

Report on the implementation of the prosecutorial strategy for war crimes investigation and prosecution for Q1 2021

The monitoring of the implementation of the prosecutorial Strategy for war crimes investigation and prosecution is provided for in the revised Action Plan for Chapter 23 (activity 1.4.3.5), and the Strategy also provides that the supervision of the implementation of the strategy is carried out through quarterly reports to the Public Prosecutor's Office of the Republic. Thus, the above report for Q1 2021 was prepared based on the obligations established in the mentioned strategic documents, according to individual goals:

Target: Combating impunity for war crimes by increasing the effectiveness of the investigation and prosecution of all serious, mass and systematically committed war crimes listed in the records of war crimes events

Increasing WCPPO efficiency via the following:

- Use of existing capacities in accordance with proceedings priorities

In the period from 1 January 2021 to 31 March 2021, the War Crimes Public Prosecutor's Office (WCPPO) filed 4 indictments against 4 perpetrators, as well as 1 indictment against 1 unknown perpetrator.

Some 5 orders were issued to conduct investigations against 7 persons, of which 2 orders against 3 persons were based on evidence transferred from the Prosecutor's Office of Bosnia and Herzegovina (B-H).

Guided by the criteria for determining priorities more closely defined by the Strategy, the WCPPO in this reporting period also worked on the prosecuting of high-ranking perpetrators and engaging deputies in cases involving complex events in which a large number of victims were killed. Accordingly, the acts brought by the WCPPO in the previous period (indictments and orders on conducting investigations) also refer to complex criminal cases and the prosecution of senior officers and commanders of larger military formations of the brigade rank.

An investigation is currently being conducted in 10 cases against 57 persons.

Two indictments were brought against 3 persons, after they were procedurally confirmed by the competent court in B-H, and they refer to war crimes against the civilian population from Article 142 paragraph 1 of the CC of the FRY.

It is certainly necessary to mention that the pandemic caused by the COVID-19 virus, which has been going on for more than a year, has affected the work of the Public Prosecutor's Office to a certain extent, and that under normal circumstances the intensity of the work of the WCPPO would be greater in terms of detecting war crimes, conducting investigations, as well as trials (with regard to the response of witnesses and experts and in general, communication with the participants of the proceedings from abroad and the like).

Acting case handlers took into account the prohibition of discrimination, which implies prosecution regardless of national, ethnic and religious affiliation or the status of the perpetrator and the victim, as provided for in the National Strategy for War Crimes Prosecution (NSWCP).

Acting deputies gave detailed consideration and analyzed the judgments of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals (IRMCT). It is expected that this activity will contribute to the WCPPO finding and extracting new evidence and taking further steps important for prosecuting those responsible for war crimes.

Unceasing cooperation with the Prosecutor's Office of B-H continued, and took place through taking over criminal prosecution and working on a two-way exchange of requests for assistance. The goal is to continue taking over proceedings in the future as well, whenever there are conditions for it.

The WCPPO is part of the working group for the development of the new National Strategy for War Crimes Prosecution 2021-2026 and has actively participated in the consultations and meetings held so far.

The WCPPO also participated in the preparation of attachments for the regular reports of the negotiating group for Chapter 23, on the implementation of the National Program for the Adoption of the European Union Acquis (NPAA) in the part of the measures and activities planned for the purpose of establishing or strengthening the institutional structure and administrative capacities.

Participation in the meetings of the working group for gathering facts and evidence in elucidating crimes against members of the Serbian people and other national communities in Kosovo and Metohija continued.

Target: Strengthening the institutional and professional capacities of the WCPPO

- A proactive approach to WCPPO work and its work reorganization

During Q1 2021, the same number of deputy prosecutors (10) and assistant prosecutors (8) work in the WCPPO, and 1 person is employed as a psychologist.

The need to strengthen capacities is still present, primarily bearing in mind the increased intensity of regional cooperation through taking over criminal proceedings,

especially those in which the investigation was carried out by the competent Prosecutor's Office of B-H, which requires additional effort in terms of familiarization with files and collected evidence, especially when it comes to complex cases, the number of which have increased in the previous period.

Also, although the work on domestic cases takes place continuously, it is evident that there is still a need to intensify work on cases that are in the pre-investigation stage, as well as making prosecutorial decisions in investigative cases, while the resolving of this issue would undoubtedly contribute to hiring an additional number of deputy war crimes prosecutors and assistant prosecutors.

- **Forming joint WCPPO and War Crimes Investigation Unit (WCIU) teams**

The activity of forming these teams has been completed. In the reporting period, the WCPPO and WCIU joint team representatives continued their high-quality cooperation through regular meetings and consultations with representatives of other institutions.

Previously formed case processing teams according to the territorial principle continued with their work.

The establishing of a suitable WCPPO database compatible with the Zy Lab database at the disposal of the WCIU would contribute to more effective joint work.

- **Professional development**

There is no doubt that the COVID-19 pandemic somewhat slowed down the pace of professional development in early 2021 as well. However, thanks to the available technology, although in a reduced circle of participants, training sessions were also held during Q1 2021 with the help of various types of Internet platforms. WCPPO staff took part in all training sessions available to them.

In March, two staff members participated in professional training via a CEPOL webinar on the topic "EUROJUST - Network against Genocide, Cumulative Prosecution of Foreign Terrorist Fighters," organized by the Republic Public Prosecutor's Office.

The participation of WCPPO staff in the second round of training, "Forensic analysis of written statements," organized by the European Forensic Agency in the period from 12 to 14 May 2021 is planned. This training is important for improving the existing knowledge of deputy and assistant prosecutors, as well as other employees, in terms of useful investigative techniques.

As already mentioned in the previous report, it is necessary that professional development in the coming period include education and information about the relevant provisions of the International Convention for the Protection of All Persons from Enforced Disappearance, considering the obligation of the Republic of Serbia established in Article 23 of that Convention, as well as training in the field of international criminal and international humanitarian law and in the area of strategic planning, information technology and project management, as stated in the previous report on the implementation of the Strategy.

Representatives of this Public Prosecutor's Office contributed to the creation of the OSCE publication "Victim of a criminal offense and criminal protection instruments" -

(International legal standards, regional criminal legislation, implementation and measures to improve protection), by participating in creating professional papers on the topic of victim and witness protection.

It is planned that in the next quarter, the WCPPO staff will attend training organized by the OSCE Mission in Serbia on dealing with victims and witnesses, with a focus on psychological support and secondary victimization of witnesses and victims, in which the Protection Unit (PU) and WCIU are also to take part.

- **Application of new technologies and work methods**

The UNDP and the Embassy of Great Britain donated modern equipment for communication via videoconference connection to the WCPPO on 19 February 2021. The introduction of this type of technology will improve the efficiency of this Public Prosecutor's Office, and the devices should facilitate the taking of statements from participants in the proceedings, primarily victims and witnesses of war crimes who live outside the territory of the Republic of Serbia and who, for justified reasons, cannot personally access the Public Prosecutor's Office. With the help of a videoconference connection, the organization of holding regional meetings will be facilitated, given the current epidemiological situation.

It was observed that there is a need to improve the infrastructural capacities of the WCPPO through the regular procurement of ICT equipment needed for efficient work and functioning of the system.

- **Investigation plan**

In the cases handled by deputy prosecutors, specific investigation plans were drawn up through the steps defined in more detail in the Strategy.

- **Affirming the application of the plea bargain agreement**

As in the previous quarter.

The deputy war crimes prosecutors in their cases continued to consider the possibility of applying the plea bargain agreement on the recognition of a crime from Article 313-320 of the Criminal Procedure Code. During the reporting period, no plea agreements were concluded.

In the near future, the Chief War Crimes Prosecutor will initiate expert meetings on the topic of improving the resolution of issues related to the conclusion of this type of agreement, as well as the agreement on the testimony of the defendant.

- **Ensuring full confidentiality of the investigation process**

In accordance with the obligation provided for in the revised Action Plan for Chapter 23, and the relevant laws and by-laws, the WCPPO actively monitors compliance with obligations regarding secrecy and confidentiality of data by all WCPPO staff and supervises the implementation of laws and by-laws in this area.

We continue to take measures to protect data from unauthorized access, publication and any other misuse, in accordance with the Personal Data Protection Act. Each indictment filed after the preliminary hearing is published on the website, with prior processing in accordance with the Rulebook on Anonymization, in order to protect the personal data of the participants in the proceedings conducted before this prosecution.

The decision on which data and to what extent it can be made available to the public requires special assessment in each specific case. The relationship between the legitimate interest of the public to know the identity of the participant in the proceedings and the right to privacy of that person is subject to assessment in each specific situation, depending on the content of the act that is published, and that relationship also depends, among other things, on the stage of the specific criminal proceedings.

In the reporting period, there were no conditions for submitting a request for initiation of misdemeanor proceedings due to the existence of a well-founded suspicion that a misdemeanor has been committed under Article 73 of the Law on Public Information.

The persons starting employment in the Public Prosecutor's Office in the reporting period signed a statement on the safeguarding of secret and confidential data in accordance with the Law on Confidentiality of Data and in accordance with other legal and by-laws, an integral part of which is the instruction on the obligation to protect and safeguard secret and confidential data, with an overview of the valid material regulations regarding secret and confidential data, the obligation to protect and preserve them, as well as an overview of the provisions of criminal regulations in the case of any actions of the elected, appointed and employed persons in violation of the established obligations.

- **Financial investigations and asset forfeiture**

The WCPPO has continued to research in every case it is investigating whether the suspected persons possess property obtained by committing a crime. In this reporting period, there were no legal requirements for initiating financial investigations, or proceedings for the permanent or temporary confiscation of property resulting from a crime in cases under the jurisdiction of the WCPPO.

In the coming period, the Public Prosecutor's Office will ask the WCIU to increase its activity in collecting data on the finances of the defendants.

In addition, in the coming period, which will depend to some extent on the epidemiological situation, expert meetings will also be organized in this area for the purpose of exchanging experience with competent authorities, primarily with regional public prosecutors' offices and courts, with the participation of international organizations and institution, where one of the key topics will be the mandatory consideration of the application of the said institute within the work plan of the prosecution.

Target: Improving the mechanism for the protection and support for victims and witnesses

- **Protection of victims and witnesses**

Cooperation with the Protection Unit of the Ministry of Internal Affairs of the RS (PU) continued with the consistent application of the Protocol on Cooperation in the Area of Witness Protection. The deputy war crimes prosecutors held regular meetings in order to perform the tasks under their jurisdiction as efficiently as possible.

The deputy prosecutors in each specific case continued to carry out individual assessments of witnesses and the need to initiate procedural and non-procedural protection measures.

The WCPPO will insist that joint trainings and round tables with PU representatives continue in the near future. The strengthening of joint cooperation is undoubtedly a factor that contributes to the increase of efficiency in the work of both parties, primarily when it comes to out-of-process protection of the participants in the proceedings.

- **Support for victims and witnesses**

In accordance with the revised Action Plan for Chapter 23, at the beginning of 2021, in January 2021, the WCPPO employed a specialized psychologist who participates in providing professional assistance to victims and witnesses.

According to the 2021 WCPPO plan and work program, special attention is paid to the professional development of this Public Prosecutor's Office staff. For the next period, attending training in the area of protection and support for witnesses and victims is planned, in order to ensure an adequate level of knowledge and skills in providing the support.

Given the need to improve the position of victims in war crimes proceedings, and on the other hand, bearing in mind the fact that Victims' Associations play an important role in the communication of the Public Prosecutor's Office with the injured parties, in the reporting period, on 9 February 2021, a meeting was held between the representatives of the Association of Families of Kidnapped and Murdered Persons in Kosovo and the WCPPO.

The importance of the WCPPO Information and Support Service for victims and witnesses is recognized by the National Strategy for the realization of the rights of victims and witnesses of crimes in the Republic of Serbia (2019 to 2025), with the accompanying Action Plan for Chapter 23. It is planned to work on a full implementation of this Strategy and its consistent application in the part related to the improvement of the work of this Service in the WCPPO.

- **Defense of the defendant**

There were no changes compared to the previous quarter. In every case handled by the deputy war crimes prosecutors, they continued to act with full respect for the rights of the defendant in accordance with the applicable regulations, respecting the presumption of innocence, the right to a fair trial and the right to a trial within a reasonable time.

During Q1 2021, not a single request was submitted to initiate misdemeanor proceedings due to the existence of grounds for suspicion that a misdemeanor has been committed under Article 73 of the Law on Public Information and Media ("Presumption of innocence - in order to protect human dignity, as well as the independence, reputation and

impartiality of the court or other competent authority, no one in the media may be labeled as the perpetrator of a criminal offense, that is, declared guilty or responsible before the final court decisions”).

The Public Prosecutor’s Office staff who are in charge of public relations, primarily the WCPPO spokesperson and the person authorized to access information of public importance, adhere to the rule that their statements related to the defendants do not infringe their rights in any way.

The person authorized for access to information of public importance in the WCPPO when acting on requests in terms of the Law on Free Access to Information of Public Importance, as well as other authorized persons in this Public Prosecutor’s Office, strictly take into account the application of Article 10, paragraph 2 of the Criminal Code procedure, which stipulates that information on whether an investigation is being conducted against a person will be provided only to the court, another public prosecutor or the police, and to the defendant, his defense counsel or the injured party, when the conditions prescribed by the provisions of that Code are met. The recommendations of the Venice Commission on European standards regarding the independence of the judiciary related to the actions of the prosecution are followed in their entirety.

Target: Achieving progress in uncovering the fate of missing persons

- **War crime trials and the issue of missing persons**

In Q1 2021, cooperation between the WCPPO and the Commission for Missing Persons (CMP) of the Government of the Republic of Serbia continued in accordance with the Memorandum on Cooperation between the WCPPO and the Commission signed on 12 June 2018.

The WCPPO continued to participate in the investigation of unsolved cases of missing persons with the WCIU and the CMP in order to clarify their fate, and to this end, in the reporting period, future activities are planned in terms of checks and investigations of persons at the scene in order to find potential gravesites at the Kiževak location, in the Raška municipality, where the exhumation of the found remains began in 2020.

There is continuous communication and cooperation with the CMP regarding specific cases, as well as through the exchange of notifications and information and with organizations that work to collect documents on persecution and suffering, as well as destroyed property of persons of Serbian nationality in the area of the former SRC and all citizens in the area of the RSK in the pre-war, war and post-war period.

As said in the previous report, the problem of missing persons is still one of the issues that requires a quicker solution, given that the number of persons who are still missing is extremely large, and overcoming obstacles is sometimes impossible without the cooperation of all the regional countries.

The CMP periodically forwards new information to the WCPPO, detailing the obligations assumed by the working group for missing persons, with proposed measures and a time frame for the implementation of planned activities in several cases in which requests for

verification of information were exchanged. The Commission informed the WCPPO about the new information and the plan of activities in the coming period regarding the further handling of individual cases related to missing persons, primarily from the territory of AP KiM.

This Public Prosecutor's Office will work on improving and intensifying cooperation with the CMP of the Republic of Serbia, which, as before, will be realized through the mutual exchange of data and information. Issues that arise in cooperation will be discussed through round tables organized regularly in order to achieve the most effective cooperation and communication based on the Memorandum of Cooperation. Cooperation will take place through the participation of WCPPO representatives in the work of the Expert Group for solving cases of missing persons in the territory of the former SFRY.

There is a plan in the following period to hold meetings between WCPPO representatives and representatives of relevant institutions that deal with the issue of missing persons, in order to coordinate further activities that are relevant in connection with the process of searching for missing persons at the national and international level.

It was observed that additional training of WCPPO staff in this area is necessary, especially bearing in mind the established obligation of the Republic of Serbia pursuant to Article 23 of the International Convention on the Protection of All Persons from Enforced Disappearance.

Target: Improving regional and wider international cooperation in the area of the investigation and prosecution of war crimes

- **Cooperation with the International Residual Mechanism for Criminal Tribunals (IRMCT)**

In this reporting period, the IRMCT's Office of the Prosecutor (OTP) and the WCPPO continued to cooperate on cases by mutual referrals and handling requests for assistance, as well as access to the Electronic Disclosure System database by WCPPO staff for the purpose of their cases. The number of employees with access to this database has been increased.

During Q1 2021, the implementation of a joint project in which several WCPPO staff members and the IRMCT are participating, called the RFA project, which includes a detailed analysis of all cases of positive cooperation between prosecution offices in terms of the analysis of Category 2 cases, continuous requests for assistance, cases concerning regional cooperation, cases where evidence, documents and information have been provided, as well as cases where there are witnesses.

It is planned that cooperation will continue at the same pace, and that such a position has also been taken by the Mechanism OTP, which clearly follows from the report submitted by the Chief Prosecutor of the Mechanism to the UN Security Council in December 2020, stating that some progress has been made in terms of the transfer of certain confirmed indictments against high- and middle-ranking defendants from B-H to Serbia, as well as that the OTP will continue to cooperate with all prosecution offices in the region in order to ensure that the progress achieved last year is continued. In addition, the WCPPO continuously

implements the activities that are detailed in the revised Action Plan for Chapter 23 regarding cooperation with the IRMCT.

A meeting of WCPPO and IRMCT representatives (month: April 2021) was organized in order to prepare a report that the Chief Prosecutor of the Mechanism is to submit to the UN Security Council in the following period.

In the coming period, cooperation should be improved through participation in joint training sessions, that is, professional training, among other things, on the topic of sexual violence in war crimes cases.

For quality assurance and work with extensive documentation and evidence submitted by the IRMCT, it is necessary to provide adequate additional space and appropriate hardware and software equipment.

- **International and inter-institutional cooperation**

- a) Cooperation with the Prosecutor's Office of B-H and the State's Attorney Office of the Republic of Croatia**

The Strategy envisages the improvement of regional cooperation in the area of war crimes investigation and prosecution, which is of essential importance and without which a good quality prosecution of persons responsible for war crimes is impossible.

In the previous quarter, there were no regional conferences due to the pandemic of the COVID-19 virus, while meetings at the level of the main representatives of the prosecutors' offices were held through telephone communications.

Even in this reporting period, the conditions for submitting a proposal for transfer of criminal prosecution to a foreign state were not met. In the cases that were assigned before the reporting period, acting deputy prosecutors continued with regular written communication with the competent regional prosecutors' offices in order to inform them about the stages of the proceedings and the status of the cases.

Regional cooperation was also continued in this reporting period. The indictments that were filed are the result of good regional cooperation with the Prosecutor's Office of B-H.

Cooperation continued through the exchange of requests for assistance. In the period from 1 January 2021 to 31 March 2021, the Prosecutor's Office of Bosnia and Herzegovina submitted 18 requests for assistance, of which 9 requests were granted, and the same number of requests are being processed. The WCPPO submitted 42 requests for assistance to the Prosecutor's Office of B-H, of which 4 requests have been granted so far, while 38 requests for assistance have not yet been answered.

In the period from 1 January 2021 to 31 March 2021, the State Attorney's Office of the Republic of Croatia (DORH) submitted 5 requests for assistance to the WCPPO, of which 1 request was granted, and 4 requests are still being processed. In the same period, the WCPPO submitted 31 requests for assistance to DORH, of which only 3 requests were granted, and 28 requests remain unanswered.

Although cooperation with the judicial authorities of B-H has produced significant results, regional cooperation with the Republic of Croatia is still not at a satisfactory level,

bearing in mind the above statistics, and the fact that the competent courts of the Republic of Croatia still make decisions on trials in absentia and that in Croatia the 2011 Law on the Nullity of Certain Legal Acts of the Judicial Bodies of the Former JNA, SFRY and the Republic of Serbia is still in force, which makes cooperation between the two prosecutors' offices difficult. This further implies that the results of cooperation depend greatly on the attitude of the Ministry of Justice of the Republic of Croatia in each specific case. Practice has shown that, in most cases, the arrival of a response to a request takes a very long period of time.

With the aim of overcoming the obstacles that hinder this cooperation, the War Crimes Prosecutor will initiate conferences and regional meetings in the shortest possible time.

The intention is that one of the topics is definitely to be the affirmation of the institute for the transfer of criminal prosecution in cooperation with the Prosecutor's Office of B-H and DORH in accordance with the current regulations that regulate this institute and international cooperation.

b) Cooperation with the European Union Rule of Law Mission in AP KiM - EULEX and the Provisional Institutions of Self-Government in Priština

As in the previous period, the deputy war crimes prosecutors addressed requests for assistance to EULEX in Priština in accordance with the Mutual Legal Assistance procedures provided for in the Technical Protocol for the Implementation of IBM and within the scope of their cases. During the reporting period, the WCPPO submitted 2 requests, which have not yet been acted upon.

In the coming period, it is necessary to establish an adequate mechanism for improving cooperation between the judicial authorities of the Republic of Serbia and the Provisional Institutions of Self-Government in Priština, taking into account the Decision of the Government of the Republic of Serbia 05 number 018-1862/2013-1 dated 7 March 2013, which adopted the text of the MLA procedure, whereupon it is necessary to take into account the fact that the EULEX mandate was partially changed during 2018 in terms of the executive powers of the Mission.

Target: Raising awareness and improving societal attitudes regarding the importance of prosecuting war crimes

- **The transparency of the WCPPO's work**

In Q1 2021, the website was the most important tool for imparting information about the work of this Public Prosecutor's Office. Requests for access to data of public importance were answered by the authorized person of the Public Prosecutor's Office within the legal deadline. In the reporting period, 4 requests were submitted and were answered in a timely manner.

All indictments brought in the reporting period that passed the preparatory hearing stage were published on the website of this Public Prosecutor's Office in accordance with the

Rulebook on the Anonymization of Prosecutor's Indictments. The indictments are anonymized considering that, in accordance with the provisions of the Personal Data Protection Act, it is necessary to protect personal data, especially when it comes to victims of crimes, as there is special protection in this regard in accordance with Directive 2012/ 29 EU of the European Parliament and the Council dated 25 October 2012.

The filing of an indictment and its confirmation represent the beginning of the proceedings before the competent court, and the publication of a defendant's personal data at the very beginning of the criminal proceedings is subject to a more restrictive regime compared to the later stages of criminal proceedings. This is especially valid bearing in mind that the majority of decisions (verdicts and judgments) are anonymized on the websites of courts dealing with war crimes cases, within the Court Practice section.

Considering the report of the European Commission, which indicated that the WCPPO website has gotten worse, this Public Prosecutor's Office, with the support of UNDP, started the development of a new website that will be active during the next quarter.

The WCPPO spokesperson continued with regular communication with representatives of the media, civil society organizations and victims' associations. As in the previous period, information was sent to the media and interested parties for the most part through written answers or announcements. All queries by interested parties were answered in a timely manner and in the shortest possible time, and the interests of the proper conduct of the procedure and the protection of the persons to whom the data refer were strictly taken into account.

It is planned that the Information Booklet on the work of the WCPPO will be updated during the month of May 2021.

Bearing in mind that in the coming period there will be a new strategic-planning document for war crimes prosecution, which should replace the NSWCP, it is certain that certain changes will ensue in the Strategy.