

Remarks by Nemanja Stjepanović, Member of Humanitarian Law Center's
Executive Team

"The International Tribunal and Beyond:
Pursuing Justice for Atrocities in the Western Balkans"

Joint briefing of the Tom Lantos Human Rights Commission
and the Commission on Security and Cooperation in Europe

12 December 2017

Honorable Chairpersons, Members of Congress, Ladies and Gentlemen,

On behalf of the Humanitarian Law Center I thank you for inviting me to present our views in regard with the prospects of dealing with the past and war crimes trials in Serbia and in the region, after the International Criminal Tribunal for former Yugoslavia (ICTY) has completed its mandate.

More than 20 years since the end of the wars in Croatia and Bosnia and almost 20 years after the conflict in Kosovo, the region is not just far from reconciliation, but in recent years there has been a notable regression. The latest judgments of the ICTY – to Bosnian Serb military commander Ratko Mladic and six Bosnian Croat war politicians - are clear examples of the former Yugoslav societies' rejection of facts pertaining to their past.

Politicians both in Serbia and the region claim that the work of the ICTY did not contribute to reconciliation, at the same time refusing to accept the evidence and conclusions of the Court, which could lead to reconciliation. The current Serbian leadership openly rejects to discuss the accomplishments of the ICTY, calling the court "biased" and arguing that it was only prosecuting Serbs. The true reason for such an approach lies in refusing to accept the role of Serbia, its political leadership, its army and secret police in the wars in Croatia, Bosnia and Kosovo.

For the same reason - the concealment of the role of Serbian state structures in the wars of the nineties - war crimes trials in Serbia have never fully come to life, and now have further slowed down, so to speak, they are before quenching.

In the last three years, the Serbian War Crimes Prosecutor's Office has issued only eight indictments. The fact that only in 2011 the same Prosecutor's Office issued fifteen indictments - speaks for itself about the slow down.

Since the beginning of the war crimes trials, the Serbian War Crimes Prosecutor has never accused any high-ranking military or police officer, or high political officials of Serbian ethnicity. The Prosecution's targets are almost exclusively direct perpetrators of crimes, and from the indictments and judgments it is not possible to see their relationship with the State.

For example, at the trial of members of the Scorpions unit for the murder of six boys and young men from Srebrenica which happened in Trnovo near Sarajevo in the summer of 1995, the least effort was never made to establish the connection of that unit with the Ministry of Interior of Serbia, while even in the verdict it was never stated that the victims were brought from Srebrenica. The obvious goal

being to prevent establishing Serbia's connection with the Srebrenica genocide and, in general, the war in Bosnia.

Considering the 25-year work of the ICTY and the 14-year work of the domestic War Crimes Chamber in Serbia, a paradoxical conclusion can be made that the crimes were planned by the highest political, military and police officials, while their execution was conducted by the lowest levels of the structure. As if there was no one in between them. When the domestic war crimes judiciary was established, the idea was for it to complement the work of the ICTY by prosecuting senior and middle ranked individuals within military-police structures, and not by prosecuting mere perpetrators.

The Humanitarian Law Center has been pointing for years to the responsibility of the Army commanders in Kosovo, but the national judiciary never reacted. One of the commanders of the military brigades in Kosovo is today the Chief-of-staff of the Serbian Armed Forces. This is Ljubisa Dikovic, a former commander of the 37th Brigade, whose members took part in the attacks on Kosovo villages where massive crimes were committed, and the evidence points to their role in concealing the crimes, that is, transferring bodies from Kosovo to mass graves in Serbia.

In Serbia, four sites with mass graves were discovered, where nearly 1,000 Albanian civilian bodies were found. Their bodies were transported as part of a concealment operation of the crimes in Kosovo, and it is clear from the ICTY judgments that everything was executed on the orders of former FR Yugoslav President, Slobodan Milosevic, and with the participation of the highest state structures, primarily from the police. None of the hundreds of participants of this process, however, has ever been prosecuted before the national judiciary.

In one of these mass graves, at the police pole in Petrovo Selo in eastern Serbia, the bodies were discovered of American citizens – ex members of the Atlantic Brigade of Kosovo Liberation Army (KLA) Yili, Agron and Mehmet Bytyqi - who were arrested in Serbia without arms and uniforms, in their attempt to help a Roma family to get out of Kosovo. They were arrested and sentenced to two weeks in prison; after being released they were again arrested by the police, taken to Petrovo Selo and executed there. In Serbia, there was a trial against two policemen who arrested the Bytyqi brothers when they were released from prison and who took them to Petrovo Selo, but they were acquitted. No senior police official has ever been charged for this crime.

Former war crimes prosecutor Vladimir Vukcevic publicly said that, according to his knowledge, the murder was ordered by the Serbian police minister, late Vlatko Stoiljkovic, and that the part of the structure that executed this order was Goran Radosavljevic Guri, until recently a member of the Main Board of the ruling Serbian Progressive Party. Despite the government's promises - which mostly coincide with visits by US officials to Belgrade - there is no progress in this case. This is yet another example of how high state officials are shielded from accountability - in this case, police officers; and an illustration of the capitulation of the judiciary before the state.

Furthermore, only 61 Albanian victims from Kosovo are covered by the judgments of the Serbian War Crimes Chamber, which is less than 1% of approximately 7,000 Albanian civilians killed by the Serb forces in 1998 and 1999. It is particularly of great concern that the domestic War Crimes Prosecution Office has not raised any new indictments for crimes committed against Albanians from Kosovo for almost four years.

At the same time, the first indictments of the newly established Special Court for Kosovo in The Hague are expected. It is a court of Kosovo's national judiciary before which the crimes of members of the KLA committed from 1998 to 1999 will be prosecuted. After the ICTY trials that brought limited satisfaction to the KLA victims, that Court represents a new chance for justice, but also brings fear

that its work will be presented in Serbia as proof that crimes in Kosovo were committed primarily against Serbs and that there is no need for further trials in Belgrade. With Serbian war criminals convicted for war crimes in Kosovo out of prison and back in Government, we fear that Serbia will perceive and present to the public the work of the new Kosovo court as Serbia getting a well-deserved "last laugh".

As part of the accession negotiations, the European Union recognized the problem of war crimes trials as an important issue under Chapter 23 relating to justice and the rule of law. The adopted Action Plan for Chapter 23 and National War Crimes Prosecution Strategy foresee a number of concrete steps that Serbia must take in order to improve war crimes prosecution. Although these documents are not perfect, their effective implementation would without a doubt make war crimes prosecution in Serbia far more effective. However, nearly two years since their adoption, the Action Plan and Strategy remain dead letters.

Our impression is that international partners have been failing to clearly communicate to Serbia that the stalling of war crimes prosecution and the widespread denial of court-established facts are unacceptable. As a result, suspected war criminals remain in public office and, what is particularly worrying, convicted war criminals are returning to public life.

The most recent example is the appointment of General Vladimir Lazarevic, who served a 14-year sentence before the ICTY for crimes in Kosovo, as a lecturer at the Military Academy and the promotion of Nikola Sainovic, sentenced in the same case to 22 years in prison, to the Presidency of one of the ruling parties - Socialist Party of Serbia. These are not the only examples. The Government, more specifically, the Minister of Defense publicly stated that "the time of shame has passed".

At the same time, Serbian President Aleksandar Vucic gives conciliatory statements, while ministers and media loyal to him keep sending messages that Serbia does not accept responsibility for the policy that led to the gravest crimes on European soil since World War II. The result of this hypocrisy being that Serbia's international partners are calm, while at the same time, further conflicts in the region are being fueled.

The situation is not much better in the whole region neither, primarily in Croatia where refusal to perceive the past has reached its peak after a recent verdict to Croatian war leaders in Bosnia and Herzegovina. Recent unrest in the region is getting more and more frequent, and the calls of politicians to look only in the future do not seem promising. For years, civil society offers a suggestion for resolving such a situation - the Regional Commission (RECOM) to establish all the facts about War Crimes, whose work would be supported by all the governments in the region. The Initiative exists for years and it is our hope that with the support of the international partners in the region, the importance of the initiative will be finally understood and the establishment of the Regional Commission supported.

Thank you for your attention.