

PURSUIT OF JUSTICE

Guide to the War Crimes Chamber of the Court of BiH vol.II



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Guide to the War Crimes Chamber of the Court of BH vol.II

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INTRODUCTION

The War Crimes Chamber of the Court of Bosnia and Herzegovina was founded to enable local judges and prosecutors to bring to justice indictees charged with severe violations of human rights committed during the war that ravaged the country from 1992 to 1995.

Although international officials in BiH initiated the establishment of the War Crimes Chamber, it was formed, and still functions, with the support from domestic institutions and citizens in this country.

The establishment of the War Crimes Chamber in 2005 was considered a huge step ahead for the judicial system in BiH. At the same time changes were also made to state level legislation which led to passage of the laws that the War Crimes Chamber judges currently apply.

Although the War Crimes Chamber has been functioning for more than two years, its Trial Chambers still consist of two international judges and a presiding national judge, while a certain number of international prosecutors also remain. The court still relies on international donations to a large extent. The objective is to transform the Court of BiH into a domestic institution, which will be funded exclusively from Bosnia's state budget.

This publication is intended for all those who want to obtain additional information about the work of the Court of BiH, prosecution and the War Crimes Chamber. We have also included an overview of the most important laws related to processing of war crime indictees, as well as information on the work of other institutions associated with the process of facing the past and transitional justice in BiH.

In addition, the manual provides information on Justice Report - the news agency of the Balkan Investigative Reporting Network. The agency specialises in reporting on the War Crimes Chamber, but also on other issues related to the process of facing the past and transitional justice in BiH and the region.

Justice Report was founded in April 2006. Since then, we have written nearly 1,000 stories from courtrooms in which war crime processes are conducted. Day by day, the number of people who place trust in our information and who support our efforts has increased. They include the local and international media, non-governmental organizations, foreign governments, as well as Bosnian citizens at home and abroad.

Our reports have been successful at an international level. Some of the achievements include nominations for prestigious awards and quoting of our texts or statements given by our journalists in media all over the world, from Japan to the USA.

Most important of all is the fact that our stories reach the people who survived the war and witnessed all its horrors. Survivors who want to tell their stories contact us. We help them reach and establish contact with other people who had similar experiences. All of them seek justice, and Justice Report is making efforts to provide them with as much useful data as possible, and it uses its reports to recover their trust in the judiciary and justice.

Knowing that those who possess correct and timely information have the power, we strive to give that power to as many BiH citizens as possible.

1. Establishment of the War Crimes Chamber within the Court of BiH

1.1 Why and how was the War Crimes Chamber established?

The International Criminal Tribunal for the former Yugoslavia (ICTY) in the Hague was established by the United Nations Security Council in 1993. By 2006, 161 indictments had been filed leading to the completion of 106 processes. Four indicted persons are still on the run, and the search for them is ongoing. Verdicts against 68 persons have been pronounced, of which 56 legally binding (51 individuals have been convicted and five have been acquitted of counts).

As of July 2007, 55 trials were underway and 46 persons were being held in the ICTY's detention unit, and eight were provisionally released¹.

The longest sentence pronounced by the ICTY to date is the life sentence passed down to Stanislav Galic for crimes committed in Sarajevo.

The processing of war crime indictees on the territory of Bosnia and Herzegovina started during wartime, in 1992. The indictees were tried under the criminal code of the Socialist Federal Republic of Yugoslavia (SFRJ), which had a death sentence as its most severe measure of punishment. Although a few persons were sentenced to death, these verdicts were never carried out, as the country became a signatory of the European Convention on Human Rights by signing the Dayton Peace Accord. This convention bans the death penalty.

¹ ICTY official web page, KEY FIGURES OF ICTY CASES, see <http://www.un.org/icty/glance-e/index.htm>

According to the data from “War Crimes in BiH: Completed Criminal Procedures in BiH 1992-2006”², 54 criminal proceedings against 77 war crime indictees³ were finalised before local courts in Bosnia and Herzegovina in the period from 1992 to 2006.

Out of this number, 14 verdicts of release were pronounced, while the remaining verdicts mostly sentenced the indictees to imprisonment for a term of nine, ten or 12 years.⁴

Most indictments were filed for war crimes against civilians (47 in total)⁵.

According to data available to the Organisation for Security and Cooperation in Europe (OSCE), during 2007 a total of 56 war crime trials were underway before the various levels of courts in BiH - 24 of them in the Federation of BiH, seven in Republika Srpska, two in the District of Brcko while all others were processed before the War Crimes Chamber of the Court of BiH.

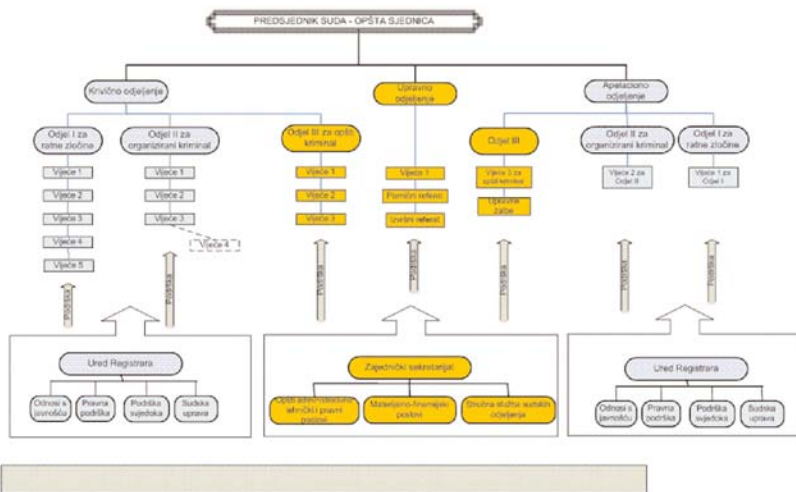
Due to the large number of criminal acts carried out during the war, and the severity of these crimes, in 2003 the local authorities and the international community came to a conclusion that BiH must have a state level court to process war crimes cases after the closure of the ICTY.

The idea to establish a War Crimes Chamber within the Court of BiH emerged from the February 2003 Joint Conclusions between the Office of the High Representative (OHR) and the ICTY, recommending the establishment of a specialised chamber within the Court of Bosnia and Herzegovina as the most appropriate institution for processing the most sensitive war crimes cases.

The War Crimes Chamber (WCC) within the Court of BiH is also a key component of the ICTY’s completion strategy, which is supported by the United Nations Security Council. According to the completion strategy, the ICTY will focus on the criminal prosecution and trials of the most senior commanders, while a small number of cases involving intermediate and low level perpetrators will be referred to national jurisdictions.

The establishment of the WCC was proposed for the first time at the Peace Implementation Council Steering Board meeting held on June 12, 2003. A whole series of meetings followed between ICTY and OHR in 2003 and 2004, focusing on the founding of the chamber. Also, the Peace Implementation Council Steering Board appealed to Bosnia and Herzegovina’s authorities and the international community (potential donors) in its September 26, 2003 Communiqué to take part in a donors’ conference in The Hague and to consider ways of supporting the establishment of the War Crimes Chamber within the Court of BiH. This was supported by the UN Security Council, which urged the international community in its Resolution 1503 to support the High Representative’s efforts to establish the WCC. In the same resolution as well as Resolution 1534 (March 2004) the UN Security Council adopted the ICTY’s completion strategy with a view to ensuring a gradual and coordinated completion of the tribunal’s historic mission by 2010.

According to this completion strategy, the ICTY will focus on the criminal prosecution and trial of the most senior commanders and leaders, while a small number of cases involving intermediate and low-ranking indictees will be referred to national courts. This decision necessitated the establishment of the War Crimes Chamber within the Court of BiH.



The Court of BiH – www.sudbih.gov.ba

2 Sijerčić-Čolić, Hajrija; Tomić, Zvonimir and Simović, Miodrag (preface authors): “War Crimes in BiH: Completed Criminal Procedures in BiH 1992-2006: Indictments, Appeals, Verdicts”. American Bar Association - Central European and Eurasian Law Initiative and Association of Prosecutors of BiH: Sarajevo, 2006
 3 Ibid, pp 17
 4 Ibid, pp 18
 5 Ibid, pp 17

1.2 Which laws regulate the work of the Court of BiH and War Crimes Chamber?

Before the WCC was founded, it was necessary to have the legislation in place, which would regulate its establishment and functions, and the referral of cases from the ICTY to the courts in BiH. The necessary set of laws was passed by parliament and came into force on January 6, 2005. This removed all formal obstacles preventing the establishment of the War Crimes Chamber within the Court of BiH. By 2007, all these laws had since been amended.

The WCC started its work on 9 March 2005. At the same time, two more sections started working within the Court of BiH, namely the Section for Organised Crime, Economic Crime and Corruption, and a Section for General Crime. The President of the Court of BiH regulates the work of all three sections.

The War Crimes Chamber within the Court of BiH was established as a permanent institution which will exist as long as there are cases of this type to be tried. This is the major difference between the WCC and the ICTY, which is an ad hoc tribunal with a limited duration, founded to punish serious human rights violations and the war crimes committed in the former Yugoslavia from 1991. This limits the ICTY to the prosecution and trial only of those suspects believed to be responsible for the most serious crimes in accordance with the time frame and criteria defined by the ICTY's Office of the Prosecutor.

Unlike the ICTY, the mandate of the Court of BiH is restricted by time. It will try perpetrators and reach verdicts in war crimes cases so long as evidence and suspects exist. And unlike the ICTY, whose work is regulated by a UN Security Council Statute and the Rules of Procedure issued by the tribunal's judges, the War Crimes Chamber of the Court of BiH tries and reaches decisions in war crimes cases under the legislation of Bosnia and Herzegovina. This can complicate the experience of following trials before the WCC, as its work is regulated by a number of different laws, regulations and rules of procedure. Nevertheless, the basic information necessary for the monitoring of WCC's work is found in the following documents:

- The Law on the State Court of BiH (Official Gazette of BiH, number 16/02),
- The Law on Amendments to the Law on the State Court of BiH (Official Gazette of BiH, numbers 24/02, 3/03, 37/03, 4/04, 35/04, 61/04),
- The Law on Transfer of Cases from the International Criminal Tribunal for the former Yugoslavia to the Prosecutors' Office of Bosnia and Herzegovina and the Use of ICTY Evidence in the Procedures Conducted Before the Court of Bosnia and Herzegovina (Official Gazette of BiH, number 61/04),
- Agreement between the High Representative to Bosnia and Herzegovina and Bosnia and Herzegovina on the Establishment of the Registry... and Special War Crimes, Organised Crime and Corruption Department Within the Prosecutors' Office of Bosnia and Herzegovina (Official Gazette of BiH, number 12/04),
- The Law on Prosecutors' Office of Bosnia and Herzegovina (Official Gazette of BiH, number 24/02),
- The Law on Amendments to the Law on Prosecutors' Office of Bosnia and Herzegovina (Official Gazette of BiH, numbers 3/03, 37/03, 35/04, 61/04),
- The Criminal Procedure Code of BiH and Corrigendum of the Code (Official Gazette of BiH, numbers 3/03, 32/03),
- The Laws on Amendments to the Criminal Procedure Code of BiH (Official Gazette of BiH, numbers 63/04, 13/05),
- The Law on Protection of Witnesses Under Threat and Vulnerable Witnesses (Official Gazette of BiH, number 3/03),
- The Law on Amendments to the Law on Protection of Witnesses Under Threat and Vulnerable Witnesses (Official Gazette of BiH, number 61/04),
- The Law on Witness Protection Program in Bosnia and Herzegovina (Official Gazette of BiH, number 29/04).

Copies of the above laws are available in the 'Official Gazette' (JP NIO Sluzbeni list) at Magribija 3, Sarajevo. Requests should be made via telephone 033/55 41 11 or online at <http://www.sllist.ba> The laws are also available on the official website of the Court of BiH: <http://www.sudbih.gov.ba/>

1.3 Transition from a hybrid to a domestic institution

Although the idea to establish the WCC came from the international community, the project aims to deliver a fully functioning national institution within the national judicial system at the end of the project.

At the Hague donors' conference, initiated by the Office of the High Representative in BiH in October 2003, the representatives of the international community pledged 16.1 million euro for the first two years of the project, which started with the establishment of the War Crimes Chamber within the Court of BiH. At the same conference the donor countries committed themselves to supporting the War Crimes Chamber financially and in terms of expertise during the first five years of the project.

In accordance with these conclusions, a team of international experts was sent to BiH to design a plan for the establishment and functioning of the WCC and to monitor its implementation and disbursement of donations. Pursuant to the same agreement, the Office of the Registrar was established within the Court of BiH whose aim would be to facilitate the integration and transition of the Office of the Registrar into domestic institutions within the next five years of its mandate.

The function and role of the Office of the Registrar, as well as its tasks and work procedures have been slightly amended by the Agreement on the Office of the Registrar co-signed by the Presidency of BiH and the High Representative in September 2006.

Originally the Office of the Registrar, which supports the work of the sections within the Court of BiH and the prosecution, was headed by an international expert, but the new agreement has altered this arrangement appointing two Registrars, both from BiH.

One Registrar is in charge of Section I and Section II of the Criminal and Appellate Chamber of the Court of BiH, while the second one is in charge of the Special Chamber for War Crimes and Special Chamber for Organised Crime, Economic Crime and Corruption of the Prosecution of BiH.

Appointment of the Registrars is endorsed by the Court President and Chief Prosecutor.

By the agreement signed in 2006, the Transition Council was established. The council has an advisory role and is responsible for coordinating the transition of the Office of the Registrar. The following members constitute the council: the Court President, the Chief Prosecutor, the Registrars, the President of the High Judicial and Prosecutorial Council, the Minister of Finance and Treasury, the Minister of Justice of BiH and the Director of the European Integrations Directorate.

In accordance with the 2006 agreement, local personnel in the Office of the Registrar should be integrated into appropriate domestic institutions, in particular the Court of BiH, the Prosecution of BiH and the state Ministry of Justice, and the ownership of assets of the Registry and all other responsibilities should also be transferred to domestic institutions.

The Office of the Registrar was originally given a task to implement the six-phase transition plan by 2009.

In the forthcoming phases, the number of international experts will be reduced, while the Court of BiH and the prosecution will gradually become the state's ownership. The budget and financial responsibility rest with the institutions and ministries of BiH. The WCC functions as a national judicial institution.

2. Mandate

The mandate of the Court of BiH has been significantly broadened since its establishment in 2003, when it was responsible for adjudicating cases involving breaches of electoral laws, for instance. Meanwhile, the institution grew into a judicial body which tries the most serious felony cases, amongst them organised crime, economic crime, corruption and war crimes.

The Law on the Court of BiH gives this institution the responsibility for trying crimes punishable under the Criminal Code of Bosnia and Herzegovina and other BiH laws. Under the BiH Criminal Procedure Code, the court tries in first instance within its real jurisdiction defined by law, and handles appeals lodged against first instance decisions; it decides on renewal of criminal proceedings, resolves the conflict of jurisdiction in criminal matters between the courts in the Federation and in the Republika Srpska, entity courts and the courts in the Brcko District, and decides on issues concerning the implementation of international and inter-entity criminal legislation.

The Court of BiH is also responsible for issuing instructions for the application of the criminal substantive law of BiH in regard to the crimes of genocide, crimes against humanity, war crimes and violations of the laws and customs of war, and individual criminal responsibility for such crimes. The Court of BiH does that *ex officio*, or at the request by an entity court or the Brcko District Court.

In case an individual is indicted for more than one criminal offence some of which fall under the Court of BiH's jurisdiction and some under the jurisdiction of other courts, the priority is given to the trial before the State Court of BiH.

The WCC will, in a way, continue the work of the ICTY in terms of prosecution and trial of war crimes in Bosnia and Herzegovina. In view of an extremely high number of war crimes committed in this country and a high number of war

crimes suspects, the Court will not be able to process all of the crimes committed. The State Prosecutor's Office has on numerous occasions said that over 12,000 criminal complaints against potential war crimes suspects have been made regarding war crimes cases. It would take the court decades to try such a big number of cases.

It is assumed that the War Crimes Chamber and the Unit for Organised Crime in their full capacity can try between 12 and 16 cases at the same time.

Accordingly, the WCC agreed - in cooperation with the lower judicial authorities in BiH - on a whole series of criteria under which it will review and evaluate all war crimes suspects (i.e. all the cases). The cases found in the evaluation to be "sensitive" will be tried by Cantonal or District Courts. The cases found to be "highly sensitive" will be tried on the state level i.e. before the WCC.

"Highly sensitive" cases are those which concern the crime of genocide, extermination, mass killings, rapes, and other forms of sexual abuse as a part of organised criminal undertakings (e.g. in concentration camps or in the aftermath of a military operation), plunder, torture, widespread, systematic forced evictions and large-scale detentions in concentration camps.

Cases involving former or current high-ranking military officers, political leaders, judicial officials, police chiefs, camp commanders, extremely violent individuals and perpetrators of massive rapes are also deemed to be "highly sensitive". So too are those cases that involve witnesses such as insiders or those who might have been involved in the commission of war crimes, if there is a risk of tampering with evidence. The War Crimes Chamber will also process the cases for which there is a credible fear that the local authorities could be interested for any reason in protecting the suspects.

Any case which meets any of the above criteria will be classified as a "highly sensitive" case and as such will be processed by the Court of BiH. The cases which do not meet the above criteria are treated as "sensitive" and referred to Cantonal/District Courts.



Buildings complex of the Court of BiH, State Prosecution and Detention Unit

3. Structure of the War Crimes Chamber

Structurally and institutionally, the WCC consists of three segments: chambers of judges, Prosecutor's Office and the Registry. WCC staff consists of domestic and international professionals, however, there is a tendency to replace international professionals with their domestic counterparts by the end of the transitional period.

3.1 Chambers of Judges of the War Crimes Chamber

By the Law on Court of BiH, the Court President is authorised to appoint judges to the chambers.

The trial chambers of the WCC meet during hearings and reach first instance decisions, while the appeals panel of the WCC considers appeals lodged against those first instance decisions.

There are five first instance trial chambers within the WCC, each consisting of three judges, of who two are international and one national. Normally, the local judge chairs the trial chamber. In the next phase of the WCC's existence, it is expected that the make-up of the trial chambers will change to that of a national, not international, majority.

3.2 Appointment of judges to WCC

3.2.1 National judges

National judges, including the Court President, lay judges and reserve judges of the Court of BiH, are by law appointed by the High Judicial and Prosecutorial Council. The council makes a selection among the candidates who applied to the publicly advertised vacancies.

The Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina stipulates the requirements for a judge of the Court of BiH: at least eight years of experience as a judge, prosecutor, attorney, or an equivalent legal experience obtained after the applicant passed a bar exam.

While the Court judges are appointed for life, their terms may be ended by resignation, mandatory retirement or if they are dismissed for reasons defined by the law.

The Court President is also appointed by the High Judicial and Prosecutorial Council and under the Law he or she is one of the judges appointed to the Court of BiH, who must have proven managerial and organisational skills relevant to the proper functioning of the court. The Court President is appointed for a six-year term, renewable once.

The responsibilities of the Court President are defined in Article 21 of the Law on Court of BiH, as follows:

He or she shall:

- a) represent the court in its communication with state institutions and organisations;
- b) appoint judges to different divisions and chambers, unless otherwise stipulated by this Law;
- c) select replacements in case a judge is exempted, as agreed at a general court session;
- d) set dates for sessions, handle cases, allocate cases between the court members and, when necessary, define the responsible division;
- e) convene and preside over the court's general session;
- f) implement the court's budget;
- g) perform administration of the court staff;
- h) initiate a disciplinary proceeding against General Registrar.

The Court President, at a general court session, shall propose a working schedule that is to be elaborated at the beginning of each calendar year, and which should provide for the allocation of cases in advance and according to objective criteria.

The current President of the Court is Meddzida Kreso.

Complaints against judges are filed with and handled by the High Judicial and Prosecutorial Council (see Chapter 6).

3.2.2 International judges

According to the Agreement on the Office of the Registrar signed in 2006, the High Judicial and Prosecutorial Council (HJPC) announces a vacancy for an international judge, while, in the past this was done by the High Representative.

The Office of the Registrar contacts embassies and relevant foreign authorities in order to secure availability of adequate candidates for the vacant position and to secure and agree on financial terms concerning those candidates.

The main conditions that have to be met by the candidates before they are appointed as international judges are:

- at least eight year experience as a judge, prosecutor or defence attorney dealing with complex criminal cases;
- experience in working with war crimes, economic crime and fraud cases is particularly desirable;
- knowledge of international criminal law is desirable;
- proven impartiality and excellent work results in previous posts.

International judges are appointed by a three-member commission of the HJPC consisting of BiH citizens and international members.

Before a candidate takes up the post, he or she takes an oath in accordance with the Law on the High Judicial and Prosecutorial Council. An international judge can be appointed to a term not exceeding two years and can be re-appointed once to a term not longer than two years.

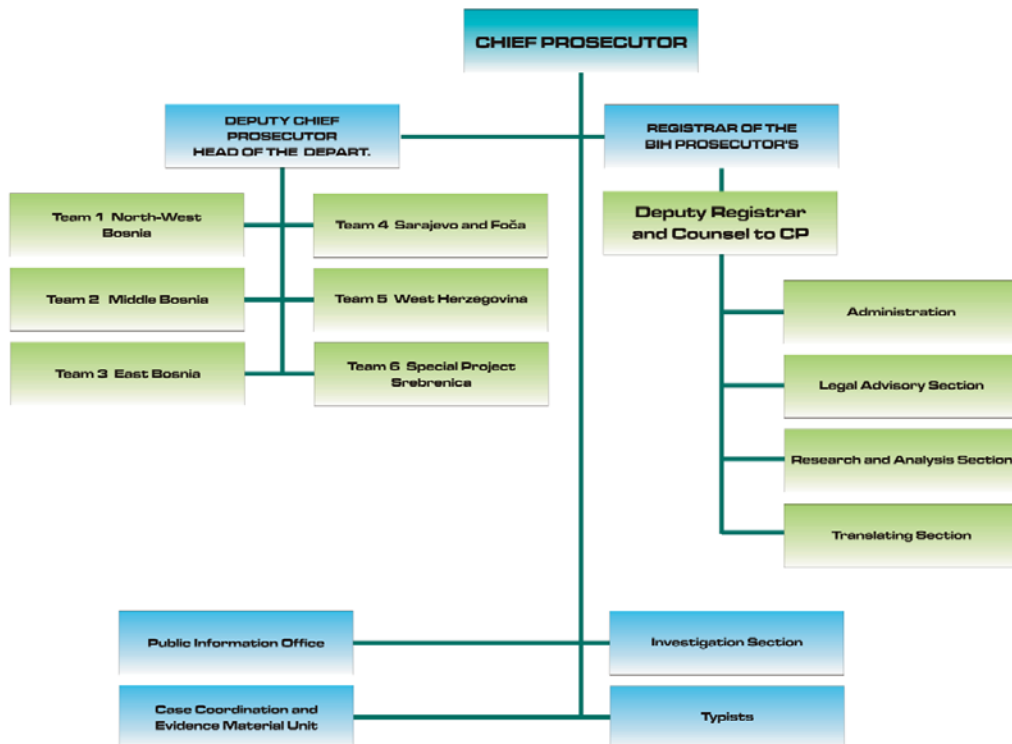
International judges are authorised by law to use English in all procedures conducted before the Court of BiH, and the translation in one of the languages in official use in BiH is provided by court interpreters.

3.3 Office of the Prosecutor of Bosnia and Herzegovina

The Office of the Prosecutor of BiH was established in October 2003 after the BiH Parliament passed the Law on the Prosecutor’s Office of Bosnia and Herzegovina imposed by the High Representative’s decision of August 2002. At the beginning of its work the Office of the Prosecutor employed four prosecutors, while a total of 26 local and international prosecutors have been employed in it until 2007.

During its first three years the Office of the Prosecutor of BiH opened 1,453 investigations and lodged 471 indictments.

ORGANIZATIONAL CHART OF THE DEPARTMENT FOR WAR CRIME



In March 2005, a War Crimes Section was established within the Office of the Prosecutor of BiH to process the war crime cases initiated within the country, but also the cases and investigations referred to Bosnia and Herzegovina by the Prosecution in The Hague.

Within the Office of the Prosecutor there is a Special Department for organised crime, economic crime and corruption as well as a General Department for processing of criminal acts of terrorism, smuggling, falsification and other criminal acts that come under its jurisdiction.

As per the strategic plan, the Office of the Prosecutor is expected to employ exclusively national staff by 2009.

The Prosecutor's Office of BiH works in three departments: the Department for General Crime; Special Department for War Crimes; and Special Department for Organised Crime, Economic Crime and Corruption.

The Chief Prosecutor supervises the work of all the departments and sections and relies on the Law on the Prosecutor's Office of BiH and the Rules of Procedure of the Prosecutor's Office of BiH. The Chief Prosecutor is also in charge of preparing and executing the budget.

Deputy Chief Prosecutors are heads of Special Departments. These individuals have their deputies, who are selected from the ranks of prosecutors of Special Departments.

3.3.1 Appointment of prosecutors to the Office of the Prosecutor of BiH

National prosecutors

The High Judicial and Prosecutorial Council appoints prosecutors to the Office of the Prosecutor of BiH and Chief Prosecutor and his or her deputies.

The Chief Prosecutor and his or her deputies are appointed for a six-year term and can be reappointed. Their terms may end earlier in case of resignation, mandatory retirement or dismissal.

At the time of publication, the Chief Prosecutor of BiH is Marinko Jurcevic.

International prosecutors

A transitional provision of the Law on the Office of the Prosecutor of BiH, Article 18, gives the War Crimes Section and the Section for Organised Crime, Economic Crime and Corruption a possibility to appoint international prosecutors. The international prosecutors can be appointed during the transitional period only, i.e. not beyond five years after the establishment of the Office of the Prosecutor.

The same provision also establishes that the Chief Prosecutor's international deputies act as managers of individual departments.

International prosecutors cannot be prosecuted, arrested or detained, nor will they have to answer, in a civil procedure, for their opinions expressed or decisions made while they perform their duties.

International prosecutors are authorised to use the English language in all proceedings before the Court of BiH.

3.3.2 Special Department for War Crimes in the BiH Prosecutor's Office

A Deputy Chief Prosecutor is the head of the Special Department for War Crimes in the BiH Prosecutor's Office.

The Prosecutor's Office is responsible for carrying out investigations into war crimes that fall within the State Court's jurisdiction and for prosecuting perpetrators before this court. The Prosecutor's Office works under the BiH Criminal Procedure Code, the Law on the BiH Prosecutor's Office, the Law on the BiH Court, the BiH Criminal Code, the Witness Protection Law and the Law on Witness Protection Programme and the Law on Transfer of Cases from ICTY to the BiH Prosecutor's Office as well as the agreement on the Establishment of the Registry.

There are also two implementing regulations which were necessary for the establishment and work of this department: the guiding criteria for the review of the Rules of the Road cases and the Book of Rules for Review of Cases. The implementing regulations also define the organisation and strategy of this Department.

The Special Department for War Crimes in the BiH Prosecutor's Office consists of six teams that cover six regions in BiH.

Team 1 covers Northwestern BiH and a part of Posavina,
Team 2 covers Central BiH,
Team 3 covers Eastern BiH including the Drina Valley, and other part of Posavina,
Team 4 covers Sarajevo and Eastern BiH, including Foca,
Team 5 covers Western Herzegovina and the Neretva Valley, and
Team 6 covers the Srebrenica region.

Each team is headed by a domestic prosecutor, who is assisted by an international prosecutor and one more domestic prosecutor. In addition to the prosecutors, the teams also consist of legal advisers and staff members, investigators, case coordinators, interpreters and typists. A certain number of domestic and international legal advisers are assisting the Department and provide advice on operational and organizational issues, as well as on the issues which refer to international law, and maintain contacts with the ICTY regarding transfers of cases and evidence.

In addition to the regional prosecutorial teams, the Special Department of the Prosecutor's Office of BiH has had new structures established, such as the Section for Legal Counselling and Section for Investigation and Analysis with the aim of building local capacities. These sections provide vital support to investigation teams in the field of legal analysis (international humanitarian law and international human rights law) and evidence analysis (civil and military structures, criminal activities, chronology of conflict etc.)

The Special Department for War Crimes in the BiH Prosecutor's Office is responsible for the cases it receives from four different sources:

- cases in which an indictment has been confirmed by the ICTY and the ICTY's Prosecutor's Office, under Rule 11 bis, filed a motion for transferring the case to the domestic judiciary. Since the establishment of the WCC, motions have been made for a total of 14 individuals. Decisions have been rendered to transfer six of them to BiH. The indictment is then adjusted by the State Prosecutor's Office to the BiH legislation and is presented the Court, which makes a decision on its admissibility
- cases in which ICTY Prosecutor's Office has not yet completed investigations. Those are the cases in which the ICTY Prosecutor has not issued indictments. The ICTY Prosecutor's Office will transfer those cases to the national Prosecutor's Office that will be responsible for bringing the ongoing investigations to a conclusion on the basis of evidence received from the ICTY Prosecutor's Office and issue indictments where appropriate.
- cases which have been referred to the ICTY's Prosecutor's Office by Cantonal/District Prosecutor's Offices and other investigative authorities under the "Rules of the Road" agreement. The Department for War Crimes in the BiH Prosecutor's Office has reviewed all the cases which have been designated as "A" cases under the Rules of the Road, giving approval for arrests on war crimes charges. The cases involve the total of 743 perpetrators out of which 206 have been designated as "highly sensitive" cases and as such will be tried by the War Crimes Chamber.
- cases for which investigations began after October 2004 (when ICTY's the Rules of the Road Unit was closed) at the Cantonal/District level. There is a huge number of cases in this group.

3.4. Office of the Registrar for War Crimes and Organised Crime

The Registry is an administrative unit that provides support to Court Sections and to the Prosecutor's Special Department for War Crimes, with a view to ensuring fair trials of war crime indictees.

The Registry was formed on the basis of the agreement between the High Representative and Bosnia and Herzegovina (signed by the High Representative and the members of the BiH Presidency on December 1, 2004). This agreement was amended in September 2006. The major change refers to establishment of Transition Council.

The aim of this agreement is integration and transition of the Office of the Registrar into domestic institutions within a five-year period. It is planned that this will be done through six phases. During the planned period until 2009, local staff should be integrated into relevant domestic institutions in BiH and the ownership of assets of the Registry should be transferred to those institutions.

The fifth phase is currently underway (August 2006 - January 2008). In the course of this phase, the ratio of foreign and local judges in the Chambers of Judges within Section 1 of the Court of BiH should be changed. Instead of two international and one national judge, the chambers will consist of two national and one international judge.

At this moment there are 47 judges in the Court of BiH, of which 32 are national and 15 international.

The final phase of the transition plan, which will last from January 2008 to August 2009, foresees withdrawal of foreign judges and prosecutors. The Court and the Office of the Prosecutor of BiH will be fully managed by national personnel.

This plan is also being implemented in other judicial institutions. It has resulted in transfer of responsibilities for the Registry's management structures from international to national personnel during 2006. This, *inter alia*, included the withdrawal of the international registrar, international deputy registrar and international head of administration.

According to the 2006 agreement, two Registrars were introduced – the Court of BiH Registrar and the Prosecutor's Office Registrar.

The Court Registrar is responsible for:

- Determining the number of international judges;
- Performing duties in relation to the recruitment of international judges;
- Providing administrative support services to Sections I and II of the court including the management and supervision of the Court Management Unit responsible for running the courtrooms, managing case files and operating courtroom technical equipment;
- Managing the Judicial Support Unit providing legal support to judges;
- Managing the Witness Support Office providing logistical and psychological support to witnesses before, during and after trial;
- Liaison with ICTY Chambers and Registry regarding the transfer of cases to Bosnia and Herzegovina and other relevant issues;
- Passing the rulebooks of the Registry Units;

The Prosecutor's Registrar is responsible for:

- Ensuring implementation of the approved budgets as well as implementation of the Transition Plan.
- Determination of the number of international prosecutors;
- Recruitment of international prosecutors;
- Administrative support services to special departments of the Office of the Prosecutor;
- General supervision of the Registry Units for support to prosecution;
- Providing Prosecution Teams support staff to assist the prosecutors;
- Facilitating cooperation with ICTY Prosecutor's Office and liaison with that office and Registry regarding the transfer of cases from ICTY to BiH and other relevant issues;
- Passing the rulebooks of the Registry Units;
- Ensuring implementation of the approved budgets as well as implementation of the Transition Plan.

The Transition Council is a new institution established after the signing of this agreement. The council is composed of the Court President, the Chief Prosecutor, and the Registrars, the President of the High Judicial and Prosecutorial Council, the Minister of Finance and Treasury and the Minister of Justice of Bosnia and Herzegovina as well as the Director of the European Integrations Directorate. The Transition Council elects its chairperson.

The council is assisted by two international experts who enjoy observer status.

The members act in the Transition Council *ex officio*, which means that they do not receive remuneration from the Registry's budget. The same applies to the observers.

The Transition Council has an advisory role and is responsible for coordinating the transition of the Office of the Registrar into domestic institutions. Some of its tasks include: coordination of implementation of the Integration and Transition Strategy of the Registry; review of changes to the organizational structure of the Registry as proposed by the Management Committee; assistance in preparation of contingency planning, including policy development to address capacity matters related to prosecution and adjudication of war crime cases if, for example, more cases are transferred from the ICTY than initially envisaged; advocacy at the national level to secure the annual increase in the budget of BiH allocated for the functioning of justice institutions; advocacy at the international level to secure continued financial support; assistance in preparation and implementation of the Transition Plan for the Criminal Defence Section and supervision of the implementation; assistance in preparation and implementation of the proposal of the transition of the Registry authority in

relation to witness protection, including the conclusion of relocation agreements; supervision of the implementation of the transition with the establishment of time frames for set stages; coordination of the work on preparation of legal amendments required for implementing the transition of Registry authorities and the integration of national staff into the institutions of BiH; review and evaluation of the annual and quarterly budget forecasts as presented by the Management Committee; appointment of internal and external auditors for the Registry and the review of audit reports; coordination of fundraising activities by the Office of the Registrar and BiH officials, including the management and preparation of additional donor conferences and coordination of activities at ministerial and government level with other states and the European Commission.

In addition, within the Office of the Registrar there is a management committee composed of the Registrars, the Head of Finance and at least one other senior staff member of the Registry, as proposed by the Registrars and endorsed by the Transition Council.

The management committee is responsible for facilitating implementation of the Transition and Integration Strategy of the Office of the Registrar.

3.4.1 Administrative Division

The Registry's administrative division is composed of the following units: Personnel, Procurement, Budget and Finance, Security, Information Technology, Language and Maintenance.

The language unit provides simultaneous interpretation during trials and written translation of legal documentation. In addition, this unit also translates all the documents relevant to war crimes investigations and hearing of witnesses and suspects, as well as at internal meetings and meetings held between the court staff and other authorised agencies.

The information technology unit is in charge of ensuring sessions in a digital format. This unit has also developed a possibility of hearing witnesses from other countries via video and audio link. All hearings before the WCC are also recorded in audio and video format and all tapes are preserved in the archive.

3.4.2 Court Management Section

The core functions of the Court management section are:

- Development, implementation and management of an automated case assignment system to ensure fair, impartial and efficient distribution of workload to the trial and appeals chambers;
- Court information management - electronic processing, management and dissemination of information to chambers, parties and other parties (e.g. the public through a secure Internet site);
- Court records management - an automated system of receipt and efficient processing, storage, tracking and retrieval of files, documents and evidence utilising the latest technology;
- Court and trial support and case management - provision of a range of support services to trial chambers, including an efficient case management (e.g. scheduling of hearings, provision of information to chambers, file reviews and follow up) and the use of modern courtroom technology in support of proceedings (e.g. digital recording, simultaneous interpretation, electronic transcripts, electronic evidence presentation etc.); and
- Support to general Registry operations - electronic management of records and services, such as general books of record and correspondence and operation of Registry facilities such as a court library. The library users are the staff of the Registry, the Court and the Prosecutor's Office of Bosnia and Herzegovina. The library is also available to others who may receive some basic information and guidance. The major tendency of the library is to develop a single library and documentation centre that will become a permanent form of support to Registry operations, the court and the BiH Prosecutor's Office. There are about 600 titles mainly on criminal law and international humanitarian law. A small portion of the library fund was obtained via donations, and the rest was bought in accordance with the needs of the Registry, the court and the BiH Prosecutor's Office.

It is worth underlining that this section is already supervised by the President of the BiH Court and the Deputy Registrar from BiH. Among the services provided by the court administration is an automated system of case allocation - the programme which distributes cases to trial chambers.

In this case allocation system, the computer allocates cases to the chambers it chooses. Moreover, the system ensures an optimal use of all chambers. Every chamber takes part in all stages of a case. For instance, chamber 1 carries out preliminary actions in one case, considers objections to detention in another case, and chairs the main trial in a third case.

3.4.3 Judicial Support Section

The Judicial Support Section is responsible for staffing and organising legal teams that provide support to trial chambers.

The section is in charge of drafting decisions and verdicts, researching complex legal matters and providing support to the court judges. Every trial chamber in the War Crimes Chamber has a three-member team available for legal support. Each team consists of a national lawyer, one national and one international intern.

3.4.4 Prosecution Support Section

The primary purpose of the Prosecution Support Section is to provide administrative and logistical support to the Prosecutor's Office in the interim period for the purpose of capacity building, establishment and administration of case management capabilities and the setting up of a case registration, assignment and tracking structure. The provision of development and training programs is an essential component of the support services provided to the Prosecutor's Office. The section also coordinates with national and international institutions to provide training programmes in the areas of investigations, case management, trial preparation, trial advocacy, and substantive international and national criminal law.

This section was, among other things, involved in drafting a strategy for the selection of cases to be taken over by the WCC.

3.4.5 Criminal Defence Support Section

The Criminal Defence Support Section was formed as an independent body in coordination with the President of the Court of BiH to provide legal and logistical support to defence lawyers appearing before the Court in war crimes cases. It is an advisory body to the defence and provides support in all stages of the proceedings.

Its purpose is to ensure that a suspect or an indictee has free access to legal advice and assistance and to provide representation in court, in accordance with the principle of a fair trial. The Criminal Defence Support Section also provides administrative and legal support to the defence lawyers representing war crimes cases, and advanced training to ensure that defence lawyers are trained and possess the knowledge necessary in the areas of law relevant to war crimes trials.

The Criminal Defence Support Section is physically separated from the Court of BiH. It is located in downtown Sarajevo (Skenderija). Until 2006 an international expert headed the section, before being succeeded by a BiH citizen.

An administration assistant and a language assistant provide support to the section staff. The Criminal Defence Support Section provides support to defence lawyers through five support teams acting in five geographically defined regions in BiH. In addition to professional legal advice that the section provides to the defence, it also carries out detailed legal researches in order to be able to share the necessary information with defence lawyers and assist them in preparing legal arguments in different legal fields.

The core functions of the Criminal Defence Support Section are:

- Providing all accused with information on how to instruct defence council;
- Determining the requirements for qualification to appear as council before the court in cooperation with the President of the Court of BiH. In order for a defence council to meet those criteria, he or she must have at least seven years of experience as a judge, a prosecutor or an attorney; a good knowledge of the laws regarding war crimes (either to have experience or specialisation) and must know the Criminal Procedure Code (either experience or a specialised education in that field is required);

- Assisting defendants in the selection of council who meet the requirements for qualification to appear as defence council before the court;
- Determining, with the advice and consent of the court, which accused should be entitled to legal assistance whose fees are provided in whole or in part by the state. Article 45 of the BiH Criminal Procedure Code requires mandatory defence in cases punishable by long-term imprisonment, which refers to all war crimes cases. Under Article 46 of the same law, if the accused in such cases cannot afford defence, costs will be borne by the state. The court establishes who among the accused will have legal defence paid by the state.
- Determining what such free legal assistance should consist of;
- Providing an appropriate system of remuneration for defence counsel and other members of defence teams. The remuneration system is defined by the Council of Ministers of Bosnia and Herzegovina in accordance with the national fees. A different system of remuneration to defence councils and defence teams is not defined, which is why it is assumed that all defence lawyers will receive the same amount in accordance with the fees. Likewise, the remuneration to the defence team members involved in research is not defined nor is the amount to be paid to the defence councils in advance as coverage of costs defined.
- Assessing claims for remuneration by defence teams.

Because of its limited budget, the Criminal Defence Support Section cannot afford to hire international criminal law experts. The Criminal Defence Support Section consultants are therefore hired on short-term contracts to deal with specific legal issues and provide assistance in individual cases.

Administrative support – the Criminal Defence Support Section makes its computers and other equipment necessary for research and effective representation of their clients before the Court available to the defence councils. Also, the section manages the application process through which lawyers apply and obtain a license necessary for representation of clients before the Court of BiH.

Training - the Criminal Defence Support Section provides training which is mandatory if the legal lawyers are to defend the accused before the Court of BiH. Also, continued training and specialisation in other areas of law or the court procedure is possible. In the course of 2005, 75 attorneys from BiH have been trained in war crimes laws.

The Criminal Defence Support Section publishes all vacancies and training information on its website www.okobih.ba. This department also publishes a periodical magazine named “The War Crimes Reporter”.

3.4.6 Detention section

The detention section was constructed within the project for the construction of the Court of BiH and the BiH Prosecutor's Office. The detention unit is managed by the BiH Justice Ministry via its criminal sentence enforcement division.

Before June 15, 2005, the detention section was managed by an international governor, who was later succeeded by a local counterpart. The detention section is responsible for engaging, supporting and supervising the detention section managers.

There are 21 cells of 13 square metres each. Each cell is equipped with a toilet, heating, air conditioning and a TV set. Moreover, there are separate rooms for meetings with defence counsels, a walking area, a gym, library, medical clinic and prayer rooms.

Detainees may receive their attorneys throughout day, when needed. They may walk in the open air two hours a day, spend five and a half hours in the library and the gym every day, and receive private family visits for 30 minutes a day. They spend the rest of the time in their cells. Families may bring in food that meets normal daily needs every day, to a 5 kg maximum.

Detainees remain in the detention unit throughout the court proceedings if the prosecution seeks detention and the court deems it necessary.

Criminal sentences are served in entity prisons until a new prison is built to house convicted offenders. Work to construct a new state prison began in 2006, and a ceremony to lay the building's foundation stone was held in Ilidza, Sarajevo, on November 22. The new facility is located around 10km away from the court building.



Unutrašnjost Pritvorske jedinice



Ulaz u Pritvorsku jedinicu

The Ministry of Justice of BiH designed a mid-term strategic plan for the period 2006-2008, which includes the building of the State Prison of BiH and establishment of an effective, efficient and sustainable system for the execution of criminal sanctions at the state level.

In cooperation with the Office of the Registrar, the ministry has secured financial resources from the 2006 state budget in order to start with the implementation of the prison construction project. The total budget for the prison construction project is 14.4 million euro.

The lack of adequate space for detainees and convicts has caused problems for a long time. It was brought up again in a report made by the Department for International Development (DfID) published in April 2006. This report indicates that prison capacities in Bosnia and Herzegovina are 105% full. In addition, the existing Entity maximum-security facilities do not have adequate capacity to keep dangerous prisoners in a safe and secure way.

The dangers of this situation were confirmed in May 2007, when war crimes convict Radovan Stankovic managed to escape from the prison in Foca where he was serving a 20-year sentence for crimes committed in the area in 1992.

On the territory of BiH there are currently 15 prisons - eight in the Federation and six in Republika Srpska (RS), and one state detention unit within the Court of BiH (whose capacity is 21 beds). According to data available to the Ministry of Justice, the realisation of the Prison Construction Project would secure an institution with a high-level security for 340 convicts and detainees in accordance with the standards of the European Prison Regulations and BiH laws, while the condition of cost-effectiveness would still be met.

3.4.7 International Protocol Section

The International Protocol Section administers the recruitment of secondees to Bosnia and Herzegovina. Also, the section negotiates terms of secondment or voluntary service for international judges, prosecutors, law clerks who did not pass a bar exam and interns. Its task is to establish and manage protocol, training and support services to the above-mentioned international personnel to ensure that international contractors are fully and effectively committed to working in the Court of BiH.

3.4.8 Security Section

The Security section, in coordination with the judicial police of BiH and other relevant law-enforcement agencies, ensures security of all operations of the Court of BiH.

3.4.9 Witness Support Section

The creation of the Victim and Witness Management Section recognises that a constituent component of any criminal prosecution process is the protection of witnesses from outside interferences. It is of fundamental importance to the judicial process that witnesses be able to provide their testimony in an environment free from threats, coercion and corruptive influences.

In the wider context of war crimes trials, where crimes may have been committed on such a huge scale, and communities remain adverse to one another, the need for witness protection and support remains particularly acute. Witness protection is achieved by ensuring the physical, legal and material security of potential or actual witnesses.

Further to this point, it is a state obligation to ensure the safety and well being of witnesses summoned to appear before the courts. The section consists of an international section leader, two local psychologists and two local assistants.

An internal witness protection and assistance protocol has been prepared. The Witness Management Section is also involved in implementing activities toward attaining these goals. The section also supports the establishment of infrastructure necessary for ensuring legal, material and physical security to the future and actual witnesses (forms of witness protection are explained in detail in Chapter 4.3).

3.4.10 Public Information and Outreach Section

For the Court of BiH and Registry

The Public Information and Outreach Section (PIOS) provides information about the War Crimes Chamber to the international and national media and to the citizens of BiH. This department is also in charge of organising visits by students and representatives of local and international organisations interested in the work of the Court. Anyone who wishes to visit the Court of BiH should fill in the visiting form available at www.sudbih.gov.ba.

Only the representatives of PIOS are authorised to give statements in the name of the Court unless its President decides otherwise. Journalists can however request an interview with other employees of the Court by filling in a form available at the above mentioned website.

The law allows every individual over 18 years of age with valid identification document to attend public hearings. The media and ordinary citizens are allowed to follow all trials apart from hearings closed to the public. However, recording equipment and mobile phones are not allowed in the courtrooms of the War Crimes Chamber. PIOS is tasked with providing the media and other interested individuals with audio/video recordings from trials. Request form for this service is also available on the Court's website.

For the Prosecutor's Office of BiH

Public Information Office is in charge of providing the media and public with the information about the work of the Prosecution of BiH. This department can provide interested parties with all information requested apart from details which could damage ongoing or future investigations, uncover the identity of suspects before their detention or indictment has been confirmed or which could damage the defendant's right to presumption of innocence.

This office also organises interviewes and statements needed by the local and international media. Further information and interview request form are available at the following webpage. www.tuzilastvobih.gov.ba

3.4.11 Legal Council Office

The Legal Council Office (LCO) performs the core functions of a legal council to the Registrar. It was established in a similar manner as the ICTY's Registry Advisory Section for Legal and Policy Matters with similar duties and responsibilities. The core responsibilities of the LCO are, among other things, to:

- Provide interpretation and contribute to the application of legal instruments regarding status, privileges and immunities of the Registry and its staff,
- Conduct research and prepare analytical and policy papers for the Registrar,
- Prepare legal opinions on questions relating to the Registrar's responsibilities and the Registry's mandate,
- Advise on the status and development of the legal framework and laws relevant to the operation of the Registry and the Court and Prosecutor's Office of BiH,
- Advise on institutional and other operational modalities related to the work of the Registry,
- Review and advice on and draft agreements including commercial contracts,
- Provide legal advice on personnel and other operational activities of the Registry, including interpretation and implementation of Financial and Staff Regulations and Rules,

- Review and advise on relations with other international organisations, negotiate relationships agreements, and memoranda of understanding and participate in projects with such organisations,
- Advise on judicial cooperation with the ICTY and other international organisations such as EUPM, OSCE and others,
- Develop agreements between the Registry and Bosnia and Herzegovina and other states,
- Conclude cooperation and relocation agreements, in the following areas, amongst others: witness protection, extradition, regional cooperation in criminal matters, sentencing, advising on implementation of agreements,
- Advise on judicial cooperation with national authorities in BiH,
- Develop framework and advice on disciplinary matters and removal from office in relation to staff and on disqualification, replacement or resignation,
- Prepare legal framework for the detention facility.

4. Review of the legal framework

One of the requirements for the establishment of the War Crimes Chamber in the Court of BiH was the passage of a package of laws to allow the BiH legal system to deal with the war crimes cases in the most effective way.

This package consists of the Law on Amendments to the Law on the Court of BiH, the Law on Amendments to the Law on Prosecutor's Office of BiH, the Law on Transfer of Cases from ICTY to the Prosecutor's Office of BiH and the Use of ICTY Evidence in the procedures before the courts in BiH, the Law on Amendments to the Law on Protection of Witnesses Under Threat and Vulnerable Witnesses and the Law on Amendments to the BiH Criminal Code.

By August 2007, these laws had been amended several times as part of the judicial system reform in BiH. The ultimate goal of the voluminous reform is establishment of a new legal framework in BiH to ensure that justice is "efficient, available and equal for all".

The Court of BiH and WCC both encounter deficiencies in the legal practice in their daily work. Competent officials then point at what needs to be changed. The same practice has been applied in the work of the ICTY, which has modified its work procedures several times since its establishment.

Regarding war crimes trials before the courts in Bosnia and Herzegovina (War Crimes Chamber in the Court of BiH, and Cantonal/District courts), it is worth underlining the importance of amendments to the BiH Criminal Code.

4.1. Changes to the Criminal Procedure Code of BiH

With the passage of a new Criminal Procedure Code in 2003, the criminal procedure is defined as a combination of a legal tradition in BiH and modern European methods of investigation and an effective judicial procedure. Changes to the previous Criminal Procedure Code concern the implementation of the criminal procedure in all phases: investigation, in a criminal procedure, and the appellate procedure, and many other procedures.

4.1.1 Legal presuppositions

Some of the major presuppositions in a criminal proceedings are: In dubio pro reo or the presumption of innocence: everyone is considered innocent until proven guilty of a crime by a final and binding court decision; and Ne bis in idem: once a decision has been reached in criminal case, the person to whom the decision establishing the facts refers should not be subjected to further decisions on the same matter.

4.1.2 Investigative judge vs. prosecutor

A new Criminal Procedure Code introduces the accusatory principle, which means that a criminal procedure may be launched and implemented only at the request by the prosecutor. The same principle eliminates the role of an investigative judge and defines the prosecutor's role as a party to the procedure. The prosecutor's core responsibility is to carry out an investigation against individuals suspected of crimes and to supervise investigative actions carried out by the police.

This law defines the rights and responsibilities of a prosecutor. It does say that the prosecutor, as soon as he or she becomes aware that there are grounds for suspicion that a criminal offence has been committed, should take necessary steps to initiate an investigation that would lead to identification of suspects and should manage and supervise the

investigation but also the activities pertaining to identification of suspects and gathering of statements and evidence. The prosecutor also renders decisions concerning granting of immunity in accordance with this law, concerning requests for information from state bodies, legal and physical persons, issues summons and orders, proposes the issuance of warrants, files and represents indictments before the court, submits legal remedies and performs other tasks as provided by the law.

4.1.3 Initiation and implementation of an investigation

The law establishes that all “officials and responsible persons“ in the government authorities in BiH, public companies and institutions are obliged to report criminal acts when they are informed about them. It also stipulates that each citizen should report criminal acts. The report should be made to the prosecutor, verbally or in writing. The filing of a false report is an act punishable by law. If the prosecutor decides not to open an investigation, he or she is obliged to inform the complainant and the injured party about his or her reasons for such a decision within three days. The complainant and the injured party have the right to submit a complaint to the Office of the Prosecutor within eight days.

If the prosecutor finds that there are grounds for suspicion that the suspect has committed the criminal offence, he or she prepares an indictment and files it with the preliminary hearing judge, who may either admit it or reject some allegations or the whole indictment within the timeframe of eight days. The prosecutor has the right to file a new or amended indictment, which should be resubmitted for admission. After an indictment has been confirmed, the indictee and his or her defence attorney must be allowed free access to all documents and pieces of evidence gathered by the prosecutor.

The suspect becomes an indictee only after an indictment has been confirmed. After the indictment has been confirmed, the preliminary hearing judge informs the indictee that he or she will be invited to a plea hearing within the timeframe of 15 days.

If the suspect is at large, the indictment may suggest that the suspect be brought into custody. If the suspect is already held in custody, a motion for custody extension or release may be filed.

4.1.4 Detention and legal deadlines

The work of WCC largely depends on strict legal deadlines for detention of a suspect or an indictee. By law detention may be ordered in the following cases:

- if circumstances exist that suggest a possibility of flight;
- if there is a justified fear to believe that he will destroy, conceal, alter or falsify evidence or clues important to the criminal proceedings or if particular circumstances indicate that he will hinder the inquiry by tampering with witnesses, accessories or accomplices;
- if there is a fear of re-offending or completing an attempted crime;

Pre-trial custody is defined by a court decision, on the motion by a prosecutor.

Detention during investigation

If the prosecutor files a motion for custody order during the investigation, a judge may render a decision ordering custody for a maximum of one month following the date of deprivation of liberty. If the custody is to be extended after the one-month period, the judge can render a decision ordering custody extension for up to two months. If the proceeding concerns a criminal act punishable by an imprisonment for a term of ten years or longer (this includes war crimes), the custody can be extended for up to three months. By law, in highly complex cases the custody may be extended for another three months. This means that war crimes suspects can be held in custody for up to nine months during investigation.

An appeal against the custody extension decision is allowed. A non-trial chamber decides the appeal, but the appeal does not delay the execution of the decision. If, before the expiration of the deadlines referred to above, the indictment is not confirmed, the suspect shall be released.

Detention after confirmation of an indictment

After the confirmation of indictment, the detention may not last longer than three years in the case of a criminal offence for which a punishment of long-term imprisonment is prescribed and not longer than two years in the case of a

criminal offence for which a punishment of imprisonment for a term exceeding ten years may be imposed. Both situations apply also to war crimes cases.

The review of justification of the detention is carried out every two months. These decisions may be appealed, although the appeals shall not delay the execution of these decisions. Unless a first instance verdict is pronounced within the period of three years, the detention shall be terminated and the indictee released.

If there are circumstances indicating that the suspect or indictee might flee, hide or go to an unknown place, the court may place the suspect or indictee under house arrest, order a temporary withdrawal of travel documents and confiscation of personal identification documents. These orders may replace the decisions ordering custody or custody extension.

In addition, "when the circumstances of the case so indicate" the court may order a number of prohibiting measures such as prohibition from visiting certain places or areas, prohibition from meeting certain persons, order to report occasionally to a specified state authority etc.

These measures cannot restrict the right of the suspect or indictee to communicate with his or her defence attorney, nor to live in his or her place of residence and see members of his or her family and close relatives.

In addition to a judge, the prosecutor can exceptionally also render a decision ordering temporary withdrawal of travel documents and ID card in special cases involving a criminal offence for which a prison sentence of ten years or more severe punishment may be pronounced. In the course of an investigation, the prosecutor should immediately inform the competent judge who shall decide about the order within 72 hours. In case that judge fails to issue the said order, the travel documents and the identity card shall be returned.

Custody during the appellate procedure

The detention may last for a maximum of 12 months after the pronouncement of the first instance verdict. Unless the second instance decision either modifying or confirming the first instance decision is reached within this period, the detention shall be terminated and the indictee released.

4.1.5 The role of the defence

Every suspect has a fundamental right to a fair trial. Indictees are entitled to the following rights before the Court of BiH:

- the right to attorney free of charge (however, not in every case)
- the right to a fast and fair trial
- the right to an impartial trial
- the right to the appropriate time and place needed for preparation of defence
- equality of arms
- the right to be considered innocent until proven guilty by the prosecutor
- the right of the defence to examine all witnesses

By the Criminal Procedure Code of BiH, the defence is mandatory if an indictment has been filed for a criminal offence for which a prison sentence of ten years or more may be pronounced. A defence attorney shall be appointed in case the indictee cannot engage one. The court appoints an attorney upon issuance of an indictment at the latest. The defence attorney's core responsibility is to take all necessary steps to protect the interests of the indictee and to keep secret all the information the indictee shares with him or her.

Also, the attorney is obliged to present only his or her true knowledge about the facts and may also remain silent over facts detrimental to his or her client. This means that the defence counsel is obliged to make a contribution to the establishment of all the facts in favour of the defendant. Under a new Criminal Procedure Code, the adverse parties to the procedure (prosecution and defence) are given an opportunity during the main trial to present alternately their arguments and critically refer to each other's arguments and refute them by evidence or counter-argument. Also, all the parties to the procedure, including the defence counsel, may also examine and cross-examine witnesses and court-experts.



4.1.6 Guilty plea, plea bargaining and plea agreement

Upon confirmation of an indictment and its delivery to the indictee, he or she is summoned to enter a plea within 15 days to the preliminary hearing judge, in the presence of a prosecutor and the defence council. If the accused does not enter a plea, the preliminary hearing judge writes in the report that the accused denies his or her guilt. If the accused does not plead guilty, the case is referred to the trial chamber for the main trial which must begin within 60 days. This deadline may be extended for 30 days. If the accused pleads guilty, the case is referred to the trial chamber that schedules hearing.

The defendant and his or her attorney on one side - and the prosecutor on the other - may negotiate conditions for the defendant to plead guilty to the crime he or she is charged with in return for reduction of the severity of the charges below the minimal punishment prescribed by law. An agreement or a plea bargain is made in writing, which the trial chamber may accept or reject. If the trial chamber accepts the plea bargain, the chamber informs all the parties to the procedure accordingly and the case is referred to the main hearing.

4.1.7 Joinder and separation of proceedings

Like the tribunal in The Hague, the WCC may also make a decision to join a number of cases into a single case of several individuals accused of the same or similar crimes.

According to the Criminal Procedure Code, the court may decide to conduct a single procedure and reach one verdict for one person found guilty of multiple crimes or in cases involving a number of perpetrators of the same crime. The same article stipulates the possibility to conduct joint proceedings if several persons are charged with several crimes if there is a relation between those offences. If individual proceedings are already pending against several persons in connection with the same criminal offence, the court may also decide on the joinder of proceedings.

The panel of judges makes a decision on the joinder of proceedings and no appeal may be made against that decision. The court may also decide on the separation of proceedings for individual criminal offences, or against individual indictees and to complete them separately if there are important reasons for that or for reasons of purposefulness. The decision may not be made at any time before the completion of the main hearing and may not be appealed.

4.1.8. The main trial

The main trials taking place before WCC are public and can be attended by all adults, except when the Trial Chamber renders a decision excluding the public.

The new way of conducting the main trials enables all parties to have better control of the court proceedings, while the judge loses a leading role in examination of witnesses, court experts and the indictee (if the indictee decides to testify).

The obligation of the judge - i.e. the chamber of judges and their presiding judge under the law - is to preside over the main hearing, to take care of a comprehensive and detailed hearing, the establishment of the truth, to prevent delays, to decide on parties' motions. All the decisions made during the main hearing are announced and entered in the main trial record.

A chamber of judges may exclude a person, including the accused, from the courtroom if that person disrupts order. If the prosecutor, the defence attorney, injured party, legal representative, injured party's proxy, a witness, expert,

interpreter or another person present in the main trial persists in disruptive conduct and disobeys orders of the judge, the chamber will warn them. If the warning is ineffective, the panel of judges may order that the person in question be removed from the courtroom and be fined up to 10,000 KM.

Should a defence attorney or a person with the power of attorney of the injured party continue to disrupt the order even after being fined, the panel of judges may prevent him or her from further representation at the main trial and fine him or her up to 30,000 KM.

If the prosecutor, the defence attorney, a witness or an expert fail to appear at the main trial for no legitimate reason, they may be fined 5,000 KM.

If a witness refuses to give a testimony for no justified reason even after he or she has been warned of the consequences, he or she may be fined up to 30,000 KM.

If the accused fails to attend the trial, the chamber of judges will order that the he or she be apprehended and brought in at the next session. If the accused avoids appearing at the main trial, the panel of judges may order that the accused be placed in custody.

4.1.9 Presentation of evidence

In accordance with the Criminal Procedure Code, parties to the procedure and the defence attorney have the right to invite witnesses and present evidence. Unless the judge or the panel, in the interest of the justice, decides otherwise, the evidence at the main trial shall be presented in the following order:

- a) evidence of the prosecution;
- b) evidence of the defence;
- c) rebutting evidence of the prosecution;
- d) evidence in answer to the prosecutor's rebutting evidence;
- e) evidence whose presentation was ordered by the judge or the chamber;
- f) all relevant information that may help the judge or the chamber in fashioning the appropriate criminal sanction, if the accused is found guilty on one or more counts in the indictment.

During the presentation of evidence, direct examination, cross-examination and redirect examination is allowed. The party who called a witness directly examines the witness in question, but the judge or the chamber of judges may at any stage of the examination ask the witness appropriate questions.

Upon the completion of the evidentiary proceedings, the panel of judges calls for the prosecutor, injured party, defence attorney and the accused to present their closing arguments. The last words shall be always given to the accused. The court then retires for deliberation and voting for the purpose of reaching a verdict.

4.1.10 Appeals

Parties to the procedure may file an appeal against the first instance verdict within 15 days from the date of delivery of the verdict. This deadline can be extended for another 15 days in more complex matters. A chamber of the Appellate Division shall consider the appeals.

In considering the appeal, the chamber may reject the appeal for reasons of timeliness or permissibility, dismiss the appeal as unwarranted, or uphold the appeal, modify or revoke the verdict and, if necessary, order reopening of proceedings.

4.2. Criminal offences as defined by the Criminal Code of BiH

Genocide - Article 171: Whoever, with an aim to destroy, in whole or in part, a national, ethnical, racial or religious group, orders the perpetration or perpetrates any of the following acts: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of one group to another group.

Punishment: imprisonment for a term not less than ten years or long-term imprisonment.

Crimes against humanity - Article 172: Whoever, as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack perpetrates any of the following acts: depriving another person of life (murder); extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe

deprivation of physical liberty in violation of fundamental rules of international law; torture; coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape), sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity; persecutions against any identifiable group or community of people on political, racial, national, ethnic, cultural, religious or sexual gender or other grounds; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health.

Punishment: imprisonment for a term not less than ten years or long-term imprisonment.

War crimes against civilians - Article 173: Whoever in violation of rules of international law in time of war, armed conflict or occupation, orders or perpetrates any of the following acts: attack on civilian population, settlement, individual civilians or persons unable to fight, which results in the death, grave bodily injuries or serious damaging of people's health; attack without selecting a target, by which civilian population is harmed; killings, intentional infliction of severe physical or mental pain or suffering upon a person (torture), inhuman treatment, biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation, immense suffering or violation of bodily integrity or health; dislocation or displacement or forced conversion to another nationality or religion; coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape) or forcible prostitution, application of measures of intimidation and terror, taking of hostages, imposing collective punishment, unlawful taking to concentration camps and other illegal arrests and detention, deprivation of rights to fair and impartial trial, forcible enlistment in armed forces of enemy's army or in its intelligence service or administration; forced labour, starvation of the population, property confiscation, pillaging, illegal and self-willed destruction and stealing on large scale of property that is not justified by military needs, taking an illegal and disproportionate contribution or requisition, devaluation of domestic money or the unlawful issuance of money,

Punishment: imprisonment for a term not less than ten years or long-term imprisonment.

The same punishment will be imposed on whomever in violation of rules of international law, in the time of war, armed conflict or occupation, orders or perpetrates any of the following acts: attack against objects specifically protected by the international law, as well as objects and facilities with dangerous power, such as dams, embankments and nuclear power stations; targeting indiscriminately of civilian objects which are under specific protection of international law, of non-defended places and of demilitarized zone; long-lasting and large-scale environment devastation, which may be detrimental to the health or survival of the population.

Whoever in violation of the rules of international law applicable in the time of war, armed conflict or occupation, orders or carries out as an occupier resettlement of parts of his civilian population into occupied territory, shall also be punished by imprisonment for a term not less than ten years or long-term imprisonment.

War Crimes against the Wounded and Sick- Article 174: Whoever, in violation of the rules of international law in the time of war or armed conflict, orders or perpetrates in regard to wounded, sick, shipwrecked persons, medical personnel or clergy, any of the following acts: depriving another persons of their life (murder), intentional infliction of severe physical or mental pain or suffering upon persons (torture), inhumane treatment, including therein biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation; causing of great suffering or serious injury to bodily integrity or health; unlawful and arbitrary destruction or large-scale appropriation of material, means of medical transport and stocks of medical facilities or units which is not justified by military needs.

Punishment: imprisonment for a term not less than ten years or long-term imprisonment.

War Crimes against Prisoners of War- Article 175: Whoever, in violation of the rules of international law, orders or perpetrates in regard to prisoners of war any of the following acts: depriving another persons of their life (murder), intentional infliction of severe physical or mental pain or suffering upon persons (torture), inhumane treatment, including therein biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation;

causing of great suffering or serious injury to bodily integrity or health; compulsive enlistment into the armed forces of an enemy power, or deprivation of the right to a fair and impartial trial.

Punishment: imprisonment for a term not less than ten years or long-term imprisonment.

Organising a Group of People and Instigating the Perpetration of Genocide, Crimes against Humanity and War Crimes - Article 176: Whoever organises a group of people for the purpose of perpetrating aforementioned criminal offence.

Punishment: imprisonment for a term not less than ten years or long-term imprisonment.

Whoever becomes a member of a group of people referred to in this paragraph, shall be punished by imprisonment for a term between one and ten years. A member of the group of people who exposes the group before he has perpetrated a criminal offence in its ranks or on its account, shall be punished by a fine or imprisonment for a term not exceeding three years, but may also be released from punishment.

Whoever calls on or instigates the perpetration of the mentioned criminal offence shall be punished by imprisonment for a term between one and ten years.

Unlawful Killing or Wounding of the Enemy- Article 177: Whoever in violation of the rules of international law in the time of war or armed conflict kills or wounds an enemy who has laid down arms or unconditionally surrendered or has no means of defence.

Punishment: imprisonment for a term between one and ten years.

If the killing has been perpetrated in a cruel or insidious way, out of greed or from other low motives, or if more persons have been killed, the perpetrator shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

Whoever, in violation of the rules of international law at the time of war or armed conflict, orders that there be no surviving enemy soldiers in a fight, or whoever fights against the enemy on such basis, shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

Marauding the Killed and Wounded at the Battlefield - Article 178: Whoever orders the unlawful appropriation of belongings from the killed or wounded on battlefield, or who carries out such appropriation.

Punishment: imprisonment for a term between six months and five years.

If the criminal offence has been perpetrated in a cruel manner, the perpetrator shall be punished by imprisonment for a term between one and ten years.

Violating the Laws and Practices of Warfare - Article 179: Whoever in time of war or armed conflict orders the violation of laws and practices of warfare, or whoever violates them. Violations of laws and practices of warfare referred to in paragraph 1 of this Article shall include: use of poison gases or other lethal substances or agents with the aim to cause unnecessary suffering; ruthless demolition of cities, settlements or villages or devastation or ravaging not justified by military needs; attack or bombarding by any means of undefended cities, villages, residences or buildings; confiscation, destruction or deliberate damaging of establishments devoted to for religious, charitable or educational purposes, science and art; historical monuments and scientific and artistic work; plundering and looting of public and private property.

Punishment: imprisonment for a term not less than ten years or long-term imprisonment.

Individual Criminal Responsibility - Article 180: A person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of the above mentioned criminal offence shall be personally responsible for the criminal offence.

The official position of any accused person, whether as Head of State or Government or as a responsible Government official person, shall not relieve such person of criminal responsibility nor mitigate punishment.

The fact that any of the criminal offences was perpetrated by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. The fact that a person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the court determines that justice so requires.

Violating the Protection Granted to Bearers of Flags of Truce - Article 181: Whoever in violation of the rules of international law in time of war or armed conflict insults, maltreats or detains the bearer of the flag of truce or his escort, or prevents them from returning, or in any other way violates their privilege of inviolability.

Punishment: imprisonment for a term between six months and five years.

Unjustified Delay of the Repatriation of Prisoners of War - Article 182: Whoever, in violation of the rules of international law, after the termination of a war or armed conflict, orders or conducts an unjustifiable delay in the repatriation of prisoners of war or civilians

Punishment: imprisonment for a term between six months and five years.

Destruction of Cultural, Historical and Religious Monuments - Article 183: Whoever, in violation of the rules of international law at the time of war or armed conflict, destroys cultural, historical or religious monuments, buildings or establishments devoted to science, art, and education, humanitarian or religious purpose.

Punishment: imprisonment for a term between one and ten years.

If a clearly distinguishable object, which has been under special protection of the international law as people's cultural and spiritual heritage, has been destroyed by the criminal offence, the perpetrator shall be punished by imprisonment for a term not less than five years.

Misuse of International Emblems - Article 184: Whoever misuses or carries without authorisation the flag or emblem of the Organisation of the United Nations, or the emblem or flags of the Red Cross, or symbols corresponding to them, or any other international symbols recognized as the protection of certain objects from military operations

Punishment: a fine or imprisonment for a term not exceeding three years. Whoever perpetrates the criminal offence during a state of war or imminent war danger, shall be punished by imprisonment for a term between six months and five years.



ICTY

4.3 Accessory to persons indicted by the ICTY

The BiH Criminal Code recognises failure to report and/or support to persons indicted for war crimes by the ICTY as a crime. Under the provisions of this code, the person who having knowledge of the whereabouts of a person indicted by the ICTY, and having knowledge of the fact of such indictment, fails to report such whereabouts, although the timely discovery of the wanted person depends on such report, will be punished by imprisonment for a term not exceeding three years.

No punishment for the failure to inform of a person referred to above shall be imposed on a person who is the spouse, cohabiting partner, first-line blood relative, brother or sister, adoptive parent or adopted child or their spouse or cohabiting partner, or defence lawyer, medical doctor or confessional priest of the indicted person.

Whoever renders assistance to, or hides a person indicted by the ICTY or aids him to elude discovery, will be punished by imprisonment for a term not exceeding three years.

4.4. Transfer of cases from ICTY to the BiH Prosecutor's Office

Transfer of cases and use of evidence gathered by ICTY is regulated by the Law on Transfer of ICTY Cases. Under this law, if the ICTY transfers a case in which an indictment is confirmed under Rule 11 bis of the Rules of Procedures and Evidence gathered by ICTY, a criminal prosecution under the indictment is taken over by the BiH Prosecutor.

The BiH Prosecutor will adapt the indictment issued by ICTY to the BiH Criminal Procedure Code. The prosecutor presents an adapted indictment to the War Crimes Chamber in the BiH Court, which the court accepts if it is established that such an indictment is adapted in an appropriate way. If the BiH prosecutor adds new counts or indictees to the indictment, the BiH court will confirm the indictment only in regard to the new counts or indictees.

If ICTY referred an unconfirmed indictment to the BiH Prosecutor's Office, the BiH Prosecutor's Office will take over criminal prosecution under the BiH Criminal Procedure Code. In all cases, the ICTY will be informed about a final and binding verdict reached during the criminal procedure.

The same law regulates the take-over of evidence from ICTY. In principle, the evidence gathered under the Statute and the Rules of Procedure and Evidence of ICTY may be used before the courts of law in BiH. However, the courts may not base their verdicts exclusively or in a decisive degree on the previous testimonies (if the witnesses did not give the same testimonies at the main trial). Under this law, the evidence (gathered by the ICTY Prosecutor) which may be used before national courts in a manner determined in the same law, may be: testimonies by witnesses to ICTY; testimonies by experts to ICTY; testimonies given to ICTY officials; and documentation and forensic findings gathered by ICTY.

Only original documentation, certified copies and forensic findings obtained by ICTY may be used in a procedure conducted before the WCC and is considered as if obtained by the national authorities. This law provides for the possibility of concluding a separate agreement between ICTY and the BiH Council of Ministers in regard to technical assistance relevant for transfer of cases from the ICTY to national authorities.

By law, upon the indictee's arrival from The Hague to Sarajevo, the Court of BiH must render a decision ordering custody or releasing the indictee not later than 48 hours after a motion for custody order was filed by the prosecution.

4.4.1. Rule 11 bis of the Rules of Procedure and Evidence of ICTY

Regarding the transfer of cases from the ICTY to domestic jurisdictions, it is important to note Rule 11 bis of the ICTY Rules of Procedure and Evidence since it also refers to this issue, in addition to the above mentioned law. Rule 11 bis is a part of the Rules of Procedures and Evidence of ICTY which regulates transfer of cases to other jurisdictions.

Under this rule, after an indictment has been confirmed and prior to the commencement of trial, irrespective of whether or not the accused is in the custody of the tribunal, the president may appoint a bench of three Permanent Judges selected from the Trial Chambers ("Referral Bench"), which solely and exclusively shall determine whether the case should be referred to the authorities of a state:

- in whose territory the crime was committed; or
- in which the accused was arrested; or
- having jurisdiction over such case and being willing and adequately prepared to accept such a case, so that those authorities should forthwith refer the case to the appropriate court for trial within that state.

The Referral Bench may order such referral proprio motu or at the request of the prosecutor, after having given to the prosecutor and, where applicable, the accused, the opportunity to be heard and after being satisfied that the accused will receive a fair trial and that the death penalty will not be imposed or carried out.

In determining whether to refer the case the Referral Bench shall consider the gravity of the crimes charged and the level of responsibility of the accused.

Upon issuance of an order under this Rule:

- the accused, if in the custody of the tribunal, shall be handed over to the authorities of the state concerned;
- the Referral Bench may order that protective measures for certain witnesses or victims remain in force;
- the prosecutor shall provide to the authorities of the state concerned all of the information relating to the case which the prosecutor considers appropriate and, in particular, the material supporting the indictment;
- the prosecutor may send observers to monitor the proceedings in the national courts on her behalf

The Referral Bench may issue a warrant for the arrest of the accused, which shall specify the state to which he is to be transferred to trial.

At any time after an order has been issued pursuant to this rule and before the accused is found guilty or acquitted by a national court, the Referral Bench may, at the request of the prosecutor and upon having given to the state authorities concerned the opportunity to be heard, revoke the order and make a formal request for deferral.

Where an order issued pursuant to this rule is revoked by the Referral Bench, it may make a formal request to the state concerned to transfer the accused to the seat of the tribunal and the state shall accede to such a request without delay. The Referral Bench or a judge may also issue a warrant for the arrest of the accused.

A Referral Bench has the powers of, and insofar as applicable will follow the procedures laid down for a Trial Chamber under the rules.

The accused or the prosecutor have the right to appeal the Referral Bench's decision whether to, or against referred of the case. Notice of appeal shall be filed within 15 days of the decision unless the accused was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the accused is notified of the decision.

4.5. Witness protection

4.5.1 The Law on Protection of Witnesses Under Threat and Vulnerable Witnesses

Witness protection is defined by the Law on Protection of Witnesses Under Threat and Vulnerable Witnesses. This law defines which witnesses may be regarded as witnesses under threat or vulnerable witnesses.

A vulnerable witness is a witness who has been severely physically or mentally traumatised by the events of the offence.

A witness under threat is a witness whose personal security or the security of his family is endangered through his or her participation in the proceedings (as a result of threats, intimidation or similar actions pertaining to his or her testimony) or a witness who believes there is reasonable ground for fear that such a danger could be the result of his or her testimony.

By law, a witness under threat and a vulnerable witness are entitled to legal assistance. However, there is no institution at the state level authorised to provide such assistance. Therefore the parties inviting the witnesses and the court are the only instances providing legal assistance to these witnesses.

Protection measures provided to such witnesses in court procedures include, in addition to providing for the anonymity, psychological, social and professional assistance. A protected witness has to be informed at the protected witness hearing about the following:

- he will be heard as a protected witness;
- his identity shall not be revealed to any person other than the members of the chamber and the minute taker of the chamber;
- he is not obliged to answer questions that would indicate his identity or the identity of the members of his family.

The witness protection measures, defined by the court, include, in addition to the witness identity protection, the keeping of the record and the facts for up to 30 years; exemption of the court procedure from usual procedures, allowing the witness to testify via video-link conference, behind a screen or other protection measures such as voice distortion, public exclusion, blackout of picture on video recording.

The law also stipulates that the witness may be removed from the courtroom where there is a justified fear that the presence of the accused will affect the ability of the witness to testify fully and correctly. In exceptional circumstances, if revealing some or all of the personal details of a witness or other details would contribute to identifying a witness, and would seriously endanger the witness under threat, the preliminary proceedings judge may, upon the motion of the prosecutor, decide that some or all of the personal details of a witness, may continue to be kept confidential after the indictment is issued.

The record of the witness protection hearing shall not contain information relating to the identity of the protected witness. The record shall employ a pseudonym for the witness, as determined by the chamber, which shall be used during the criminal proceedings and in the decisions of the court.

4.5.2 Disclosing the identity of a protected witness

Data on witness protection measures constitutes an official secret. The Criminal Code of BiH – Article 240, defines this offence. According to this article: whoever without authorisation discloses data on the identity of a protected witness or reveals information that can lead to the discovery of the identity of a person who has given or is about to give evidence before the state institutions and which, by law, must not be disclosed or has been declared a secret data by a decision of the Court of BiH, shall be punished by imprisonment for a term between three months and three years.

If a judge of the Court of BiH or other official commits this offence, he or she shall be punished by imprisonment for a term between six months and five years.

The person who, without authorisation, makes public, enables publication or renders accessible data or information referred to above, or the person who accidentally obtains revealed information communicates or renders accessible this data or information shall be punished by a fine or imprisonment not exceeding one year. The law stipulates that the person who obtains the information, without authorisation, must reveal the source of information and manner of obtaining data at the request of the competent body. If the person fails to do so, he or she shall be punished by imprisonment for a term between one and eight years. The law also stipulates that the person who accidentally obtains such information must reveal a source at the request of the competent body, or he or she shall be punished by a fine and/or imprisonment for a term not exceeding three years.

4.5.3. Giving false statements

Article 235 of the Criminal Code of BiH stipulates that a witness, translator or interpreter who makes a false statement before the Court of BiH shall be punished by a fine or imprisonment for a term not exceeding three years.

The same punishment shall be imposed to a person who gives false testimony in presentation of evidence by hearing a party in a civil action or administrative proceedings before the institutions of Bosnia and Herzegovina if the decision concerning the proceedings in question is based on such testimony.

If the false testimony is given in the course of criminal procedure, the perpetrator shall be punished by imprisonment for a term between six months and five years. If particularly grave consequence for the indtee occur as a result of this criminal offence, the perpetrator shall be punished by imprisonment for a term between one and ten years.

The law stipulates that, if the person voluntarily withdraws his or her false statement before the final decision has been made by the court, he or she shall be fined or sentenced to imprisonment for a term of six months, but may also be released from punishment.

4.5.4 Failure to inform of a person indicted by the ICTY

The Criminal Code of BiH, Article 231, stipulates that whomever, having knowledge of the whereabouts of a person indicted by the ICTY, fails to report it, although the timely discovery of the person depends on such report, shall be punished by imprisonment for a term not exceeding three years.

No punishment for the failure to inform of a person referred to above shall be imposed on a person who is the spouse, cohabiting partner, blood relative, brother or sister, adoptive parent or adopted child or their spouse or cohabiting partner, or defence lawyer, medical doctor or confessional priest of the indicted person.

Article 231a stipulates that whoever, having knowledge of the whereabouts of a mass grave, fails to report it shall be punished by imprisonment for a term not exceeding three years.

4.5.5 The BiH Law on Witness Protection Programme

Regarding witness protection, it is worth mentioning one other law which regulates the same issue: that is the Law on Witness Protection programme of Bosnia and Herzegovina which stipulates that the witness protection programme is implemented by the State Investigation and Protection Agency (SIPA) after a procedure is established and a risk assessment made.

This law ensures an effective witness protection during and after criminal proceedings. A witness may be provided with protection only with his or her consent and if he or she or a member of his or her family may face a threat to life, health or freedom in connection with his/her will to testify and if he or she is suitable for witness protection measures. A witness may be provided with protection if a threat is noticed upon completion of criminal proceedings, i.e. if the danger is a consequence of his or her testimony given in the course of the proceedings.

Under the law, a witness protection unit has been formed within SIPA. The unit maintains close cooperation with the protected witness support section within the Registry in the BiH Court, although it makes all the decisions independently from that section upon careful consideration of all circumstances. The unit staff have undertaken a comprehensive training organised by the witness protection support unit in the Office of the Registrar in cooperation with the ICTY.

This unit, supervised by international witness protection experts, has developed, in cooperation with SIPA staff, protection measures which SIPA's witness protection unit will implement. The Registrar's Office has also mediated in signing an agreement on relocation of protected witnesses outside BiH with a series of foreign governments.

The protection measures implemented by SIPA under this law are the following:

Change of identity - at the request by the witness protection unit and in compliance with the data provided by that unit, the public authorities may issue or change certificates and other documents of the protected witness on a temporary basis, which are necessary for the creation and maintenance of the temporarily changed identity. Such a person may take part in legal matters with his/her temporarily changed identity. Upon termination of the protection measure, the witness protection unit will withdraw the documents of a new identity which are no longer needed.

Physical protection - provided by the Witness Protection Unit.

The witness protection programme may also be implemented before, in the course of and after a court procedure and after an operating and security procedure necessary for the witness's inclusion in the witness protection programme. The protection measures which are implemented pursuant to both laws are applied, under the same laws, throughout BiH and this ensures secure and unimpeded testimonies and facilitates the work of the Court of Bosnia and Herzegovina.

The witness protection programme is implemented only in the cases which involve a high level of vulnerability and risk for the witnesses' lives.

5. BiH Court Support Network

The BiH Court Support Network cooperates with non-governmental organisations (NGOs) and groups from the whole country of Bosnia and Herzegovina, with the aim of apprising the public about the work of the Court of BiH.

Non-governmental organisations manage the four information centres in Tuzla, Mostar, Sarajevo, Bijeljina and Prijedor and have an established cooperation with 130 NGOs. Each centre has opened a telephone line for public inquiries.

Mostar: +387 (0)36 581 100

Tuzla: +387 (0)35 249 150

Prijedor: +387 (0)52 242 590

Sarajevo: +387 (0)33 554 215

Bijeljina: +387 55 210 851

6. High Judicial and Prosecutorial Council

The BiH High Judicial and Prosecutorial Council (the council) was established as a national body under a law passed by the BiH Parliamentary Assembly and on June 1, 2004. Protecting the public and judicial system from judges and prosecutors who fail to adhere to their professional and ethical responsibilities is one of the council's important functions. The law provides the council with clear and transparent criteria for disciplining judges and prosecutors.

The council's jurisdiction for determining disciplinary liability and imposing disciplinary measures includes all prosecutors, judges, court presidents, lay judges and reserve judges in all prosecutors offices and courts at the State, Entity, Cantonal, District, Basic and Municipal levels in Bosnia and Herzegovina, excluding the Constitutional Courts of the State and Entities of Bosnia and Herzegovina. Office of Disciplinary Council (ODC) has oversight responsibility over the Council's disciplinary activities, or more broadly, protection of the public and judicial system, and reports directly to the Council.

ODC is in charge by law of receiving, investigating and prosecuting complaints of misconduct against judges and prosecutors.

The council was created in part to ensure that judges and prosecutors carry out their official duties in a manner that is consistent with their ethical and professional responsibilities. The law contains a comprehensive list of more than 20 disciplinary offences that a judge or prosecutor may commit if he or she acts in a manner that is inconsistent with the minimal standards of professional and ethical behaviour.

Accountability requires disciplinary action, and upon determination of the judge's or prosecutor's disciplinary liability, imposition of appropriate disciplinary measures.

Judges and prosecutors are expected to independently and impartially uphold the constitutions and laws, and to act in a manner that is consistent with their ethical and professional responsibilities. Disciplinary offence include:

- acting with bias and prejudices;
- accepting gifts or remuneration for the purpose of improperly influencing the decisions or activities of the judge, including also when the gift or remuneration merely creates the appearance of improper influence;
- exploiting his or her position as a judge or a prosecutor in order to obtain unjustified advantages for himself or herself or for other persons;
- not disqualifying himself or herself from hearing a case when a conflict of interest exists;
- neglect of official duties;
- being engaged in activities that are incompatible with the judicial function;
- failure to act in compliance with decisions, orders or requests by the council.

Before assuming their duties, judges and prosecutors take a declaration of office, under which they in essence promise to perform their official duties in accordance with the constitution and laws, to make decisions conscientiously, responsibly and independently, as well as to protect the freedoms and rights of individuals guaranteed by the constitution of BiH. If the office of disciplinary council proves that a judge or a prosecutor has committed a disciplinary offence, the council may issue disciplinary measures against the judge or the prosecutor ranging from a written warning issued for a relatively minor offence to dismissal in the case of a serious offence. In 2007, in the course of the first six months, 764 complaints of misconduct were lodged against judicial personnel including: 79 court presidents, 394 regular and 26 reserve judges, 111 prosecutors (including 20 chief prosecutors, 13 deputies and 78 prosecutors). The number of pending complaints received by the ODC is more than 1,700.

The work of a judge or prosecutor always involves making difficult decisions, and those affected by these decisions will not always agree with the judge's or prosecutor's handling of a case or decisions made. The fact that someone may not agree with how a case was handled or decided does not mean that the judge or prosecutor's conduct was unethical or unprofessional and should be cause for disciplinary action. Before the ODC will consider taking disciplinary action against a judge or prosecutor, the claim of misconduct must involve factual law.

Accordingly, before lodging a complaint of misconduct against a judge or prosecutor, a complainant must ask if their dissatisfaction or claim of misconduct is in reality about the actual conduct of the judge or prosecutor, or really only about a decision made by the judge or prosecutor. If the dissatisfaction is about a decision of the judge or prosecutor, one should seek advice and guidance of a lawyer to help one decide whether or not to appeal the decision.

Secondly, only if one has first determined that the claim or dissatisfaction is in fact about the conduct of the judge or prosecutor (and not about his or her decision), is it then appropriate to consider lodging a complaint of misconduct with ODC. It should also be noted that assertions in complaints of misconduct which set forth claims that a judge or prosecutor delayed a case or committed procedural violations, requires first that ODC establish and prove that such delay or procedural violation was unjustified, and secondly, that they also form a pattern of recurrent delays or procedural violations committed by the judge or prosecutor.

Accordingly, without additional evidence to prove intentional and unethical conduct, such as that the court or prosecutorial proceeding was intentionally delayed or procedural violation intentionally committed, due to bias, lack of impartiality, etc., a single instance of delay or procedural violation is typically not sufficient proof of a disciplinary offence for which the judge or prosecutor may be found liable.

The ODC cannot guarantee or promise such confidentiality. Also, when disciplinary proceedings are initiated, the ODC must exchange relevant information with the accused judge or prosecutor, as the judge or prosecutor is entitled to be informed of the charges and evidence against him/her, so that a defence to the charges can be prepared.

A complaint of misconduct may be filed by anyone, preferably in writing and addressed to ODC. A form for complaints is also available and may be obtained from the council's website (<http://www.hjpc.ba/>). The complaint should be submitted as soon as one becomes aware of the misconduct, while everyone's recollection of the facts are fresh; before any relevant documents are lost or destroyed; and, before the statute of limitations period has expired.

The ODC must initiate a disciplinary proceeding before the council within five years from the date of the alleged misconduct.

Address correspondence to:

High Judicial and Prosecutorial Council of BiH
Office of the Disciplinary Council
Kraljice Jelene 88
71000 Sarajevo
Bosnia and Herzegovina

The written complaint should include all-important information, including dates, and to ensure legibility should be typewritten or printed. If available, legible copies of letters, contracts, court decisions or other documents that are involved with the claim(s) should be included with the complaint. Send only copies of documents that do not need to be authenticated.

If our review shows that there is a reasonable basis to believe that the judge or prosecutor may have committed a disciplinary offence, a detailed and thorough investigation of the facts and circumstances will be conducted. An investigation involves obtaining all relevant documentation and conducting interviews with people who have information about your claim(s), including possibly yourself, and interviewing the named judge or prosecutor. Both sides of the story need to be heard, and all of the evidence evaluated before making a final determination as to whether or not your complaint is justified.

When all of the relevant information have been obtained:

- 1) in serious and urgent cases, a request may be lodged with the council for immediate suspension of the judge or prosecutor. The suspension of a judge or prosecutor may be ordered for any period, not to exceed the date of the finalisation of the disciplinary proceedings that formed the basis of the suspension;
- 2) if the investigation shows that there is evidence to substantiate and prove your claim(s) of misconduct against the judge or prosecutor, ODC will either: (i) seek the judge or prosecutor's resignation from office; (ii) enter into an agreement with the judge or prosecutor for a final resolution and disposition of the disciplinary matter; or, (iii) initiate official disciplinary proceedings by filing a disciplinary complaint with the council;
- 3) if our evaluation shows that your complaint is unfounded or cannot be substantiated and proven, ODC will not take disciplinary action against the judge or prosecutor.

A disciplinary panel composed of members of the council makes the final decision on all disciplinary matters taken by ODC against judges and prosecutors before the council.

The ODC is committed to carrying out its official duties independently, in a fair and impartial manner, and within a reasonable period of time. You should be aware that individuals who knowingly make and lodge false or frivolous complaints of misconduct against a judge or prosecutor may be subject to penalties as provided for under law.

7. Trials ongoing before the War Crimes Chamber of the Court of BiH (as of August 2007)

Sefik Alic – charged with war crimes against prisoners of war; individual and command responsibility. Former member of the Army of BiH. The trial started in April 2007 (concerning Bosanska Krajina)

Zdravko Bozic, Mladen Blagojevic, Zeljko Zaric and Zoran Zivanovic – charged with crimes against humanity; individual responsibility. Former members of Republika Srpska Army (VRS). The trial got underway in April 2007. (Bratunac)

Milos Stupar, Milenko Trifunovic, Petar Mitrovic, Brano Djinic, Aleksandar Radovajovic, Slobodan Jakovljevic, Miladin Stevanovic, Velibor Maksimovic, Dragisa Zivanovic, Branislav Medan, Milovan Matic – charged with genocide; individual responsibility. Former VRS members. The trial got underway in March 2006. (Kravica)

Zeljko Lelek – charged with crime against humanity; individual responsibility. Former member of the Bosnian Serb police in Visegrad. The trial got underway in March 2007. (Visegrad)

Zdravko Mihaljevic – charged with crimes against humanity; individual responsibility. Former HVO member. The trial started in May 2007. (Kiseljak)

Jadranko Palija – charged with crimes against humanity; individual responsibility. Former VRS member. The trial commenced in March 2007. (Sanski Most)

Marko Radic, Dragan Sunjic, Damir Brekalo and Mirko Vracevic – charged with crimes against humanity; individual and command responsibility. Former HVO members. The trial got underway in April 2007. (Vojno)

Nenad Tanaskovic – charged with crimes against humanity; individual responsibility. Former member of reserve police forces of the Public Safety Centre in Visegrad. The trial started in January 2007. (Visegrad)

Pasko Ljubicic – charged with crimes against humanity, war crimes against civilians and violation of laws and practices of warfare; individual and command responsibility. Former HVO member. Referred to BiH by the ICTY in September 2006. The trial started in May 2007. (Central Bosnia)

Zeljko Mejacic, Momcilo Gruban, Dusan Fustar, Dusko Knezevic – charged with crimes against humanity; individual and command responsibility. Responsible officers in detention camps controlled by Republika Srpska authorities in the course of 1992. Referred to BiH by the ICTY in May 2006. The trial got underway in February 2007. (Omarska, Keraterm)

Savo Todorovic and Mitar Rasevic – charged with crimes against humanity; personal and command responsibility. Former superior officers in Foca detention camp controlled by Republika Srpska authorities. Referred to BiH by the ICTY in October 2006. The trial commenced in April 2007. (Foca)

Zijad Kurtovic – charged with war crimes against civilians; individual responsibility. Former member of the Army of BiH. The indictment was confirmed in May 2007. (Mostar)

Mirko Todorovic and Milos Radic – charged with crimes against humanity; individual responsibility. Former VRS members. The indictment was confirmed in July 2007. (Bratunac)

8. Indictments confirmed before the War Crimes Chamber (as of August 2007)

Milorad Trbic – charged with genocide; individual responsibility. The indictment was confirmed in July 2007. Referred to BiH by ICTY in June 2007. (Srebrenica)

Rajko and Ranko Vukovic – as former members of VRS both suspected of war crimes against civilians. Indictment confirmed in August 2007. (Foca)

Musajib Kukavica and Niset Gasalo – former members of the Army of BiH indicted for war crimes against civilians. In custody since March 2007. (Bugojno)

Sreten Lazarevic, Dragan Stanojevic, Mile Markovic and Slobodan Ostojic – former members of the RS police reserve formations indicted with war crimes against civilians. Prosecution requested transfer of case to a lower court. (Zvornik)

9. First instance verdicts

Nikola Andrun – charged with crimes against civilians; individual and command responsibility. Former HVO member. Sentenced to 13 years imprisonment by a first instance verdict pronounced in December 2006. (Dretelj)

Zoran and Goran Damjanovic – charged with war crimes against civilians; individual responsibility. Former members of the VRS army. The first instance verdict sentencing Zoran to 10 years and six months and Goran to 12 years imprisonment was pronounced in June 2007. (Sarajevo)

Zoran Jankovic – charged with crimes against humanity; individual responsibility. Former VRS member. Acquitted of counts by a first instance verdict pronounced in June 2007. (Zvornik)

Momcilo Mandic – charged with crimes against humanity; command responsibility. Former Minister of Justice of the Serb Republic of BiH. A verdict of release was pronounced in July 2007. (Sarajevo and Foca)

Radislav Ljubic – charged with crimes against humanity; individual responsibility. Former VRS member. Sentenced to ten years imprisonment by a first instance verdict pronounced in March 2007. (Rogatica)

Niset Ramic – charged with war crimes against civilians; individual responsibility. Former member of the Territorial Defence of BiH. Sentenced to a compound imprisonment for a term of 30 years by a first instance verdict pronounced in July 2007. The compound sentence includes the 20 years imprisonment to which Ramic was sentenced earlier. (Visoko)

Radmilo Vukovic – charged with war crimes against civilians; individual responsibility. Former VRS member. Sentenced to five years and six months imprisonment by a first instance verdict pronounced in April 2007. (Foca)

Marko Samardzija – charged with crimes against humanity; individual and command responsibility. In May, the Appellate Chamber revoked the first instance verdict originally sentencing him to 26 years imprisonment. Former VRS member. (Kljuc)

Gojko Jankovic – charged with crimes against humanity; individual and command responsibility. Former leader of a Serb paramilitary group. Sentenced to 34 years imprisonment by a first instance verdict pronounced in February 2007. Referred to BiH by the ICTY in December 2005. (Foca)

Kreso Lucic – charged with crimes against humanity; individual and command responsibility. Former member of the Military Police of the Croatian Defence Council (HVO). First instance verdict pronounced in September 2007 sentenced him to six years imprisonment. (Kresevo)

10. Second instance verdicts

Dragan Damjanovic – convicted, in July 2007, to 20 years long-term imprisonment for crimes against humanity; individual responsibility. Former VRS member. (Sarajevo)

Nikola Kovacevic – convicted, in July 2007, to 12 years imprisonment for crimes against humanity; individual responsibility. Former member of the VRS. (Sanski Most)

Abdulbim Maktouf – convicted, in April 2006, to five years imprisonment for war crimes against civilians; individual responsibility. Former member of the Army of BiH. (Travnik)

Dragoje Paunovic – convicted to 20 years imprisonment for crimes against humanity; individual and command responsibility. Former VRS member. (Rogatica)

Nedjo Samardzic – convicted to 24 years imprisonment for crimes against humanity in December 2006; individual responsibility. Former VRS member. (Foca)

Radovan Stankovic - convicted to 20 years imprisonment in April 2007; individual responsibility. Former VRS member. Escaped from prison in May 2007. (Foca)

Boban Simsic – convicted to 14 years imprisonment in August 2007; individual responsibility. Former member of the Public Safety Centre in Višegrad. (Visegrad)

11. Other cases

Milenko Glavas – suspected of crimes against civilians. Former VRS member. Arrested in August 2006, released in November 2006. Investigation underway. Former HVO member. (Kotor Varos)

Marinko Maric – suspected of war crimes against civilians. The indictment was confirmed in December 2006, but the suspect is currently on the run. Former VRS member. (Gabela)

Mihail Novalic – suspected by the prosecution of crimes against humanity, released from custody due to lack of evidence in June 2006. Former HVO member. (Repovci)

Enes Handic and Senad Dautovic – suspected of war crimes against civilians. Arrested in April 2007. Former members of the Army of BiH. (Bugojno)

Mladen Milanovic – former VRS member suspected of war crimes against civilians. In detention since July 30, 2007. (Vogosca)

Nedjo Zeljaja, Djordjislav Askraba and Ratko Bundal – former members of VRS suspected of crimes against humanity. In detention since August 2007. (Kalinovik)

Suljo Karajic – former member of BiH Army, Fifth Corps, suspected of crimes against prisoners of war and civilians. In detention since 17 October. (Bosanka krajina)

Predrag Kujundzic - former commander of paramilitary unit Predini vukovi, suspected for crimes against civilians. In detention since 10 October. (Doboj)

12. Glossary

Claim under property law – concerns reimbursement of damage (material or non-material), recovery of items or annulment of a particular legal transaction. The court renders decisions on the claims. In a verdict pronouncing the accused guilty, the court may award the injured party the entire claim or award him a part of the claim and refer him to a civil action for the remainder. The latter option is also applicable in case the verdict rendered by the court does not contain a decision on the claim.

Special investigative actions – these actions may be applied with the aim of discovering and combating severe/complex criminal offences. The actions may include: surveillance and technical recording of telecommunications, access to the computer systems and computerised data processing, surveillance and technical recording of premises, covert following and technical recording of individuals and objects, use of undercover investigator and informant, simulated purchase of certain objects and simulated bribery, supervised transport and delivery of objects of criminal offence.

Expert witness – a person possessing technical or scientific knowledge or other special skills invited by the prosecutor or court to assist in establishing important facts within the criminal proceeding.

Expert evaluation – a procedure by which the expert witness reaches findings and opinions that might be used as evidence in the criminal proceeding.

Expert's opinion – drawing of conclusions in conformity with the rules of the expert's science or arts relying on established facts.

Witness – a person testifying about the facts that are to be established in the course of the criminal proceeding.

Superior order – an order given by a superior to his subordinate instructing him to perpetrate or not to perpetrate some action. If the subordinate perpetrates the criminal offence, he is liable as a perpetrator, while the superior is liable as an abettor. The fact that a person acted pursuant to an order of a superior may be considered in mitigation of punishment.

Reconstruction of events – a reproduction of the criminal offence in simulated conditions and environment, which must correspond to those under which the criminal offence was perpetrated.

Eyewitness (or Direct witness) – a person who was a direct participant in the criminal offence or who watched the perpetration of the offence.

Eyewitness sui generis – a person who is an eyewitness and, at the same time, the injured party to the referenced criminal proceeding.

Intermediary witness (or Indirect witness) – a person possessing information about the criminal offence that was not obtained by his own direct observation.

Crime scene investigation – a range of technical, tactical and methodical measures undertaken to establish or explain the facts by direct observation at the crime scene in order to collect material evidence related to the criminal offence.

Second-instance decision – a decision reached by the Appellate Chamber deciding on the first instance verdict appeal. It can be made in a form of a decision or a verdict. By decision the chamber may reject the appeal for being late or inadmissible or revoke the first instance verdict and order a retrial. By verdict the chamber may reject the appeal as unfounded and confirm or revise the first instance verdict.

Extraordinary legal remedy – an extraordinary opportunity to reconsider legally binding decisions. Bosnian Criminal Procedure Code foresees just one extraordinary legal remedy – repeating the criminal proceeding, which can happen under special circumstances with implementation of special procedure for reconsideration of the legally binding decision in question.

Repeating the criminal proceedings – returning of a proceeding dismissed by a first instance decision to some previous phase and conducting the proceeding from that particular phase onwards. The criminal proceeding may be resumed on an appeal of an authorised person, if it appears that the factual status established by the first instance verdict is false and this can be proved by new facts and pieces of evidence, which were not known of or presented at the main trial.

Plea hearing – a statement entered by the indictee before the preliminary hearing judge in the presence of the prosecutor and the defence attorney. The indictee may plead guilty, not guilty or fail to enter a plea. In the last case the judge shall record that the indictee enters a plea of not guilty.

Main trial – central part of a criminal proceeding in which the prosecution and defence present their arguments, conduct evidentiary procedure, establish factual status and, if the process is not interrupted, a verdict is rendered.

Imprisonment – a principal criminal sanction prescribed by Bosnian legal regulations. It may not be shorter than 30 days (general minimum) and longer than 20 years (general maximum).

Long-term imprisonment – most severe criminal sanction prescribed by Bosnian criminal codes. This is a special form of imprisonment, for a term ranging from 20 to 45 years. A slightly different regime applies to it in comparison to "ordinary" imprisonment (e.g. concerning punishment in conjunction, suspended sentence, pardon etc.). It is prescribed for the gravest forms of serious criminal offences perpetrated with intent and it may never be prescribed as the sole principal punishment. By existing regulations, this punishment is prescribed for criminal offences against the integrity of BiH and crimes against humanity and values protected by international law.

Individual criminal responsibility – a responsibility for planning, initiating, ordering, perpetrating or instigating the perpetration of a criminal offence, and for aiding in planning, preparation and execution of a criminal offence of genocide, crimes against humanity, war crimes against the civilian population, war crimes against the wounded and sick, war crimes against prisoners of war, unlawful killing and wounding of the enemy, unlawful marauding the killed and wounded at the battlefield and violating the laws and practices of warfare.

Command responsibility – a responsibility charged upon a superior for acts committed by his subordinate, if he knew or had reason to know that the subordinate was about to commit such act or had done so and the superior failed to take the necessary and reasonable measures to prevent such act or to punish the perpetrator thereof. It is applied in case of a criminal offence of genocide, crimes against humanity, war crimes against the civilian population, war crimes against the wounded and sick, war crimes against prisoners of war, unlawful killing and wounding of the enemy, unlawful deprivation of property.

Decisions – expressions of the will of the court or some other state agency in the course of a criminal proceeding. There are three types of decisions: verdicts, decisions and orders.

Verdict – the most important decision in the course of a criminal proceeding. This is a court decision resolving a particular criminal and legal proceeding. It is rendered at the end of the main trial. An appeal may be filed against a first instance verdict unless it was rendered on the basis of a plea agreement. The verdict refers to the criminal offence stated in the indictment, the indictee's responsibility and eventual sanction, as well as to secondary criminal proceeding issues (claim under property law and proceeding costs).

Decision – a decision resolving individual process-related issues in the course of a criminal proceeding. It may be rendered by the court and by other criminal proceeding authorities (e.g. prosecutor).

Order – a decision resolving issues related to the course of the criminal proceeding and particular process-related activities (e.g. a search warrant). Order may also be rendered by other criminal proceeding authorities (e.g. prosecutor).

13. Addresses of institutions and associations in BiH

Balkanska istraživačka mreža (BIRN)

Obala Kulina Bana 10
71000 Sarajevo
BiH
Tel: + 387 33 215 269
urednik@birn.eu.com
www.bim.ba

Sud Bosne i Hercegovine

Kraljice Jelene 88
71000 Sarajevo
BiH
Tel: + 387 33 707 100
pios@registrarbih.gov.ba
www.sudbih.gov.ba

Odjel za podršku žrtvama i svjedocima pri Sudu BiH

Tel: + 387 33 707 184
+ 387 33 707 186
reg.wso@registrarbih.gov.ba
Ured za odnose sa javnošću
Tel: + 387 33 707-178
+ 387 33 707-164
+ 387 33 707-165
Fax: + 387 33 707 224
pios@sudbih.gov.ba

Ured registrara

Tel: + 387 33 707 100
Fax: + 387 33 707 272
info@registrarbih.gov.ba
<http://www.registrarbih.gov.ba>

Tužilaštvo BiH

Tel: + 387 33 707 400
Fax: + 387 33 707 463
info@tuzilastvobih.gov.ba
<http://www.tuzilastvobih.gov.ba/>

Odjel za odnose sa javnošću Tužilaštva BiH

Tel: + 387 33 707 113
Fax: + 387 33 707 226
Mobitel: + 387 61 483 339
info@tuzilastvobih.gov.ba

Odsjek Krivične Odbrane (OKO)

Skenderija 15

71000 Sarajevo

BiH

Tel: + 387 33 560 260

Fax: + 387 33 560 270

oko@okobih.ba

<http://www.okobih.ba/>

Visoko sudsko i tužilačko vijeće

Kraljice Jelene 88

71000 Sarajevo

BiH

Tel: + 387 33 707 500

Fax: + 387 33 707 550

<http://www.hjpc.ba/>

OSCE BiH

Fra Andela Zvizdovića 1A

71000 Sarajevo

BiH

Tel: + 387 33 752 100

press.ba@osce.org

www.oscebih.org/

OHR Sarajevo

Emerika Bluma 1

71 000 Sarajevo

Tel: + 387 33 283 500

Fax: + 387 33 283 501

www.ohr.int/

Savez logoraša BiH

Obala Kulina Bana 24

71000 Sarajevo

BiH

Tel: + 387 33 210 301

Međunarodna komisija za nestale osobe (ICMP)

Alipašina 45 A

71000 Sarajevo

BiH

Tel: + 387 33 218 660

Fax: + 387 33 203 297

icmp@ic-mp.org

www.ic-mp.org/

Udruženje Žena žrtva rata

Trg Oteškog bataljona 64

71999 Sarajevo

Tel: + 387 33 628 121

Uredzenazrtva_rata@bih.net.ba

www.zena-zrtva-rata.ba/

Istraživačko-dokumentacioni centar

Kupreška 17
71000 Sarajevo
Tel: + 387 33 725 350
+ 387 33 351/352
Fax: + 387 33 725 357
centar@idc.org.ba
www.idc.org.ba

Ministarstvo pravde BiH

Trg BiH 1
71 000 Sarajevo
BiH
Tel: + 387 33 223 501
+ 387 33 223 502
Fax: + 387 33 223 504
kontakt@mpr.gov.ba
<http://www.mpr.gov.ba/>

MKSJ Ured u BiH

Aleja Bosne Srebrene b.b.
71000 Sarajevo
Tel: + 387 33 773 218
Fax: + 387 33 773 217
www.un.org/icty/index-b.html

Državna agencija za istrage i zaštitu – Centar za istraživanje ratnih zločina

Adema Buće 102
71000 Sarajevo
BiH
Tel: + 387 33 702 400

Helsinški komitet za ljudska prava, Republika Srpska

Ulica braće Gavrić 6
76 300 Bijeljina
BiH
Tel: + 387 55 201 532
Fax: + 387 55 210 851
helcomm@teol.net
www.helcomm-rs.org

Helsinški komitet za ljudska prava, Sarajevo

Ante Fjamenga 14b
71000 Sarajevo
BiH
Tel: + 387 33 660 811
Fax: + 387 33 661 853
www.bh-hchr.org

14. About BIRN's Justice Report

BIRN's Justice Report is a news agency that specialises in reporting on the war crime processes conducted before local judicial institutions, the development of the legal system in BiH, and facing the past.

Justice Report offers local, regional and international media and general public regular, comprehensive, objective and reliable data on war crime processes and other happenings relevant for an efficient process of facing the past in BiH.

We are the only agency providing regular reports on trials conducted before the War Crimes Chamber of the Court of BiH. In addition to this we also prepare analysis and monitor and report on the changes in the judicial system and alternative mechanisms for establishment of the truth about the past war. Our reports are published in two languages on our web page: <http://www.bim.ba/> They are available, free of charge, to all interested parties.

Once a week, Justice Report publishes a magazine containing all texts published in the course of the week and sends it by e-mail to its registered subscribers. If you would like to receive Justice Report by e-mail please register on: <http://www.bim.ba/> or send an e-mail to: nerma@birn.eu.com Justice Report is published in the local language and in English.

Almost two years since its establishment, Justice Report has recruited more than 3,000 subscribers in BiH and abroad, and thousands of people have visited our web page. Our journalists have written more than 1,000 articles, many of which have attracted the attention of the local and international public.

Each of the numerous letters we receive from our readers, victims and survivors of the most horrible crimes, is a reward in itself. Those people seek justice. Therefore, if there is a system in the country that works its hardest to bring that justice to them, they should be able to receive all available information about it.

This manual contains some of the published articles that have shaped our work so far.

The last taboo

By Nidzara Ahmetasevic, Sarajevo

Widespread sexual abuse of men during the war years remains off the agenda in Bosnia, with victims receiving little or no support. (Published on www.bim.ba – 18.04.2007) -

"I hope nobody lives through what I had to live through. I cursed my mother who gave birth to me," says one anonymous male, referred to only as 4977, who explains that he was held in a detention facility in Foca during the war and was raped by 28 men.

"They would take a pine cone, turn it around, push it into my anus and start pulling out."

His statement is like many others filed in the archives of the Association of Camp Inmates of Bosnia and Herzegovina, ACIBiH.

"They lined us up on one side and separated fathers and sons. They took us out on the stage and ordered us to take our clothes off," says another ex-prisoner, who was held in the Celopek camp in Zvornik.

"I don't want to say what they ordered us to do. That is obvious since they stripped us naked. They were especially attracted to watching a father and son do it."

"Later, they ordered some of us to bite others' sexual organs off," he adds. "Not cut off, but bite off, which is what I had to do. That is the most difficult thing I had to go through in the prison."

More than a decade after the war in Bosnia and Herzegovina came to an end, the sexual abuse of men during the conflict remains a taboo subject. As a result, it is difficult to establish the exact number of victims who suffered this kind of cruelty. For the same reason, many perpetrators will never stand trial.

"It is difficult to talk about that subject," says Murat Tahirovic, president of the ACIBiH. "You know what our society is like. It is a shame to even admit that. It is difficult for women and especially difficult for men."

There is no doubt, however, that sexual abuse of men was widespread during the war. Dr Alma Mehmedbasic-Bravo, a psychiatrist at the Sarajevo Clinical Centre, says she has treated many patients of all ages who experienced this kind of cruelty.

"Mostly they were prisoners who were detained throughout Bosnia and Herzegovina, but also in detention camps on the territory of Serbia - in Misovo polje, Slijivovice and other places," she says.

"They are patients who survived multiple traumas - physical, psychological and sexual," she adds. "Every torture also causes psychical suffering, especially this one."

Tahirovic notes that one particularly brutal practice - forcing close family members to carry out sex acts on one another - was especially common in eastern Bosnia, in the Bijeljina and Zvornik regions.

The President of the Association of Camp Inmates of Sanski Most, Amir Talic, adds that there are also records of male sexual abuse in two of the most notorious detention centres set up during the war, the Omarska and Keraterm camps. Thanks in part to evidence provided by witnesses and survivors, some perpetrators have been punished and particular instances of such crimes brought to light.

Talic points out that male sexual abuse was discussed during the trial of Dusko Tadic, who was sentenced to 20 years' imprisonment for crimes in Prijedor by the International Criminal Tribunal for the Former Yugoslavia, ICTY, in The Hague.

"A testimony was recorded of a prisoner who was forced to bite off another's sexual organ," Talic says. "They were both killed later."

Talic says his own organisation has had trouble getting men to speak about sexual abuse that they suffered themselves. "If they do speak, it is always about a crime that happened to someone else and that they were forced to watch," he explains.

Edin Ramulic, member of the Izvor association, which represents families of the missing persons in the Prijedor area, has also noted cases of such abuse in the Omarska camp but agrees that people are generally unwilling to discuss the issue.

"That is less mentioned than rape of women. We all know that there was sexual abuse, but it is difficult to find someone who will talk," Ramulic says.

The United Nations Convention Against Torture, to which Bosnia and Herzegovina is a signatory, requires that crimes of this nature should be prevented, that those responsible should be punished and that witnesses to this kind of abuse should be protected during trial proceedings against the perpetrators.

With this in mind, the ACIBiH recently sent a number of files to the state prosecutor's office containing the stories of men who suffered sexual abuse during the war. They are hoping that the first investigations of such crimes by the Bosnian authorities will be initiated soon.

So far, investigations into the wartime sexual abuse of males in Bosnia and Herzegovina have been carried out by prosecutors from the ICTY. Some perpetrators have been punished as a result.

Individuals like Radosav Brdjanin, Dragoljub Prcac, Milojica Kos, Zoran Zigic, Miroslav Kvocka, Mladen Radic, Dusko Tadic, Zeljko Meakic, Stevan Todorovic, Predrag Banovic and Dusko Knezevic have all been indicted in connection with sexual abuse of men, amongst other crimes.

Judges hearing the case against Todorovic, a police officer from Bosanski Samac who was sentenced to ten years at the ICTY for war crimes in 2001, noted instances in which men were forced to perform fellatio on one another.

Knezevic, whose indictment for alleged war crimes in Prijedor has been transferred from the Hague tribunal to Bosnia's own state court, faces similar accusations. The charge sheet against him states that he, together with other men, would enter the Keraterm detention camp to beat and abuse prisoners, including forcing them to perform sex acts on each other.

Talic agrees with Hague prosecutors that such abuse was part of a systematic campaign of ethnic cleansing. "I think it was a torture method," he says.

In Bosnia and Herzegovina today there are numerous organisations that bring together women who were raped during the war and help them to promote their interests. Partly as a result of work carried out by such organisations, a draft law has been put before parliament which sets out the rights of female rape victims in one of Bosnia's two entities, the Federation. In the long-term, it is hoped that similar legislation will be put into force at a national level.

The ACIBiH has launched an initiative to expand legislation governing civilians who suffered during the war, in such a way that it would also encompass male victims of sexual abuse.

In the meantime, however wartime rapes and sexual abuse of men remain largely off the agenda.

"There is no system that ensures any type of assistance for such people," says Tahirovic, who points out that only two non-governmental organisations currently offer any kind of assistance to male victims of wartime sexual abuse.

"The tragedy that these people carry inside them is transferred onto the family and daily life. That tragedy will remain for who knows how long," Tahirovic explains.

"We are trying to prove to politics that it is necessary to stop the agony of people and regulate their status, that finally professional people start taking care of these victims. That they are not left to themselves," he adds.

Dr Mehmedbasic-Bravo says all torture victims live with the trauma they suffered for the rest of their lives. New forms of stress, including unemployment, accommodation problems and a lack of recognition of their suffering, only makes things worse.

"Such traumas are beyond the usual human experience," the psychiatrist says. "Most of the camp inmates were civilians. They couldn't even imagine that something like that could happen to them, that they would be imprisoned, that they will see the death of other people, that they would live through such painful experiences. Such people carry permanent personality changes and post-traumatic syndrome for the rest of their lives."

Tahirovic points out that so far mainly senior war crimes indictees have been put on trial and many of the lower-level individuals who actually committed abuse remain unpunished and at large.

"A great number of victims are forced to face the people who tortured them in prisons, if they return to the towns from which they were expelled," he says, adding, "Those 'small' perpetrators are perhaps even more important than the organisers."

Dr Mehmedbasic-Bravo says recognising those who experienced torture during the war is an important first step towards healing their suffering. "None of the victims can heal themselves," she says. "They need professional assistance to reach the level of life that they had before the torture. They need social, psychological and legal assistance, but also compensation - moral and financial."

"Moral compensation is punishment of the perpetrators," she explains. "Without that, there is no rehabilitation of the victims."

Truth Commission Divides Bosnia

Experts query draft law on how the process would work, while victims complain they have not been consulted.

By Nerma Jelacic and Nidzara Ahmetasevic

(Published at www.bim.ba – 31.03.2006) - An initiative to form a truth commission for Bosnia and Herzegovina is provoking a fierce debate in the country, dividing civil society, political parties, the international community and ordinary people. The mixed reception for the idea has placed a question mark over its fate. Doubts have also been raised about the work that has already been done on the ground in relation to the commission. Experts contacted by Balkan Insight have raised a host of queries and criticisms concerning a draft law on the commission's mandate and goals, to which Balkan Insight has received exclusive access. Some of them have said it lacks precision and takes the wrong approach to the business of establishing the truth about the horrific events which occurred in Bosnia from 1992 to 1995.

THIRD TIME LUCKY

This is the third time that a truth commission has been proposed as a means to deal with crimes committed during the war in Bosnia

In 1997, the United States Institute for Peace, USIP held consultations with Bosnian representatives over a draft statute for such a commission. The USIP report said the organisation had consulted, among others, Bosnia's then president, Alija Izetbegovic, Momcilo Krajisnik, Dragan Kalinic and Biljana Plavsic from the Republika Srpska, and the politician Ejup Ganic. Senior figures from the religious community had also apparently been consulted, including the Serb Orthodox patriarch Pavle, the Mufti of Mostar, Seid Smajkic, Cardinal Vinko Puljic and Jakob Finci, president of Sarajevo's Jewish community.

At the time, the United Nations-run International Criminal Tribunal for the Former Yugoslavia, ICTY, in The Hague opposed the idea on the grounds that it was already establishing the historical truth about the war. Moreover, by 2001 two of the Bosnian Serb politicians consulted in 1997, Plavsic and Krajisnik, were in the custody of the ICTY, charged with war crimes themselves.

That May, however, a conference held in Sarajevo again declared that the time had come for a truth commission and for a law to be adopted on its establishment. This time the Bosnian government, the international community and the ICTY supported the initiative. However, nothing concrete emerged. Finally, five years later in November 2005, another working group on a truth commission was formed.

This time it was made up of representatives of eight leading political parties. They were Besima Boric of the Social Democratic Party, SDP; Alma Colo, of the Party of Democratic Action, SDA; Vinko Radovanovic of the Party for Democratic Progress, PDP; Momcilo Novakovic of the Serb Democratic Party, SDS; Remzija Kadric of the Party for Bosnia and Herzegovina, SBiH; Nebojsa Radmanovic of the Alliance of Independent Social Democrats SNSD; Lidija Bradara, of the Croatian Democratic Union, HDZ; and Mile Mutic of the Socialist Party of Republika Srpska, SPRS.

Chaired by a local non-governmental organisation, NGO, called the Dayton Project, the group was tasked with writing a draft law on the establishment of a truth commission, its mandate and composition.

Two international experts attended as consultants: Neil Kritz, USIP's senior scholar on international law; and Gordon Bacon of the United Nations Development Programme, UNDP, who was involved as an individual rather than as a UN representative.

The eighth member of the group, SPRS' Mutic, dropped out after victims of ethnic cleansing in Prijedor protested against his involvement, citing his activities in the war as editor of Kozarski Vijesnik, a newspaper in Prijedor. The Hague tribunal said this newspaper acted as a platform for Serb nationalist propaganda, while Human Rights Watch reports and transcripts of ICTY Prijedor-related trials showed that Mutic had also been a member of the local Crisis Committee, which was responsible for much of the ethnic cleansing in the area.

QUESTIONS OVER THE DRAFT LAW

The draft law, a copy of which Balkan Insight has obtained, defines the mandate of the commission in broad terms. It is to "objectively examine the hostilities... in Bosnia and Herzegovina and former Yugoslavia from 1990 to 1996". It is proposed that the commission examines these wartime violations in five categories.

The first concerns establishing the number and identity of victims, including missing persons, and those who were tortured, raped and deported. This includes the numbers and identity of military personnel who died, were wounded or disappeared, mass graves and the demolition of religious and cultural monuments and private property.

The second task is to examine the developments that led to "ethnic distrust and misunderstanding". The third is to establish the "role and moral responsibility of individuals, organisations, institutions which with its acts, or lack of acts, helped or prevented, the breaking of human rights".

The fourth goal is to establish "the role of relevant actors outside Bosnia and Herzegovina who with their acts or lack of acts helped the violence". The fifth marks a new development for truth commissions internationally. This task is to establish the "existence and acts of individuals who refused to take part in persecution and torture Šandć who tried to protect their neighbours".

Following examination of these violations, the commission will "make it possible that the public... becomes familiar with the events and violence committed". The commission would then also "recommend measures necessary to resolve the violence committed and prevention of their repetition in the future".

Finally, the draft says the commission would complete its work and hand in a final report to parliament within two years. Turning to the question of membership, the draft suggests that the commission would comprise seven citizens of Bosnia and Herzegovina who were not involved militarily or politically in the war and who "reflect the national, geographic and gender set-up of the country".

The commission will be helped by an international Council of Advisors. Who will name the Council members has not been decided but the Nominating Committee in charge of this, according to the draft, will be made up of 15 members: three named by leaders of the House of Representatives and the House of Peoples of Bosnia and Herzegovina and four nominated by "international organisations, which are yet to be identified". The other eight would be representatives of the public and civil society.

The working group has yet to establish a procedure for their selection. The members of the truth commission and its president are to be named by parliament on recommendations from the Nominating Committee.

Numerous experts contacted by Balkan Insight have expressed concern that the commission's broad and general mandate could cause major problems, forcing the body to spend too much time on internal clarification or political struggles. Mithat Izmirlija, a Bosnian magistrate and an expert on peace commissions, says the question of how it will function and what it is to achieve needs to be agreed in advance. "Prior to its formation, the principles, aims and values that the commission wants to achieve in Bosnia must be precisely defined," he said.

Another problem raised by the experts that Balkan Insight consulted is that the commission's mandate often appears to overlap with or copy the work of other organisations. Doune Porter, of the International Commission on Missing Persons, ICMP, said, "There are already several mechanisms in place that will help to establish the truth." The commission's first task, for example, overlaps with the work and mandate of the existing Research and Documentation Centre, RDC. The RDC work on establishing a data base with names of victims from the war has not finished. Until now its database already consists of more than 97,000 names, with the final number expected to be around 110,000.

Porter, of the ICMP, noted that Bosnia's Missing Persons Institute is also already establishing the truth about the numbers of missing persons and their identity. The former entity-based commissions for missing persons were also in charge of uncovering mass graves and, with the help of ICMP, identifying the victims. Some experts have also queried the proposed system for nominating members to the commission.

"It still leaves open the possibility for the commission to be formed by parliamentarians or other officials who held an active role in the war or were officials in towns where crimes were committed," Izmirlija said. "The whole project could fall through if people are included whose moral credibility is questionable," he added.

Thirdly, victims' groups have voiced grave doubts about the viability of a two-year timeframe, fearing it will not be possible to establish the truth in such a short period. Some sources close to the working group have said the commission plans to hear only between 5,000 and 7,000 testimonies of individuals, in order to meet the deadline.

There has also been controversy over the suggestion that the commission may "without prior notice visit any institution or place". Experts said this would violate the European Convention on Human Rights, which stipulates the right to privacy of any individual.

Perhaps the most controversial aspect of the draft law, however, is article number five, regulating the commission's "cooperation with judicial institutions". This article suggests that the "final report will not identify individuals who committed crimes". The naming of perpetrators is often considered one of the most powerful instruments in the hands of a truth commission. It allows for full disclosure and pins individual responsibility on those who committed crimes, diminishing the possibility of a whole nation or group being blamed.

Truth commissions in Argentina, El Salvador and South Africa all were empowered to name individual perpetrators. In its final report, the El Salvador commission explicitly said it had resisted pressure not to conceal names. "The whole truth cannot be told without naming names," it said, before going on to conclude that, "Not to name names would be to reinforce the very impunity which the parties instructed the Commission to put an end to." However, Bosnia's draft law in this section suggests that "statements given to the commission by individuals will not be made available to the ICTY or state, entity, cantonal or district courts on the territory of Bosnia and Herzegovina without prior consent of the said individual".

Experts in international criminal law and post-conflict countries told Balkan Insight that this diminishes the whole purpose of the truth commission. As an addendum to this part of the draft law, the working group raised the possibility that the commission should send to the courts only "that information which presents liberating evidence for a person who is being prosecuted".

One international community member in Bosnia commented that this might mean that "the commission will give evidence to defence teams but not to prosecutors." He added, "That is ridiculous."

WHO SET UP THE COMMISSION?

After the furore over Mile Mutic, victims' groups and other organisations demanded to know on whose initiative the working group had been formed. While some of the media said USIP was the driving force, others said the momentum came from the Bosnian government. Balkan Insight has also been given conflicting answers.

The version given by the working group themselves is that the Bosnian parliament initiated the formation of the group and asked the parties to nominate representatives to it. "It was a local initiative of the leadership of parliament," Besima Boric, the SDP member of the group told Balkan Insight. They sent a letter to all the political parties telling them

that work would start on drafting a law on the truth commission and asking them to send representatives," she added.

Boric told Balkan Insight that the group was formed last November and met twice a month. "Gordon Bacon and Neil Kritz attend meetings as consultants," she added. "The leadership of the assembly must have invited them." But another member of the working group, Remzija Kadric, of the SBiH, gave a different version of events. "This is not a local initiative," he told Balkan Insight. "It was pushed by international organisations, but eight political parties accepted it."

Some representatives of civil society groups and the media said the Dayton Project was the group most responsible. But Maja Marjanovic, project officer with the Dayton Project, told Balkan Insight that the NGO acted only "as a kind of secretariat that supports dialogue. We give logistical help for the work on the draft of the law on the truth commission."

The Dayton Project was set up a year ago with the support of USIP "to provide a voice for civil society... and help create a stable Bosnia and Herzegovina", it says. The organisation is working on two projects – each addressing key issues stemming from the war. One is constitutional reforms and the other is the truth commission, or Confidence Building Commission, as Dayton Project documents call it.

The NGO's website says it will "assess if there is a need and readiness for a Confidence Building Commission which would deal with the events that took place during the war in BiH ŠBosnia and HerzegovinaĆ." It goes on, "The Dayton Project and the partners will search for an authentic Commission model for Bosnia and Herzegovina."

The existence of the working group first became public in January but it was not until February that significant public discussion on the issue took place.

Judging by reactions in the media, most people were angered by the suddenness with which the working group was established without apparent consultations. Invariably, they raised the question of who set up the whole process. "The whole approach is a catastrophe, as is the way in which the discussions have been held," Mirsad Tokaca, of the RDC, told Balkan Insight.

"Nobody knows who initiated the formation of the working group or whose initiative it is. It seems like a semi-secret operation," he added.

Amira Krehic, of the Centre for Free Access to Information, took the same line. "We don't know who started this group nor what it is really going to do," she said. Some members of the international community who have closely followed the process told Balkan Insight that the working group was indeed set up on the initiative of USIP.

"They had discussions with parliamentary groups last year and the groups gave their endorsement to the process," one source said.

But Neil Kritz, director of Rule of Law programme for USIP, told Balkan Insight that he only got involved after being invited to do so by Bosnia's minister of human rights, Mirsad Kebo.

"The idea came from parliament speakers, all three," Kritz told Balkan Insight. "It is their idea to establish a working group to work on a draft law. I was invited as a consultant and an adviser." Kritz has extensive experience with truth commissions in other countries, as well as with transitional justice and war crimes issues across the world.

"I have been impressed by some of the discussion inside of that working group," he said, pointing to a determination amongst its members to maintain contacts with the civil sector and with the Bosnian public in general.

WERE VICTIMS CONSULTED?

When the extent of the work done so far became public, representatives of victims and citizens' associations expressed dismay at not having been consulted.

"A commission or initiative which has been made without the involvement of the victims is not welcome," said Milijana Bojic, of the Association of Families of the Missing and Imprisoned of the Republika Srpska.

Murat Tahirovic, of the Bosnia and Herzegovina Association of Camp Inmates, agreed. "Ten years after the end of the war some group arrives with a suggestion to find the truth about what happened during the war here," he said. "At the same time, the non-governmental sector and the people in whose interest this is apparently being done do not know anything about it," Tahirovic added.

"The process should be from the bottom up," Tokaca said. "The process needs to be open to citizens and cannot work as some secret society. I am sceptical that this initiative can succeed."

The Association of Women of Prijedor was of the same mind. "The truth cannot be established in secret meetings and through excluding the public," it said in a press release.

Women Victims of War, which unites female victims of wartime rape and other abuses, was also dissatisfied, as was the Women of Srebrenica organisation, which said it was explicitly against a commission being formed without the involvement of victims.

However, Boric denied that a working group made up of politicians was doomed to failure. "All laws have to go through parliament and if politicians do not contribute and . . . commit themselves, the law will not be accepted," she told Balkan Insight. "This is why our working group . . . is the best option," she added. "They can make sure the law is adopted by parliament."

The Dayton Project also feels the discussion has been taken out of context and that civil society was involved more than some groups are now claiming.

"We are present as a civil society organisation and are coordinating a dialogue with other organisations," Marjanovic told Balkan Insight.

Marjanovic said the Dayton Project organised three meetings to discuss the subject in Banja Luka in January, in Mostar in February and in Sarajevo in March. Between ten and 18 representatives of civil society groups attended each meeting, she said, adding, "They were mainly organisations representing victims of war and some other citizens' associations."

"The reception varied," she went on. "Some supported the work of the commission and the start of the working group. Others were explicitly against. . . Šandć some wanted the commission but thought this was the wrong approach."

But Tokaca insists three meetings were not enough. "They cannot be viewed as meetings at which civil society representatives were involved," he said. "The media need to also be involved."

Members of the international community have also taken different stands, though all agreed that a truth commission needed to be a local initiative and include all segments of society.

"This must be a Bosnian project," Norway's ambassador to Bosnia, Henrik Ofstad, told Balkan Insight. "When it comes to truth commissions and justice initiatives, internationals should keep a low profile." "This is your truth and your reconciliations, which means you should take the initiative," he added.

"You suffered in Bosnia because this was not done after the Second World War, so do not fail to do it again." "Is it the right time? It is up to the Bosnians to decide," he said. "The fact that Šerbian leader SlobodanĆ Milosevic died is an argument in favour of not losing any more time. You have to look for the truth while the people are still alive."

Porter, of the ICMP, agreed, "The decision on whether a truth commission per se should be created and what mandate it should have rests entirely with the citizens of this country."

Didier Chassot, charge de affaires of the Swiss embassy in Sarajevo, told Balkan Insight that there is a real need to promote dialogue about the truth.

"We are at the phase where we need to sit at a table and establish a solution which works for everyone," he said. "There is no one size fits all. That is why all stakeholders must be involved" But he warned that the commission can not be allowed to get into competition with Bosnia's existing judicial approach to war crimes.

"Some have tried to frame the debate on these terms. That is wrong. It has to be a multi-track approach," he said.

BUT DO BOSNIANS WANT IT?

The question of whether Bosnia and Herzegovina wants or needs a truth commission remains unanswered. Slavisa Jovicic of the Republika Srpska Camp Inmates Association, is in favour. "The commission cannot bring about reconciliation, but it can establish the truth," he said. "The commission must include victims' representatives of all nationalities. We are not seeking a balance in quantity of crime, but justice. The commission must have a mandate to demand all the data it needs - no more hiding them in desk drawers," he added.

"I want everything to be explained, and individuals to be brought to account," Jovicic concluded.

However, the commission would not in fact have a true mandate to bring individuals to account, as this is the task of the ICTY, the War Crimes Chamber in Sarajevo and other lower courts in the country. Moreover, Murat Tahirovic, also of the Republika Srpska Association of Camp Inmates, says it might have been more useful to give the money assigned for the commission to the courts to investigate and try war criminals and in this way contribute to the truth.

"Money is constantly being syringed into commissions while our witnesses do not even get minimal 'per diems' for testifying," he said. "This commission is being formed so that someone can profit from our misery."

"We know a lot can be earned from this issue," agreed Kada Hotic, of the Association of Mothers from the enclaves of Srebrenica and Zepa. "If this is someone's aim, they should be ashamed."

"There are state institutions in place, such as the State Court and prosecutor's office which should deal with these questions," said Milijana Bojic, of the Association of Missing and Imprisoned of the Republika Srpska. But Boric disagrees.

"We need a commission because to continue living with three or five truths is a catastrophe," she told Balkan Insight.

There are masses of people who would like to say what happened to them, I am one myself. But they will never have a chance to be witnesses in a trial and for their story to see the daylight," Boric said. "The courts are very important part of that story and they offer a path to the truth but that is all too slow," she added.

Ramzija Kadric, her colleague in the working group, is more mixed in her view. "I am both for and against its formation," he said. "We need a commission ŠonlyĆ if it will discover the causes, aims and results of the war in Bosnia. If the commissions fails to find this, perhaps it will have shown the time was not right," he told Balkan Insight.

Dr Erna Paris, the author of the book "Long Shadows: Truth Lies and History", is also nuanced in her view. "Truth commissions can be useful. . .but the population has to be ready," she said. "I am not sure whether that is the case yet in Bosnia." „One day you will all have to reintegrate and live together again, in spite of separate 'entities' you occupy the same geographical space. This is why a truth commission will be a useful tool, even if it is still a bit soon," Paris added.

The USIP's Kritz agrees that a truth commission could help resolve the question of conflicting histories regarding the war in Bosnia.

"The question should be answered only by people from Bosnia and Herzegovina. Not by me, or any other internationals, Not by high commissioners, not by USIP or any other organisation or institution," he told Balkan Insight. Marjanovic of the Dayton Project is careful to point out that that nothing has yet been agreed.

"This is only the first phase of the project. We will have further consultations," she said. "We want to find out if it is at all needed for this country, and only then will we finalise the draft law."

JUSTICE REPORT INVESTIGATION: Veil of Silence Covers Croat Murders in Banja Luka

By Gordana Katana

Bishop says time has come to solve spate of unsolved wartime murders of Croat civilians.

(Published at www.bim.ba – 03.04.2007) - Miroslav Malic was killed in his home in the Banja Luka suburb of Petricevac on October 7, 1992. Jozo Anusic was killed soon after. Attacked and tortured in his home in November in the suburb of Barlovac, he died a month later.

Borka and Marko Jerkovic were killed days later in Petricevac on December 15. They, too, were murdered also in their own home.

Data collected by the Catholic authorities in Banja Luka says 70 Catholic Croats were killed in the diocese from August 1991 to December 1995.

The same data shows that other crimes besides murder took place against Croats in Banja Luka during the war, including physical threats, expulsions from homes and apartments, forced labour and the destruction of Catholic churches, convents and monasteries.

Vesna Jovic, chairwoman of the Croat humanitarian association Danica, recalls that Banja Luka's Croats never knew whether they would end each day in one piece.

"In Paprikovac settlement, as in all other town settlements where Croats lived, every night brought fear," she said. "It was known that people were getting killed and were disappearing during the night."

She added, "My parents and their neighbours either did not sleep, or they spent the nights hiding in pigsties and chicken coops, hoping to survive that way."

However, 12 years after the war in Bosnia and Herzegovina ended, a veil of silence remains over these foul acts. To date, the county prosecutor in Banja Luka has filed only six indictments concerning crimes committed against non-Serbs in a territory covering 14 municipalities.

The Catholic Bishop of Banja Luka, Franjo Komarica, believes the extent of the crimes against his flock is not reflected in those six indictments. He believes at least 420 non-Serb civilians were murdered in the Banja Luka diocese in the war.

"It is unbelievable that so many civilians were murdered in their homes, that 95 per cent of Catholics were expelled from their homes, and that for 12 years no one has talked about it," he said.

Banja Luka county prosecution officials do not dispute the Bishop's figures. They agree around 500 non-Serb civilians were murdered during the war and admit too few investigations have taken place.

The deputy county prosecutor, Sead Zeric, told Justice Report that investigations had not taken place, and are not now likely, because "someone" ordered the destruction of all murder files involving unknown perpetrators in 1999.

UNANSWERED LETTERS

While the local courts have made next to no progress in tracking down the killers of Banja Luka's non-Serbs during the war, these crimes have featured in several trials at the International Criminal Tribunal for the former Yugoslavia, ICTY, in The Hague.

They were mentioned in the indictments against Biljana Plavsic, Momcilo Krajisnik, Radoslav Brdjanin and Stanislav Zupljanin, who is still at large.

According to the indictments, the violence began in the autumn of 1991 when Radovan Karadzic's Serbian Democratic Party, SDS, put into effect its plan to create a separate Serbian entity in Bosnia and Herzegovina, the Autonomous Region of Krajina.

A separate "Serbian people's assembly" followed on October 24, 1991, dominated by the SDS. On January 9, 1992, this assembly passed a declaration effectively creating a new state, the Srpska Republika of Bosnia and Herzegovina. The declaration said the new republic embraced all "Serbian autonomous regions and territories, as well as other Serb ethnic areas in Bosnia and Herzegovina". The name was changed on August 12 to Republika Srpska, RS, in order to delete all reference to Bosnia.

The new mini-state soon established all the competencies of a regular government, including a separate interior ministry under Mico Stanisic. This set up central police stations, CSB, in Banja Luka in the north-west, Trebinje in the south-east, Doboj in the north, the Serb-held part of Sarajevo and Bijeljina in the north-east.

Stojan Zupljanin became head of the CSB in Banja Luka. He was later appointed to the Banja Luka "crisis staff", formed in May 1992, alongside Banja Luka's mayor, Predrag Radic, executive board chairman Rajko Kasagic, and the hospital director, Vojo Kupresanin.

Hague verdicts have established that the police were considered a branch of the RS armed forces.

The campaign against non-Serbs in the RS got underway in earnest from April to December 1992, as the police, the Republika Srpska Army, VRS, territorial defence and paramilitary forces, "disarmed" the local non-Serbs under the guise of preventing attacks by "Muslim and Croat extremists".

However, the so-called disarmament of non-Serbs often went further, including beatings, expulsions and murder.

In spite of the clear danger to his safety, Bishop Komarica refused to abandon his fast-diminishing flock who came to the diocesan offices every day bringing fresh news about murders and physical attacks.

Powerless to protect them physically, he wrote dozens of letters from May 1992 to the local authorities in the RS, to the Serbian Orthodox Church and to international officials, asking them to stop the acts of terror.

In a letter sent in May 1992 to the mayor, Radic, he mentioned a recent attack on parishioners and the parish centre, in which fortunately no one was killed.

"Please understand this letter as an expression of my deep concern, sorrow and protest that an armed attack has been committed again against a Catholic pastor and parochial pastoral centre in Dervisi, on the periphery of our town," read the letter, which the bishop has given to Justice Report.

In the same letter, Komarica noted that he had visited the scene and believed "the perpetrators of this crime intended to kill the residents of the parochial pastoral centre". He urged the mayor to "undertake adequate steps in order to disable the perpetrators of these unfortunate excesses".

The mayor did not respond either then, or at any other time to the letters the bishop sent, informing him of attacks on Croats and the Catholic church in 1992.

The police behaved in the same manner. When the bishop wrote in September 1992 to Zupljanin, he said, "You should be familiar with the fact that armed uniformed persons are conducting terrible robberies (destruction of civilian objects, homes, property,) on the territory under your jurisdiction, in many villages populated by Catholics who have nothing with which to defend themselves."

In the same letter, since presented to Justice Report, the bishop described attacks on the staff and premises of the humanitarian organisation Caritas, saying the police had been only "semi- or entirely uninterested" in resolving the registered crimes.

"When they are able to come to me, my parishioners complain daily that they are insecure in their own homes, and many call me by phone and request that I protect them from robbery and the endangerment of their lives," the bishop's letter to Zupljanin concluded.

Faced with the fact that local authorities could not or would not take measures to prevent this violence and the murders of Croats, the bishop asked the RS government to intervene on May 11, 1993.

In a letter to the current state ombudsman for human rights, the former RS deputy prime minister, Vitomir Popovic, he listed several Croats who had been murdered in the Petricevac area of Banja Luka.

They were Maric Miroslav, killed on October 7, 1992, Marko and Borka Jerkovic, killed on December 15, 1992, Adolf Kezic, killed on April 14, 1993, Anto Josipovic, killed on January 8, 1993 and Barusic Jovo, a church alderman, killed on April 26, 1993.

The bishop made other attempts to alert senior government officials and leaders about the crimes taking place in Banja Luka against Croats, writing to the former RS president, Radovan Karadzic, the vice president Nikola Koljevic, and high officers of 1st Krajina Corps of RS Army. Again, there was no response. "My cries for help were not fruitful," he recalls. "Only rarely did I receive responses but nothing changed."

While Popovic did not respond to the bishop at the time, he has since confirmed to Justice Report that he received letters and knew other high RS officials received them.

Popovic claims he was in no position to help. "I did not control the army or the police so I was not able to do anything to prevent the attacks on Croats," said Popovic. He asserted he had helped the bishop during the war "when it was possible".

The ombudsman for human rights defended former colleagues, saying the wartime police visited murder crime scenes in Banja Luka and generally "did their job".

Most of the other officials that the bishop wrote to cannot answer for their conduct. Radic and Koljevic are both dead, while Karadzic and Zupljanin are on the run. As for Momcilo Krajisnik, the wartime chairman of the RS assembly, the ICTY has already sentenced him for war crimes. He has appealed against the verdict.

PASSING THE BUCK

Bishop Komarica says there has been a conspiracy of silence about these crimes to this day. "Nobody was held accountable for a single murder case," he noted.

Only one court case took place before the county court in Banja Luka concerning the Croat-related crimes, which was for the abduction and murder in 1995 of Fr Tomislav Matanovic of Prijedor and his parents. Significantly, the court acquitted the indictees. "That was a joke of a court and not a desire to determine the truth," said the bishop.

Dusan Savic, an investigative judge at the main court in Banja Luka in 1994 and 1995, said prosecutors were to blame.

"Every time the police contacted us, we went to investigate and did our job. Why there were no further court procedures is the responsibility of the prosecution," he said.

Gojko Vasic, head of criminal police administration of the RS ministry of internal affairs, blames the courts. He said that during 2006 and 2007, he investigated 180 war crimes cases.

Vasic says that during the war the public security centre, CJB, in Banja Luka, investigated reported murders in the territory under its jurisdiction and remained in possession of all the documentation submitted to prosecutors' offices after completion of investigations.

Vasic said the courts failed to convict even when they had the evidence. He claims he gave the courts enough evidence to convict at least one suspect for war crimes against non-Serb civilians but the court acquitted the man on all counts.

Sead Zeric, senior deputy at the county prosecutor's office in Banja Luka, blamed unknown officials for destroying the evidence. He told Justice Report that documents concerning investigations of wartime murders of civilians in Banja Luka had gone missing.

"Around 500 civilians were murdered in the Banja Luka area during war years but the problem in investigating and pressing charges is that in 1999 somebody issued an order to destroy all murder cases involving an unknown perpetrator," said Zeric.

Justice Report has tried in vain to discover who might have issued such an order, if it was indeed ordered.

Miroslav Gladanac, RS public prosecutor until January 1998, claims no such act was done during his term in office. "Both the county and main public prosecutors, Milan Puvacic and Nebojsa Pantic, did their jobs well and I doubt that they could have changed after I left," said Gladanac.

Puvacic, however, said the murder cases had never been under the jurisdiction of the county prosecutor, while Pantic is not currently contactable.

Vesna Jovic also blames local Croat politicians for part of the failure to process war crime cases concerning Croats from Banja Luka.

"While Bosniak politicians use every opportunity to talk about crimes committed against Bosniaks in Republika Srpska and justly demand punishment for those responsible, the Croat politicians, who are small in number anyway, are silent," she said.

"They are just not interested, and only hold their positions to fulfil their personal interests."

Bishop Komarica says the policy of silence and passing the buck serves nobody's interests, because true reconciliation demanded an element of justice.

"For the victims and their families, truth and justice must be satisfied," he said. "The people who took law into their own hands thinking that the law will not get them must be found, so the evil is not repeated," he added.

Criminal code confusion casts doubt on war crimes justice

By Nidzara Ahmetasevic, Sarajevo

Four criminal codes are being implemented in Bosnia and Herzegovina today, which may call the legality of certain war crimes judgements into question.

(Published at www.bim.ba – 05.07.2007) - Legal experts fear that if Bosnia and Herzegovina does not harmonise its jurisdiction policy in the area of criminal law, the effectiveness of its war crimes trials could be called into question.

At present, four criminal codes are being implemented simultaneously in Bosnia and Herzegovina - resulting in four different definitions of war crimes and a number of different punishments.

Human rights activists, as well as legal experts, claim that the implementation of four codes when it comes to processing war crimes poses a big problem for jurisdiction here.

Some claim that that this puts the indictees in a situation where they are not equal before the court, which is one of the most basic human rights.

On the other hand, others are afraid that some of the judgements handed down until now could even be annulled after consideration of appeals.

However, the biggest fear comes from the possibility that such a situation could seriously endanger the work of the Bosnian court's War Crimes Chamber, as well as the establishment of a national strategy for prosecuting war crimes suspects.

Besides the criminal code of Bosnia and Herzegovina, three more criminal codes are in effect at the moment - that of the Federation of Bosnia and Herzegovina, of the Republika Srpska, and the criminal code of Socialist Federal Republic of Yugoslavia, SFRY.

After Bosnia and Herzegovina was pronounced independent in 1992, a decree was passed with the same legal force with which the criminal code of SFRY was passed, with small amendments. Up until the end of the war, nobody even tried to change this law.

After the signing of the peace accords, the justice system in Bosnia and Herzegovina, as well as the country itself, stayed split up along entity lines. As the government here encountered difficulties in agreeing on important decisions regarding this issue, the Office of the High Representative, OHR, made a series of legal decisions.

With the mediation of OHR, the criminal code of the Federation of Bosnia and Herzegovina was passed in 1998, but has gone through a series of changes until now. In Republika Srpska, the law itself was passed in 2000, but it has also been altered. Until the existing laws were passed, all justice institutions implemented the criminal code of SFRY.

The Bosnian criminal code, which is now implemented only by the court of Bosnia and Herzegovina, was imposed by the OHR in 2003.

As there are different laws, today there are still ministries of justice on different levels - entity and national - as well as courts, prosecutions and other institutions. Their work is mostly not harmonised.

The application of four different criminal codes in the area of processing war crimes is already creating problems in daily practice.

Most protests - the bulk of which come from defence attorneys – are directed towards the Bosnian court, which uses the Bosnian criminal code in its work

Attorneys who appear as defence counsels in cases before the Bosnian court are of the opinion that their clients are in an unfavourable position due to the application of the new criminal code and they often request the implementation of the old criminal code, that of SFRY, as it was in effect at the time when the alleged crimes were committed.

This request is usually based on the level of punishment afforded by the old code, which is significantly less harsh than the new Bosnian one. At the same time, the criminal code of SFRY or entity criminal codes do not recognise some of the acts with which some of the indictees are charged before the Bosnian court.

INDICTEES' APPEALS

For example, lawyers defending the 11 indictees charged with genocide in Kravica have appealed to the Bosnian court for the implementation of the national criminal code in their case.

The defence counsels objected not only to the new law, but also to the local court's authority, because both were imposed by OHR rather than the local parliament.

"Such a legislative function and authority do not exist even in totalitarian regimes, let alone countries with achieved democratic standards which belong to the contemporary world," argued one appeal set out by one of the defence teams in question.

They object to the implementation of the Bosnian criminal code because "it was not in effect at the time of alleged commitment of the crime... The criminal code ... could be applicable only in case that it is more favourable for the perpetrator".

The defence team for the Kravica indictees are of the opinion that as the criminal code of SFRY was still in effect during the war – and that it allows for more favourable punishment - the 11 should be tried according to that law according to which, if they were found guilty, they could get a maximum sentence in the amount of 15 years of prison.

The appeal of the team of attorneys of Abduldahim Maktouf, the first person to be sentenced for war crimes according to the new criminal code, has a similar basis. The constitutional court of Bosnia and Herzegovina is currently considering his appeal.

Ismet Mehic, Maktouf's defence counsel, says that the essence of the appeal is the decision to apply the Bosnian criminal code in the trial.

"In the Maktouf case, we are dealing with the illegal application of regulations because the crime was committed at the time when the code of SFRY was in effect," Ismet Mehic told Justice Report.

"The criminal code of Bosnia and Herzegovina is applied for the first time in the Maktouf case and it will be a test case for upcoming trials. We believe that the use of that law (violates) our client's human rights," argues Mehic.

Mehic believes that the constitutional court will decide in their favour and that soon all war crimes cases, regardless of the court, will be tried according to the criminal code of SFRY.

FIFTEEN YEARS FOR GENOCIDE

Appeals in the cases of Maktouf and the 11 indictees charged with genocide are only two examples. However, similar arguments can be heard at almost all war crimes trials at the Bosnian court.

When it comes to processing war crimes, the basic differences in the existing four laws that are implemented are easily detected.

The criminal code of SFRY defines genocide and gives at least a five-year sentence for perpetrators, or technically even the death penalty. As capital punishment has been repealed following the European convention on human rights, only jail sentences are available for this crime.

The Bosnian criminal code gives a much higher sentence for genocide - at least ten years or a longstanding jail sentence. Five years or a longstanding jail sentence is given for the same act in the Federation, and in RS ten years or a life sentence.

Crimes against humanity are mentioned only in the criminal code of Bosnia and Herzegovina, as well as the criminal act of expulsion or forced disappearance - and the punishments are the same as for genocide. The other laws in Bosnia do not even recognise this type of crime.

War crimes against the civilian population are acknowledged in all four laws but, again, the punishments differ from a minimum of five years according to the criminal code of SFRY, to a minimum of ten in the criminal code of Bosnia and Herzegovina. As the death penalty has been repealed, the longest sentence which can be given according to SFRY laws for these acts is 15 years.

Because of that, local attorneys, employees of the national court and prosecution, and international organisations insist that it is necessary to harmonise the laws in Bosnia and Herzegovina as soon as possible.

The Bosnian prosecution is of the opinion that criminal legislation needs to be equalised as soon as possible across the country. Head prosecutor Marko Jurcevic uses every opportunity to publicly invite authorised institutions to become involved in this issue.

Jasna Dzumhur, an expert in the area of human rights and the director of the Office of High Commissioner for Human Rights in Bosnia, OHCHR, is resolute when she says that entity and state laws need to be harmonised.

"There are two basic reasons for that. The first reason is that indictees and defendants must be given equal rights. The second aspect is the protection of the victims themselves and the relationship towards victims for a crime with which someone is charged. The law must be an equal tool in the hands of both," said Dzumhur.

She also pointed out that the principle of implementation of a more favourable law, which the defence teams are requesting, and pronouncing gentler punishments "can be less than stimulating from the aspect of human rights" for both the victims and the defendants.

"Those who are objecting to the use of the ŠBosnianĆ criminal code use the time of committing (the criminal act) as the main principle," says Dzumhur. She is referring to the fact that during the war only the old SFRY criminal code was in effect.

"But if they put that under a question mark, the one can put the authority of the Hague tribunal under a question mark as well. That would go on forever," warned Dzumhur. "The moment when the state law came into effect, the validity of all other laws should cede."

Until now, parliament has not considered removing other codes from function and leaving the state code as the only one. As a result, today the courts of lower level are forced to stick to the rules that regulate that indictees must be tried in accordance with the law that gives the lowest punishments.

The spokesperson of the prosecution of Sarajevo Canton and Prosecutor Oleg Cavka told Justice Report that the cantonal court in Sarajevo uses the criminal code of SFRY in processing war crimes.

"That is, we apply the law which was in effect at the time when the criminal act was committed. According to this law, maximum punishments for the heaviest criminal acts are 15 years of jail. That is a practical problem that leads to inequality of citizens before courts," said Cavka.

ACT AND SANCTION

Aware that simultaneous application of four laws in a country creates problems in daily practice, the Bosnian court has invited authorised institutions to look at possible solutions.

"Simply put, a person can be held responsible and punished for acts which represent violation of mentioned prohibitions, such as genocide, war crimes, etc., even when they were not foreseen as such criminal acts at the time they were committed," said a court spokesperson.

When determining the punishment, the court chooses to implement the Bosnian criminal code and find their support, as well as those who are appealing, in the European convention on human rights.

The European convention prohibits pronouncing a sentence higher than the one applicable at the time when the criminal act was committed. However, Bosnia's state court interprets this as it not being obligatory to use the gentler law compared to the punishment which was applied at the time when the criminal act was committed.

The Bosnian court was encouraged by a decision made by the European Court for Human Rights in Strasbourg based on an appeal filed in Croatia.

While discussing which laws have preference, the European court made the decision "that perpetrators of war crimes knew beyond any doubt at the time of war that the crimes they committed would be criminalised at least by international laws, and their later persecution is predictable, therefore they surely knew that they must be punished even with the heaviest sanctions".

The European court assumed that "if an act is known, the sanction is known as well".

The Bosnian court believes that the general purpose of punishing for the heaviest criminal acts should not be forgotten.

"Threatened and given punishments should reflect the gravity and seriousness of the crime and must be such that they ensure adequate punishment of the perpetrators, and ensure effective legal remedy for the society and persons whose rights were violated", is the position of the Bosnian court.

While in Bosnia the discussions about equalising criminal codes have yet to come to life, a similar initiative on international level is initiated in the region. Last month, the president of the Bosnian court Meddzida Kreso and president of Belgrade's county court Sinisa Vazic initiated a campaign of equalising the laws used in processing war crimes on the territory of Serbia, Bosnia and Croatia.

Kreso and Vazic initiated forming of "a work group for equalising criminal policy in war crimes trial on a regional level".

The proposal is to appoint judges in a working group who are working on war crimes cases from Croatia, Serbia and Bosnia and Herzegovina, as well as some international judges from the Hague tribunal.

The regional idea is already being considered and is getting support from international institutions. In the meantime, there are no initiatives for harmonising the criminal legislation on the territory of Bosnia and Herzegovina.

"There are many cases ŠhereĆ but nobody understands what is the basis of our work," said Cavka.

"We, who have problems, are very much thinking of using one law. However, those who are supposed to think about that and work in that direction are not acting. This problem has existed for two years already and nothing has been done. And that is enough time for a law to be changed.

"There is a simple solution for this big problem - that implementation of the state criminal code is allowed in war crimes trials in all entities."

No place for war criminals in Bosnian prisons

By Nidzara Ahmetasevic, Sarajevo

Bosnia's prisons are bursting at the seams, and the problem will only get worse as the War Crimes Chamber continues its work.

(Published at www.bim.ba – 15.05.2007) - Prisons in Bosnia and Herzegovina are old, overcrowded and do not fulfil basic international standards, experts have warned.

Many observers believe that the problem will only get worse as the new War Crimes Chamber in Sarajevo continues its work. Bosnia and Herzegovina currently has 15 prisons and detention facilities - eight in the Federation, six in Republika Srpska (RS), and one state detention unit. More than 2,600 individuals are incarcerated in these facilities, which are running at an estimated 105 per cent of capacity.

Britain's Department for International Development (DFID) warned in a recent report that the only way to resolve the issue is to build a new state prison and overhaul the current penal system.

The need for a new state prison is a result of the reform of the Bosnian judiciary and the establishment of the Bosnian State Court and its War Crimes and Organised Crime Chambers.

The DFID study, which was presented to the international community and local government this week, predicts that the State Court will sentence 200 new prisoners in the next few years – all of whom will have to be incarcerated somewhere.

The Bosnian justice ministry estimates some 93 will be sentenced for war crimes and 130 for organised crime offences in the coming year alone.

Further problems are caused by the special treatment and security measures needed when dealing with war crimes convicts. The study warns that, at present, none of Bosnia's penal institutions are capable of providing these measures, and notes that the prisons do not meet European standards.

The state justice ministry last year also warned that existing prison capacities were inadequate for housing those sentenced by the Bosnian courts.

Bosnian justice minister Slobodan Kovac has told Justice Report that, as a result, plans for the construction of a state prison are now underway.

"In this phase of judicial reform in Bosnia and Herzegovina, construction of a state prison is a priority," he said.

PRISON FOR 330 CONVICTED PERSONS

According to Kovac, the new prison would have a capacity to house 330 prisoners. The cost of the project is estimated at 14.4 million euro.

The location chosen for the new facility is Butmir, a suburb of Sarajevo that is ten kilometres away from the State Court.

"More than a million convertible marks (around half a million euro) was spent in the past 18 months on transportation costs due to lack of prison and detention space," Kovac said.

"A state prison would reduce the costs of transporting the detainees to the court from other prisons."

The country's prisons are currently under authority of entity governments in the Federation and Republika Srpska, and district Brcko. The detention unit of the Bosnian court is currently the only facility supervised by the state.

This unit comprises 21 cells, of which 19 are inhabited by war crimes indictees, one by an organised crime suspect, and the other used for private visits.

However, the court already has more indictees than the detention unit can cater for. Therefore several war crimes accused are being transferred to trials from detention units in other parts of Bosnia, which leaves its mark on the court's budget.

The Bosnian court is also facing a problem when it comes to incarcerating those found guilty of war crimes. Two sentences have been passed so far by the court's War Crimes Chamber with more expected next month.

However, Kovac admits that he does not know where the convicted persons would serve their sentences.

"I don't know where the two sentenced persons are as the court arbitrarily sends them to some of the entity prisons. This is not good. It is expensive and these prisons are not appropriate. They do not have even basic facilities required by the law," Kovac told Justice Report.

The minister also warned that the presence of war crimes and organised crime offenders "in the existing prisons aggravates the safety in prisons and has negative impacts on other prisoners".

He predicts that in this way "the number of individuals who will turn back to crime after release will increase, and their prospects for rehabilitation will not be improved".

RECOMMENDATIONS TO THE AUTHORITIES

In its report, DFID establishes that the Bosnian authorities - on all levels - should focus their attention on improvement of conditions within the prisons.

Other international organisations have also called for reform of the prison system. The Council of Europe has also said that the prisons are old, inappropriate and do not satisfy the minimum of European standards.

Back in 2003, another organisation - the European committee for prevention of torture and inhumane and humiliating treatment or punishment - made recommendation to the Bosnian government on necessary measures for improving the prisons.

The committee concluded that there were "serious deficiencies in material conditions within detention units because of inadequate infrastructure or deterioration of the conditions in cells (frequently caused by overcrowding)".

All three organisations have concluded that the construction of a state prison will better the conditions under

which those convicted will serve their sentences.

Minister Kovac has told Justice Report that, as with the set up of the state court and detention unit, the local authorities have to rely on the help of international donors.

In March this year an international donors conference was held in Brussels, where the needs of the state court and prison were presented to the international community.

Local government representatives hoped to secure 40 million euro for the completion of the state court project and the construction of state prison in the next five years. But the donors promised a total of around 10 million euro for these needs, leaving the government and judicial officials uncertain about the future of their project.

The justice ministry and government have continued seeking funds for the prison project elsewhere. But Kovac has warned that despite the goodwill of the local authorities and judiciary to strengthen the rule of law on state level, much still depends on the willingness of the international community to sponsor their efforts.

"We are ready for all this work, but we require stronger material support from the international community. Without it we will not be able to resolve the situation in which we find ourselves," Kovac told Justice Report.

