

Transitional Justice in the Western Balkans

Izabela Kisić*

The Core Elements at the First Level – Truth, Reconciliation and Compensation

“Transitional justice refers to the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses. These measures include criminal prosecutions, truth commissions, reparations programs, and various kinds of institutional reforms. (...) States have duties to guarantee that the violations will not recur, and therefore, a special duty to reform institutions that were either involved in or incapable of preventing the abuses.”

International Center for Transitional Justice

The history of the Balkans and the specificity of the conflict, just as in each post-conflict region, call for a comprehensive approach to transitional justice. Not a single Western Balkan country has adopted a generally recognized transitional justice concept: all they have instead are *ad hoc* initiatives.¹

* Izabela Kisić, MA, Senior Researcher, Helsinki Committee for Human Rights in Serbia, Belgrade/Serbia.

¹ The only country to indicate that it would adopt the strategy of transitional justice is Bosnia and Herzegovina. However, the prospects for its adoption are small because of the likelihood of obstruction by the entity Republika Srpska (RS). The process of working out a strategy began in 2010 when the country's Ministry of Justice, together with civil society organizations and assistance from the UNDP, began to work on a draft strategy by defining a list of issues, from determining facts about war crimes, reparations, honouring the victims and institutional reform. The need for such a document was explained by the recommendations of the Council of Europe and the United Nations. In the final stage of work on the draft strategy, officials from Republika Srpska withdrew from the project, claiming their views were not being given due attention. At the same time, RS NGOs began opposing the strategy. Assistant Minister of Justice Niko Grubešić said that in post-conflict BiH we must confront the issue of how to bring the perpetrators of war crimes to justice, but at the same time find a way to provide closure to the victims

Even though European integration is the only mechanism which can initiate transitional justice in the Western Balkans, the EU missed the opportunity to devise a comprehensive concept and a unified framework of transitional justice for this post-conflict region. The EU has failed to articulate a coherent policy of how „justice“ in the broader sense ought to guide and direct its activities of peace building in the Western Balkans.

The Director for Europe of the International Center for Transitional Justice notes that with peace and stability as the narrative basis of the European project, and with prosperity as a promise, the EU has been very successful in bringing democracy closer to those countries which had until recently been under oppressive governance. However, in the process of EU expansion, the dimension of human rights could have been established at a deeper level by implementing the broad Copenhagen criteria, a part of which would separately deal with the issue of the past.²

Only recently has the international community given this issue somewhat greater attention.

In February 2012, the Council of Europe for the first time³ issued a report on transitional justice in the Western Balkans with a series of recommendations directed at the abolishment of impunity, securing adequate and effective reparations for the victims of war, the need for the truth to be ascertained and acknowledged, as well as the need for institutional reforms as a guarantee against resurgence.

The United Nations have introduced transitional justice approaches into its peacekeeping and peace building operations. The UN report on the rule of law and transitional justice in conflict and post conflict societies

of war: „We finally have to find a way how to mend and reconcile the war-torn society.“ (see: www.balkaninsight.com/rs).

² EU's strategy for transitional shortfalls and chances (“Strategija EU za tranziciju pravdu: propusti i prilike”); In: Forum za tranziciju pravdu, No. 3, edited by Denisa Kostović, Belgrade, 2007.

³ Council of Europe: “Post-war justice and durable peace in the former Yugoslavia”, February 2012.

(2004)⁴ marked growing understanding and application of transitional justice concepts and instruments.

International missions in post-Yugoslav countries lack specialized units or sections which would deal with transitional justice in a comprehensive way. In that sense, monitoring the conflict in the former Yugoslavia, the international community focused on the reform of institutions rather than on a change in the system of values, cultural models and the creation of a common narrative on the causes of the dissolution of the former Yugoslavia and the character or nature of the war. Some forms of transitional justice such as war crime trials before domestic courts are implemented at state level. Reforms of the security sector – the army and the police – have been launched. The international community, the European Union above all, as well as the Council of Europe and the OSCE have insisted on amending the law and harmonizing it to European standards.

Usually civil society organizations and activists address the issues states would not: they analyze contexts in which war crimes have been committed and the causes and consequences of the war and *systemic* crime, publicize documents compiled in wartime, publish books and produce documentaries, and they go public with their findings in the attempt to imbue “collective memory” with factual information about victims and crimes.

However, it turned out that reforming institutions and creating a historical narrative on the causes of Yugoslavia’s bloody dissolution are two inseparable aspects of post-conflict justice in the region.

The insistence on only one aspect and not the other does not automatically lead to stable peace and reconciliation in the region. Within Serbia itself, which is the key to interpreting the past, there is a lack of capacity

⁴ The Report of the UN Secretary-General (UN document S/2004/616): “The rule of law and transitional justice in conflict and post-conflict societies”, 23 August 2004, <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf?OpenElement>>.

to deal with its own responsibility for Yugoslavia's bloody dissolution. The obstacles to stable peace, or positive peace as some call it, can only be removed by answering the question of what the causes and aims of the war were.

The lack of a common narrative concerning the causes of the bloodshed in the Western Balkans, exacerbated by the enormous amount of civilian casualties, equally amongst the defeated and the victorious, has slowed down the processes of transitional justice and, especially, the process of the renewal of confidence and true reconciliation in the Western Balkans. This issue was never placed on the agenda of any transitional justice initiative in the countries of the Western Balkans. Between Serbia on the one side, and all other post-Yugoslav countries on the other (in the beginning Montenegro was on the side of Serbia) there is a deeply rooted conflict about the nature of the war in the former Yugoslavia. This makes their relations all the more fragile.

It is within this context that one should view the reactions to the judgment rendered by the Hague Tribunal (November 2012) in which generals of the Croatian Army, Ante Gotovina and Mladen Markač, were acquitted of the charges of having participated in an „organized criminal enterprise“ against the Serbs in Krajina. The reactions of Croatia and Serbia to the verdict were diametrically opposed, reminding one of the beginnings of their conflict more than 20 years ago.

Because of the above reasons, not even transitional justice in the Western Balkans can be viewed as being unique to all countries of the region, but rather as a separate process within each country involved. Therefore, for reconciliation to be possible, it is imperative for Serbia itself to determine its relationship with its neighbors. On the other hand, it is necessary that within each country reconciliation is reached between the majority and the minority community, or between Bosniaks, Croats and Serbs within Bosnia and Herzegovina.

Even alongside institutional reforms, past conflicts continue to live on in politics and in the public opinion. Serbia does not acknowledge the borders of Kosovo. Utilizing its minorities or communities in neighboring

countries, in the Republika Srpska (RS) in Bosnia and Herzegovina or Serbs in Kosovo's north, Serbia continues to have an impact on the destabilization of these countries, that is, it continues to prevent the forming of these states based on the rule of law. This is why the key to reconciliation in the Western Balkans is in Serbia's hands.

The May 2012 elections in Serbia triggered-off renewed anxiety in the region since the levers of power are again in the hands of the parties and individuals which played a key role both in the preparations for and during the war itself.⁵ From the region only Montenegro's President Filip Vujanović⁶ came to the inauguration of his Serbian colleague Tomislav Nikolić (elected in May 2012) due to his stance on the war and the past. The countries in the region expect mutual respect for territorial and state sovereignty because otherwise, a return to the past can ensue. Even the relations with Croatia are burdened. Croatia's President Josipović has, for example, stated that he has a problem cooperating with someone in the region who negates a crime, because this means that the crimes can be repeated.

⁵ Ivica Dačić – MP in 1990s, SPS spokesman and one of the “young lions” of the party – was appointed to the post of the Prime Minister. His Socialist Party of Serbia rules in coalition with the populist Serb Progressive Party (Srpska napredna stranka), a faction of the Serb Radical Party that had its own para-military forces, the so-called “Šešeljians” infamous for crimes against the non-Serb population in the territory of former Yugoslavia. The Serb Radical Party was also known for its chauvinistic stands and the banishment of non-Serbs from Serbia. Today, its outstanding young cadre, Aleksandar Vučić coevally is the president of the Serb Progressive Party, the Deputy Prime Minister, Defense Minister and coordinator of all military and security services. Serbia's newly elected President, Tomislav Nikolić, used to be Radical's “second best” throughout.

⁶ There are views that President Vujanović from Montenegro came to Serbia for Nikolić's inauguration only out of fear, given the very fragile relations between Serbia and Montenegro, which continue unabated since the establishment of the independent state of Montenegro. During the election campaign in Montenegro the divisions between those who deny Montenegrin statehood and the identity of the Montenegrin nation and who are strongly backed by Belgrade on the one hand, and the ruling Montenegrine elite on the other hand, manifested themselves clearly. These divisions are still very pronounced and contribute to the very fragile nature of the Montenegrin state.

Truth and Reconciliation Commissions

The establishment of truth and reconciliation commissions in the Western Balkans is one of the weakest points of the transitional justice process in the region. Many of them haven't survived.

Currently, the only initiative in the field of reconciliation is the RECOM (Regional Commission), which represents the largest coalition of civil society organizations (1,500) in the post-Yugoslav countries. This coalition was established to determine facts about all victims of war crimes and other grave human rights violations in the territory of ex-Yugoslavia in 1991-2001. The support it has received from the international community, including considerable funds, has by far been bigger than any other restorative-justice initiative ever received in the Western Balkans.

This initiative, launched in Belgrade, was not designed to deal with the causes and consequences – the context of ex-Yugoslav wars. This is why it has to cope with serious problems now. The initiative has been developed for years so that it was only 2008 that it became operational.

The RECOM would publicize its report within the period of 2 years – including findings about war crimes and recommendations for reparations – and pledging “no more” to war crimes. The planned regional commission would open its archives to the general public. Some 500,000 persons (out of the planned 1 million) from all ex-Yugoslav republics put their signature under the initiative. Copies of the petition were handed over to the Presidents of Croatia and Montenegro, the Presidency of Bosnia and Herzegovina and Slovenian authorities. The former President of Serbia, Boris Tadić, was also given a copy but not in person. He did not meet with RECOM representatives. Copies have also reached the Presidents of Macedonia and Kosovo (also the Prime Minister of Kosovo, Hashim Thaçi has given his support to the initiative).

Not long ago, the Director of a well-known Belgrade-seated NGO Nataša Kandić, RECOM founder and coordinator, said that a meeting with the newly elected President of Serbia Tomislav Nikolić was at the top of RECOM's list of priorities. This makes the very idea of RECOM sense-

less considering the fact that Nikolić was among the warlords, known for his explicit chauvinism and nationalism. Throughout ex-Yugoslav wars he was the vice-president of the Serb Radical Party deploying its paramilitary troops, responsible for war crimes, to ex-Yugoslav battlefields.

This regional commission gradually loses support in the region, criticized for its operations and concept even by civil society organizations – primarily those from Kosovo, Bosnia and Croatia. As for conceptual differences, according to the Helsinki Committee for Human Rights in Serbia, civil society representatives also hold that the proposed regional approach for RECOM is inadequate and does not give an insight into the context, causes and main culprits of the war in former Yugoslavia.⁷ They advocate that is very important to cover a much broader context, political, cultural and social context on the eve of the war.

It is imperative for Serb society to face up to its responsibility for the war and war crimes, the advocates of the above-mentioned thesis argue. The ex-Yugoslav wars were not civil wars – they were wars of aggression Serbia waged in the attempt to occupy parts of territories of other republics, Bosnia-Herzegovina, Croatia and to suppress Kosovo. The then leadership of Montenegro sided with Serbia throughout the war and shared its policy. The RECOM coordinators say that insistence on individual accountability for massive crimes casts a shadow on a far more significant dimension of the war: the policy that generated these crimes. In this context, RECOM is practically amnestying the state of Serbia, its institutions and elites.

The facts about the war and war crimes have been well-documented. Some reports on massive crimes, such as those by Human Rights Watch, Amnesty International, the International Red Cross or the international rapporteur Thaddeus Mazowiecki in the 1990s, were publicized during the war. Piles of documents are in the possession of ICTY, national war crime courts and numerous NGOs. The precondition for regional reconciliation is the presentation of all these facts within a context telling of

⁷ Helsinki Committee for Human Rights: European option obstructed. Annual report on human rights in Serbia 2011. Belgrade 2012, p. 56.

causes of ex-Yugoslav wars, their brutality and their masterminds. The fact that RECOM skips the context undermines its achievements. Investigating the context with the objective of determining the nature or character of the war(s) in the region of the former Yugoslavia was the greatest challenge for the RECOM initiative.

Out of several short-lived truth and reconciliation commissions in the ex-Yugoslav territory one was established by the then Prime Minister Vojislav Koštunica (after the ousting of the Milošević regime). It was obvious from the very beginning that his commission – at least for having assembled outstanding nationalists, including the founder himself – could not be after either truth or reconciliation. It melted away soon. Koštunica himself turned out to be the hardcore defender of the national program that spurred the Serbs initially to go to war.

The president of the Jewish community in Bosnia and Herzegovina, Jakob Finci, established the “Association of Citizens for Truth and Reconciliation”, a loose group of civil society organizations and individuals in 2000. In 2001, the group discussed the establishment of a formal commission and discussed a draft law to create such a commission. The meeting was supported by The Hague Tribunal. However, the effort was limited by the fact that Bosnian Serb representatives did not attend the meeting. In Bosnia-Herzegovina, the commission was supposed to deal with the period from the November 1990 elections till the spring of 1996 – in other words, the period starting on the eve of the war and ending in its aftermath.

Apart from the commissions that would refer to the state, there were a few attempts to form commissions which would or should deal with investigating facts tied to specific war crimes. The Commission on the Siege of Sarajevo, e.g, was established in 2006. It produced no results by the end of its mandate.

The Republika Srpska Government Commission “for investigating the circumstances surrounding the events in and around Srebrenica from July 10th–19th 1995” was somewhat more effective. There is no doubt that this Commission was set up under international pressure. The

Commission ascertained that “thousands of Bosniaks were executed, in a way that is a grievous violation of international humanitarian law, and that the perpetrator, among other things, undertook measures to conceal the crime by dislocating the remains of the bodies”. Thirty-two new locations of mass grave sites were discovered, the information coming exclusively from Republika Srpska sources (governmental bodies and witnesses in the field). Dragan Čavić, the President of the RS at the time, stated that the nine days of the Srebrenica tragedy were a black page in the history of the Serbian nation. Even though at that time this was practically a revolutionary statement for RS, it didn’t have long-term effects. Namely, RS incumbent President Milorad Dodik has never spoken in such a manner, but has even denied, on more than one occasion, the Srebrenica genocide.

Apologies, monuments, commemorations

Fifteen years after the end of the Croatian war, the Presidents of Serbia and Croatia, Boris Tadić and Ivo Josipović, respectively, together paid homage to Croatian victims in front of the mass grave in Ovčara near Vukovar (in Ovčara, Serbian forces killed more than 200 Croats). On that occasion, both presidents highlighted the importance of reconciliation. The event was covered by 230 accredited journalists from the region.⁸ President Tadić’s apology in Ovčara was reinforced by a concrete gesture by Serbian officials important to determine the facts of the crime in Ovčara. Namely, Serbian officials handed over to the Croatian side documents from the Vukovar hospital which had been taken back in 1991. It is precisely the absence of similar concrete gestures which helps to ascertain the facts about war crimes, that cast a shadow of doubt on the sincerity of the subsequent “messages of apology” and frequent meetings of the two Presidents replete with media exposure.

Apologies are also frequently relativized by the fact that visits by Serbian officials to places where war crimes have been committed in the name of the Serbian people involve statements which “distribute” culpa-

⁸ See the article: “Predsednik Tadić u Ovčari”. In: <www.blic.rs>, November 4, 2010.

bility. For example, former president Tadić apologized to the Bosniaks in 2004 in Sarajevo, but then went on also to ask for an apology for Serbian victims.⁹ Tadić was at the commemoration for the victims of Srebrenica in 2010 when he, unlike the other dignitaries present, did not address the victims themselves, but only spoke to journalists. However, his addresses did not touch Serbia's responsibility for the war and thus failed to contribute to regional relations. Most memorable gestures were expected from Serbia's leaders – they were expected to take actions recognizing Serbia's role in the outbreak of war and bloody disintegration of the former Yugoslavia.

Spurred by the international community, the Serbian Parliament in 2010 adopted the Declaration on Srebrenica, which condemns the crime in Srebrenica but avoids the word genocide itself. A similar declaration failed to pass in Bosnia and Herzegovina as it was prevented by Republika Srpska. Five NGOs in Serbia have petitioned to make the denial of the Srebrenica genocide illegal.

In Croatia, Operation Storm is crucial to the process of facing the past and to Serb-Croat reconciliation. In 2006 the Croatian parliament adopted a declaration condemning all the crimes committed before and during the Operation. For the first time in 2012, a representative of the Serb community in Croatia (Veljko Džakula) attended the ceremony to mark the anniversary of Operation Storm as a liberation campaign. This act also marked progress in Serb-Croat reconciliation in Croatia. On the other hand, Belgrade media strongly criticized the Serb representative.

⁹ Boris Tadić's statement in Sarajevo in 2004: "I apologize to all those against whom crimes were committed in the name of the Serbian people, but the crimes were not committed by the Serbian people, but by individual criminals and it is impossible to accuse an entire people or nation. The same crimes were committed against our people and in that sense we all owe each other an apology. If I am the first one to do it – I stand before you. For me, it is of crucial importance for confidence (to exist) that all criminals will be held accountable for their crimes and that there are no biased approaches to crime and that there is no protection when crimes are in question, those committed against the Bosniaks, Croats or Serbs". (www.b92.net, December 6, 2004).

The Council of Europe in its report¹⁰ critically points out that not a single monument commemorating civilian victims of a minority nation has been erected in any Western Balkan country (for instance, at a former concentration camp for civilians).

Alternative educational outreach programs and civil society organizations

Initiatives to deal with transitional justice in the Western Balkans come mainly from civil society organizations and play a significant role in confidence building between states or communities within a single state involved in a conflict. In their work, these organizations face huge obstructions. Without clear support from the government, but also lacking consistent support from the international community, civil society organizations and their activists are frequently the target of extremist nationalistic organizations. During the past few years a certain improvement has been achieved. The February 2012 report of the Council of Europe notes that there has recently been the impression that the police are more amenable to provide security to organizers of round table discussions, commemorative gatherings and exhibitions in the region which raise public awareness and deal with the memory of victims and the events of the past.¹¹ Nevertheless, the ruling elites, with support from the media, especially in Serbia, strongly continue to marginalize the efforts of the non-governmental sector in the process of facing up to the past.

Furthermore, instead of contributing to reconciliation in the Balkans the media deepen interethnic tensions. The media in Serbia missed several opportunities to contribute to regional reconciliation and to face the past. The arrest of Slobodan Milošević and his extradition to the ICTY was one of such opportunities for a media turnabout. Further, when it came to the arrests of Mladić and Karadžić the media were more relativistic than supportive to the actions taken by the police and politicians.

¹⁰ Council of Europe: Post-war justice and durable peace in the former Yugoslavia, February 2012.

¹¹ Council of Europe: Post-war justice and durable peace in the former Yugoslavia, February 2012.

A huge part of the activities of civil society organizations in the field of transitional justice is directed at young people, mainly the generations of present day high school and university students who grew up in the post-war period. Civil society organizations take young people in the first place to visit scenes of mass crimes (committed “in the name of their nation”). For example, CSOs from Serbia organise study tours for the young to Sarajevo, Vukovar, Srebrenica and Kosovo. The focus of the work with young people is on changing their cultural model and value system which, especially in Serbia, increasingly inclines towards nationalism and right-wing ideologies.

Another obstacle to reconciliation in the region is the attempt to revise history, that is, the reinterpretation and misinterpretation of the anti-fascist legacy – the attempt to rehabilitate the Četnik movement, its symbols and its leader which marked the preparation for the wars in the 80s and the wars themselves during the 90s. The Četniks were advocates of ethnic cleansing and the Greater Serbia project in World War II. In response, other ex-Yugoslav republics revived symbols of their own dark past. Judicial rehabilitation of the Četnik leader, Draža Mihailović will soon be completed in Serbia: chances to prevent it are meager. More than 20 NGOs in Serbia have appealed to the international community to lobby against the ongoing revision of Serbia’s fascist and anti-fascist movements. They argued that such a revision could easily trigger off the revival of fascist policies and movements in other West Balkan countries.

International Criminal Tribunal for the former Yugoslavia

The most powerful mechanism of transitional justice in the region of the Western Balkans, in spite of certain shortcomings, is the International Criminal Tribunal for the former Yugoslavia in The Hague, established by the United Nations.¹² However, the Hague Tribunal was not perceived as an instrument of transitional justice in the countries of the

¹² The ICTY has issued 161 indictments. At present 35 cases are on trial. (www.icty.org).

Western Balkans and European integrations were the main lever to force these countries to cooperate with this international institution.¹³

There are many positive and very important achievements of the Hague Tribunal. One of the substantial achievements are the trials against top ranking political and military officials on the basis of command responsibility. Also, the “removal” of the most responsible individuals for war

¹³ The crisis in Serbia’s cooperation with the Hague Tribunal came to a head after the ruling in the case of the Croatian generals Ante Gotovina and Mladen Markač who, in November 2012, were acquitted practically of all charges, including the one on the “joint criminal enterprise” and the persecution and eviction of the Serbian population from Krajina. (Gotovina was charged only for count 3 from the indictment which refers to the fact that he knew about the acts of retribution committed, that he should have investigated them but which Gotovina, according to the Proceedings Chamber, failed to do. The Appeals Chamber accepted the conclusion of the Proceedings Chamber that Markač, by failing to investigate the crimes of the special police, created an atmosphere of impunity, which spurred the members of the special police to commit war crimes.) In the context of reconciliation, it would be essential for Croatia, now that it is free of the burden of the charge of a „joint criminal enterprise“ before the Hague Tribunal, to initiate domestic proceedings and open the issue of responsibility for crimes committed against the Serbs during operation „Storm“. Serbia’s response to the judgement was in unison and highly politicized. The government had on its side most of the opposition, segments of civil society and the media – which will all have long-term consequences on deepening the negative image of the Hague Tribunal amongst the Serbian population. Cooperation with The Hague has been demoted to the technical level which, among other things, means that the Government of Serbia will no longer be handing over documentation essential for the Tribunal to use as proof against former leading Serbian officials undergoing trial in the Hague. These types of documents were always a bone of contention. Previously, Serbia demanded the redaction of certain parts in the documents which mainly referred to the role of the Serbian authorities in the wars. Certain activities of the ICTY Outreach Office in Belgrade have been suspended. For example, a conference on the legacy of the Tribunal has been cancelled and the Office has been prevented from organizing lectures in high schools on the judgements rendered by the Tribunal. It seems quite paradoxical that Vuk Jeremić, presiding over the UN General Assembly, in protest over the judgments rendered by the Tribunal in the case of the Croatian generals, has scheduled a public debate in the UN for April 2013 on the merits of the ad hoc tribunals, established precisely by the UN. Jeremić warns that he enjoys the exclusive right to choose the participants of this debate both from the academic community and the civil sector.

crimes from political and public life is especially important if we know that Western Balkan countries have not implemented lustration laws. Further, the ICTY has introduced a major issue: it was the first court to invoke Article 27 of the Fourth Geneva Convention qualifying sexual abuse as a grave breach of humanitarian law.

However, trials before the Tribunal have not influenced general public opinion in most of the post-Yugoslav states. The Tribunal is deemed just and impartial on the basis of the judgments rendered towards the members of one's own nation.

The ICTY outreach program, particularly in Serbia, has hardly achieved its goal and has not changed the public opinion within the local communities. Therefore they continue to support war criminals within their own nation. The Tribunal therefore missed the chance to achieve broader and stronger support within the Western Balkans. In Croatia public protests were organized against the arrest and transfer to The Hague of members of the Croatian armed forces.

Many arrests of war criminals have been turned into public events gathering citizens who were protesting against the arrests of their heroes.

For example, The Hague Tribunal brought charges against the Serbian president Slobodan Milošević and many high ranking officials within the army, police and security service in Serbia. This, however, did not help to raise some important questions within Serbia, such as the role of the Serbian public institutions in war mongering. Serbian public opinion continues to believe that Serbia is not responsible for the wars.

Though Serbian national TV stations have broadcast some trials live from ICTY, their editorial policies were such that these broadcasts did not change public opinion of the war. So, for instance, live broadcasts of the trial of Slobodan Milošević aroused more sympathy for him than revealed facts about Serbia's involvement in the war. Commentators – lawyers and other experts addressing the audience during the breaks – actually turned the courtroom into Milošević's mouthpiece while totally ignoring testimonies of witnesses for the prosecution. They were after

minimizing Serbia's role and preventing damage it might suffer as the most responsible party.

Regional elites – in Serbia in the first place – managed to suppress the effect of ICTY decisions on a change in public opinion. Occasionally, convicted persons have been welcomed as heroes in their native countries. The Serbian government sent a plane to take Biljana Plavšić, ex-president of the Republika Srpska Assembly, notorious for her monstrous statements about the slaughter of Bosnian Muslims, to Serbia after her release. In her numerous interviews since her release she has been reaffirming her wartime stands rather than repenting them. This and other cases indicate that appealing to criminals to repent before some commissions and the general public is unviable and produces no desirable effect in the Western Balkans.

The cooperation with the ICTY was highly uncertain and therefore happened under strong pressure from the international community. For instance, it took Serbia more than ten years after the ousting of Slobodan Milošević to extradite all ICTY indictees. Then it was only in 2005 that Croatia extradited General Gotovina to ICTY. Serbia often obstructed ICTY proceedings by refusing to hand over the necessary documents from the 1990s testifying to ex-Yugoslavia's disintegration and the war.

What's most important is to prepare for the end of the ICTY mandate in December 2016. A major question is the storage of ICTY documentation – a sea of evidence about war crimes and the causes for ex-Yugoslavia's disintegration. This documentation is crucial for the continuation of transitional processes in the region, which cannot be over at the time ICTY closes down. The documentation should be available to everyone in the region and to the international players dealing with the Balkans. It's good that it will be stored in The Hague for the time being – though in the future it could also be stored in Sarajevo or Srebrenica, places that suffered most during the ex-Yugoslav wars. It should also be available online at a portal enabling detailed searches. At present this documentation can only be searched by cases – and those searching need to know the exact number of the case to get the information they are looking for.

Decisions of the other court based in The Hague – the International Court of Justice – that are crucial for transitional justice in the region are being neglected: this particularly refers to the International Court of Justice decision in the case Bosnia-Herzegovina vs. Serbia (qualifying the Srebrenica massacre a genocide, 2007) and its advisory opinion about Kosovo's independence declaration (not contrary to international law). The proper explanation of these rulings to citizens of Serbia is not only crucial from the angle of the historical truth but also for the development of a regional policy and postwar state-building. Only the civil sector has tried to point out the significance of these decisions - but without a helping hand from the media.

Reparations

Speaking of reparations one should take into consideration the following: the conflict left all ex-Yugoslav republics devastated and impoverished. While Croatia, Bosnia-Herzegovina and Kosovo were devastated in the war, Serbia's authorities themselves destroyed the country's economy by financing the war for five years.

Against this backdrop one can hardly expect these countries to compensate civilians for their ruined homes and lands. This is where the international community stepped in. While the international community was financing the return of refugees – mostly by providing construction material and support to small-size enterprises – political elites were obstructing the return of refugees. Civil sector organizations rather than national governments were those who have dealt with the return of refugees.

About three million citizens were expelled from their homes in the Western Balkans. In November 2011 the Council of Europe released that 438 thousand refugees were still living in makeshift facilities: most of them were Roma.

Thanks to the insistence of the civil sector Annex 7 of the Dayton Accord addresses the issue of refugees. The first regional agreement on lasting solution to the issue of displaced persons was signed 10 years

after the Dayton agreement was achieved. In November 2005 the agreement was signed by the foreign ministers of Bosnia-Herzegovina, Croatia, Serbia and Montenegro – and only thanks to mediation by the UN High Commissioner for Refugees, the Council of Europe and the EU. In 2011, the foreign ministers of Bosnia and Herzegovina, Croatia, Montenegro, and Serbia signed a joint declaration announcing their countries' commitment to resolving the long-standing issue of refugees and displaced persons in the Balkans.

The Council of Europe warns in its reports that governmental transitional justice policies are deficient: In Bosnia-Herzegovina – transitional justice policy boils down to welfare and the disability to provide pensions to the survived. The government is more concerned with veterans than civilian victims; a reparations system to meet the actual needs of victims is non-existent; victims of sexual abuse are neglected. In the federal entity Republika Srpska the War Reparations Act was adopted in 2005. Even before it was passed, courts of law had issued 70-million-Euro reparations orders, plus interests, in some 9,000 cases. However, these decisions have never been effectuated – despite the Restitution Act having been adopted in the meantime. Victims of the war in Croatia and their families can claim compensation by law; on the other hand, many claims have been made in vain. In Serbia, not a single act provides compensation to victims or their families having sustained damage as a result of acts taken by Serbian institutions. It is very hard for victims of torture or sexual abuse, or prisoners of concentration camps to prove injuries sustained in front of domestic courts. Moreover, all compensation claims must be made within 5 years from the time the damage was sustained; otherwise, they are statute-barred under the limitations act, which is an absurdity considering the duration of ex-Yugoslav wars. The issue of missing persons is still highly politicized and stands in the way of regional cooperation between commissions of experts; over 30,000 people are still registered as missing persons.¹⁴

¹⁴ Data from Council of Europe: Post-war justice and durable peace in the former Yugoslavia, February 2012.

Institutional reforms and transitional justice

Institutions are highly politicized throughout the region, with the exception of Croatia, which has made significant process in this regard during the EU accession process. The international community, faced with obstructions to its work, manages by relying on individuals willing to cooperate in the reform process, rather than by relying on the institutions themselves, which renders the institutions weak. This weakness is particularly evident during election cycles.

Serbia's institutions were actively involved in the conflict on the territory of former Yugoslavia, which became evident in the Hague Tribunal, where nearly all military, police and political leaders of Serbia's institutions were standing trial. (Indictments have been raised, for example, against the former President of Serbia Slobodan Milošević, the Deputy Prime Minister of the FRY government from 1994-2000 Nikola Šainović, the chief of the General Staff Dragomir Ojdanić, the commander of the Third Army area and chief of the General Staff Nebojša Pavković, the head of the State Security Service Jovica Stanišić, ...)

Bosnia and Herzegovina has been in an institutional crisis for a long time. The reform process in the Republika Srpska has gone in the opposite direction, especially as of 2006, with Milorad Dodik increasingly utilizing the rhetoric of war leaders. Reports on the situation in Bosnia and Herzegovina (like the report of the International Crisis Group: "Bosnia and Herzegovina: What does Republika Srpska want?"¹⁵) testify that Dodik is continuing in a peaceful manner what Mladić and Karadžić have started. The fragile institutions of Bosnia and Herzegovina, the Constitutional Court and the police above all, are being continuously targeted by the leadership of Republika Srpska, which utilizes its veto right and permanent threats of holding a referendum as its main tools. As a consequence, statements of political leaders from the second entity, the Federation Bosnia and Herzegovina, threaten that if the Republika Srpska secedes, conflicts will arise. All of this demonstrates how fragile

¹⁵ <http://www.crisisgroup.org/en/regions/europe/balkans/bosnia-herzegovina/214-bosnia-what-does-republika-srpska-want.aspx>.

the peace in the region still is. By misusing institutions, Republika Srpska questions the Euro-Atlantic integration of Bosnia and Herzegovina. For example, Bosnian Serbs have vetoed the amendment of the act on the protection of sensitive data which would have allowed international partners to share confidential information with Bosnia and Herzegovina, including the police in the entities and cantons.

After the war had ended, not all states had the same starting points. For example, Bosnia-Herzegovina and Kosovo have had to build institutions from ground zero. This is especially the case in Kosovo, given that Kosovo Albanians have been completely excluded from the institutions and public administration for the past 20 years. There are opinions that, following the destructions of the war, it would have been easier to build institutions from the beginning, instead of reforming the existing ones. In this sense, Kosovo makes a good example, whereas this has not been achieved in Bosnia and Herzegovina. The building of Kosovo's institutions has attracted a number of young Kosovo Albanians which were schooled in the West during the 1990-ies to return to the country. The institutions were open to them because both politicians and war leaders recognized that institutions cannot be built without educated experts. The most important factor was that these young people were not burdened by prejudice. What keeps these young people from continuing to work actively on the consolidation of the state of Kosovo today is an extremely high level of corruption.

Bosnia and Herzegovina has come out of the war much more devastated than Kosovo. In Bosnia, the capacities for reconstructing the country, in both infrastructure and human capacity, were far lower than in Kosovo.

The process of reforming institutions in the Western Balkans can be seriously threatened by the changes in Serbia following the recent elections (in spring 2012). The security services and the judiciary are back in the hands of the parties responsible for the war.

The judiciary

All countries have, under pressure from the international community, adopted a vast number of laws to reform the judiciary. However, the judiciary reform in most Western Balkan countries can be considered one of the weakest points of the transition. There is still a high degree of corruption, and the governments' measures are not efficient enough.

Corruption, which is one of the main remnants of the past, and the absence of political will to fight against it represent one of the greatest obstacles to the region's development today. The absence of political will to enter the fight against corruption impartially is evident. Opening corruption scandals throughout the Western Balkans has the aim of cracking down on political opponents, rather than being a genuine fight against corruption. They serve the purpose of coming into power. The questions of wealth acquired during the 1990-ies and the war profiteers has remained practically unopened.

It should be noted that the majority of tycoons which have acquired fortunes during the war have, during the transition, become the only holders of private business and an important source of employment. Among other things, this has led to the international community not questioning their business. For example, many businessmen from Serbia were refused entry into the US during the 1990-ies, but after 2000, many were removed from these lists.

Another missed opportunity was systematically to sanction all war-profiteering in the countries of the Western Balkans. In 2011 Croatia adopted legislation against the statute of limitations for criminal acts of war profiteering, ownership change and privatization – something that is unique in the entire Western Balkans.¹⁶ On the basis of this law charges were also raised against former Croatian Prime Minister Ivo Sanader.

¹⁶ In 2009 Serbia adopted the Law on confiscating property gained through criminal activity but it cannot be applied to verdicts pronounced up to its adoption before The Hague Tribunal or the domestic war crimes court.

Court proceedings continue to last very long and there is a systemic problem of non-enforcement of verdicts.

The judiciary reform in Serbia has, for example, during the past three years led to controversies and criticism by the international community and the local NGOs because of a non-transparent selection of judges and prosecutors and the inadequate territorial organization of courts. There are opinions, however, that the judiciary reform in Serbia, even with its numerous flaws, was the only measure of lustration in the judiciary since the regime change. One of the first decisions of the Constitutional Court following the last elections was that 300 judges and more than 100 prosecutors, deposed during the judiciary reform, should be reappointed.

One of the consequences of the inadequate concept of transitional justice is the strengthening of right-wing organizations in Serbia which openly propagate ethnic hatred, as well as the revival of inter-ethnic conflicts of sports fans in the post-Yugoslav region. The Constitutional Court of Serbia has confirmed the verdict on banning the right-wing organization Obraz, which the police has characterized as clero-fascist, and is considered an example of good practice. However, very soon after this ruling the leader of Obraz, Mladen Obradović, convicted to ten months of prison for spreading racial and other forms of discrimination, was released by the Appellant Court pending a retrial.

The judiciary and the police in Serbia, do not always have a strict stance towards right-wing groups which propagate inter-ethnic hatred and cause incidents.

From the standpoint of judicial reform, it is important to introduce the institution of the Ombudsman. All of the countries have established the institutions of the Ombudsman and other independent bodies which deal with the protection of human rights. However, the mechanisms for implementing the recommendations of these institutions aren't good enough.

All Western Balkan countries have accepted the European Convention on Human Rights, so that citizens can appeal to the European Court for

Human Rights. The verdict in the case of Sejdić-Finci against the state of Bosnia and Herzegovina is of particular importance for post-conflict justice. Namely, Dervo Sejdić and Jakob Finci, citizens of Bosnia and Herzegovina, have appealed that, based on the Constitution and the Election Law of Bosnia and Herzegovina, they were denied the right to be elected members of the House of Peoples in the Parliament of Bosnia and Herzegovina and to run for the Presidency of Bosnia and Herzegovina because of their Roma and Jewish descent, respectively their non-Bosniak, non-Croat and non-Serb descent.

Vetting and Lustration

Lustration has had very little effect on the countries of the Western Balkans, even in those which introduced special laws. Serbia, for example, adopted a law on lustration but it was never implemented. In case that the law on lustration had been implemented, Serbia would certainly not have Tomislav Nikolić for President 20 years after the wars broke out.

The vetting and lustration process in the individual countries of the Western Balkans has raised several questions, to which each country has to seek separate answers stemming from the character of the war (whether it was defensive or aggressive). One of those questions is whether lustration should cover the war-time period or should be limited to the period of Communism until the start of the wars; whether lustration should cover only holders of high offices like high-ranking military officers and government officials or just the people who were directly involved in taking decisions which violated human rights and the people who carried out those decisions).

The vetting measures had a somewhat greater effect in countries like Kosovo and Bosnia-Herzegovina where the international community had strong executive powers, but there were a number of shortcomings as well.

For example, in Bosnia-Herzegovina, thanks to the executive powers primarily of the Office of the High Representative and NATO forces, a significant number of background checks could be conducted to investi-

gate the past of candidates for high-ranking state posts, primarily in the police, ministerial candidates, ranking military and police officers and judges. It is especially important that the mandate of the High Representative includes the authority to dismiss high-ranking officials who obstruct the peace process. An UNDP report from 2006¹⁷ stated that the flaw in that process lay in the fact that the assessment was based on “different grounds: moral integrity, technical skills and qualifications, property and financial status, and the war crimes record. However, in general, such reviews lacked clear criteria and transparency and it is difficult to ascertain which were the main criteria used to block the appointment of public officials”.¹⁸

The shortcomings in the process of investigating personnel (vetting) in Bosnia and Herzegovina are reflected in the draft Strategy for Transitional Justice in that post-Yugoslav state. In general, the dominant opinion among the public in Bosnia-Herzegovina is the conviction that institutions which conducted and are conducting the vetting were not successful enough and that posts in state institutions continue to be held by persons guilty of rights violations in the past. One of the reasons for that conviction lies in the fact that some certified police officers were later indicted for and convicted of war crimes, and that the trials were conducted “behind closed doors”. There were never any public and wide-ranging consultations on the issue which institutions and posts in those institutions should be subject to investigation, how the process should be organized, which period of time the vetting should cover and similar relevant questions. However, the public still has a great interest in seeing the vetting process conducted and that was shown through a consultation process and the mentioned public opinion poll. Namely, that poll showed that almost 90 percent of the polled believe that people guilty of human rights violations in the past should be banned from employment in public institutions.¹⁹

¹⁷ Aucoin, Louis/Babbitt, Eileen: *Transitional Justice: Assessment Survey of conditions in the Former Yugoslavia* (UNDP report). Belgrade 2006.

¹⁸ *Ibid.* p. 101.

¹⁹ Ministry of Justice and Ministry of Human Rights and Refugees of Bosnia and Herzegovina: *Strategy of Transitional Justice in Bosnia-Herzegovina*. Sarajevo

The Project Report done by the Center for Democracy and Reconciliation in South East Europe²⁰ says:

“The interest of the general public has been focused on other issues, and civil society was not strong enough to bring the issue to the fore. The mainstream information media did not place the issue on a public agenda in a way and to an extent that would have been appropriate and necessary. Most international actors involved in democracy building in the Western Balkans paid little or no attention to contested issues surrounding the dealing with the past. All of this had negative repercussion on democracy and the rule of the law.”

Primarily thanks to the existence of the international court for war crimes, a certain number of individuals which were at the helm of security services during the war have disappeared from public life. However, the entire mid-level and lower-level managerial personnel remains.

From the standpoint of lustration, the opening of personal files is important. The former members of the service are still very present in public life, which would probably explain many cases. However, there are also serious arguments that these files could be misused for political clashes between opponents. Opening of the files has its controversies in other countries as well.

The opening of the files of federal security services which have, during the 1980-ies, fallen under the competence of Serbia would, however, provide insight into the dissolution of former Yugoslavia. In this year's resolution of the European Parliament on Serbia, it was stressed that Belgrade should cooperate with the other post-Yugoslav countries in regard to the security services archives from communist times. It is precisely stated that Serbia should make these archives available should any of these countries require them.

This question has also been opened in Macedonia in the context of lustration. Macedonia is particularly interested in opening the Belgrade

2012. <<http://www.mpr.gov.ba/aktuelnosti/propisi/konsultacije/Strategija%20TP%20-%20bosanski%20jezik%20fin%20doc.pdf>>.

²⁰ Cited in Aucoin, Louis/Babbitt, Eileen: Transitional Justice: Assessment Survey of Conditions in the Former Yugoslavia (UNDP report). Belgrade 2006, p. 105.

security services archives, especially those referring to the Third Military Area of the JNA (which comprised also the territory of Macedonia), where facts or false dossiers on cooperation with the former Yugoslav secret services are being used for the disqualification of political opponents. The problem is that Macedonian authorities do not have the possibility of preventing potential “traps” from Belgrade.

Domestic courts for war crimes as part of the judiciary reform

Special war crimes prosecution departments were founded relatively late in Bosnia and Herzegovina (2005), and in Croatia and Serbia (2003). War crime trials in Kosovo were organized immediately following the conflicts in 2000, however, the international judges, prosecutors and attorneys dominated before the in Kosovo (UNMIK, followed by EULEX). The independent Court of Kosovo and the Ministry of Justice were established in 2005. Two specialized departments within higher-instance courts were established in Montenegro as late as 2008.

According to a report by the Council of Europe²¹ and local NGOs, politicians frequently obstruct the work of these prosecution offices, whereas the safety of witnesses represents one of the greatest problems in all Balkan countries. As regards witness protection, according to the report of the Council of Europe it is not enough for EULEX²² to be engaged, rather the improvement of the local legal system is necessary. In the majority of cases, in Serbia above all, proceedings have a very slow dynamic.

The greatest shortcoming of the war crimes prosecution in Serbia is the fact that not a single charge has been raised against high officials in state institutions, or against members of the mid-ranked and lower-ranked managerial personnel. Immediate perpetrators and members of paramilitary units are the only ones standing trial. It is evident that, based on the

²¹ Council of Europe: Post-war justice and durable peace in the former Yugoslavia, February 2012.

²² EULEX has a special unit consisting of international investigators for war crimes investigations.

existing charges raised at The Hague and on witness testimonies, that there is sufficient material to raise charges before the national court and for initiating proceedings for command responsibility.

According to observer reports from the Tribunal and the OSCE, the courts in Bosnia and Herzegovina have demonstrated that they are capable of trying cases of war crimes.

The OSCE mission in Bosnia-Herzegovina report says that the courts and prosecution in the country made significant progress in 2005-2010 towards determining the accountability for war crimes. That progress covers both the number of cases and the quality of the processing. "In just a few years, both those institutions have proved that they are a reliable and efficient partner of the ICTY," said the OSCE report.²³

Unlike the rest of Bosnia-Herzegovina, war crimes trials in the Republika Srpska began 10 years after the war which ended in 1995, and created additional difficulties. "A large number of cases are solely based on witness testimony taken immediately after or during the armed conflict, however, witnesses may have become unavailable in the meantime. On the other hand, a large number of other cases cannot be brought before the courts because the indicted are unavailable," the OSCE report said. The OSCE mission research indicated that most of the prosecutors that were polled said that the inability to locate and have access to war crimes suspects is one of the main reasons for the large number of investigations which are still open.

A source of the problem is also the fact that the war criminals often have double, and even triple citizenships, hence they can run from country to country within the region in search of a safe haven. (Croatia, Bosnia-Herzegovina and Serbia therefore signed an agreement preventing the misuse of double citizenship). Regional cooperation of national war crimes prosecutors has been improved, but serious problems continue to

²³ OSCE Mission to Bosnia and Herzegovina: Delivering Justice in Bosnia and Herzegovina: An Overview of War Crimes Processing from 2005 to 2010, May 2011, <http://www.oscebih.org/documents/osce_bih_doc_2011051909500706eng.pdf>.

exist, especially obstructions of the extradition process (this refers primarily to Bosnia-Herzegovina and Serbia).

The main obstacle in Bosnia is the lack of cooperation at the state level, and at the levels of the entities and the Brčko district. According to the National Strategy for War Crimes Processing it is stipulated that a centralized data base on all closed cases should be created. The Council of Europe emphasises in the report (Feb, 2012) that certain high-ranked politicians are speaking against the judiciary in Bosnia and Herzegovina, which is impeding the work of the judiciary and does not help reconciliation.

In Macedonia, following several years of judiciary reform, this process was challenged by last spring's (2012) adoption of the Parliament's decision on applying the 2002 Amnesty Law to all cases which the Hague Tribunal has referred back to Macedonia during 2008, in order for the cases to be tried before domestic courts. The question of implementation of this decision has remained open. According to Amnesty International:

“Relatives have challenged a decision by the Macedonian parliament in 2011 which effectively ended the investigation of four war crimes cases returned from the ICTY for prosecution in Macedonia, by extending the provisions of a 2002 Amnesty Law. This included the investigation of the abduction of 12 ethnic Macedonians and one Bulgarian national, allegedly by the Albanian National Liberation Army”.

Relations in the region are upset by Serbian indictments of high-ranking Croatian, Bosnian-Herzegovinian and Kosovo officials of the 1990s which were discredited before international courts. The lists of the indicted (or convicted in absentia) of Serbia's War Crimes Prosecutor's Office contain the names of persons against whom arrest warrants were issued during Slobodan Milosevic's regime. The most disputable indictments are those raised by the Military Court during the 1990s which have not yet been revised and arrest warrants are still effective. For Serbia, these cases have had the aim of discrediting the Bosnian state in the eyes of the international community and to discredit its legitimacy.

Those cases include e.g, the indictment of the Croatian citizen Tihomir Purda, of the Bosnia-Herzegovina war-time Presidency member Ejup

Ganić and the Bosnia-Herzegovina Army chief Jovan Divjak. This refers, also, for example, to numerous charges against Kosovo Albanians for alleged terrorist acts, which led to certain arbitrary arrests of Kosovo citizens last spring. It is well known that this refers to a majority of indictments which were unfoundedly filed, as demonstrated by the amnesty of over 2000 Albanian political prisoners in Serbia following the change of government on October 5th.

The case of Jovan Divjak is especially interesting since that ethnic Serb fought in the ranks of the Army of Bosnia-Herzegovina and was a symbol of the defense of Sarajevo. Divjak was arrested in Vienna and held in custody pending extradition proceedings. He is suspected of committing war crimes against the members of the Yugoslav People's Army in Dobrovoljačka Street in Sarajevo. After spending six days in an Austrian prison, Divjak was released on bail. A court in Korneuburg turned down the request for Jovan Divjak's extradition to Serbia because he would not have a fair trial in Serbia.²⁴ According to the court decision, the significant denial of his right to a defence makes his extradition to the Serbian authorities impermissible. The court also pointed out that the Hague Tribunal did not find enough evidence to support the claim that he had committed war crimes, in order to launch an investigation on the former Bosnia and Herzegovina General in Serbia.

Due to the failure of those indictments, Serbian ex State Secretary in the Ministry of Justice, Slobodan Homen, has stated that "all arrest warrants issued by Serbia against those suspected of war crimes will be revised". Homen also emphasized that

"during the war in the former Yugoslavia confessions were also acquired by suspects in camps and in front of cameras, so that such confessions should certainly be checked. The checking of evidence and arrest warrants is also needed for the credibility of our country, as well as due to the fact that all perpetrators of war crimes should be brought to justice".²⁵

²⁴ A video was broadcast on Belgrade's TV stations in which Divjak can be heard clearly shouting cease fire.

²⁵ Večernje novosti, 21 March 2011, "Poternice na proveru".

The Helsinki Committee for Human Rights in Serbia said in its 2011 annual report that it is

“very important that the political elites of the former Yugoslav republics reconcile their views on the prosecution of war crimes suspects and indictees, and the individualization of the perpetrators’ accountability. They must mutually settle the disputes arising from the armed conflicts, instead of asking a third party – international judges – to say the final word. In pursuing the latter option, one party will always remain unsatisfied, thus contributing to the further tensioning of inter-state and inter-ethnic relations instead of reconciliation to which almost all aspire when speaking at political fora”.²⁶

The case of the Western Balkans shows that political will is needed to set up domestic war crimes courts and that political will is the main condition needed for the efficiency of those courts – that is the creation of conditions for judges and prosecutors to operate independently. If not, the courts face strong obstruction to the collection of evidence and a lack of adequate protection for witnesses. Besides this, it is necessary to have mutual trust and very strong cooperation between the post-conflict communities, that is states, which is often impossible to establish without the international community and civil society within the country.

Police

Progress in regional police cooperation has been achieved. However, the fight against organized crime and serious and professional cooperation among the police in this area depend primarily on the level of interest of the political elites. For example, lately, a lot of information about organized crime in northern Kosovo has come to light, from which it could be concluded that illegal trade could not be possible without the involvement of politicians from the region.

The example of northern Kosovo, a region with no rule of law, shows certain weaknesses of the international missions, in this case the European Union Rule of Law Mission (EULEX) which has a police investigations unit. That international mission failed to establish the rule of law

²⁶ Helsinki Committee for Human Rights: European Option Obstructed: Annual Report on Human Rights: Serbia in 2011. Belgrade 2012, p. 85.

in that area. According to its own assessments, the police investigations unit faces problems with access to the area to conduct investigations, a lack of trust among the local community, lack of will of witnesses and victims to testify.²⁷

Although certain progress has been made in police reform in all countries of the region, this sector continues to be politicized. From the transitional justice standpoint, it is important to monitor the reform of security structures in Serbia, primarily due the involvement in today's incidents in the region.

The riot in northern Kosovo has confirmed the presence of Serbia's intelligence and security structures in Kosovo. This information has surfaced thanks to certain MPs which were members of the Parliament's Committee on Security. The fact that Serbia's public enterprises mechanization was used for road blocks in northern Kosovo testifies to Serbia's involvement.

Police reform in Bosnia and Herzegovina was obstructed by the Republika Srpska. The RS has strongly objected to the unification of police forces of the Federation and the RS. The last measure of the RS which obstructs reform processes in the police was adopted last summer (2012), when the RS passed a law negating the IPTF certificates, of the international police mission of the UN. These certificates represent a lustration measure adopted after the war, based on which those who have participated in crimes and operations against civilians cannot work in the police force. This should have been the foundation of the police reform.

The selection of key officials and the composition of the police force in multi-ethnic environments is one of the challenges transitional justice is faced with. The police continue to be very centralized, and local-level decisions are often made at the top level, i.e. at the Minister's cabinet. Also, the appointment of police chiefs based on ethnic principles, that is appointing the top police officer from the minority community in a municipality in which it is the majority (for example: Serb municipalities in

²⁷ See <<http://www.eulex-kosovo.eu/sr/executive/00002.php>>.

the north of Kosovo), often means problems with finding a competent person qualified for the job. The minority community in some municipalities lacks trained police officers who can do their job professionally. Consideration should be given to ways of overcoming this obstacle because it is an important measure of building inter-ethnic trust.

Raising confidence in the police in multi-ethnic environments should be a priority for the police in each country. For example, in Serbia, in multi-ethnic environments, in the South or in the Sandžak, citizens still have a distinct fear of the police special forces, the “Gendarmerie”, which has undergone certain restructuring (in the negative direction) amidst the election campaign, and has been given a new anthem which states that, without Kosovo, there are no Serbs nor Serbia. Although the Police Minister Dačić has spoken out against such an anthem, or rather against performing it in public, the anthem is a testimony to the system of values within the police special unit. (It was introduced by the Commander of the “Gendarmerie”)

The police reform is very fragile and can easily go in the opposite direction.

During the summer of 2012, Montenegro conducted a pilot project in that the seaside area was patrolled by police officers from Serbia, Albania and Croatia, together with Montenegrin officers. The guest police officers did not carry weapons and they were in charge primarily of assisting tourists from their pertinent states of origin and Kosovo. This is particularly important given that there has been lots of peer violence between tourists from Serbia and the local inhabitants of late.

Generally speaking, the cooperation between the police and the civil sector in the region has been improved, but European standards have not nearly been reached. Torture is still present in police stations and civil society organizations are not allowed to perform monitoring of detention units.

One of the greatest challenges, as regards the security sector, is the inadequately regulated private security sector in Western Balkan countries.

In Serbia, tens of thousands of people are employed in this sector and are carrying weapons as part of their jobs. Due to the inexistence of a legal framework for their work, it can be concluded that these are paramilitary organizations.

The army

The most important mechanisms in reforming the military in the Western Balkans are processes involving membership in NATO and the Partnership for Peace program. This process includes adopting the standards and rules of contemporary western militaries. The main obstacle to the process is the lack of political will by local leaders. The only country of the Western Balkans which seriously opposes membership in NATO is Serbia which has a disruptive effect on the balance in the entire region.

Significant steps to reform the military in Serbia were taken thanks to its membership in Partnership for Peace (in 2006) which was a significant stimulation to those reforms. They seriously began only after the fall of the government headed by nationalist leader Vojislav Koštunica in 2008.

However, there is a concern that the reform process within Serbia's army will start running in reverse. Serbia's new government (the new defense minister is from the Serbian Progressive Party which opposes NATO) has clearly stated that Serbia wants to remain militarily independent. The re-introduction of general conscription is being announced. The chair of the Committee for Security and the oversight of security services are, for the first time, being recruited from the lines of the ruling parties, instead of the opposition.

The first serious reforms were achieved only after the Democratic Party (Demokratska stranka) had come into power following 2008. Serbia's Army has, for long afterwards, been the most pronounced protector of war criminals. In this regard, a thorough investigation about the killing of two soldiers in a military barrack in Belgrade (2004) is needed and the perpetrators should be prosecuted. The official investigation, contrary to all forensic findings, claims that this was a suicide. However, there are serious indications that the recruits were murdered because

they saw Ratko Mladić in the barrack “Karas” in Belgrade.²⁸ In Serbia today, only the civil sector insists upon this.

The fact that Serbia does not have a regional security policy, or rather the fact that Serbia does not state what its goals *vis-à-vis* Kosovo and Bosnia are, represents a serious threat to military reform in the Balkans.

Near the end of the previous government’s mandate, General Ljubiša Diković – on whom the non-governmental organization Humanitarian Law Center has compiled documentation on commanding the unit which had committed numerous crimes in Kosovo in 1999 – was appointed Chief of the General Staff of Serbian Armed Forces. This raises several questions: did the security forces know this, if they knew – did they inform the minister; if they did not inform the minister – are the security forces stronger than civilian army representatives, ...

Even with the obstructions of the Republika Srpska in reforming the army in Bosnia and Herzegovina, significant progress has been made – at the end of the war, Bosnia and Herzegovina had 250,000 soldiers in three armies. Today, this is an army with ca. 10,000 professional soldiers.

Although more than 10 years have passed since the conflict in Macedonia ended with the Ohrid Agreement, the Macedonian army still faces a reversible reform process. Macedonian new army law reveals new ethnic splits. The new law provides a range of privileges for members of armed forces that fought in the conflict in 2001. Ethnic Albanians want the same rights for families of Albanian Liberation Army fighters. Finding a balance in this field, twelve years after the termination of the violent conflict and the following peace agreement is certainly one of the greatest challenges for mediators. In order to prevent the conflict from breaking out again, the conflict itself has to be defined as regards time as

²⁸ Following the forensic investigation by FBI experts and the conclusion that the Guardsmen were killed by a third person, the prosecution launched proceedings against an unidentified person for the double murder. The request for American experts was sent by the Serbian judiciary.

well as the roles of the warring parties. This could later become the basis to resolve the question of who has privileges and who does not.

The question that security services have never opened is the responsibility of the Yugoslav National Army (JNA). It concerns the personnel with which the JNA started the war, amongst them the generals Veljko Kadijević and Blagoje Adžić. At the start of the breakup of Yugoslavia, the JNA was under the strong influence of the Serbian leadership headed by Slobodan Milošević. Although that army no longer exists, its role in the breakup of Yugoslavia would significantly explain the nature of the conflict.

Conclusions Based on Western Balkans Experience

A comprehensive concept of transitional justice needs to be installed for each post-conflict country or region and would start with the specific nature of the conflict. The presence of international armed forces on the ground secures not only conflict prevention but also demands their active role in building a stable peace. That role can be achieved through:

- Education of professional military personnel which should cover both the education of soldiers in international conventions on the behavior of the armed forces during the conflict and the need to establish standards of civilian oversight of the armed forces;
- The implementation of a number of measures of trust between the once warring armies, as it is the case in the Western Balkans. In that sense, NATO and the Partnership for Peace are important rallying spots for officers from the once warring armies;
- International military forces on the ground can launch measures to build trust among the opposing communities. In that sense their help is needed to find war criminals and to protect witnesses;
- Foreign troops should inform the population in the operational area about the reason why foreign troops are in their country. This requires a consensus within the international community at the political level on regional conflicts. For the international community this is certainly the most complex job to do;

- International military and police forces based in post-conflict countries should require from their soldiers and policemen that they explain their mandate to the local population to ensure their support in certain cases and crises;
- In order to establish regional stability all the countries of the Western Balkans should become members of NATO since that includes a standardization of the militaries in the region and contributes to a stable peace. By leaving certain countries out of the Alliance, room is left for forces which could isolate countries and thereby destabilize the region;
- Monitoring the reform of the security sector;
- Providing help to the law enforcement institutions in gathering information about war crimes and the suspected perpetrators;
- At all stages, bear in mind the necessity of cooperation with the civil sector which is often the main catalyst in launching the process of transitional justice as well as reconciliation.