 102

¹⁷³ Record of the questioning of witness S.V., Ki. no.239/05 of 3 November 2008

¹⁷⁴ Reply to the question of an MP, Cabinet of the Minister of the Interior of the Republic of Montenegro Nikola Pejaković no. 278/2 of 8 April 1993 (presented as evidence at the trial, mentioned in the final judgment Ks. 6/12 of the High Court in Podgorica)

¹⁷⁵ “Deportations were performed by the state and the state made a mistake”, *Vijesti*, 13 November 2010; “Deportation was a state mistake”, *Pobjeda*, 13 November 2010; “The state is at fault”, *Dan*, 13 November 2010

¹⁷⁶ *Ibid*, p. 28

Bulatović, and his Deputy was Nikola Pejaković, who became Minister of the Interior as early as in August.¹⁷⁷

Except for Momir Bulatović, who was a witness at the trial, none of the other above mentioned persons were called to testify and were not included in the indictment, nor is there any evidence that the SSPO questioned any of them after the adoption of the Strategy in May 2015 regarding these events.

3.2.3.2. Repeated prosecution of the same defendants

The SSPO believes that there are no formal legal conditions to reopen proceedings against persons who have already been prosecuted in this case, because a war crime involves a specific event, and when a particular person has already been prosecuted for that event, it is not possible to prosecute him/her again by, for example, expanding the number of injured parties or the number of defendants in the indictment.¹⁷⁸

However, Article 425 paragraph 1, item 3 of the Criminal Procedure Code of Montenegro stipulates that criminal proceedings may be repeated, even to the detriment of the defendant, if “new facts or new evidence are presented that, in and of themselves or in connection with earlier evidence, are able to cause the conviction of a person who has been acquitted, or his/her conviction under a stricter criminal law”.¹⁷⁹ It should be borne in mind here that *deliberately wrong qualification undoubtedly constitutes a “new fact”, which is necessary for the reopening of proceedings in all modern criminal justice systems* (see Appendix “NE BIS IN IDEM - Possibility of Retrial for War Crimes and Crimes against Humanity in the National Criminal Justice System” by Prof. Dr. Nebojša Vučinić).

Those who have been tried in sham proceedings before national courts can also be re-tried in proceedings before an international court. Article 7 of the Statute of the International Residual Mechanism for International Criminal Tribunals¹⁸⁰ (as well as Article 10 of the Statute of the International Criminal Tribunal for the Former Yugoslavia)¹⁸¹ states in paragraph 2 item b that a person who has already been tried before national courts for war crimes may be tried again before the Mechanism if the proceedings before the national court were not impartial or independent, if they were intended to protect the defendant from international criminal responsibility, or if the criminal proceedings were not carried out diligently”.

¹⁷⁷ *Ibid.*

¹⁷⁸ Minutes from the meeting of HRA representatives with Special State Prosecutor Lidija Vukčević of 5 August 2020, p. 2.

¹⁷⁹ Paragraph 2 of this article prescribes: „Repetition of criminal proceedings to the detriment of an acquitted or convicted person shall not be allowed if more than six months have elapsed from the day when the prosecutor learned of new facts or new evidence”.

¹⁸⁰ United Nations Security Council, Resolution no. 1966 (S/RES/1966), 22 December 2010.

¹⁸¹ United Nations, UPDATED STATUTE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_bcs.pdf, accessed on 2 February 2021.

HRA believes that the very construction that had been used by the courts in this case to avoid the application of both domestic and international law, and to acquit the defendants and defend the political thesis that Montenegro did not participate in the war in BiH by supporting one side in the conflict, i.e. the Bosnian Serb Republic (later the Republic of Srpska) meets the requirements specified in the cited provision. In addition, an omission in the qualification, which the State Prosecutor's Office had made by failing to refer to all the acts of execution that could be proved, judging by the final judgment, as well as another omission in the form of incorporation of international law into the factual description of the indictment, which the court used as a justification for the acquittal,¹⁸² speak further in favour of a re-trial.

3.3. The "Morinj" case

3.3.1. Description of the case and the prosecution

The Morinj camp (according to the indictment - the Morinj Concentration Centre), which was formed by the Yugoslav People's Army (YNA) near Kotor, served to detain and abuse about 270 Croats, half of them civilians, from October 1991 to August 1992. They were brought in from the Dubrovnik battlefield. At the end of March 2007, the State Prosecutor's Office of the Republic of Croatia submitted to the Supreme State Prosecutor of Montenegro evidence against ten Montenegrin citizens who were suspected of having committed war crimes against civilians and prisoners of war in Morinj from 3 October 1991 to 2 July 1992.

Based on that documentation, the Higher State Prosecutor's Office submitted a request to the High Court in Podgorica to conduct an investigation against 6 suspected members of the former YNA reserve on reasonable suspicion that they had committed war crimes against civilians and war crimes against prisoners of war at the Morinj Concentration Centre. On 15 May 2010, the High Court in Podgorica convicted all of them.¹⁸³ The judgment was then overturned by the Appellate Court based on an appeal that was filed by both the prosecutor and the defence attorney, and the case was returned to the High Court for a re-trial.

Following a re-trial, the High Court acquitted two defendants on 25 January 2012, one of whom was the highest-ranking of all the defendants, i.e. chief of the security service of the Naval Base Command. Prison sentences of another two were reduced, while the remaining two were sentenced to the same sentences they were issued in the first judgment.¹⁸⁴

¹⁸² Judgment of the High Court in Podgorica in the case Ks. no. 6/12, 22 November 2012, pp. 208-209; judgment of the Appellate Court of Montenegro in the case Kžs.18/2013, 17 May 2013, p. 6; judgment of the Supreme Court of Montenegro in the case Kzz. no. 4/15, 23 June 2015, p. 8. For comments, see "War Crimes Trials in Montenegro (2009-2015)", B. Ivanišević, T. Gorjanc-Prelević, Human Rights Action, Podgorica, 2016, p. 33. Please keep in mind that the expert Salustro criticised the applied prosecution strategy (*Peer-based Assessment Mission to Montenegro, on the Domestic handling of war crimes by Maurizio Salustro*), 2014, p. 12).

¹⁸³ Judgment of the High Court in Podgorica, K. no. 214/08 of 15 May 2010.

¹⁸⁴ Judgment of the High Court Podgorica, Ks. 33/10 of 25 January 2012.

After a new appeal was filed against the judgment of the High Court, in the judgment of 6 July 2012 the Appellate Court rejected the appeal of the state prosecutor as unfounded, which rendered the acquittal of the two defendants final. At the same time, the Appellate Court upheld the defendants' appeals and overturned the judgment of the High Court in the part containing the conviction, doing so also *ex officio* in relation to one defendant who had not filed the appeal. In relation to the defendants who were found guilty by the first instance judgment, the case was returned to the first instance court for a re-trial. In the re-trial, on 31 July 2013, the High Court in Podgorica issued a judgment in which it found the defendants guilty and convicted them of the criminal offence of war crimes against prisoners of war. The Supreme State Prosecutor and all the defendants filed appeals against said judgment. Deciding on the appeals, on 27 February 2014 the Appellate Court issued a judgment in which it rejected the appeals as unfounded, upholding the judgment of the High Court. The court proceedings thus received a final outcome.¹⁸⁵

Ivo Gojnić, a reserve officer in charge of administrative and quartermaster affairs, Špiro Lučić, a military police officer, Ivo Menzalin, a cook, and Boro Gligić, a guard, were sentenced to two to four years in prison each.

In the previous report on war crimes trials,¹⁸⁶ the HRA criticised the prosecutor's office for failing to treat the crime in the Morinj camp as an organised system of ill-treatment of prisoners (e.g. by applying the institute of "joint criminal enterprise"¹⁸⁷), given that the High Court itself has ruled that *there was an atmosphere of terror and fear for life itself in the Morinj Concentration Centre, to which the victims were constantly exposed*.¹⁸⁸ This omission led to the indictment not including those who were superior to the direct perpetrators. As direct perpetrators, the indictment listed only personnel from the YNA reserve from the bottom of the hierarchical order.

The HRA believes that by applying the criminal law institute provided by the Criminal Code of the FRY from 1993, such as complicity, aiding and abetting or responsibility of the organisers of a criminal association, a wider circle of people could have been indicted – namely, people who headed the guard service and military police in the camp, such as the first accused Mladjan Govedarica (who was acquitted of the accusation that he directly committed ill-treatment and ordered physical abuse); the head of the special counter-intelligence group charged with interrogation in Morinj, military security officer Mirsad Krluč; camp commander Ljubomir Knežević, all the way to the head of the Security Directorate of the Federal Secretariat for National Defence – as well as various members of the YNA who all served during the camp's existence: General Marko Negovanović, Aleksandar Vasiljević and Nedeljko Bošković; Commander of the 2nd Operational Group, Lieutenant General Pavle Strugar; Commander of the 9th Naval Sector; Naval Colonel Krsto Djurović (killed on 5 October 1991) and his successor,

¹⁸⁵ B. Ivanišević, T. Gorjanc-Prelević, *op. cit.*, pp. 19-20.

¹⁸⁶ B. Ivanišević, T. Gorjanc-Prelević, *op. cit.*, p. 20.

¹⁸⁷ The Institute was applied by the Hague Tribunal and the Court of BiH, while the 1993 FRY Criminal Code, which was applied in this case, contained similar forms of liability suitable to include acts and omissions of persons at the top of the camp hierarchy: criminal association, co-perpetration, aiding and abetting. T. Gorjanc Prelević, B. Ivanišević, *op. cit.*, p. 21.

¹⁸⁸ Judgment of the High Court in Podgorica in the case Ks. no. 33/10, 25 January 2012, p. 174.

Vice Admiral Miodrag Jokić; Chief of Staff of the 9th Naval Sector, Navy Colonel Milan Zec, and Commander of the YNA Navy, Admiral Mile Kandić.

Based on the constitutional appeal of the accused Ivo Gojnić, in 2019 the Constitutional Court revoked the decision of the Supreme Court rejecting the appeal against the decision of the Supreme State Prosecutor's Office rejecting the proposal to file a request for protection of legality against the final judgment of the High Court in Podgorica,¹⁸⁹ due to the violation of the principle of fair trial, i.e. the principle of impartiality, since Vesna Medenica, who at the time of the indictment against Gojnić was the Supreme State Prosecutor, gave instructions on how to proceed in this case, while at the same time, as the President of the Supreme Court, she was a member of the Supreme Court panel that issued the disputed decision.¹⁹⁰ In a new decision, the Supreme Court reiterated its previous decision; Medenica was not a member of the panel this time, while other members remained the same.¹⁹¹

3.3.2. What has been done since the adoption of the Strategy

There is very little information about the Morinj case in the SSPO's reports on the implementation of the Strategy. In the reports from 2015 and 2016, it was mentioned that "in accordance with the above Strategy, finally adjudicated cases known to the public as "Morinj" ... are being analysed in order to verify and possibly identify other perpetrators of war crimes concerning these events".¹⁹² In November 2016, at the invitation of the ICTY, the Special Prosecutor and the SSPO's Adviser went through the ICTY databases and the Residual Mechanism at the Tribunal in order to collect "data and evidence which would indicate that Montenegrin citizens had committed crimes related to the "Morinj" cases An agreement was reached to submit the collected documents, and for an "authorised official of the Hague Tribunal to search the specially protected databases that were not available to the Special Prosecutor and the Adviser".¹⁹³ It is not known how these documents were analysed, or whether any other measures were taken.

3.4. The "Bukovica" case

3.4.1. Case description

Bukovica is a mountainous area located in the north of Montenegro in the municipality of Pljevlja, along the border with Bosnia and Herzegovina (BiH). It consists of 37 villages, which until 1993 were inhabited predominantly by a Muslim population. During the armed conflict in

¹⁸⁹ Decision of the Supreme Court of Montenegro, Kž-s II no. 11/14 of 8 April 2015.

¹⁹⁰ Decision of the Constitutional Court UŽ-III no. 574/15 of 28 February 2019.

¹⁹¹ Decision of the Supreme Court UŽ-Kž-S II no. 1/19 of 5 April 2019 (panel of judges: Stanka Vučinić, Radule Kojović, Petar Stojanović).

¹⁹² Report on the implementation of the War Crimes Investigation Strategy of 21 December 2015, p. 4 and Report on the Implementation of the War Crimes Investigation Strategy of 12 May 2016, p. 3.

¹⁹³ Report on the implementation of the War Crimes Investigation Strategy of 5 December 2016, p. 2.

BiH, a large number of Yugoslav Army reservists, members of paramilitary formations and the police of the Republic of Montenegro spent time in the territory of Bukovica. Under the pretext of looking for illegal arms, according to testimonies collected by human rights NGOs, they tortured, searched, robbed, mistreated and abused Bosniaks from Bukovica. According to the Association of Persons Exiled from Bukovica, in the period from 1992 to 1995 six people were killed, two committed suicide as a result of a consequence of torture, 11 were abducted, and about 70 were subjected to physical torture. At least 8 houses and a mosque in the village of Planjsko were set on fire, while 90 families, with about 270 members, were expelled. Almost all the households were looted.¹⁹⁴

3.4.2. Description of the prosecution

The indictment was filed in April 2010 against seven former members of the Yugoslav Army reserve and the Ministry of the Interior of Montenegro. They were accused of crimes against humanity, i.e. that, during the war in BiH, in violation of the rules of international law, they systematically abused and intimidated the Bosniak Muslim population in the Bukovica area in 1992 and 1993, forcing them to leave.

The trial before the High Court in Bijelo Polje began in June 2010 and ended with the final acquittal of all the defendants in March 2012, due to a lack of evidence that a crime against humanity had been committed. In this case, the trial was repeated due to the improper composition of the trial chamber. In 2012, the Appellate Court upheld the second acquittal, finding also that the act for which the defendants were charged did not have all the essential elements of a crime against humanity or another crime, but failing to explain why the committed acts could not be viewed as crime against humanity. The HRA criticised this position of the courts in great detail in the previous report.¹⁹⁵ In January 2013, the Supreme Court rejected the request for protection of the legality of the Supreme State Prosecutor's Office.¹⁹⁶

In this case too, as in the "Deportation" case, the question of command responsibility was never raised. Investigations and court proceedings did not include those responsible as per command line, nor those who ordered the crimes.¹⁹⁷ It is unknown whether the possible responsibility of Veselin Veljović, a longtime director of the Montenegrin Police Administration, was ever investigated. He was the commander of the police station in Pljevlja during the war in BiH, and, according to some testimonies, he led house searches.¹⁹⁸ As a witness at the trial, Veljović stated that everything that was done in the Bukovica area, was done in accordance with the decisions and authorisations given by state authorities.¹⁹⁹

¹⁹⁴ B. Ivanišević, T. Gorjanc-Prelević, *op. cit.*, p. 22.

¹⁹⁵ *Ibid.*, pp. 25-26.

¹⁹⁶ *Ibid.*, p. 9.

¹⁹⁷ "Pljevlja: Bukovica, a perfect crime", *Preporodinfo*, 4 September 2020: <https://www.preporod.info/bs/article/18929/pljevlja-bukovica-savrseni-zlocin>.

¹⁹⁸ B. Ivanišević, T. Gorjanc-Prelević, *op. cit.*, p. 23.

¹⁹⁹ "No one was found guilty for war crimes in Bukovica", *DW*, 3 January 2011, <https://www.dw.com/hr/bez-krivaca-za-ratni-zlo%C4%8Din-u-bukovici/a-14749704>.

European Commission expert Maurizio Salustro criticised the strategy that was used by the prosecutor's office to prosecute defendants for crimes against humanity, which are much more difficult to prove than war crimes.²⁰⁰ He pointed out that "it goes without saying that a war crime is much easier to prove than a crime against humanity, because no systematic attack has to be demonstrated. Just one case of violence or ill-treatment would be enough to integrate a war crime".²⁰¹ Salustro also explained that all ill-treatments committed in the context of the armed conflict prior to April 1992, which is when BiH declared independence, could also be qualified as war crimes.²⁰²

In its 2016 Report on War Crimes Trials in Montenegro, the HRA particularly criticised the courts' passive approach to the prosecution's indictment; namely, the Appellate Court did not explain why the actions for which the defendants were charged could not be qualified as war crimes against civilian population. The Appellate Court was supposed to examine whether the defendants, based on the presented evidence, could be convicted for that criminal offence. HRA also pointed out that the interpretation of crimes against humanity in the final judgment was contrary to the position the Hague Tribunal had taken in several cases.²⁰³

3.4.3. What has been done after the adoption of the Strategy

Based on the Strategy, the Special State Prosecutor's Office was expected to take into account that representatives of the Bosniak Party, the NGO sector and the victims' associations pointed out that the indictment did not cover all perpetrators, those who ordered the crimes, not even all the events - including five murders.²⁰⁴

However, it seems that during the reconsideration of this case almost nothing was done at the domestic level to investigate the responsibility of some other persons; instead, it all came down to communication with the Hague Tribunal, which was sent a letter rogatory requesting that it provide legal assistance for searching the protected database. Judging by the SSPO's brief annual reports, the data that were requested in the letter rogatory were submitted, and their analysis began. However, there is no information in the report about the result of the analysis, or that any action was undertaken in the case after 2017.²⁰⁵

Given that neither the prosecution nor the courts have handled this case professionally, the question of the possibility of re-trial to the detriment of persons that were already tried under the Criminal Procedure Code of Montenegro (see 3.2.3.2.) and international law remains open (see Appendix, text by Professor Dr. Nebojša Vučinić).

²⁰⁰ *Peer-based Assessment Mission to Montenegro, on the Domestic handling of war crimes (by Maurizio Salustro)*, 2014, p. 11, paragraph 32.

²⁰¹ *Ibid*, p. 11, paragraph 33.

²⁰² *Ibid*, p. 11, paragraph 34.

²⁰³ B. Ivanišević, T. Gorjanc-Prelević, *op. cit.*, p. 27.

²⁰⁴ *Ibid*, pp. 22-23. For example, at the trial held on 26 October 2010, the injured party Osman Tahirbegović charged M. S. and B. B, who were not included in the indictment, as the main culprits for the crime.

²⁰⁵ Report on the Implementation of the War Crimes Investigation Strategy of 9 August 2017, p. 3, and Report on the Implementation of the War Crimes Investigation Strategy of 27 November 2017, p. 3.

3.5. The “Kaludjerski laz” case

3.5.1. Description of the case and the prosecution

Kaludjerski laz is a village in Montenegro, located in the area of the Rožaje municipality towards the border with Kosovo. During the NATO intervention in the Federal Republic of Yugoslavia in 1999, in the territory of Kaludjerski Laz and the surrounding villages, where there were no conflicts, members of the Yugoslav Army killed 22 and wounded 7 Albanian civilians²⁰⁶ who had crossed into Montenegro from war-torn Kosovo. In public, this crime was given the name “Kaludjerski laz”, after one of the villages in which the crimes were committed. The killings of 11 civilians have been prosecuted to date, six of whom were killed in Kaludjerski Laz, while the lives of the rest of them ended in other locations.²⁰⁷ According to attorney Velija Murić, who represented the injured parties, the other victims of that crime were not listed in the indictment on the basis of which the trial was pending before the High Court in Bijelo Polje. Although all the victims were listed in the criminal report, the prosecution failed to explain why some of them were not included in the investigation and indictment.²⁰⁸

The trial before the High Court in Bijelo Polje for the crimes committed in Kaludjerski Laz began in March 2009, and ended with a final judgment on 8 December 2014 – the acquittal of all 8 accused members of the Yugoslav Army. The first-instance judgment was issued after more than four years, in December 2013, and it was confirmed by the Appellate Court in 2014.²⁰⁹

In this case, the investigation was poorly conducted because the weapons were not seized from the soldiers who were on duty at the time, the soldiers were not subjected to expert examination, and shell casings were not collected from the location where the soldiers had opened fire. According to the judgment of the High Court in Bijelo Polje, due to these omissions it was not possible to determine who actually shot at civilians. All the defendants were therefore acquitted due to insufficient evidence.

3.5.2. What has been done after the adoption of the Strategy

On 18 April 2015, through attorney Velija Murić, the Montenegrin Committee of Lawyers for Human Rights filed criminal charges against unknown perpetrators (former members of the Army of Serbia and Montenegro) “because, as members of the Yugoslav Army, between March

²⁰⁶ Criminal report of the Montenegrin Committee of Lawyers for the Protection of Human Rights - Rožaje of 18 April 2015.

²⁰⁷ Also, according to Murić’s attorney, preliminary investigation activities in this case were performed by military judicial bodies, namely Miladin Joksimović, a military investigative judge from Bijelo Polje, and Branislav Dašić from Plav, the then deputy military prosecutor. According to him, the bodies of the victims of this crime were taken to Novo Selo near Peć immediately after their autopsy in Andrijevića, where they were buried in a group grave in an improvised manner.

²⁰⁸ Tea Gorjanc Prelević, Bogdan Ivanišević, *mentioned report*, p. 35.

²⁰⁹ *Ibid*, str. 9.

and June 1999, in the area of the Hajla Mountain and the Rožaje villages of Besnik, Balotiće, Daciće, Gornji Bukelj, Donji Bukelj, Kaludjerski Laz and the town of Police, without any real cause and reason, motivated exclusively by nationalistic reasons and the desire to irresponsibly kill innocent people, by issuing orders, through failure to perform military control and failure to perform command duties, using military weapons and other means, deprived of life: ...”, followed by a list of names of persons who were claimed to be unarmed civilians, men, women and children.²¹⁰ The name of Sadik Ramčaj was added to the names of the victims that the organisation and the attorney listed in the report they submitted in May 2005. In the report from 2015, Alja Bećiraj, who was not mentioned in the report from 2005, was also listed among the wounded civilians.²¹¹ Although prosecutor Ivica Stanković invited attorney Murić lawyer for an interview after he submitted the report, Murić has not been informed to this day whether anything was ever done regarding it.

As in the “Bukovica” case, a letter rogatory was dispatched to the Hague Tribunal requesting a search of the protected database in order to gather evidence concerning the event.²¹² The data were obtained, and it was stated in the report from 2017 that they were analysed, but it was not explained what the results were.²¹³ The last thing that was done in this case had to do with the letter rogatory that was submitted by the District Public Prosecutor’s Office in Doboj on 12 January 2018. Acting upon the letter rogatory, the Special State Prosecutor’s Office submitted the requested data on 6 February 2018.²¹⁴ Since then, there has been no information on any action involving this case.

3.6. The “Štrpci” case

3.6.1. Case description

On 27 February 1993, at the railway station in Štrpci, on the territory of Bosnia and Herzegovina (BiH), members of the Visegrad Brigade of the Army of the Republic of Srpska, called “Avengers” and led by Milan Lukic, took 20 non-Serb passengers from a fast train on the Belgrade-Bar track and took them to a school in the village of Prelovo near Visegrad. They robbed them, beat them, and then transferred to the village of Mušići, near Višegradska Banja, where they killed them and threw their bodies into the river Drina. The oldest victim was 59 years old, the youngest 16.²¹⁵ Ten of the victims were from Montenegro. The remains of only four were found, in 2009 and 2010, on the shores of Lake Perućac near Višegrad.²¹⁶

²¹⁰ Criminal report received from the attorney Velija Murić.

²¹¹ Report of the Montenegrin Committee of Lawyers for the Protection of Human Rights - Rožaje and the Committee for the Protection of Human Rights and Freedoms - Regional Centre Peć of 18 April 2005 and the report of the Montenegrin Committee of Lawyers for the Protection of Human Rights of 18 April 2015.

²¹² Report on the implementation of the War Crimes Investigation Strategy of 9 August 2017, p. 3.

²¹³ Report on the implementation of the War Crimes Investigation Strategy of 27 November 2017, p. 3.

²¹⁴ Government of Montenegro, *Action Plan for Chapter 23. Judiciary and Fundamental Rights, semi-annual report, January-July 2018*, 2018, p.

40.

²¹⁵ „Crime in Štrpci, 28 years later”, HRA, 27 February 2021: <https://www.hracion.org/2021/02/27/crime-in-strpci-28-years-later/?lang=en>.

²¹⁶ *Ibid.*

3.6.2. Description of the prosecution

Nebojša Ranisavljević was the first perpetrator that was convicted of this crime.²¹⁷ He was arrested by the Montenegrin police in October 1996 and had been in custody since then. The trial was held in the Republic of Montenegro because the Federal Court of the FRY, deciding on the conflict of jurisdiction between the courts in Serbia and Montenegro, made such a decision. During the investigation, Ranisavljević admitted to committing the crime in a detailed statement, which he later claimed before the court was the result of police torture. The doctor who examined him testified, however, that there had been no traces of torture on his body. He was sentenced to fifteen years in prison. The trial began in May 1998, but the first-instance verdict was passed in 2002 and confirmed in 2003.²¹⁸ The Judge Rapporteur in this case later became the Supreme State Prosecutor Ivica Stanković.²¹⁹ The verdict was based mostly on the testimony of the defendant, but also on those of several other witnesses and other evidence.²²⁰ Ranisavljević served his sentence and has been free since 2011.²²¹

The leader of this unit of the Army of the Republic of Srpska, Milan Lukić, was sentenced by the Hague Tribunal to life in prison for war crimes committed in Višegrad,²²² but he was not tried for the crime committed in Štrpci. He was arrested in 2005 in Argentina, where he escaped using false documents.²²³ In December 2019, the Prosecutor's Office of BiH accused him of having participated in the crime in Štrpci.²²⁴ An indictment against Lukić was never filed in Montenegro, nor has Montenegro launched any other investigation into this crime.²²⁵

The second convicted perpetrator of the crime in Štrpci was Mićo Jovičić, who struck a plea agreement with the Prosecutor's Office of BiH in 2016, and was sentenced to five years in prison based on said agreement.²²⁶ The trial of the remaining 10 defendants has been pending before the Court of Bosnia and Herzegovina since 2015.²²⁷ The trial of five defendants is pending before the Special Court in Belgrade.²²⁸

²¹⁷ For more details see B. Ivanišević, T. Gorjanc-Prelević, op. cit, p.8.

²¹⁸ Judgment of the High Court in Bijelo Polje, K. no. 5/98 of 9 September 2002.

²¹⁹ Information obtained from the Acting of the Supreme State Prosecutor Ivica Stanković at a meeting held on 24 May 2021 in the premises of the Prosecutorial Council, which was organized at the initiative of the HRA on the occasion of the discussion on the draft of this report.

²²⁰ Tea Gorjanc Prelević, Bogdan Ivanišević, *mentioned report*, p. 8.

²²¹ „Trial for štrpce: Ranisavljević claims he did not see indictees”, *Radio Free Europe*, 10 December 2019: <https://www.slobodnaevropa.org/a/30318049.html>.

²²² „Milan Lukić and Sredoje Lukić convicted of war crimes in Višegrad”, UN, International Criminal Tribunal for the Former Yugoslavia, 20 July 2009: <https://www.icty.org/en/press/milan-luki%C4%87-and-sredoje-luki%C4%87-convicted-war-crimes-vi%C5%A1egrad>.

²²³ „Lukić claims that he is innocent and asks for extradition to the Hague”, *Radio Free Europe*, 10 August 2005: <https://www.slobodnaevropa.org/a/855128.html>.

²²⁴ „Milan Lukić accused in BiH for the abduction and murder of passengers from a train in Štrpce 1993”, *N1*, 13 December 2019: <https://rs.n1info.com/region/a552084-milan-lukic-optuzen-za-strpce/>.

²²⁵ The attorney of the injured parties, Velija Murić, long ago pointed out that Lukić should have been tried in Montenegro - "štrpci - 16 years since the crime", *DW*, 27 February 2009: <https://www.dw.com/bs/%C5%A1trpci-16-godina-od-zlo%C4%8Dina/a-4060210>.

²²⁶ *ibid*.

²²⁷ S1 1 K 018711 15 Kri - Dragičević Luka and others, <http://www.sudbih.gov.ba/predmet/3448/show>, accessed 9 March 2021.

²²⁸ „The trial in case of Štrpci without witnesses again”, *Danas*, 8 December 2020: <https://www.danas.rs/drustvo/suocavanje/sudjenje-za-strpce-opet-bez-svedoka/>.

3.6.3. What has been done after the adoption of the Strategy

Listing old cases, the Strategy does not mention this one.²²⁹ It has not been announced that the SSPO has done anything to prosecute other perpetrators of this war crime since the beginning of the implementation of the Strategy.²³⁰ At a meeting with NGO representatives held on 24 May 2021, representatives of the SSPO pointed out that they have contributed to the preliminary investigation and the investigation that was conducted against 15 people that are currently standing trial in BiH and Serbia.

Although this crime was not committed on the territory of Montenegro, considering the fact that as many as 10 victims were from Montenegro, that the first trial of one of the perpetrators of the crime was conducted in Montenegro, and that there is evidence that political and military leaders of the then FRY participated in this crime,²³¹ the state prosecutor's office is expected to continue to work on it.

Back in 1998, attorneys Dragan Prelević and Aleksandar Cvejić, who represented some of the injured families on behalf of the Humanitarian Law Centre, filed criminal charges against Milan Lukić and other members of the "Avengers" unit.²³² The report stated that Lukić personally participated in taking passengers off the train, but it also listed the names of many witnesses to

²²⁹ War Crimes Investigation Strategy, p. 2, article 4.

²³⁰ In the Reports on the implementation of the Strategy starting from 21 December 2015 and ending on 7 May 2021, there is no clear information that the SSPO has ever worked on reconsidering this case.

²³¹ "Keeping in mind the strictly classified documentation regarding the abduction in Štrpci, which was kept deeply hidden for nine years and was then taken out and delivered to the court in Bijelo Polje and brought about as evidence in the trial of Nebojša Ranisavljević, then the documents and cognition gathered by the Commission for information inquisition about the kidnapping of the passengers of the 671 train which had taken place in Štrpci on 27 February 1993 formed by the Parliament of Montenegro, in addition to the hearing of colonel Luka Dragičević, the commandant of the Višegrad brigade (during the time of the abduction), in front of the chamber of the High Court of Bijelo Polje, which judged Nebojša Ranisavljević in the main perquisition of 19 February 2002, the situation regarding the kidnapping is far clearer, therefore it is certain that the principals and orderers of this crime are not solely the government of the Republic of Srpska, but also the highest representatives of Serbia and Yugoslavia". "The president of the Commission for information inquisition about the abduction of the passengers of the 671 train which had taken place in Štrpci on 27 February 1993 formed by the Parliament of Montenegro, Dragiša Burzan, sent a letter on 31 January 1996, to Filip Vujanović, the minister of internal affairs of Montenegro whereby he informs, amongst other things, the following: The witness known to the Commission, that also possesses his statement and has in due course offered him to the ministry of internal affairs of Montenegro, who was in addition brought to the prosecutor of Serbia and to whom he had stated that Neša Ranisavljević, cca. 30 years of age (presently), born in Despotovac, and Mića Jovičić, 33-34 years of age, born in Knin, are the participants of the abduction (abductors). These two had at the end of March 1993 been treated from wounds in the Emergency Room in Belgrade. Inhabitants of (likely) Belgrade. Photographs of these individuals exist in the possession of the witnesses. The document in the possession of the Commission contains many more details. "When facts proven in this proceeding are observed in the given context (under A), based on the documentation of strictly confidential nature out of which arises that the highest state, political, military, police, and railway figures and leading Yugoslav and Serbian individuals had 30 days ahead, 30 days prior to the 671 train abduction in the Štrpci station on 27 February 1993, known all the details of the announced and upcoming kidnapping, then it is clear that the kidnapping had been planned, organised, and performed by one centre with the consentaneity, affirmation, and complete coordination of the highest organs of the republic of Srpska, Serbia, and Yugoslavia whose president was Dobrica Ćosić. "In the strictly confidential information given to the general director of the Railway Transportation Company (RTC) of Belgrade by the director of the Sector for the preparation for defenses and protection Mitar Mandić on 1 February 1993, the general director of RTC Belgrade is notified about the following information: These days, precisely 28 January 1993, I've been informed by the chief of the Section TC Užice Živanića that members of the Serbian military municipality Rudo will conduct a train stopping and taking of passengers. The entire action would take place on the part of the railway Belgrade-Bar which goes through Bosnia and Herzegovina. Most likely at the crossroad Štrpci or the stop Goleš." – taken from ABDUCTION IN ŠTRPCI, Analysis of the war crime trial, Facts, legal questions and political implications, Fund for humanitarian law, 18 February 2003. page 45-49.

²³² Crime in Štrpci: "Why have you waited for 20 years to pass?", *Vijesti*, 6 December 2014: <https://www.vijesti.me/zabava/205972/zlocin-u-strpcima-sto-ste-cekali-da-prode-20-godina>

the crime. The Montenegrin prosecutor's office never indicted Lukić, or anyone else other than Ranisavljević.²³³

Also, on 20 May 2002, attorney Velija Murić filed with the then Federal State Prosecutor and the Public Prosecutor's Office of the Republic of Serbia, the Supreme State Prosecutor of the Republic of Montenegro and the Senior State Prosecutor in Bijelo Polje, a criminal report against 14 former high-ranking officials of the Federal Republic of Yugoslavia, the Yugoslav Army, the Republic of Serbia and the head of the traffic department of the Belgrade Railway, because they were "aware of the plan to abduct Bosniak-Muslim passengers from a train in Štrpci, given that due to their powers and positions they had positions of responsibility in the structure of the authorities of Yugoslavia and Serbia, and that kidnapping was planned with their knowledge because they had strictly confidential information thereon, and they did not take any of the actions within their powers to prevent the kidnapping of Bosniak-Muslim civilians, citizens of FRY, by members of the Army of the Republic of Srpska who were at the time under the command of Yugoslav Army officers who were sent by the General Staff of the Yugoslav Army to the Bosnian-Herzegovinian battlefield (Rudo, Višegrad, Goražde brigades). The abduction was carried out in the form of a planned military action on 27 February 1993 at 3:50 p.m., when the above persons were taken from train number 671 traveling from Belgrade to Bar, in a town called Štrpci"²³⁴ The report was supported by cited documents, specific documents and case files to be obtained, and witnesses that needed to be questioned.²³⁵

To date, no prosecutor's office has responded to Murić's report in any way.²³⁶

In the testimony of the convicted Ranisavljević before the Court of BiH, a certain "Montenegrin man"²³⁷ is mentioned among the participants in the action. A Montenegrin man is also mentioned in the indictment before the Hague Tribunal, in the case against Milan and Sredoje Lukić and Mitar Vasiljević.²³⁸ In addition to the Montenegrin man, Ranisavljević also mentioned Milan "Čačak", Aco Šimšić, a "drunken Slovenian man", Željko Marjanović, Bogdan Šekarić, Vidaković and Mitar "Chetnik" as other participants in the abduction.²³⁹ It remains unknown whether the SSPO ever took any concrete steps to establish the identity of this person, or other persons who participated in the commission of the crime against passengers from the train at the station in Štrpci.

²³³ *Ibid.*

²³⁴ Criminal charge of attorney Velija Murić from 2 May 2002. For additional information see: "TWENTYEIGHT ANNIVERSARY OF THE CRIME IN ŠTRPCI: He will fight to the last to find out the truth", *Monitor*, 05 March 2021: <https://www.monitor.co.me/dvadeset-osma-godisnjica-zlocina-u-strpcima-do-posljednjeg-ce-se-boriti-da-se-sazna-istina/>.

²³⁵ The charge indicates the notices of RTC Belgrade of: letter to the assistant of the general director for legal and human potentials of RTC, page. pov. num. 4/02 from 7 March 2002; estimate of the political and security situation in the railway knot Page. pov. num. 5/93 from 27 January 1993; information directed to the general director of RTC Belgrade, page. Npov. num. 4/1-93 from 01 February 1993; information about the activities of RTC Belgrade regarding the realisation of the security situation on the road Užice-Gostun - cooperation with the organs of the ministry of internal affairs of Serbia and the Army of Yugoslavia, etc.

²³⁶ Information by attorney Murić from 5 May 2021.

²³⁷ „Dragičević et al: Participants to the abduction and the murder of the passengers”, *Detector*, 10 May 2019: <https://detektor.ba/2019/05/10/dragicevic-i-ostali-ucესnici-otmice-i-ubistva-putnika/>.

²³⁸ For additional information see : <https://www.icty.org/x/cases/vasiljevic/ind/bcs/vas-ii981026b.htm>, paragraphs 33-36.

²³⁹ Dragičević and others: *op.cit.*

3.7. Other cases

European Commission expert Maurizio Salustro advised the state prosecutor's office in 2014 to focus on proactive examination of cases related to the Dubrovnik battlefield and the phenomenon of the so-called Montenegrin "weekend warriors" in eastern Bosnia and Herzegovina. This meant that instead of informal requests for cooperation, requests for new information and evidence ought to have been concretised and focused on these key events.²⁴⁰

3.7.1. The Dubrovnik battlefield

The siege of the city of Dubrovnik by units under the command of the YNA began on 1 October 1991 and lasted until the end of June 1992. In just one day - 6 December 1991 - 20 people lost their lives and about 60 were wounded.²⁴¹ The UNESCO-protected Old Town was bombed, many buildings were damaged, and the library of the International University Centre, with about 20,000 books, was burned down. Also, rural buildings in the vicinity of Dubrovnik were looted, burned and destroyed, while the city itself was left without electricity and water for 138 days and had spent 240 days under the naval and air blockade. The siege of the city of Dubrovnik and its surroundings resulted in the death of 116 civilians, 194 Croatian defenders and 165 members of the YNA from Montenegro. A total of 443 people were detained in the camps Morinj and Bileća, 33,000 people were expelled and 2,071 residential buildings were destroyed.²⁴²

The only persons whose responsibility for war crimes committed in the area of Dubrovnik has been established so far are the former YNA General Pavle Strugar, and his subordinate Admiral Miodrag Jokic who admitted guilt. The Hague Tribunal sentenced them to seven and a half and seven years in prison, respectively. Vladimir Kovačević "Rambo", first class captain of the YNA, also stood trial before The Hague Tribunal. He was temporarily released by the court for medical treatment, but the indictment against him was subsequently dropped before the Special Court in Belgrade in 2007 because he was unable to participate the trial due to a health condition. Milan Zec, a retired YNA admiral, was acquitted by the Tribunal.²⁴³

At the end of 2009, the County State Prosecutor's Office of Dubrovnik filed an indictment against 10 former YNA officers, accusing them of failing to prevent their units from behaving contrary to the Geneva Conventions during the YNA aggression on Dubrovnik in 1991 and 1992, that is, from shelling populated areas, killing civilians (116), imprisoning, ill-treating and forcing civilians to flee, demolishing civil, cultural, religious and commercial buildings, looting and committing arson.²⁴⁴ The case was submitted to the County State's Prosecutor's Office of Split

²⁴⁰ *Peer-based Assessment Mission to Montenegro, on the Domestic handling of war crimes (by Maurizio Salustro)*, 2014, p. 9, item 25.

²⁴¹ "29 years from shelling the old town of Dubrovnik and unpunished crimes", HRA, 6 December 2020: <https://www.hracion.org/2020/12/06/29-from-shelling-the-old-town-of-dubrovnik-and-unpunished-crimes/?lang=en>

²⁴² "Stopping the silence about the attack on Dubrovnik", *Vijesti*, 2 October 2020: <https://www.vijesti.me/vijesti/politika/474233/prekinuti-cutanje-o-napadu-na-dubrovnik>.

²⁴³ Tea Gorjanc Prelević, Bogdan Ivanišević, *mentioned report*, p. 11.

²⁴⁴ Tea Gorjanc Prelević, Bogdan Ivanišević, *mentioned report*, p. 12.

on 29 October 2011, which became in charge of the Dubrovnik area.²⁴⁵ Meanwhile, the indictment became final and the hearing should be scheduled by the Split County Court.²⁴⁶ Whether the accused will be tried in absentia will be determined when the conditions for holding a hearing are met.²⁴⁷

In agreement with the Supreme State Prosecutor's Office of Montenegro, the State Prosecutor's Office of the Republic of Croatia announced on 1 April 2015 that the county state prosecutor's offices were not working on any cases where the perpetrators of war crimes were citizens of Montenegro residing in Montenegro.²⁴⁸ However, in response to the HRA's request for access to information of 26 February 2021, the Prosecutor's Office of the Republic of Croatia replied that they did have several cases pending against Montenegrin citizens and persons residing in Montenegro, who were charged with war crimes committed in Dubrovnik in 1991 and 1992.²⁴⁹

On 30 December 2012, the Dubrovnik County Prosecutor's Office filed an indictment before the Dubrovnik County Court against Nikola Vuletić, for the criminal offence of war crimes against prisoners of war under Article 122 of the Basic Criminal Code of the Republic of Croatia. Due to the same criminal offence, and the criminal offence of war crime against civilians under 120 paragraph 1 of the Basic Criminal Code of the Republic of Croatia, the Dubrovnik County Prosecutor's Office also acted against Miodrag Nikolić and Drago Vasiljević. They were charged with inhumane treatment of prisoners of war between 1 October and 31 December 1991, because they "ill-treated, threatened and humiliated the war prisoners, denying them food and failing to provide them with timely and appropriate medical care, as a result of which several prisoners were gravely injured and their health was seriously impaired".²⁵⁰ The citizenship of the defendants is not known, and neither is the current stage of the proceedings.

In relation to the crimes committed on the Dubrovnik battlefield, the command responsibility of the civilian authorities can also be called into question, since on 1 October 1991 the then President of the Presidency of SR Montenegro, late Momir Bulatović, issued the order on the mobilisation of the Montenegrin MoI militia unit for the purpose of "performing combat tasks of the armed forces in the war conflict on the border between the Republic of Montenegro and the Republic of Croatia".²⁵¹ At the time, Prime Minister of Montenegro was Milo Djukanović,

²⁴⁵ According to the entry into force of the Law for the amendments to the law about the application of the Statute of International criminal court and the persecution for the crimes against international warfare and humanitarian law ("NN" of the Republic of Croatia num. 55/11), the competent court for handling war crime cases on the area of Dubrovnik is the County court in Split, therefore this case was ceded to the County State's Prosecutor's Office of Split - The response of the County State Prosecutor's Office of Dubrovnik from 7 June 2021 to the HRA request for free access to information and urgencies.

²⁴⁶ Response of the County State Prosecutor's Office of Split, num. PPI-DO-12/21 from 8 June 2021, to the HRA request for free access to information and urgencies.

²⁴⁷ Response of the County State Prosecutor's Office of Split, num. 26 Su i-15/2021 from 9 June 2021, to the HRA request for free access to information.

²⁴⁸ *Ibid.* During the meeting on 5 August 2020, the Prosecutor Vukčević confirmed that no progress was made.

²⁴⁹ Response of State Prosecutor's Office of the Republic of Croatia (SPORC) to the HRA request for free access to information, PPI-DO-8/2021-2 from 26 February 2021.

²⁵⁰ Response of the County State Prosecutor's Office of Split to the HRA request for free access to information, num. PPI-DO-7/2021, from 25 February 2021.

²⁵¹ "The crime of authorities in sequels", *Monitor*, 26 Octobre 2012: <https://www.monitor.co.me/zloin-vlasti-u-nastavcima/>.

Minister of the Interior was the late Pavle Bulatović, while his assistant for public security, Milisav Marković, was the commander of said unit.

However, the SSPO did not have any success in establishing the responsibility of Montenegrin citizens for war crimes committed in the area. The Report on the Implementation of the War Crimes Investigation Strategy of 21 December 2015 stated that the SSPO was working on “collecting and analysing evidence in relation to Montenegrin citizens - potential perpetrators of crimes in the Dubrovnik area in 1991 and 1992”,²⁵² but no information on the results of that work has been published since then.

3.7.2. "Weekend Warriors"

In the period from May 1992 to 1993, Montenegrin citizens, especially those from Nikšić, fought as volunteers on the side of the Army of the Republic of Srpska in eastern Bosnia and Herzegovina, and in particular participated in the looting of civilian buildings and other war crimes, including rape.²⁵³

Since the beginning of the implementation of the Strategy, in 2016 the SSPO reported that it had worked on 6 cases that were opened in an earlier period, relating to war crimes cases suspected of having been committed in the Republic of Croatia, Montenegro and Bosnia & Herzegovina in 1991, 1992 and 1993, and which were then in the preliminary investigation phase.²⁵⁴ It is not known which cases these were exactly, and whether they also included “weekend warriors”. The report on the implementation of the Strategy shows that the Montenegrin prosecution acted based on letters rogatory that were submitted by the prosecutor’s offices from BiH,²⁵⁵ while the SSPO announced that it had opened another case against a Montenegrin citizen suspected of having committed a war crime, and that the procedure against him was initiated based on documents obtained from BiH.²⁵⁶

Finally, in 2020, the International Residual Mechanism for Criminal Tribunals submitted to Montenegro a file referring to more than 15 suspects who could finally be investigated for serious crimes. It is possible that cases that referred to the so-called “weekend warriors” were among them.

²⁵² That report states that the SSPO worked on the acquisition and analysis of documents connected to Montenegrin citizens, potential perpetrators of crimes in the area of Dubrovnik during 1991 and 1992.

²⁵³ B. Ivanišević, T. Gorjanc Prelević, *op.cit.*, p. 12.

²⁵⁴ Report on the work of the Special State Prosecutor’s Office for 2016, *op.cit.*

²⁵⁵ Reports on the implementation of the War Crimes Investigation Strategy from 21 November 2015 until 7 May 2021.

²⁵⁶ Information acquired in the meeting with Prosecutor Vukčević, 5 August 2020.

3.7.3. Rape cases in eastern BiH

There are indications that Montenegrin citizens also participated in rape cases in eastern Bosnia, mostly in Foča.²⁵⁷

One of them is Ranko Radulović, a 'controversial' Montenegrin businessman, former owner of the football club "Čelik" from Nikšić and owner of a cafe in that city, who was already known to the public because of the accusations of alleged cigarette smuggling in the 90s and loansharking.²⁵⁸ He gained public attention once again in 2015, when he was arrested on suspicion of being the organiser of a criminal group that was preparing liquidations of people in the territory of Montenegro.²⁵⁹ Two years later, he was arrested again on suspicion of illegally organising a transport of weapons near Nikšić.²⁶⁰ He is currently in custody, charged with the organisation of a criminal group and other crimes.²⁶¹

While Radulović was in a correctional institution, SSPO interrogated him on 1 August 2019, at the request of the Prosecutor's Office of BiH, in the capacity of the accused, regarding the suspicion that in 1992, in Foča, he committed a crime against humanity under Article 172 of the CC BiH.²⁶² One of the witnesses, who was among those imprisoned at the Karaman House, a women's camp in the village of Miljevina, near Foča, claimed that he had raped her when she was only 15 years old.²⁶³ The Prosecutor's Office of BiH filed an indictment against Radulović for the aforementioned criminal offence on 3 September 2020. He was charged with participating, together with other persons, in the attack and persecution of civilians in Foča, taking hostages, "as well as in an unlawful, arbitrary and from the military standpoint unjustified destruction of property on a large scale, that he participated in the illegal detention of civilians, aided in forcing girls of Bosniak ethnicity to have sexual intercourse or perform sexual acts equated with rape, and that he raped several victims multiple times".²⁶⁴ The indictment included 50 witnesses, seven of whom were granted protection measures,²⁶⁵ as well as some 200 pieces of material evidence.²⁶⁶

²⁵⁷ "Gang rape, torture, and enslavement of Muslim women charged in ICTY's first indictment dealing specifically with sexual offences", United Nations, International Criminal Tribunal for the former Yugoslavia, 27 June 1996: <https://www.icty.org/en/press/gang-rape-torture-and-enslavement-muslim-women-charged-ictys-first-indictment-dealing>.

²⁵⁸ "Who is Ranko Radulović?", *Portal Analitika*, 19 June 2018: <https://www.portalanalitika.me/clanak/304944--ko-je-ranko-radulovic>.

²⁵⁹ "Radulović and the team in custody, Petrušić also arrested", *Vijesti*, 20 June 2018: <https://www.vijesti.me/vijesti/5826/radulovic-i-ekipa-u-pritvoru-uhapsen-i-petrusic>.

²⁶⁰ "Ranko Radulović arrested in Nikšić", *Vijesti*, 18 June 2018: <https://www.vijesti.me/zabava/29519/u-niksicu-uhapsen-ranko-radulovic>.

²⁶¹ "Radulović heard for susicion of war crime perpetration, denied culpability", *Vijesti*, 1 August 2019: <https://www.vijesti.me/vijesti/crna-hronika/395657/saslusavaju-radulovica-zbog-sumnje-da-je-pocinio-ratne-zlocine>.

²⁶² Report on the implementation of the War Crimes Investigation Strategy from 2 August 2019, *op. cit.*

²⁶³ "Radulović heard for susicion of war crime perpetration, denied culpability", *Vijesti*, 1 August 2019: <https://www.vijesti.me/vijesti/crna-hronika/395657/saslusavaju-radulovica-zbog-sumnje-da-je-pocinio-ratne-zlocine>.

²⁶⁴ INDICTMENT ISSUED FOR A CRIME AGAINST HUMANITY IN THE AREA OF FOČA, *op. cit.*

²⁶⁵ One of them, under the initial M., is still in court proceedings under the Appellate court of BiH against Neđa Samardžić, ex member of the Army of the Republic of Srpska, was captured together with other women in so called female concentration camp Karaman - house near Foča 1992, testified that in the night when she was brought, she was taken from the apartment by Radulović, who raped her first. - „Horrors from the Karaman-house”, B92, 30 November 2006: https://www.b92.net/info/vesti/index.php?yyyy=2006&mm=11&dd=30&nav_category=64&nav_id=221934

²⁶⁶ *Ibid.*

The question is whether Radulović will be tried in BiH or in Montenegro, since he cannot be tried *in absentia* in BiH²⁶⁷ and the case cannot be handed over to the Montenegrin prosecutor's office because the injured parties refuse to have the trial held before Montenegrin institutions.²⁶⁸ The Ministry of Justice, Human and Minority Rights of Montenegro did not receive a letter rogatory regarding the takeover of the criminal prosecution of Radulović,²⁶⁹ nor did the SSPO conduct any actions on that basis.²⁷⁰ In the meantime, the Court of Bosnia and Herzegovina partially confirmed the indictment against Radulović.²⁷¹

The prosecutor's office can be expected to process a number of similar cases based on the files that the Residual Mechanism submitted to the Montenegrin authorities.²⁷²

3.7.4. "Lora 3" and other cases of reporting crimes against members of the YNA from Montenegro

"Lora" is the name of the former naval base of the Yugoslav Navy near Split, in Croatia. After the outbreak of the war in former Yugoslavia and the withdrawal of naval units from the then FR Croatia, control over "Lora" was taken over by the military police of the Croatian Army in 1992 and turned into a military prison. From then until it was closed in 1997, "Lora" served as a concentration camp where prisoners of war and civilians, mostly Serbs and Montenegrins, were brought in, tortured and killed.²⁷³ It is estimated that about 1,100 prisoners had passed through the camp and that dozens of them had died - many more than a few whose murders were the subject of court proceedings.

Two court proceedings have been conducted so far for multiple violations of international humanitarian law that were committed in the "Lora" camp. In the case known as "Lora 1", 8 members of the Croatian Army Military Police, including a former prison warden and his deputy,²⁷⁴ were charged with war crimes against civilians: they harassed, tortured and beat up Serb civilians, and they also killed two prisoners - Gojko Bulović and Nenad Knezević.²⁷⁵ In the case "Lora 2", the same defendants were accused of the same crime and the death of three

²⁶⁷ CRIMINAL PROCEDURE CODE OF BOSNIA AND HERZEGOVINA ("Sl. glasnik BiH", num. 3/2003, 32/2003 - corr, 36/2003, 26/2004, 63/2004, 13/2005, 48/2005, 46/2006, 29/2007, 53/2007, 58/2008, 12/2009, 16/2009, 53/2009 - dr. law, 93/2009, 72/2013 i 65/2018), art. 247.

²⁶⁸ Information acquired in the meeting with Prosecutor Vukčević, from 5 August 2020.

²⁶⁹ Response of the Ministry of justice, Human and Minority rights to the request for free access to information, UPI 01-037/21-113/1 from 22 February 2021.

²⁷⁰ Decision of the Special State Prosecutor's Office of Montenegro TUSPI num. 2/21 from 10 February 2021.

²⁷¹ "Indictment in the case of Ranko Radulović partly confirmed", *the Court of BiH*, 18 March 2021: <http://www.sudbih.gov.ba/vijest/djelimino-potvrena-optunica-u-predmetu-ranko-radulovi-21497>. In accordance with the decision of the court, Radulović is charged with the following acts: 1) under point 2 and 4 indictments for persecution regarding rape, and in relation to execution; 2) under point 5 of the indictment in relation to detention (execution), as well as the act of rape (assistance); 3) under the points 6, 7, 8, and 9 for the persecution in relation to rape, and all of which are in relation to planning, ordering, perpetrating, inciting, or aiding in planning, preparing, or committing crimes against humanity.

²⁷² Address of Mr. Serge Brammertz Prosecutor, International Residual Mechanism for Criminal Tribunals to the United Nations Security Council, 14 December 2020, op. cit.

²⁷³ "Case "Lora": Covering-up crimes leads to new conflict", *Radio Free Europe*, 26 August 2012: <https://www.slobodnaevropa.org/a/zlocini-u-logoru-lora/24687940.html>; „Behind seven concentration camps - from the crime of culture to the culture of crime", Photomography, V. Ivančić, H. Polan, N. Stjepanović, forum ZFD, Belgrade, 2018: <https://www.danas.rs/drustvo/suocavanje/zrtvama-su-mokрили-po-telu-davili-ih-gazili-i-sutirali/>.

²⁷⁴ "Case Lora – fifteen years until the arrest", *Attitude!*, 20 February 2016: <http://stav.cenzura.hr/slucaj-lora-petnaest-godina-do-uhicenja/>.

²⁷⁵ "Case "Lora": Witnesses do "not remember" the crime against Serbs", *Balkan Insight*, 19 May 2017: <https://balkaninsight.com/2017/05/19/slu%C4%8Daj-lora-svjedoci-se-ne-sje%C4%87aju-zlo%C4%8Dina-nad-srbima-05-19-2017/?lang=sr>.

other civilians from BiH, who were buried in Tomislavgrad after they were murdered.²⁷⁶ The two cases were later merged, and the defendants were sentenced to prison after several trials.²⁷⁷

The case “Lora 3” refers to a war crime that was committed against 14 members of the YNA from Montenegro (the so-called “Nikšić-Šavnik” group) in 1992.²⁷⁸ According to the Association of War Veterans of the 1990s,²⁷⁹ the war crime consisted of the murder and torture of Radivoje Petković, Nedeljko Janković and Miljan Šušić from Savnik, who were captured by the Croatian Army above Čepikuće in Herzegovina in May 1992 and whose remains were found in Trebinje; Ratko Simović, Duško Barović, Borivoje Zirojević, Dragoman Doknić, Radomir Vulić, Miloš Perunović and Ranko Vujović from Nikšić, who were also captured in Herzegovina and transferred to “Lora”, where they were subjected to torture; Pavle Popović, Dragan Jakovljević and Luka Gazivoda, also from Nikšić, who were captured near Mostar, and then, according to the witness and prisoner Drago Bosnić, were tortured in “Lora”, where Popović was beaten and died. Luka Adžić, a reservist from that group, was exchanged through the International Red Cross on 6 August 1992 near Nemetin, but he died in Nikšić in March 1993 due to the extremely difficult health situation caused by torture.²⁸⁰ In the period from 1992 to 2006, the remains of 12 members of the Nikšić-Šavnik group were found in several locations in BiH.²⁸¹ However, no indictment has been yet filed in this case.

In December 2006, the Fighters’ Association submitted written information about the Nikšić-Šavnik group to the Supreme State Prosecutor’s Office of Montenegro. After more than two years, Lidija Vukčević, then Deputy Special Prosecutor of the Department for the Suppression of Organised Crime, Terrorism and War Crimes, requested that the Association submit additional information, which they did on 8 April 2009. After the same amount of time, on 16 December 2011, the Association asked the Supreme State Prosecutor’s Office for a written response about what the Department for the Suppression of War Crimes had done to prosecute war crimes committed against soldiers from the Nikšić-Šavnik group. The next day, on 17 December, the State Prosecutor’s Office in Split announced²⁸² that it had carried out operational activities. One witness from abroad was examined in the course of the preliminary investigation, and the entire documentation of this case was obtained from the Supreme State Prosecutor’s Office. The “Split-Dalmatia Police Administration was then asked for an additional criminal investigation to verify the allegations from the obtained documentation”.²⁸³ The Supreme State Prosecutor’s Office said that, in the future, it would submit new data and information at its

²⁷⁶ *Ibid.*

²⁷⁷ „Crime in Lora 2”, *Documenta*, 30 June 2015: <https://documenta.hr/en/novosti/crime-in-lora-2-tomislav-duic-et-all/>.

²⁷⁸ “Prosecutors should face the families of the victims of “Lora”, Montenegrin Association of War Veterans from 1990, 7 May 2012: <http://www.ubr.co.me/aktuelno/95-lora-carapic-bajic>.

²⁷⁹ “Podgorica started an investigation about Lora”, Montenegrin Association of War Veterans from 1990, 3 August 2012: <http://www.ubr.co.me/aktuelno/103-lora>.

²⁸⁰ “Documents and projects, Letters to Milivoje Katić, the Chief Special Prosecutor”, Montenegrin Association of War Veterans from 1990, 25 May 2016: <http://www.ubr.co.me/projekti>.

²⁸¹ “Stanković should not be silent about “Lora””, *Dan*, available at:

<https://www.dan.co.me/?nivo=3&rubrika=Drustvo&clanak=534300&datum=2016-02-23>.

²⁸² County State’s Prosecutor’s Office in Split, Conduct in criminal proceedings “Lora”, <http://www.dorh.hr/sp1712>, accessed 23 February 2021.

²⁸³ County State’s Prosecutor’s Office in Split, Incorrect allegations published in Montenegrin newspapers, also added to Croatian portal, <http://www.dorh.hr/spl0208>, accessed 23 February 2021.

disposal to the State Prosecutor's Office in Split "which is responsible for conducting a preliminary investigation in this case, all in the spirit of exceptionally good cooperation the Supreme State Prosecutor's Office of Montenegro and the State Prosecutor's Office of the Republic of Croatia had in all other cases".²⁸⁴

At the request of the Fighters' Association, Lidija Vukčević received representatives of the families of four killed YNA soldiers from the Nikšić-Šavnik group and representatives of the Association on 25 June 2012.²⁸⁵ Finally, in May 2016, the Fighters' Association also addressed Chief Special Prosecutor Milivoje Katnić with the question about the results of the cooperation between the Supreme State Prosecutor's Office and the State Prosecutor's Office of the Republic of Croatia in this case. There is currently a case that dates back to 2007 in the County's State Prosecutor's Office, which, in cooperation with the police, is working on a criminal investigation of the "circumstances of the death of members of the Nikšić-Šavnik group, i.e. Soldiers of former YNA who were captured on the Herzegovina battlefield in 1992 and taken to the Investigation Centre "Lora" in Split".²⁸⁶

The second case, which the SSPO opened based on information obtained from the Association of War Veterans of the 1990s,²⁸⁷ concerns the killing of 24 YNA members in the area of Čepikuće, Ivanjica, Osojnik and Grab, in Croatia, in the context of the attacks on Dubrovnik that were made by the YNA forces on 1 October 1991, and the circumstances of the disappearance and murder of 7 members of the YNA in the area of Crnoglav, near Neum, in the territory of BiH on 23 April 1992.²⁸⁸

After the SSPO opened the case in 2016, there have been no concrete results apart from communication with prosecutor's offices from the countries of the region and the Residual Mechanism from The Hague, and the information that were obtained that way. Preliminary investigation is still under way.

4. Protection of witnesses in war crimes cases

Since the adoption of the Strategy until the end of 2020, there have been no requests for judicial and extrajudicial protection of witnesses in war crimes cases²⁸⁹ or any recorded cases of threats or intimidation of witnesses, and no criminal proceedings have been conducted against specific persons for that reason.²⁹⁰ With regard to out-of-court protection measures under the jurisdiction of the Police Directorate, the Witness Protection Department of the Sector for the

²⁸⁴ State Prosecutor's Office of the Republic of Croatia, Response of the Supreme State Prosecutor's Office of Montenegro, <http://www.dorh.hr/DrzavnoOdvjetnistvoRepublikeHrvatskeOdgovor>, accessed 23 February 2021.

²⁸⁵ Documents and projects, Letters to Milivoje Katnić, the Chief Special Prosecutor, *op. cit.*

²⁸⁶ Response of the County State's Prosecutor's Office in Split to the request to free access to information, PPI-DO-8/2021 from 24 February 2021.

²⁸⁷ Report on the implementation of the War Crimes Investigation Strategy from 5 December 2016, p. 2.

²⁸⁸ Case was formed in the Special State Prosecutor's Office in 2016, for more information see the Report on the work of the SSPO for 2016, p. 11.

²⁸⁹ Response of the High court to the request for free access to information no. I Su. no. 4/21 from 13 January 2021.

²⁹⁰ Government of Montenegro, *Third periodic report of Montenegro to the Committee against Torture*, p. 10.

Fight against Organised Crime has organised the questioning of 195 former detainees from the Morinj camp during the period 2015-2019, in damage claims proceedings that were carried out before the Basic Courts in Podgorica, Nikšić and Cetinje.²⁹¹

Witness protection is regulated by the Criminal Procedure Code (CPC)²⁹² and the Witness Protection Act.²⁹³ The CPC provides for special protection mechanisms against intimidation of witnesses and persons close to them, such as interrogation under an alias, with a changed voice, in a different room, with a protective wall, and with special guarantees for juvenile witnesses.²⁹⁴

The Witness Protection Act envisages the Protection Programme as a set of measures to protect the integrity, life, health, property and other goods that belong to witnesses and persons close to them, while the implementation of the programme provides for the establishment of a special Commission composed of: judges of the Supreme Court, Deputy Supreme State Prosecutor and the head of the Protection Unit²⁹⁵ (within the organisational scheme of the Police Directorate, that is, the Sector for the Fight against Corruption and Organised Crime, that is, the head of the Witness Protection Department).²⁹⁶

5. Trainings and Conferences

It can be concluded that state prosecutors had the opportunity to continuously develop in the field of war crimes prosecution and international humanitarian law, and to exchange experiences and knowledge with prosecutors from the region, colleagues from the International Criminal Court i.e. the Hague Residual Mechanism, and to communicate with representatives of NGOs. However, the SSPO was not the initiator of any of the presented activities and was, rather, always the invited party.

The following is an overview of activities, by the reporting year.

5.1. Year 2015

In October 2015, the Human Rights Action (HRA) initiated a meeting with the SSPO, with the aim that representatives of the prosecution take an active part in the preparation and implementation of the regional conference called "War Crimes".

²⁹¹ Response of the Department for analytics and improvement of work of the Police administration to the request for free access to information, no. 037/21-upl-36 from 28 January 2021.

²⁹² "Official Gazette of Montenegro" no. 57/2009, 49/2010, 47/2014, 2/2015, 35/2015, 58/2015, 28/2018 and 116/2020.

²⁹³ "Official Gazette of the Republic of Montenegro", no. 65/2004.

²⁹⁴ Criminal Procedure Code, articles 113, 120 and 121.

²⁹⁵ Law on Witness Protection, articles 2 and 6.

²⁹⁶ Police administration, Jurisdiction and organisation, https://mup.gov.me/upravapolicije/naslovna/Nadleznost_i_organizacija, accessed 14 January 2021.

5.2. Year 2016

The Supreme State Prosecutor's Office and the Human Rights Action organised a round table on the topic "Suppression of War Crimes Punishment", with the participation of representatives of the prosecutor's offices and courts of Bosnia and Herzegovina, Croatia and Serbia and representatives of the NGO sector.

- **15-20 May** - Study visit to BiH (Sarajevo) and the Netherlands (The Hague) on the topic of "War Crimes", organised by the US Embassy in Podgorica, i.e. State Department's Bureau of International Narcotics and Law Enforcement Affairs/INL Programme. The participants in the study visit were two judges, four special prosecutors and two representatives of the Police Directorate.²⁹⁷
- **7-8 July**, Kolašin - In cooperation with the US Embassy in Podgorica, i.e. the State Department's Bureau of International Narcotics and Law Enforcement Affairs / INL Programme, Centre for Training in Judiciary and State Prosecution organised a seminar on the topic of "Training on the implementation of the Montenegrin War Crimes Investigation Strategy". The lecturers at the seminar were regional, European and American experts. The seminar was attended by 29 participants: 19 representatives of the courts and prosecutor's offices (6 judges and 5 judicial advisers; 4 special prosecutors, 3 state prosecutors and 2 prosecutorial advisers) and 10 representatives of the Police Directorate.²⁹⁸

5.3. Year 2017

- **19 April** – Through the UNDP regional project "Strengthening regional cooperation in the processing of war crimes and the search for missing persons", consultations were held in Montenegro, attended by representatives of the Supreme State and Special State Prosecutor's Office of Montenegro, State Prosecutor of the Republic of Croatia, head of the War Crimes Prosecutor's Office of the Republic of Serbia, Acting Chief Prosecutor of Bosnia and Herzegovina, and representatives of the commissions for missing persons of BiH, Serbia, Croatia and Montenegro. A project document was adopted in order to increase efficiency and effectiveness in cooperation between the prosecutor's offices in the region.²⁹⁹
- **27. October** – Third regional consultations titled "Strengthening regional cooperation in the processing of war crimes and the search for missing persons" were held in Belgrade, attended by representatives of the Supreme State Prosecutor's Office of Montenegro, the War Crimes Prosecutor's Office of Serbia, and the State Prosecutor's Office of BiH. The consultations served to analyse cooperation that was achieved to date.³⁰⁰

²⁹⁷ Government of Montenegro, *Action plan for chapter 23 - Judiciary and Fundamental rights, semi-annual report, period January-July 2016*, p. 35-36.

²⁹⁸ Government of Montenegro, *Action plan for chapter 23 - Judiciary and Fundamental rights, semi-annual report, period July-December 2016*, 2017, p. 42.

²⁹⁹ "FLASH", *Dan*, 21 April 2017: <https://www.dan.co.me/?nivo=3&rubrika=Drustvo&clanak=595510&datum=2017-04-21>.

³⁰⁰ Report *op.cit.* from 27 November 2017.

5.4. Year 2018

- **January - June:** A two-day training was organised for 22 participants (5 state prosecutors, 10 court advisors, 2 advisors from the prosecutor's offices, and for 5 representatives of the Police Directorate). The lecturers at the seminar were "domestic and international experts in the field of war crimes investigation".³⁰¹
- **24-25 May** - Under the organisation by the Center for Education of Judges and Prosecutors of RS, the OSCE and the European Union held a training on the "Preparation of indictments, appeals and other acts in war crimes cases" in Teslić, Bosnian Serbian Republic.³⁰²
- **6 June** – Meeting of SSPO representatives with the FBI Special Agent working on war crimes cases and the legal advisor from the Human Rights Department of the US Immigration and Customs Service, at which future cooperation was agreed regarding the procedure for providing international legal assistance in war crimes cases.³⁰³
- **7-8 June** - Organised by the Centre for Training in Judiciary and State Prosecution and the US Embassy in Podgorica, a training on the topic "Prosecution and Investigation of War Crimes" was held in Budva.³⁰⁴
- **19-20 September** - The fourth regional consultation was held in Istanbul, Turkey (UNDP headquarters), attended by the Special Prosecutor and the associate working on war crimes cases. The consultation served to review the work done to date and discuss the legal frameworks in the region important for cross-border cooperation in war crimes prosecution.³⁰⁵

5.5. Year 2019

- **28 February** – Regular consultations between representatives of the SSPO and the Prosecutor's Office of Croatia, the Republic of Serbia and BiH were held in Zagreb. They served to review the work to date and agree on the future frameworks of work and cooperation. The consultations were organised by UNDP, within the project "Strengthening regional cooperation in the processing of war crimes and the search for missing persons".³⁰⁶
- **20-22 May** - A regional conference "Cooperation, Criteria and Standards in the Prosecution of Perpetrators of War Crimes" was held in Belgrade, organised by UNDP and the War Crimes

³⁰¹ Government of Montenegro, *Action plan for chapter 23 - Judiciary and Fundamental rights, semi-annual report, period January-June 2018*, 2018, p. 41.

³⁰² *Ibid*, p. 3, point IV.

³⁰³ Government of Montenegro, *Action plan for chapter 23 - Judiciary and Fundamental rights, semi-annual report, period January - June 2018*, 2018, p. 40.

³⁰⁴ Report on the implementation of the War Crimes Investigation Strategy from 13 June 2018, page 3, point IV.

³⁰⁵ Report on the implementation of the War Crimes Investigation Strategy from 14 December 2018, page 2, point IV.

³⁰⁶ Report on the implementation of the War Crimes Investigation Strategy from 23 April 2019.

Prosecutor's Office of Serbia in cooperation with the embassies of Italy and the United Kingdom. It was attended by the SSPO delegation and served to define further cooperation guidelines, exchange experiences and eliminate previous obstacles in cooperation.³⁰⁷

- **26-27 November** – A regular regional meeting of prosecutors was held in Sarajevo on differences in the legal frameworks for regional cooperation in the processing of war crimes. Representatives of the SSPO of Montenegro, the Prosecutor's Office of BiH, the State Prosecutor's Office of Croatia, the War Crimes Prosecutor's Office of Serbia and the International Mechanism for Criminal Courts were present.
- **17-19 December** - Organised by UNDP in cooperation with the embassies of the United Kingdom and Italy within the Regional Project on War Crimes, consultations were held in Sarajevo between representatives of the Supreme State Prosecutor of Montenegro, the Prosecutor's Office of BiH, the State Prosecutor's Office of Croatia, the War Crimes Prosecutor's Office of Serbia and the Chief Prosecutor of the International Residual Mechanism for Criminal Tribunals and their associates. The meeting served to discuss cooperation in earlier cases and investigations, and the assignment of cases with confirmed indictments.³⁰⁸

5.6. Year 2020

- The SSPO has repeatedly communicated with the representatives of the Residual Mechanism from The Hague in order to establish guidelines for and the manner of taking over, and evidence to be taken over, from the Mechanism for the purpose of prosecuting perpetrators of crimes based on provided evidence.³⁰⁹
- **29-30 June** – A training on “Effective investigation, prosecution and adjudication in war crimes cases in Montenegro”, organised by the Centre for Training in Judiciary and State Prosecution, was attended by SSPO representatives.³¹⁰
- **5 August** – In Podgorica, Prosecutor Vukčević met with representatives of the Human Rights Action, Andjela Bošković and Marija Vesković, as part of the project “Towards Justice for War Crimes Victims”,³¹¹ where they discussed war crimes cases and SSPO results in that field.
- **3-5 November** – The Youth Initiative for Human Rights organised a study visit to Dubrovnik as part of the project “No impunity for the past!”, on the topic of the attack and siege of Dubrovnik 1991/1992, for representatives of the Constitutional Court, journalists, lawyers, NGO activists, students and prosecutors Ljiljana Ognjenović Dakić and Damir Kujović.³¹²

³⁰⁷ Report on the implementation of the War Crimes Investigation Strategy from 2 August 2019.

³⁰⁸ Report on the implementation of the War Crimes Investigation Strategy from 27 December 2019.

³⁰⁹ Report on the implementation of the War Crimes Investigation Strategy from 15 April 2020 and the addressing of Mr. Serge Brammertz *op. cit.*

³¹⁰ Report on the implementation of the War Crimes Investigation Strategy from 20 August 2020.

³¹¹ Report on the work of SSPO for 2020, page 40.

³¹² “Study visit to Dubrovnik”, *EU Info Centre*, 13 November 2020: <http://www.euic.me/study-visit-to-dubrovnik/>.

- **18-19 November** – Using the Zoom platform, the Centre for Civic Education (CCE) organised a workshop for law students and young professionals in the field of justice, which was attended by Lidija Vukčević, prosecutor working on war crimes cases, Prof. Dr. Žarko Puhovski, civil activist and political analyst from Croatia, Rada Pejić-Sremac, coordinator of the Programme of the Mechanism for Informing Conflict Affected Communities (PMI), Prof. Dr. Nebojša Vučinić and attorney Goran Rodić.³¹³
- **1 December** – The Centre for Civic Education (CCE) and the Association “Red Paeony” organised a regional conference within the project “Forced Disappearance - From Truth to Justice”. The conference served to analyse the effects of dealing with the past, with a special focus on the unresolved fate of persons that went missing during the conflicts of the 1990s, which still constitutes a humanitarian problem in the Western Balkans. They also discussed the possibility of the contribution of various social actors to strengthening the mechanisms for establishing the facts about missing persons, the progress made to date in discovering the fate of those who disappeared, the legal satisfaction of their families, the real contribution of institutions from the region and decision-makers in Montenegro and the region, and the role of international mechanisms in the process of finding a large number of persons listed as missing. The conference was attended by Special Prosecutor Vukčević.³¹⁴
- **16 December** – A round table “Dealing with the Past - Where we Are Today”³¹⁵ was organised by the Youth Initiative for Human Rights. The event was attended by special prosecutor Vukčević.³¹⁶

6. Regional and International Cooperation

6.1. Cooperation Agreements

Prior to the adoption of the Strategy, the Supreme State Prosecutor’s Office of Montenegro concluded cooperation agreements on war crimes cases with Croatia (2006), Serbia (2007) and Bosnia & Herzegovina (2014).³¹⁷ On the other hand, the Memorandum of Understanding³¹⁸ was

³¹³ “The burden of the past feeds new nationalist waves”, *Centre for Civic Education*, 19 November 2020: <http://cgo-cce.org/en/2020/11/19/breme-proslosti-hrani-nove-nacionalisticke-talase/#.YNMHKugzY2w>.

³¹⁴ “Online regional conference held on the topic of “FORCED DISAPPEARANCE - FROM TRUTH TO JUSTICE”, *Government of Montenegro*, 2 December 2020: <https://www.gov.me/pretraga/236747/Odrzana-online-regionalna-konferencija-na-temu-PRISILNI-NESTANAK-OD-ISTINE-DO-PRAVDE.html>

Report on the implementation of the War Crimes Investigation Strategy from 5 February 2021, page 3, point II.

³¹⁵ *ibid.*

³¹⁶ “Clarify all war crimes to the end”, *Portal RTCG*, 16 December 2020: <http://www.rtcg.me/vijesti/drustvo/303451/sve-ratne-zlocine-rasvijetliti-do-kraja.html>.

³¹⁷ Report on Montenegro for 2020, page 24.

³¹⁸ “Glavni tužilac Brammertz se sastao s crnogorskim zvaničnicima”, *Ujedinjene nacije: Međunarodni rezidualni mehanizam za krivične sudove*, 29.01.2019: <https://www.irmct.org/bcs/novosti/glavni-tu%C5%BEilac-brammertz-se-sastao-s-crnogorskim-zvani%C4%8Dnicima>.

signed with the Prosecutor's Office of the International Residual Mechanism for Criminal Tribunals in January 2019, allowing the Montenegrin Prosecutor's Office more efficient, online access to information, evidence and materials related to war crimes in former Yugoslavia.³¹⁹

6.2. International legal assistance

The total number of letters rogatory requesting provision of international legal assistance in war crimes cases for the period 2015-May 2021 was 48. Of these, 18 were referred by the SSPO to other prosecutor's offices and 30 were referred to the SSPO by other prosecutor's offices.³²⁰ As we have been able to see,³²¹ data obtained through letters rogatory submitted by the prosecutor's offices of the countries in the region and The Hague to the judicial authorities of Montenegro are the primary source of information. The Zmajević case - the only one in which an investigation has been conducted and indictment filed in the past six years, is proof of the above claim.

In addition to letters rogatory, the exchange of information in specific cases occurred also through various meetings with prosecutors from the region, both bilateral and multilateral, but also through cooperation with the Residual Mechanism from The Hague. The Mechanism is a less formal and more convenient form of data exchange, as acting upon requests for international legal assistance can take months, or even years. From the time of adoption of the War Crimes Investigation Strategy until the end of May 2021, there were about 13 such meetings. So the SSPO has repeatedly communicated with the Residual Mechanism, the most important of such communications certainly being the submission of files to the SSPO in 2020, "referring to more than 15 suspects who can now be investigated for serious crimes, including sexual violence".³²²

The problem are situations in which there are obstacles for prosecuting certain perpetrators because they are standing trial or serving a prison sentence in the requesting state, or when the regulations of the requested state and the requesting state, or international agreements, cannot resolve a certain legal situation. An even bigger problem occurs when the extradition procedure takes too long, making international legal assistance and the realisation of justice meaningless.

³¹⁹ "Chief Prosecutor Brammertz meets Montenegrin officials", *United Nations: International Residual Mechanism for Criminal Tribunals*, 29 January 2019: <https://www.irmct.org/en/news/chief-prosecutor-brammertz-meets-montenegrin-officials>.

³²⁰ Reports on the implementation of the War Crimes Investigation Strategy starting from 21 December 2015 concluding with 7 May 2021.

³²¹ See chapters 2.2. Investigation and charges and 2.3. Overview of old war crimes cases after the adoption of the War Crimes Investigation Strategy.

³²² Address of Mr. Serge Brammertz, *op. cit.*

6.2.1. The case of Ranko Radulović

Ranko Radulovic, a Montenegrin citizen who was charged with crimes against humanity committed in Foča in 1992 under Article 172 of the BiH CC, is in custody of the prison in Spuž, Montenegro. The BiH law does not recognise trial *in absentia*, the extradition agreement between Montenegro and BiH does not include extradition of their own nationals accused of war crimes,³²³ and the victims have so far refused to have Radulović tried in Montenegro. At the meeting in Sarajevo, held on 19 May 2021, representatives of the SSPO spoke with the representatives of the Prosecutor's Office of BiH about the possibility of transferring all the cases "in which indictments have been filed in BiH, and the accused are in the territory of Montenegro".³²⁴

6.2.2. The case of those convicted *in absentia* for the crime committed against the Klapuh family

The Klapuh case is an example of a failure to deliver justice to war crimes victims due to inefficient extradition procedures and problems in cooperation between countries in the region.

Due to the murder of three members of the Klapuh family from Foča (BiH), committed in July 1992 in Plužine, by the decision of the High Court in Podgorica five members of the Army of Republika Srpska in BiH, Janko Janjić, Radomir Kovač, Zoran Simović and Zoran Vuković were convicted of war crimes against civilians, to 20 years in prison each, while their helper from Montenegro, Vidoje Golubović, was sentenced to eight months in prison for failing to report the crime and the perpetrators.³²⁵ The final verdict was enforced only in relation to Golubović from Montenegro, who attended the trial, while the other four persons were tried *in absentia* and their verdicts were never enforced.

Of the four persons that were convicted *in absentia*, Janko Janjić, a.k.a. "Tuta", committed suicide in 2000 during an attempt by SFOR members to arrest him based on the indictment from the Hague Tribunal.

The other convicted person, Radomir Kovač, has been free since July 2013, having served a sentence he was handed down by The Hague tribunal for crimes committed in Foča. In January 2017, the HRA informed the Minister of Justice of Montenegro, Zoran Pažin, about this in a letter, suggesting that Montenegro inform BiH about the final verdict by which he was convicted in Montenegro.

As we did not receive a response from Minister Pažin, we sent a letter in January 2021 to the new Minister of Justice, Human and Minority Rights, Vladimir Leposavić, who informed us on 2

³²³ LAW ON RATIFICATION OF THE AGREEMENT BETWEEN MONTENEGRO AND BOSNIA AND HERZEGOVINA ON EXTRADITION, "Official Gazette of Montenegro - International agreements", no. 4 from 20 March 2013.

³²⁴ "Meeting of the Chief Prosecutor of the Prosecutor's Office of BiH with Senior Officials of the Special Public Prosecutor's Office of Montenegro", the Prosecutors Office of Bosnia and Herzegovina, 19 May 2021: <http://www.tuzilastvobih.gov.ba/index.php?id=4901&jezik=e>.

³²⁵ K.no. 20/96 from 16 December 1996.

February that the request to take over the enforcement of Radomir Kovač's prison sentence had been sent to Bosnia and Herzegovina on 14 December 2020 by former minister Pažin.³²⁶ On 13 January 2021, the Court of BiH asked the Basic Court in Podgorica to supplement the documentation,³²⁷ and then, on 14 April 2021 rejected the request for BiH to take over the execution of the prison sentence for Radomir Kovač.³²⁸ We do not know the reasons for the rejection.

It is unknown where the third convict, Zoran Simović, is. Montenegro issued an international arrest warrant for him so that he would serve his prison sentence.³²⁹

In 2002, the fourth convict, Zoran Vuković, was sentenced by the Hague Tribunal, together with Radomir Kovač, to 12 years in prison for war crimes and crimes against humanity.³³⁰ He was released from the prison in Norway in 2008.³³¹ In December 2015 he was arrested in Serbia, on the basis of an international arrest warrant issued by Montenegro. Based on the information we received from Minister Leposavić, the Ministry of Justice of Montenegro sent a request for extradition to the competent authorities of the Republic of Serbia on 18 January 2016, followed by two urgent repeated requests, one on 12 September 2018 and the other on 7 July 2020.³³² Serbia, however, provided no official response.

During his arrest, Vuković was ordered into extradition custody based on an international arrest warrant issued by Montenegro. According to the Serbian Law on International Legal Assistance in Criminal Matters, "detention may last no longer than the enforcement of the extradition decision, but not longer than one year from the date of detention of the person whose extradition is requested".³³³ We therefore assume that Vuković has been released.

In this case, the War Crimes Department of the High Court in Belgrade issued a decision in March 2016 establishing that all the preconditions for Vuković's extradition have been met.³³⁴ However, the Ministry of Justice of Serbia, which is responsible for issuing a decision allowing or not allowing extradition,³³⁵ has failed to issue the decision on his extradition for five years, for unknown reasons, stating that the extradition procedure was under way.³³⁶

³²⁶ Montenegro, Ministry of Justice, Human and Minority rights, no 04/2-1191-K/15, from 2 February 2021.

³²⁷ Act no. S1 1 K 039446 21 Mpom from 13 January 2021.

³²⁸ Prosecutor's Office of Bosnia and Herzegovina, no. T20 0 KTARZ 0020272 21, Sarajevo, from 21 June 2021.

³²⁹ Response of Vladimir Leposavić, Minister of justice, human and minority rights to the HRA letter from 2 February 2020.

³³⁰ "Radomir Kovač and Zoran Vuković Transferred to Norway to Serve Prison Sentences", <https://www.icty.org/en/press/radomir-kovac-and-zoran-vukovic-transferred-norway-serve-prison-sentences>, accessed on 15 January 2021.

³³¹ UNITED NATIONS, PROSECUTOR V. ZORAN VUKOVIĆ, CLASSIFIED, DECISION OF THE PRESIDENT OF THE COURT ON REDUCTION OF THE SENTENCE <https://www.icty.org/x/cases/kunarac/presdec/bcs/080311.pdf>, p. 2 para. 1 and p. 5 para. 13.

³³² Montenegro, Ministry of justice, human and minority rights, no. 04/2-1191-K/15 from 2 February 2021.

³³³ Law on International Legal Assistance in Criminal Matters ("Official Gazette of the RS", no. 20/2009) - ZMPKS, art. 22, para. 2 and 3.

³³⁴ Response of the High Court in Belgrade to the HRA request to free access to information (High Court in Belgrade, Su II-17a no.106/20), from 23 July 2020.

³³⁵ Article 31, para. 2. ZMPKS.

³³⁶ Republic of Serbia, Ministry of justice, no 7-00-00143/2020/32, from 17 November 2020.

The extradition agreement between the Republic of Serbia and Montenegro³³⁷ stipulates that “the requested state must make a decision on the request for extradition as soon as possible and inform the requesting state thereof. Any total or partial refusal of the request for extradition must be explained”. It is not known why the Ministry of Justice of Serbia has not yet made a decision on extradition. The Law on International Legal Assistance in Criminal Matters of the Republic of Serbia stipulates that the Minister of Justice may postpone extradition under two conditions:³³⁸ 1) until the criminal proceedings for another criminal offence pending before the domestic court against the person whose extradition is allowed are completed; and 2) until the person whose extradition is allowed has served a prison sentence or other criminal sanction consisting of deprivation of liberty. It is not known that any criminal proceedings are pending against Vuković before the judicial authorities of Serbia, or that he was finally sentenced to a prison sentence there. If this is true, by doing this, Serbia is violating its international legal obligations and helping a convicted perpetrator of war crimes to escape justice.

According to the information that was obtained from Chief Special Prosecutor Milivoj Katnić at the meeting with the representatives of the State Prosecutor’s Office on 24 May 2021, one of the persons convicted in this case has been located in the area of Foča.

6.2.3. Dubrovnik battlefield

In a case initiated in 2009 before the judicial authorities of the Republic of Croatia against 10 former JNA officers, including Montenegrin citizens, for war crimes against civilians under Art.120 para. 1 of the Basic Criminal Code of the Republic of Croatia, and in which a hearing before the competent court in Split has yet to take place³³⁹, it is still unknown whether the defendants will be tried in absentia or not, as the Extradition Treaty between Montenegro and the Republic of Croatia does not provide for the possibility of extradition of its own nationals for war crimes.³⁴⁰

³³⁷ Law on Ratification of the Agreement between Montenegro and the Republic of Serbia on Extradition, (“Official Gazzete of Montenegro” - international agreements, no. 4/2009 and 4/2011, 7/2010-27, 5/2011-62), art. 15.
(See also art. 7). Visit: Publication - 7/2010-27. Visit: Publication - 5/2011-62.

³³⁸ ZMPKS, art. 34.

³³⁹ Response of the County Court in Split, *op.cit.*

³⁴⁰ Law on Ratification of the Agreement between Montenegro and the Republic of Croatia on Extradition (“Official Gazette of Montenegro”, No. 1/2011), Art. 8.

7. Conclusions and Recommendations

7.1. Conclusions

At the very beginning of the War Crimes Investigation Strategy of Montenegro, it was emphasised that “the fight against impunity for war crimes must be strengthened by more efficient investigation, prosecution, trial and punishment in accordance with international standards”. Such a strategic commitment was anticipated by the European Commission as well, as it expected “proactive” action from the state prosecutor’s office, i.e. self-initiative and the application of the institutes of command responsibility, complicity, aiding and abetting or incitement. However, the published results indicate that SSPO has not acted in this way in the last six years, i.e. that it did not effectively investigate war crimes.

- ✓ The Montenegrin strategy did not specify deadlines for the implementation of activities, and - unlike other national strategies for investigating and prosecuting war crimes in the region - the Supreme State Prosecutor was the only authority responsible for overseeing its implementation. This led to the fact that there was neither adequate reporting on the implementation of individual activities, nor written traces of the analyses and evaluations of the implementation of these activities.
- ✓ The reports on the implementation of the Strategy do not contain any information as to how the activities envisaged by it were implemented, or whether they were implemented at all. For example, there is no information on whether a “list of events and possible perpetrators”, a “list of possible witnesses-victims of war crimes” and a “list of cooperating witnesses in the region” have ever been compiled, in accordance with Article II of the Strategy, or whether any investigative teams were formed in line with article titled “Necessary Resources” prior to November 2020, when the formation of such a team was first mentioned in one of the reports. At the meeting held on 24 May 2021, the SSPO announced that the above lists had been made, and that investigation teams had been formed in a timely manner, but there is no trace of them in any of the SSPO’s reports. Also, the reports on the implementation of the Strategy do not contain data on whether there were any problems, envisaged by the article of the Strategy titled “Possible problems in the investigation of war crimes”, and if there were, whether the solutions listed the article titled “Possible solutions to problems encountered in the investigation of war crimes” were applied, and in what way.
- ✓ Since the adoption of the War Crimes Investigation Strategy, the SSPO has prosecuted only one defendant, Vlado Zmajević, in the case that was referred thereto by the Serbian War Crimes Prosecutor’s Office. This procedure was not a consequence of the implementation of the Strategy, as Zmajević certainly would have been prosecuted without it.

- ✓ In the six years of implementation of the Strategy, the SSPO questioned only four persons in the capacity of suspects, all on the basis of letters rogatory submitted by other countries. The total number of letters rogatory requesting international legal assistance in war crimes cases in the period 2015-2020 was 44. Of that number, the SSPO sent 16 to other states/authorities, while 28 sent them to the SSPO.³⁴¹ Information obtained through letters rogatory were the primary source of information, despite the fact that Articles II and III of the Strategy envisaged collection of information on events and possible perpetrators from a number of “open” sources, such as reports of NGOs, international organisations, books, newspaper articles, and other sources.
- ✓ Since the adoption of the strategy, the SSPO has not initiated any investigations or filed charges regarding command responsibility, complicity, incitement or aiding and abetting war crimes, although the Strategy provided for consideration of these modalities of criminal responsibility (Articles III and IV). The European Commission acknowledged this in its last report on Montenegro for 2020, as well as in all the previous **annual** reports since 2013.
- ✓ There are no reports on whether and how old cases – “Morinj”, “Bukovica”, “Deportation”, “Kaludjerski laz”, etc. - were considered, although it was an obligation under Article IV of the Strategy. The SSPO seems to have relied on earlier proceedings and court decisions in these cases, despite the fact that international experts and organisations criticised both the strategy the prosecution pursued in these cases and the courts’ application of the law. Criminal charges filed in the context of the “Deportation” case were dismissed without an explanation. SSPO has not responded to the criminal report filed in relation to “Kaludjerski laz” for six years.
- ✓ Several criminal charges that were filed for war crimes were rejected by the SSPO without it ever publishing an explanation for such actions. Although the Criminal Procedure Code does not explicitly oblige the state prosecutor to submit a reasoned decision rejecting a criminal report to the applicant who is not the injured party (Article 271, paragraph 2), the prosecution should in fact submit such a reasoning, both because of the applicant’s right to file a complaint with the immediately higher prosecutor’s office (Article 271a, paragraph 1), and the public confidence in the work of the prosecution, which is particularly fragile when it comes to war crimes cases. The non-transparent rejection of criminal reports only raised suspicions that no one was seriously dealing with them, especially e.g. in the case of the report that was filed against the Prime Minister, the ruling party and the state, and the former Supreme State Prosecutor, in respect of which the bias and self-censorship of the competent prosecutors was particularly expected.

³⁴¹ These data were obtained from the Report on the Implementation of the War Crimes Investigation Strategy, starting from 21 December 2015 and ending with the report from 7 May 2021.

- ✓ The criminal reports that were rejected in 2017 (applicant Š. Radončić) and 2019 (applicants K. Pavlović, M. Popović and E. Kočan) were rejected without instruction on the right to file an appeal against a decision rejecting the criminal report, contrary to Article 271, paragraph 2 of the CPC.
- ✓ The SSPO has actively sought to cooperate in the region and with the ICTY, i.e., with the Hague Residual Mechanism. However, none of this yielded any results in six years. It was reported that the International Residual Mechanism submitted a file related to **more than** 15 suspects to the SSPO in November 2020 and that a case has been opened as a result, possibly leading to the initiation of new investigations.
- ✓ Although the Strategy provided for the SSPO to examine the data possessed by non-governmental organisations (NGOs), the prosecution has communicated with them exclusively on the initiative of the NGOs themselves, when they would invite the competent special prosecutor Lidija Vukčević to discussions or meetings (HRA).
- ✓ Of the 60 press releases the SSPO issued in the past six years, only three were related to war crimes. Two had to do with the Zmajević case, while the third was the reply to MP Medojević's question about the Chief Special Prosecutor's participation in the Dubrovnik battlefield.

7.2. Recommendations:

- ✓ The new Supreme State Prosecutor, or Acting Supreme State Prosecutor responsible for overseeing the implementation of the War Crimes Investigation Strategy, should analyse the acting of public prosecutors in terms of the implementation of the Strategy, evaluate it, and revise the Strategy.
- ✓ The acting of the SSPO to date should be viewed in the light of criticism, comments and recommendations that were already submitted to Montenegro by international organisations and their experts.
- ✓
- ✓ The new Strategy, or its Action Plan, should contain deadlines for undertaking activities, as well as the obligation to report on the implementation of each activity individually. In addition to the Supreme State Prosecutor's Office, another body should be charged with supervision of the implementation of the Strategy, e.g. the Prosecutorial Council.
- ✓ Have prosecutors who have worked in the Prosecutor's Office of the International Criminal Tribunal for the Former Yugoslavia (ICTY) train new SSPO prosecutors who will be in charge of war crimes, especially on how they can act "proactively" or on their own initiative. Include prosecutors from BiH who have experience with the application of international humanitarian

law and criminal law institutes in the context of war crimes, such as command responsibility, complicity, aiding and abetting and joint criminal enterprise, which the Montenegrin state prosecutor's office has not applied to date.

- ✓ Unsuccessfully processed cases such as "Bukovica", "Deportation", "Kaludjerski laz", etc., should be reviewed with the help of experts in international humanitarian law, e.g. Maurizio Salustro, former prosecutor and international judge who, as an expert of the European Commission, analysed those cases in 2014 and criticised the strategy of the prosecutors in charge. Take into account also the data and recommendations provided in relation to old cases presented in Chapter 3 of this Report. Consider reopening the proceedings, taking into account the views of Professor Vučinić (see Appendix), as well as prosecuting persons that have not been investigated yet.
- ✓ Review all the rejected criminal charges related to war crimes based on the reasoning of the decisions on rejection, if such a reasoning exists. Respond to the criminal report that was filed six years ago by attorney Velija Murić in relation to "Kaludjerski laz". When rejecting a criminal report, submit a reasoned decision stating which actions were taken by the prosecution to investigate the allegations in the report, and what their outcome was, with instructions on the legal remedy.
- ✓ Ensure greater transparency in the work of the SSPO on war crimes cases. The SSPO or the Supreme State Prosecutor should also periodically report to the public on the steps taken in the investigation of war crimes.

ADDENDUM

Prof. Nebojša Vučinić, PhD, former judge of the European Court of Human Rights

NE BIS IN IDEM - Possibility of retrial for war crimes and crimes against humanity in the national criminal justice system

According to Article 6 of the Montenegro CPC, no one may be tried again for a criminal offence for which s/he has been convicted or acquitted by a final decision (paragraph 1). However, pursuant to paragraph 2 of the same provision, this prohibition does not prevent reopening of criminal proceedings under this Code. In its Article 36, the Constitution of Montenegro also provides for this prohibition, but does not contain a provision on the possibility of retrial.

This is a fundamental principle of all modern criminal justice systems in the world, but also one of the basic human rights contained in all major international human rights instruments. In a broader context, this is one of the guarantees of a fair and just procedure, motivated primarily by reasons and interests of legal certainty. The *ne bis in idem* principle means, first and foremost, that the same person cannot be tried twice for the same criminal offence, or more precisely, for a criminal offence arising from the same factual situation or the same state of the facts, as the case law of the European Court of Human Rights has confirmed in the case *Zolotukin v. Russia* (ECHR, 2009-276). If the criminal proceedings in relation to a specific criminal offence have been legally completed by a meritorious acquittal or conviction, proceedings, *as a rule*, cannot be conducted against the same person for the same criminal offence or for an offence arising from the same factual situation. For reasons of legal certainty and fairness, in many national criminal justice systems, especially those of the European-continental type, this principle prevails over the principle of truth when - in certain cases - there is a “confrontation” of these two principles (Prof. Dr. Milan Skulić, Commentary on the CPC, Podgorica 2009, p. 84). On the other hand, this principle is not absolute, so most systems provide for deviation in exceptional situations and the possibility of repeating the proceeding both in favour and to the detriment of the defendant. This is provided for also in the CPC of Montenegro, in Article 430-432.

Proceedings cannot be conducted for the same criminal offence against a person who has already been convicted or acquitted in the same state (internal *ne bis in idem* principle), or against a person who has been convicted or acquitted in another state or before an international tribunal (international *ne bis in idem* principle). The “internal” *ne bis in idem* principle is considered a part of international law, either as a customary law principle or – which, in my view, is more acceptable – as a general principle of law recognised *in foro domestico*. The “international” aspect of this principle is not clear; namely, it cannot yet be concluded with certainty that it has crystallised and constituted itself as part of customary international law, as Cassese points out (Antonio Cassese, International Criminal Law, Belgrade, 2005, translated by Obrad Račić in cooperation with Vidan Hadži-Vidanović i Marko Milanović,

p. 376). A final verdict, be it a conviction or acquittal, is considered an absolute obstacle to conducting a retrial, but this prohibition does not apply if the proceedings for the offence in question have been finally concluded in another way, and not by a meritorious verdict, or if the accusation was rejected by a final decision. As provided for also in the main international legal documents on human rights, the proceedings may be repeated to the detriment of the convicted person, in accordance with the regulations of the State concerned, especially in the case of an extraordinary remedy (ECHR, case against Germany).

The possibility of repeating the proceedings is also provided by the provision of Article 425 of the CPC of Montenegro, although under very rigorous conditions: 1. if it is proved that the verdict came as the result of a criminal offence of a judge or a person who conducted evidentiary actions; 2. if the verdict rejecting the accusation was rendered due to the withdrawal of the state prosecutor, and it is proven that said withdrawal occurred due to the criminal offence of abuse of official position of the state prosecutor, or; 3. if new facts or new evidence are presented that can cause – in and of themselves or in connection with previous evidence - the conviction of the person who had been acquitted, or his/her conviction under a stricter criminal law. Repetition of criminal proceedings in this case is not allowed if more than six months have elapsed from the day when the prosecutor learned of the new facts or new evidence. Request for protection of legality from Article 438 of the CPC provides for the possibility to establish a violation of the law after a final judgment, but not to reopen the proceedings to the detriment of the defendant if the European Court of Human Rights Finds, in its judgment, that the relevant final judgment of a domestic court has violated one or more human rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The international aspect of this principle, contained in certain international treaties and resolutions, which regulates “vertical” relations between national and international courts regarding their competence to punish international crimes, is very important. In that sense, the provisions of Article 10 of the Statute of the ICTY (International Criminal Tribunal for Former Yugoslavia – The Hague Tribunal), Article 9 of the Statute of the ICTR (International Criminal Tribunal for Rwanda) and Article 20 of the Statute of the ICC (International Criminal Court) are quite characteristic. According to these provisions, “no one can be tried twice for the same crime, neither before a national nor an international court (regardless of whether the first trial was held before a national or international court). However, this principle does not apply when, at the first trial: (i) the proceedings were conducted for the same act or conduct, but the offense was qualified as an “ordinary criminal offense” (e.g. murder) and not as an international crime (e.g. genocide), with the aim of knowingly avoiding the stamp of an international crime and the consequences it produces; (ii) if the court has not fully complied with the basic guarantees of a fair trial or has not acted independently and impartially; (iii) in the case of a sham trial, held with a view to the perpetrator avoiding international criminal responsibility; or (iv) if the prosecution or the court did not act with the care required by international standards”(A. Cassese, *op. cit.*, p. 378).

In the case of the tribunals for former Yugoslavia and Rwanda, given the legal nature of these instruments (decisions of the UN Security Council upheld by the UN General Assembly), they

have great legal weight as an expression of most countries' *opinion juris*. The same way, the ICC Statute, which was adopted by 120 states, although binding only on the contracting states also reflects the views of all those states (A. Cassese, *op.cit.*, p. 377). Thus, these are rules of an international customary character, in the process of being constituted. Although these standards refer to the "vertical" hierarchy of international and national criminal courts, they can in no way be ignored when the issue of banning double trials appears in the national legal system for war crimes and crimes against humanity, especially in monistic constitutional legal systems that give priority to international law (Article 9 of the Constitution of Montenegro) and in cases where obvious war crimes were intentionally qualified as ordinary criminal offences in order to avoid responsibility.

This problem was especially faced by the Republic of Croatia, in the context of trials and punishments for war and crimes against humanity committed in its own territory during the armed conflict of the 1990s in the context of declaring independence and rebellion of the Serb population against it, which was supported and assisted by Serbia and then YNA. The problem stemmed from a political stance which was transformed into jurisprudence during the conflict and immediately after it ended, according to which members of the armed forces of the state that was a victim of aggression and was engaged in legitimate self-defense could not commit war crimes and crimes against humanity. Thus, Croatian courts punished members of their armed forces for the killings and abuse of Serb civilians and captured members of Serb paramilitary, rebel forces for ordinary murder and other "ordinary" crimes. After pressure from the international community, which coincided with the beginning of the operation of the Hague Tribunal, the above practice changed and the perpetrators were tried once again, this time for war crimes and crimes against humanity, which caused problems of application and possible violation of the *ne bis in idem* principle.

Unlike the Constitution of Montenegro, Article 31 paragraph 2 of the Constitution of the Republic of Croatia provides, in addition to the general prohibition of retrial for the same criminal offence, for the possibility of reopening the proceedings in accordance with the law, based on the Constitution and an international agreement. The provision of Article 418 of the Criminal Procedure Code of the Republic of Croatia provides for the possibility of filing a requests for the protection of legality against final court decisions rendered in a manner that violates fundamental human rights and freedoms guaranteed by the Constitution, law or international law. If said request is made to the detriment of the defendant, and the court finds that it is founded, it will only determine that there has been a violation of the law, without prejudice to the final decision (Article 422 of the Criminal Procedure Code of the Republic of Croatia), which is identical to the relevant provision of the CPC of Montenegro.

In the case *Marguš v. Croatia* (application no. 4455/10), the Grand Chamber of the European Court of Human Rights, acting by a majority of 16 to 1, concluded that there was no place for the application of Article 4 of Protocol no. 7 to the European Convention - *ne bis in idem* regardless of the fact that the applicant was convicted of war crimes against civilians in another proceeding involving the same factual situation. Namely, in the first proceeding, the applicant was charged, for the murder and torture of Serb civilians, with ordinary murder and infliction of

grievous bodily harm. Prior to the completion of this process, the proceedings were terminated by a decision of the Osijek County Court to suspend them under the General Amnesty Act, which had meanwhile entered into force (September 1996). Based on the request for the protection of legality, the Supreme Court concluded that Article 3 paragraph 2 of the General Amnesty Act was violated in this case because the perpetrators of war and crimes against humanity in, or in connection with, the armed conflict in the Republic of Croatia were exempted from the amnesty. In another trial, in March 2007, the applicant was sentenced to 15 years in prison for war crimes committed against civilians. Based on the above circumstances - that the first proceeding ended with a decision on suspension and not with a meritorious conviction or acquittal, and that war crimes and crimes against humanity were exempted from the General Amnesty Act - the European Court ruled that it was not possible to apply the *ne bis in idem* principle to that case. In a separate, partly dissenting opinion, Judge Dedov pointed out that the retrial was carried out due to the application of the General Amnesty Act contrary to the principles of international law and the respondent State's obligations under the Convention. According to him, these circumstances were obviously "significant and convincing" and therefore the reopening of the proceedings with the aim of correcting the material violation was justified. Therefore, Judge Dedov concluded that Article 4 of Protocol No. 7 was in fact applicable, and that there was no violation of the *ne bis in idem* principle in the circumstances of that case.

The practice of international judicial and quasi-judicial bodies is very important for the possibility of holding a retrial for the same criminal offence before a national court, because the interpretation and application of domestic regulations in retrial must undoubtedly be based on international standards from this domain. In the case *Almonacid-Arellano and Others v. Chile*, in its judgment of 26 September 2006 (preliminary objections, merits, reparations and costs), the Inter-American Court of Human Rights noted the following:

"154. With regard to the *ne bis in idem* principle, although it is acknowledged as a human right in Article 8(4) of the American Convention, it is not an absolute right, and therefore, is not applicable where: i) the intervention of the court that heard the case and decided to dismiss it or to acquit a person responsible for violating human rights or international law, was intended to shield the accused party from criminal responsibility; ii) the proceedings were not conducted independently or impartially in accordance with due procedural guarantees, or iii) there was no real intent to bring those responsible to justice.¹⁶² A judgment rendered in the foregoing circumstances produces an "apparent" or "fraudulent" *res judicata* case.¹⁶³ On the other hand, the Court believes that if there appear new facts or evidence that make it possible to ascertain the identity of those responsible for human rights violations or for crimes against humanity, investigations can be reopened, even if the case ended in an acquittal with the authority of a final judgment, since the dictates of justice, the rights of the victims, and the spirit and the wording of the American Convention supersede the protection of the *ne bis in idem* principle.

155. In the instant case, two of the foregoing conditions are met. Firstly, the case was heard by courts which did not uphold the guarantees of jurisdiction, independence and impartiality.

Secondly, the application of Decree Law No. 2.191 did actually prevent those allegedly responsible from being brought before the courts and favored impunity for the crime committed against Mr. Almonacid-Arellano. The State cannot, therefore, rely on the *ne bis in idem* principle to avoid complying with the order of the Court” (*Marguš v. Croatia*, op. cit., p. 31).

The same approach was applied in the case *La Cantuta v. Peru* of 29 December 2006, where the Court pointed out that the prohibition of double punishment was not applicable if the State invoked that principle to avoid punishing those responsible, if proceedings against them were brought by a court which was not competent, independent and impartial (*Marguš v. Croatia*, op. cit., p. 31). Such sham trials for the purpose of acquitting perpetrators of human rights violations and crimes against humanity are considered by the Inter-American Court of Human Rights to be “fictitious” and “fraudulent” grounds for prohibiting double punishment.

CONCLUSION

It can be concluded that the renewal of the proceeding - theoretically speaking - is not completely excluded, but it is exceptional and difficult to perform, and in principle depends on the concrete circumstances of each special case. This particularly applies to cases where obvious war crimes or crimes against humanity were intentionally qualified as “ordinary” crimes, with the obvious intention of avoiding responsibility and protecting the perpetrators of these offences, which are not subject to the statute of limitations. “Intentionally incorrect qualification” in this domain, in which we have a highly developed jurisprudence of international and national courts on these crimes, both in armed conflicts of various types or “in the context of war conflicts”, is not difficult to prove, and in principle depends on the degree of independence, impartiality and professionalism, i.e. training and knowledge of judges and prosecutors, but also on the political will of the state to let them to do their job without hindrance. **A “deliberately incorrect qualification”, when established, undoubtedly represents a “new fact” that is necessary for the renewal of the procedure in all modern criminal justice systems.**