

EU ACCESSION NEGOTIATIONS AND STRATEGIC APPROACH TO THE PROSECUTION OF WAR CRIMES IN THE WESTERN BALKANS*

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Overloaded by the 1990s' armed conflicts' "ballast from the past" the Western Balkans states are still struggling to manage their EU Accession agendas, whose Chapter 23 "list of issues" includes, in addition to the standard judiciary, anticorruption and fundamental rights, also the challenge to address war crimes committed in 1990s. Despite visible differences in terms of the extent to which those countries have been affected by the armed conflicts as well as the gravity of their consequences, the European Commission keeps pushing for a strategic approach to the prosecution of war crimes, including enhancing the protection and support for war crime victims and clarifying the fate of persons went missing and/or disappeared in/or in connection to armed conflicts. However, the quality and comprehensiveness of such an approach varies to the great extent among the Western Balkans states, intensifying in the periods of intensive EU accession reform agenda, followed by periods of passivation after achieving some progress on EU part. This speaks itself to what extent EU accession processes can contribute to the transitional justice processes in Western Balkans.

KEYWORDS: war crimes, victims, EU accession, Chapter 23, policy planning and evaluation, Western Balkans.

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The armed conflicts in ex-Yugoslav region

Two decades have passed since last armed conflicts in the ex-Yugoslav region finished. Armed conflicts in the former Socialist Federal Republic of Yugoslavia were characterized by grave, large-scale and systematic violations of international humanitarian law. According to estimates by various organizations during the wars in Slovenia (June-July 1991), Croatia (1991-95), Bosnia and Herzegovina (1992-1995), in Kosovo and Metohija and during the bombing of the Federal Republic of Yugoslavia (1999), as well as in the Former Yugoslav Republic of Macedonia (February-August 2001) - more than 130,000 people lost their lives, with civilians accounting for the majority of them. (Kolaković-Bojović & Tilovska-Kechevi, 2019)

It is estimated that about 40,000 people went missing. In that period, various initiatives at the national and the regional level have been made to carry out search and identification processes, mostly with the support of the International Committee of Red Cross (ICRC) and ICMP. 35,007 cases in total were reported to ICRC. According to the data of this organization from September 2023, 9,772 people were still missing as a result of the conflicts in the region. Of these, 6,233 cases are related to the conflict in Bosnia and Herzegovina, 1,924 to the conflict in Croatia and 1,615 to the conflict in AP Kosovo and Metohija.¹ Additional complexity of the situation is associated to the fact that, in some cases, persons who disappeared on the territory of one state may have family members, who are also victims, living in the territory of another state (Kolaković-Bojović & Džumhur, 2025).

In addition to wilful killing of civilians in these conflicts numerous cases were registered of enforced displacement of the civilian population, unlawful imprisonment, torture, sexual violence, inhumane treatment, as well as looting and destruction of property, economic assets, cultural and religious buildings on a large scale. War crimes were committed by all parties to the armed conflicts.²

EU, transitional justice and the rule of law

Transitional justice and the EU human rights agenda

An importance of the transitional justice for the European Union (hereinafter: EU) has been confirmed through the EU Action Plan on Human Rights and Democracy 2020 - 2024³. Namely, the whole Chapter 1.6 of the Action Plan is dedicated

¹ See more on www.kznl.gov.rs/latinica/dokumenta.php.

² See more in: The National Strategy for the Prosecution of War Crimes, "The Official Gazette", No. 19/2016.

³ EU Action Plan on Human Rights and Democracy 2020-2024, available at: https://www.eas.europa.eu/sites/default/files/eu_action_plan_on_human_rights_and_democracy_2020-2024.pdf, last accessed on October 2nd 2024.

to the closing the accountability gap, fighting impunity and supporting transitional justice, where EU recognized, among others, necessity to “support in-country initiatives to combat impunity for human rights violations and abuses and transitional justice processes, including by strengthening links with the UN (point e), as well as to actively promote measures to prevent enforced disappearances and extrajudicial killings. (point f) The same chapter also provides for developing comprehensive EU approaches to ensuring accountability, in particular for the most serious crimes and human rights violations and abuses, and to supporting victims in seeking remedy by linking national and international efforts, building on EU policies, ... (point b)⁴ Such an approach is logical continuation of the EU Action plan on Human Rights and Democracy 2015 – 2019. whose provisions have been concretised and elaborated through *The EU’s Policy Framework on support to transitional justice*⁵, which incorporates the four essential elements of transitional justice, namely: criminal justice; truth; reparations; guarantees of non-recurrence/institutional reform.⁶

EU accession negotiations of Western Balkan states: A new accession methodology

Frequently mentioned, yet barely proven in practice- this is how the new accession methodology can be briefly described (Kolaković-Bojović & Simonovski, 2023) The main argument to introduce this new approach was that it is aimed at re-establishing a credible EU perspective for the Western Balkans and to make it very clear that for the Commission and for the EU as a whole, it is a top priority to have stability, peace and prosperity in the region. (Commission, 2020).⁷

⁴ e.g. on the International Criminal Court, children and armed conflict, Women, Peace and Security, survivors of conflict-related sexual and gender-based violence, transitional justice, the fight against torture and other ill-treatment.

⁵ This document forms part of the implementation of the EU Action Plan on Human Rights and Democracy –2015 - 2019, which outlines in action 22 (b) the commitment to develop and implement an EU policy on Transitional Justice. The objective is to provide a framework for EU support to transitional justice mechanisms and processes and enhance the EU’s ability to play a more active and consistent role, both in our engagement with partner countries and with international and regional organisations. *The EU’s Policy Framework on support to transitional justice*, available at: http://eeas.europa.eu/archives/docs/top_stories/pdf/the_eus_policy_framework_on_support_to_transitional_justice.pdf, last accessed on March 9th 2019

⁶ “A transitional justice process which combats impunity, provides recognition to victims, establishes the rule of law and fosters trust also aims to contribute to a process of reconciliation. Reconciliation seeks to redesign the relationship between individuals and enable society to move from a divided past to a shared future. Legal and institutional measures alone will not be sufficient. Initiatives that target the more personal dimension of a transition may also be required, such as official apologies, memorials and the reform. However, reconciliation must not be conceived as an alternative to justice, or a goal that can be achieved independently of the comprehensive implementation of the four elements of transitional justice discussed in detail below. Furthermore, while transitional justice is a core part of the reconciliation process, other components, such as security and development, are equally important.”

⁷ Matić Bošković, M., Kostić, J. (2020) ‘How to Build Common Features of the Justice Systems in

Since such an approach has been introduced when some of the WBs countries have been already in the accession negotiation process, while others were waiting opening the negotiations, it is important to mention that the Council agreed on the application of the revised enlargement methodology to the accession negotiations with Montenegro and Serbia (already in in the process), after both candidate countries expressed their acceptance of the new methodology (Matić Bošković and Kostić, 2021). This consequently required accommodation within the existing negotiating frameworks with both countries during the next Intergovernmental Conferences. In parallel, for North Macedonia and Albania, this new approach/methodology was applicable from the very beginning of the process. (Kolaković-Bojović & Simonovski, 2023)

There are three main elements of the new methodology to be addressed: a more credible process, a stronger political steer/monitoring, dynamics determined by the cluster approach and predictability of the process.

A more credible process

Credibility here refers to the stronger focus on fundamental reforms, starting with the rule of law, the functioning of democratic institutions and public administration as well as the economy of the candidate countries.⁸ Therefore, the EC has given the predominate status to those, vital area of a state functioning, over the others. In practice, this means that unless a country meets the objective criteria, the Member States shall not agree to move forward to the next stage of the process, respecting the merits-based approach. In practice, this also has consequences articulated in the third principle- predictability and dynamism (Kolaković-Bojović & Simonovski, 2023).

Predictability and Dynamism

This principle has brought grouping the negotiating chapters in six thematic clusters⁹, where the Chapter 23 which addresses the issue of war crimes has been placed

Candidate Countries and EU Member States, *Legal Challenges for the New European Commission*, Bratislava Legal Forum, Comenius University in Bratislava, Faculty of Law, pp. 101-113

⁸ See more on rule of law requirements in Matić Bošković, M., Kostić, J. (2022) 'Reform of Public Prosecution in Serbia in Line with EU Accession Requirements', in: *Efektivnost' pripravného konania – súčasny stav a výzvy pro futuro Zborník príspevkov*. Bratislava: Univerzita Komenského v Bratislave, Právnická fakulta, Katedra trestného práva, kriminológie a kriminalistiky, 392-416. ISSN 978-80-571-0547-3 and Matić Bošković, M. Nenadić, S. (2018) 'European Judicial Standards', *Strani pravni život*, 62 (1), pp. 39-56. <https://doi.org/10.5937/spz1801039b>

⁹ 1) fundamentals, 2) internal market 3) competitiveness and inclusive growth, 4) green agenda and sustainable connectivity, 5) resources, agriculture and cohesion, 6) external relations. In addition to this, the cluster organization means that the negotiations on each cluster will be open as a whole – after fulfilling the opening benchmarks at the level of whole cluster, comparing with “the old” approach based on the fulfillment of opening benchmarks on an individual chapter basis. However,

to the Cluster I. Negotiations on the fundamentals are to be open first and closed last, since the progress in this chapter will determine the overall pace of negotiations. Finally, once negotiations on Cluster 1 are open, the order of opening the other clusters shall not necessarily follow their enumeration, but it is rather based on the reform progress achieved, which is basically expected step forward based on the “Fundamentals first” introduced by EC in 2012 for the countries of the Stabilization and Association Process, which included the rule of law, functional democratic institutions, economic management, and professional public administration, with the addition - developing and maintaining good neighbourly relations and resolution of mutual bilateral disputes. (Kolaković-Bojović & Simonovski, 2023).

The initial step in introducing “the Fundamentals first” approach could be found in establishing the transitional measures (Interim Benchmarks) in chapters 23 and 24 in Serbia and Montenegro, as a mechanism that will further contribute to the quality of reforms and their monitoring.¹⁰ At the same stage, the EU also introduced the rule that chapters 23 and 24 have to be open at the beginning of the negotiation process, but also closed at the end of it. (Kolaković-Bojović & Petković, 2020) Therefore, even before introducing the enhanced methodology in 2020, the European Union sets these transitional measures that need to be fulfilled prior to define the closing benchmarks, but also opened the door for the continuous monitoring of the rule of law reforms in chapters 23 and 24. With this step, the EU once again underlined the importance of these two chapters. Therefore, the concept of the new methodology which established Cluster 1, was highly logical and expected additional effort of EU to ensure more effective mechanisms to foster, implement and monitor reform processes associated these, vital parts of a state functioning. (Kolaković-Bojović, 2017)

Other important novelties brought through the new methodology

In addition to the two above-described principles, a new methodology has also brought an *increased importance of the anticorruption* which is now horizontal principle/crosscutting issue in all chapters.¹¹ EU promised also *a more predictable pro-*

not only the progress of an each and every negotiation chapter has been preconditioned by the progress at the level of the whole cluster, but also by the progress made in Cluster 1 (Fundamentals). Therefore, this requires a stronger focus throughout the accession process on the rule of law, fundamental rights, the functioning of democratic institutions and public administration reform, as well as on economic criteria (Čekov, 2022).

¹⁰ See more: Matić Bošković, M., Kolaković-Bojović, M. (2022) ‘New Approach to the EU Enlargement Process - Whether COVID-19 Affected Chapter 23 Requirements?’, *International Scientific Conference “The recovery of the EU and strengthening the ability to respond to new challenges – legal and economic aspects”*, Osijek, 9-10 June 2022, pp. 330-350. ISSN 2459-9425; <https://doi.org/10.25234/ecllc/22433>

¹¹ See more in: Kolaković-Bojović, M., Simonovski, I. (2023) ‘The Accession Negotiations of North

cess, including the accelerated integration and “phasing-in” to individual EU policies, the EU market and EU programmes, which can trigger additional efforts of the decision makers to achieve progress, but also to make the benefits of the EU accession process to the citizens.¹² However, the Commission assumed that a motivation and benefits cannot be the only way to make the progress more predictable, so it established, as the other side of the same coin, sanctioning any serious or prolonged stagnation or backsliding in reform implementation and meeting the requirements of accession process. (Balkanews, 2020) Finally, EC underlines within the new methodology a *political engagement at the highest level as a tool to ensure* the political commitment, regional cooperation and good neighbour relationships (Kolaković-Bojović & Simonovski, 2023).

**The place of the prosecution of war crimes in the EU accession
processes of Western Balkans countries:
Let’s have a strategy!**

With the previously elaborated visible focus of the EU on the transitional justice issues, coupled with its changed approach to the accession negotiations, proven ability to deal with and the track record in dealing with war crime cases became one of the key requirements for Western Balkans countries to progress on their EU path. Even the extent to they’ve been involved and/or affected by armed conflicts as well as the gravity of consequences arising from them significantly vary, the issue of war crimes appears in their agendas within the scope of the Cluster I, Chapter 23 (Judiciary and Fundamental Rights). Therefore, overweighted by the abovementioned “ballast from the past” the Western Balkans states are struggling to manage their EU accession agendas, whose Cluster I, Chapter 23 “list of issues” includes, also the challenge to address war crimes committed in 1990s. While only Croatia has finished the accession negotiations and joined EU in 2013, the rest of the Western Balkan states previously affected by armed conflicts are yet to “fulfil necessary conditions”.

Macedonia to the EU: Between New Methodology and Old Challenges’. *International scientific conference “Law between the ideal and the reality”*. Priština: Faculty of Law; Belgrade: Institute for Comparative Law, 103-115. ISBN 978-86-6083-087-8 and Kolaković-Bojović, M. (2019) *Monitoring i evaluacija reformi u oblasti borbe protiv korupcije*. Zbornik Instituta za kriminološka i sociološka istraživanja, 38 (1). pp. 83-97.

¹² See more on conditionality in Kostić J., Matić Bošković, M. (2020) ‘How Covid-19 Pandemic Influences Rule of Law Backsliding in Europe’. *Regional Law Review*, 77-90. ISBN 978-86-80186-60-3; https://doi.org/10.18485/iup_rlr.2020.ch6

Croatia

Largely affected by armed conflicts in 1991-1995 period. This could be the best illustrated through the fact that In the Republic of Croatia until December 31, 2013, proceedings against 3,599 people were initiated due to criminal offenses of war crimes. In relation to the part of the persons against whom the proceedings were initiated, after the investigation conducted, state lawyers gave up persecution, since during the investigation, it was determined that the offense was not a war crime or because no evidence of the criminal offense and the guilt of the perpetrator was collected during the investigation. An investigation against 241 persons was conducted, a first-instance criminal proceedings were underway against 613 persons on the basis of an indictment of the State Attorney's Office and a conviction was rendered in relation to 608 persons.¹³

The issue of war crimes in Croatia has been traditionally addressed through the two types of policy documents: judicial reform strategies and the internal action plans endorsed/adopted by the State Prosecutor's Office of the Republic of Croatia and the Ministry of Interior. At the moment of joining the EU, Judicial Reform Strategy 2011-2015¹⁴ was in force in Croatia. However, it addressed this issue only through the one strategic guideline (2.17) which provides for "continuation and strengthening of all activities of judicial bodies as well as cooperation with other state bodies and ICTY in order to process more war crime cases."

In order to ensure the implementation of the Strategy, in the State Prosecutor's Office of the Republic of Croatia has developed an operational document that in detail prescribed immediate obligations of all state prosecutors, including certain deadlines and especially obliges the prosecutors to coordinate their work with police officers in charge of this kind of cases.

Bosnia and Herzegovina

The specificity of Bosnia and Herzegovina in this regard lays in the fact that it has been affected by armed conflicts to the greatest extend among WBs countries. However, it was the last state to be upgraded from the "potential candidate" to the "candidate country" status in late 2022. Therefore, it is still difficult to anticipate how this

¹³ See more in: Report of the State Prosecutor's Office of the Republic of Croatia Available at: <https://dorh.hr/sites/default/files/dokumenti/2014-02/ratni-zlocini-31-12-2013.pdf> (Last accessed: 14 October 2024)

¹⁴ *The Parliament of Croatia, Judicial Reform Strategy 2011-2015*. Available at: <https://vlada.gov.hr/UserDocsImages//ZPPI/Strategije%20%20OGP/pravosu%C4%91e//Strategija%20reforme%20pravosu%C4%91a,%20za%20razdoblje%20od%202011.%20do%202015..pdf> (Last accessed: 14 October 2024)

issue will be treated in the light of the accession benchmarks, including there all of the three categories: opening benchmarks, interim benchmarks and closing benchmarks (OBMs, IBMs and CBMs). It is expected that the importance of this issue will be at least the same as for Serbia, especially having in mind that as of 2023, almost 500 war crimes cases remained with over 4,000 known suspects. (OSCE, 2022)

The lack of progress in EU accession negotiations hasn't prevented the Bosnia and Herzegovina from introducing the strategic approach in terms of the State response to the war crimes issue. Namely, in 2008 National Strategy for War Crimes Case Processing¹⁵ was adopted. With the aim of monitoring and conducting the implementation of the Strategy and the implementation of the Council of Ministers made the decision in 2009 on the establishment of the Supervisory Body for Monitoring the State Strategy for War Crimes Strategies. Given that all objectives provided for the strategy are not achieved in the scheduled deadlines and the number of war crimes cases in Prosecutor's Office in BiH, the need for amendments to the Strategy. Accordingly, the Council of Ministers in 2017 established the working group was founded for the preparation of amendments to the State Strategy for War Crimes Cases. As a result of this in 2020 Revised National War Crimes Processing Strategy.¹⁶

It is important to mention that both versions of the Strategy approach the issue of the prosecution of war crimes comprehensively, addressing all the relevant issues, including the organization and the competence of the judiciary, cooperation with the International Criminal Tribunal for ex-Yugoslavia (hereinafter: ICTY) and with the authorities of the neighbouring states as well as protection and support to war crime victims and witnesses. An importance of the monitoring mechanism has been recognized, too.

Serbia

Since it began working in 2003 until the end of 2023, the Office of the War Crime Prosecutor (herein after: OWCP) brought indictments in 104 war crimes cases, indicting a total of at least 238 persons and encompassing at least 3,544 victims who lost their lives. Final judgments have been rendered in 68 cases and 21 cases are ongoing. In cases which have been concluded by a final decision, a total of 94 accused have been convicted and 56 acquitted. Also, indictments were dismissed against 30 out of the total number of accused, either on account of their incapacity to stand trial, or because proceedings were terminated on account of their deaths. In the finally

¹⁵ See: *National Strategy for War Crimes Case Processing (Državna strategija za rad na predmetima ratnih zločina)* (2008). Available at: http://www.mpr.gov.ba/web_dokumenti/Drzavna%20strategije%20za%20rad%20na%20predmetima%20RZ.pdf (Last accessed: 1 October 2024)

¹⁶ *Revised National War Crimes Processing Strategy (2020)*. Available at <https://portalfo2.pravosudje.ba/vstvfo-api/vijest/download/108066> (Last accessed: 1 October 2024)

concluded cases, the indictments listed a total of 1,274 victims, whereas the final judgments list 1,048 victims who had lost their lives.¹⁷

Serbia has officially opened its accession negotiations with EU in January 2014 when the intergovernmental conference was held. However, Chapter 23 itself was opened in July 2016, after the Action Plan for Chapter 23 (AP 23) had been adopted in April 2016 (Ilić, Matić Bošković, 2019, p. 258). The content of the AP 23 was shaped by the recommendations from the Screening Report for Chapter 23.¹⁸

However, contrary to recommendations from the Screening Report for Chapter 23 addressed in the Action Plan for the same negotiation chapter, the interim benchmarks given in the Common Negotiation Position¹⁹ are more detailed, but also more concrete, tackling the strategic approach to the issue of war crimes comprehensively.²⁰ Namely, while six IBMs in total addressed the issue of war crimes, even two of them (IBMs 16 and 17) refers directly to the State obligation to ensure a long-term strategic approach in dealing with this issue. Namely, the EU requested Serbia to implement effectively the measures in its National Strategy in support of investigation, prosecution and adjudication of war crimes. “Serbia monitors its implementation, assesses its impact and revises the strategy in parallel.” At the same time EU requested Serbia to adopt and implement effectively a Prosecutorial strategy for the investigation and prosecution of war crimes; Serbia monitors its implementation and assesses its impact, as necessary and appropriate. (IBMs 16-17)

The reasons for this could be found in the fact that Serbia was requested in 2015 to develop/adopt those policy documents (before all the National Strategy) together with AP 23.²¹ Therefore, adoption of the National Strategy for Prosecution of War Crimes (2016-2020) was one of opening benchmarks together with adoption of the Action Plan for Chapter 23²².

¹⁷ See more in: Humanitarian Law Centre (2024) *Report on War Crimes Trials In Serbia During 2023, Belgrade, May 2024*. Available at: https://www.hlc-rdc.org/wp-content/uploads/2024/05/Godisnji-izvestaj_2324_eng_CEO_web.pdf (Last accessed: 14 October 2024)

¹⁸ Screening Report for Chapter 23, available on: http://seio.gov.rs/upload/documents/eu_dokumenta/Skrining/Screening%20Report%202023_SR.pdf, last accessed on July 26th 2016.

¹⁹ Common Negotiation Position for Chapter 23, available at: <https://www.mpravde.gov.rs/tekst/13244/pregovacka-pozicija-.php>, last accessed on April 4th 2019.

²⁰ IBMs 16-21 refers to the issue of war crimes from the perspective of increasing efficiency of investigations, proper penalties, regional cooperation, cooperation with ICTY, resolving cases of missing people

²¹ See more in: Kolaković-Bojović, M. (2015) ‘Efikasnost postupaka za ratne zločine u Republici Srbiji.’ *Zbornik Instituta za kriminološka i sociološka istraživanja*, 34 (1), 155-167; Kolaković-Bojović, M. (2017) *Inkriminacija prisilnog nestanka u krivičnom pravu Republike Srbije*. Zbornik Instituta za kriminološka i sociološka istraživanja, 36 (1). pp. 135-147.

²² Action Plan for Chapter 23, available on: <http://mpravde.gov.rs/files/Action%20plan%20Ch%2023>.

Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia (Prosecutorial Strategy) has been adopted in 2018 with the aim of providing a detailed guidelines to the War Crime Prosecutors Office on how to prioritise cases, foster efficiency of investigations and how to improve its overall work, based on the general directions provided in this regard in the 2016 National Strategy.

However, since the progress made through the implementation of both strategies were limited, as well as in order to fulfil IBMs 16-17, in 2021 the impact of the 2016 National Strategy was assessed and the new National Strategy for 2021-2026 period with the accompanying Action Plan were developed and adopted. In terms of the methodology used to develop it, as well as in terms of the structure and the content of the document, this was significant step forward ensuring that the progress can be measured through the set of quantitative and qualitative indicators.

In 2023 the War Crime Prosecutor's Office adopted the Revised Prosecutorial Strategy for 2022-2026²³ period with the accompanying Action Plan²⁴. However, the quality of this document is disputable. Namely, despite at the first glance the structure and the content of the document looks well developed, in fact, most of the text has been actually transposed from the 2021 National Strategy and accompanied Action Plan, with almost no substantial plans added.

However, the fact that the 2021 National Strategy included the clear indicators ensured that the first report on the fulfilment of the IBMs in Chapter 23 can be prepared and submitted to the European Commission in late 2023 to serve as a starting point in defining a much clearer path of Serbia in fulfilling remaining obligations as provided in IBMs.

Montenegro

Over the last three decades, from 1992 to 2024, Montenegro conducted and concluded seven criminal trials for war crimes committed in the former Yugoslavia during the 1990s wars, with one trial still ongoing before the High Court in Podgorica. A total of 37 individuals were charged, and 11 were convicted by final judgment.²⁵

pdf, last accessed on October 30th 2016.

²³ *Revised Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia for the 2022-2026 period*. Available at: <https://tuzilastvorz.org.rs/public/documents/2023-11/revidirana%20strategija.pdf>, (Serbian only) (Last accessed: 3 October 2024)

²⁴ *Action Plan for Implementation of the Revised Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia for the 2022-2026 period*. Available at: <https://tuzilastvorz.org.rs/public/documents/2023-11/AKCIONI%20PLAN%20TS-1.pdf>, (Serbian only) (Last accessed: 3 October 2024)

²⁵ See more in: *Strategy for War Crimes Investigations for 2024-2027*.

Significantly less affected by armed conflicts in ex-Yugoslavia, but the most progressed in its accession negotiations among candidate countries²⁶, Montenegro, however, hasn't avoided the issue of war crimes in its EU agenda. In its attempt to address recommendations from the Screening Report for Chapter 23 Montenegro Government has adopted the Action Plan for Chapter 23 in 2013, which provided for a set of measures defined in Chapter 1.5. of this document, focusing, among others, on the outcome of the 6 cases finished or ongoing at the time of adopting the Action Plan (2013), capacity building of judges and prosecutors, as well as enhancing protection and support to war crime victims.

In 2015 The Supreme Prosecutor's Office of Montenegro adopted the Strategy for War Crimes Investigations (hereinafter: WCIS 2015)²⁷. This brief (less than three pages long) document was aimed at enhancing the efficiency of war crimes prosecution in Montenegro, and "designed to address the key challenges faced by the Montenegrin judiciary in this area. Methodologically, the Strategy outlined four specific tasks with corresponding activities and included five sections that addressed potential challenges during war crimes investigations, proposed solutions, required resources for implementation, initiation of the Strategy's execution, and the responsibilities for its application."²⁸

Despite of being an important step forward for Montenegrin authorities, compared to the similar initiatives in the region, the WCIS 2015 was significantly different, as in terms of the methodological approach used to develop it, us in terms of the comprehensiveness. The first of all, it was not a national or sectoral strategy formally adopted by the Government, but rather internal guiding document of the prosecution service. This has impacted its scope, structure, and ability to effectively address the challenges faced in practice. This limitation is partly due to the fact that the Strategy was adopted before Montenegro had established a comprehensive Methodology for developing policies, drafting, and monitoring the implementation of strategic documents,²⁹ developed on the basis of and for the purpose of implementing the Regulation on the manner and procedure of drafting, harmonizing and monitoring the implementation

²⁶ For more information on the nexus between justice reform and Montenegro EU agenda, see: Kolaković-Bojović, M. and Jauković, M. (2024) 'Strategic Approach to the Judicial Reform in Montenegro: The Current State of Play and a Way Forward'. *International scientific conference "The dynamics of modern legal order"*, Kosovska Mitrovica 24th and 25th of May 2024. Kosovska Mitrovica: University of Priština, Faculty of law; Belgrade: Institute of Criminological and Sociological Research; Belgrade: Institute of comparative law, 51-66

²⁷ The Supreme Prosecutor's Office of Montenegro (2015) *The Strategy for War Crimes Investigations*

²⁸ The Supreme Prosecutor's Office of Montenegro (2015) *The Strategy for War Crimes Investigations*

²⁹ Available at: <https://www.gov.me/dokumenta/23c216b2-3eb7-453c-b0a7-3cdae9e9742e>

of strategic documents³⁰. In contrast, as described before, war crimes strategies in the region typically include an extensive introduction based on a thorough analysis of the situation in this area. “In this regard, the WCIS 2015 lacked a historical context, a detailed problem description, and clear strategic and operational goals. Additionally, the Strategy was not accompanied by an action plan for implementation, which would typically include deadlines, performance indicators, and an assessment of the financial resources required. Consequently, the goals set forth by that strategy only partially addressed the challenges associated with war crimes investigations.”³¹

Even not explicitly mentioned in Montenegro IBMs, an adoption of a new strategy for investigation of war crimes was part of the unofficial “to do list” prepared by EC in the context of fulfilling necessary conditions to issue the Interim Benchmark Assessment Report (hereinafter: IBAR) in 2024.³² Triggered by this, in June 2024 the Supreme Prosecutor’s Office of Montenegro adopted the Strategy for War Crimes Investigations for 2024-2027 (hereinafter: WCIS 2024-2027) with accompanying Action Plan for 2024-2025 period,³³ which comprehensively addresses all the issues associated with the efficient investigation of war crimes, including strengthening administrative and infrastructural capacities of the Special Prosecutors Office. It also deals with enhancing access to justice for war crime victims, as a particularly vulnerable group³⁴. The Strategy also brings a comprehensive approach to the issue

³⁰ Official Gazette of Montenegro 54/2018 of 31 July 2018 which entered into force on 8 August 2018

³¹ Supreme Prosecutor’s Office of Montenegro (2015) *The Strategy for War Crimes Investigations*

³² Namely, Interim Benchmark No. 19 from the EU Common Position for Chapter 23 stipulated the following obligation: “Montenegro effectively demonstrates the capacity of law enforcement bodies and courts to handle impartially war crimes cases in line with international humanitarian law and the jurisprudence of the International Criminal Tribunal for the former Yugoslavia, and takes effective action to address issues of impunity, in particular by accelerating progress with investigations and prosecutions of these crimes, and by ensuring civilian victims’ access to justice and reparations.”

³³ Supreme Prosecutor’s Office of Montenegro, *The Strategy for War Crimes Investigations for the 2024-2027 period*

³⁴ For more about alignment with relevant international standards on victims’ rights in the context of EU accession negotiations see: Kolaković-Bojović, M. and Grujić, Z. (2020) ‘Crime Victims and the Right to Human Dignity - Challenges and Attitudes in Serbia’, in: Pavović, Z. (ed.) *Yearbook. No. 3, Human rights protection: the right to human dignity*. Novi Sad: Provincial Protector of Citizens - Ombudsman; Belgrade: Institute of Criminological and Sociological Research, 239-269; Kolaković-Bojović, M. and Džumhur, J. (2025) ‘Enforced Disappearances and the Right to Reparation in Western Balkans’, In: Baranowska, G. and Kolaković-Bojović, M. (eds.) *Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon*. Cambridge University Press (in publishing); Kolaković-Bojović, M. (2023) *Victimas de desaparición forzada y derecho a la reparación*. In: *Desaparición forzada: Colección en temas de derechos humanos*, Tomo I. Centro Internacional para la Promoción de los Derechos Humanos bajo los auspicios de UNESCO (CIPDH), Buenos Aires, Argentina, pp. 196-226.; Kolaković-Bojović, M. (2020) *Direktiva o žrtvama (2012/29/EU) i kazneno zakonodavstvo Republike Srbije*, in: Bejatović, S. (ed) *Žrtva krivičnog dela i krivičnopravni*

of people disappeared in, or in connection with armed conflicts. For all above mentioned areas, it addresses both: the need to further align Montenegro's normative and institutional framework with international standards and the recommendations of global bodies responsible for monitoring compliance with those standards.³⁵ A very important step forward can be also found in fact that the Strategy includes the whole chapter dealing with monitoring and evaluation of its implementation as well as in fact that the Supreme Prosecutor's Office adopted also the special Methodology for reporting, monitoring and evaluation of the Strategy implementation based on the indicators contained in Action Plan.

Just a few days after adopting the WCIS 2024-2027 EU adopted the European Union Common Position regarding Chapter 23: Judiciary and Fundamental Rights³⁶, where "the EU urges Montenegro to further intensify its efforts to fight impunity, including on high levels, for war crimes by applying a proactive approach to effectively investigate, prosecute, try, and punish war crimes in line with international law and standards, including full cooperation with the International Residual Mecha-

instrumenti zaštite (međunarodni pravni standardi, regionalna krivična zakonodavstva, primena i mere unapređenja zaštite). Beograd: Misija OEBS-a u Srbiji, 41-54.; Kolaković-Bojović, M. (2020) 'Medijski tretman žrtava', In: *Oštećeno lice i krivičnopravni instrumenti zaštite (međunarodni pravni standardi, norma i praksa): LX redovno godišnje savetovanje udruženja*. Beograd: Srpsko udruženje za krivičnopravnu teoriju i praksu; "Intermex", 402-420.; Kolaković-Bojović, M. (2017) 'Žrtva krivičnog dela (Poglavlje 23 - norma i praksa u Republici Srbiji)', *Reformski procesi i Poglavlje 23 (godinu dana posle) - krivičnopravni aspekti; LVII Savetovanje Srpskog udruženja za krivičnopravnu teoriju i praksu*; Beograd: Srpsko udruženje za krivičnopravnu teoriju i praksu; Intermex, Beograd, 140-150.; Kolaković-Bojović, M. (2016) 'Victims and Witnesses Support in the Context of the Accession Negotiations with EU', In: *Naučno-stručni skup sa međunarodnim učešćem "Evropske integracije: pravda, sloboda i bezbednost", zbornik radova: Tom 2*. Beograd: Kriminalističko-policijska akademija; Fondacija "Hans Zajdel", 355-366; Stevanović, I. and Marković, Lj. (2024) 'The Position of Juvenile Victims and Witnesses in Criminal Proceedings: Where are We now and What is Next', *International scientific thematic conference The Position of Victims in the Republic of Serbia*. Palić, 12-13 June 2024. Belgrade: Institute of Criminological and Sociological Research, 165-182. <https://doi.org/10.47152/palic2024.12>.

³⁵ For more about these standards see: Galvis Patiño, M.C. and Huhle, R. (2025) 'The Guiding Principles on the Search for Disappeared Persons – Origins and Impact', In: Baranowska, G. and Kolaković-Bojović, M. (eds.) *Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon*. Cambridge University Press (in publishing); Baranowska, G. and Kolaković-Bojović, M. (2025) 'Dealing with Uncertainty: On Addressing Enforced Disappearances Universally', in: Baranowska, G. and Kolaković-Bojović, M. (eds.) *Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon*. Cambridge University Press (in publishing); Kolaković-Bojović, M. (2021) 'Disappeared Persons and the Right to be Considered Alive - The current State of Play in the Western Balkans', in: Pavlović, Z. (ed.) *Yearbook. No. 4, Human rights protection: right to life*. Novi Sad: Provincial Protector of Citizens - Ombudsman; Belgrade: Institute of Criminological and Sociological Research, 271-287.

³⁶ *European Union Common Position regarding Chapter 23: Judiciary and Fundamental Rights, Brussels 21 June 2024*. Available at: <https://data.consilium.europa.eu/doc/document/AD-13-2024-INIT/en/pdf> (accessed on October 14th 2024).

nism for Criminal Tribunals, and to ensure access to justice and reparations for victims. The EU underscores the importance of meaningful regional cooperation in the domestic handling of war crimes, resolving the remaining cases of missing persons.” The closing Benchmark itself reads as follows: “Establishes a credible and sustained track-record of effectively investigating, prosecuting, and trying cases of war crimes, including high level cases in line with international law and standards, in full cooperation with the International Residual Mechanism for Criminal Tribunals, and ensures access to justice and reparations to victims.”

Such a comprehensive approach of EC proves that the decision of Montenegrin authorities to adopt a much more developed policy document this time was the right one.

Conclusions

From the above-described strategic approach used to address the prosecution of war crimes, it is clear that the quality and comprehensiveness of such an approach varies to the great extent among the Western Balkans states, intensifying in the periods of intensive EU accession reform agenda, followed by periods of passivation after achieving some progress on EU part.

In that regard, the role of the EU accession processes in Western Balkans should not be disregarded as a mechanism that can significantly contribute as to the developments at the national level as through the regional cooperation. Namely, the mechanisms established by EC to measure the progress made by candidate countries based on the fulfilment of the interim and closing benchmarks in Cluster I (Fundamentals), more precisely, in negotiation Chapter 23 (Judiciary and Fundamental Rights) ensures that the progress towards the better protection of victims and the rights of missing persons and their families influences the EC assessment of the Rule of Law state of play and therefore ensures fostering additional reforms.

However, the EU membership should not be perceived as the end of those efforts. Contrary, the EU itself needs to use and further develop monitoring mechanisms aimed at overseeing the country situation concerning the rule of law in the Member States.

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