

**REPORT ON THE IMPLEMENTATION OF THE PROSECUTORIAL STRATEGY
FOR WAR CRIMES INVESTIGATION AND PROSECUTION
- Q3 AND Q4 2022 -**

The revised Action Plan for Chapter 23 adopted by the Government of the Republic of Serbia in July 2020 designates the War Crimes Public Prosecutor's Office (WCPPO) as one of the bearers of activities in the subchapter of the *Justice, War Crimes* section. Point 1.4.3.5 envisages the monitoring of the implementation of the prosecutorial Strategy for the investigation and prosecution of war crimes, and in this connection it is determined that the supervision of the implementation of that strategy is carried out through quarterly reports submitted to the Public Prosecutor's Office of the Republic. Considering the reporting model established so far, a report for Q3 and Q4 2022 was prepared:

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

In order to increase efficiency, intensive work is being carried out on the realization of due activities that are under WCPPO jurisdiction, and were established in the Action Plan adopted with the new National Strategy for War Crimes Prosecution (NSWCP).

At the WCPPO collegium on 27 December 2022, the revised prosecutorial Strategy and the accompanying Action Plan were adopted.

Investigations in 20 cases against 68 persons are ongoing before the WCPPO, while in 17 cases orders have been placed to conduct investigations against unknown perpetrators. In the reporting period, orders to conduct an investigation were issued against 3 persons for criminal acts committed on the territory of the Republic of Croatia and AP KiM.

During Q 3 and Q4, the WCPPO filed indictments against 6 persons, one of which was filed against a high-ranking perpetrator. In relation to 3 persons, the indictments were brought after the criminal prosecution was taken over by the Prosecutor's Office of Bosnia and Herzegovina, while the other persons were charged after the investigation conducted by the WCPPO. In one procedure, an agreement was concluded with the defendant on the recognition of the crime, which, together with the indictment, was forwarded to the competent court for further proceedings and a decision. It is evident from this that the share of WCPPO indictments in the total number of indictments has increased, which is one of the indicators of increased efficiency in the work of this Public Prosecutor's Office.

According to the WCPPO indictments, during Q3 and Q4 2022, two first-instance convictions were handed down, sentencing the perpetrators to prison terms of 9 and 12 years.

As of the time of writing this report, no second-instance verdict has been made.

The WCPPO continued to participate in the sessions of the Working Group for collecting facts and evidence in the investigation of crimes against members of the Serbian people and other national communities in AP KiM.

In the reporting period, the Working Group for the selection of cases based on priority criteria began its work in accordance with the goals of the Strategy, which as one of the main goals foresees the processing of priority cases of war crimes, with the determination of criteria for prioritization.

In order to precisely define the method of processing and classifying cases by category, which was necessary due to their large number, the Working Group chairman prepared a work methodology, which elaborates more closely on the criteria for determining priorities.

In the reporting period, at the initiative of the WCPPO, two extremely important regional meetings were held, attended by the most important establishments whose work contributes to solving war crimes.

In order to continue the Palić Process, the WCPPO hosted a regional meeting of prosecutors handling war crimes cases, held in Belgrade on 10 and 11 October 2022, and organized by the OSCE Mission to the Republic of Serbia, with the support of the Federal Republic of Germany and the European Union.

Representatives of the Prosecutor's Office of B-H, prosecutors of the Federation of B-H, Republika Srpska and Brčko District, representatives of the Special Prosecutor's Office of Montenegro and the International Residual Mechanism for Criminal Courts (Mechanism) OTP took part in the high-level meeting.

The main topics of the meeting, on which the participants exchanged experiences, included the issue of assigning cases and cooperation in war crimes proceedings, improvement of protection and support for victims and witnesses, and the issue of missing persons.

At the initiative of the WCPPO, another regional meeting was held in the reporting period, in which judges, prosecutors and lawyers who handle war crimes cases took part. The meeting was held in Belgrade on 24 November 2022 in the organization of the OSCE Mission in the Republic of Serbia. The key topic of the meeting was the penal policy in war crimes proceedings, the legal framework and practice of courts, prosecutors' offices and the perspective of the defense, with a special reference to proportionality in sentencing in these proceedings. Other topics on which the participants of the meeting exchanged experiences included the application of the Institute of Agreements on the Recognition of Criminal Offenses in War Crimes Cases and the recognition and enforcement of foreign court decisions in the context of criminal policy. In the following period, conclusions from the meeting will be drawn up.

Target – Strengthening the institutional and professional capacities of the WCPPO

In the reporting period, 12 persons served as deputy prosecutors in the WCPPO, in accordance with the Decision of the State Council of Prosecutors A. no. 69/21 of 2 April 2021 (Official Gazette of the RS, No. 32/2021). Of the existing number, three deputies were sent to the WCPPO based on the decision of the Republic Public Prosecutor. Since in the reporting period one deputy prosecutor obtained the right to an old-age pension, 11 persons currently hold the position of deputy prosecutor.

The consent of the competent establishments was obtained for the amendment of the Rulebook on the internal arrangement and systematization of workplaces with regard to the IT specialist workplace. Activities have begun in the direction of hiring an additional number of prosecutorial assistants and other staff, in accordance with activity 1.4.1.6 from the revised Chapter 23 Action Plan.

A room for victims and witnesses was equipped and put into operation.

- **Forming joint WCPPO and War Crimes Investigation Service (WCIS) teams**

Cooperation between the joint teams of the Public Prosecutor's Office and the WCIS continued in the reporting period. Meetings are regularly held in accordance with the established dynamics at the level of main representatives, as well as at the level of case handlers for the needs of specific cases.

- **Advanced training**

Representatives of the Public Prosecutor's Office took part in the following training sessions:

- On 25 August 2022, the Public Prosecutor's Office spokesperson participated in the training session on "Communication with the media" organized by the Judicial Academy and the Dutch Helsinki Committee, which aimed to improve the relationship between the media and the judiciary. Representatives of the judiciary, as well as communication experts and journalists, attended the training session;

- Several WCPPO representatives participated in the CEPOL webinar organized on 17 November 2022 on the topic "Investigation of crimes against humanity and other goods protected by international law;"

- WCPPO representatives took part on 29 and 30 November 2022 in an online conference on cross-border access to electronic evidence, at the invitation of Eurojust.

- **Investigation plan**

In accordance with the provisions of the Criminal Procedure Code, acting deputy prosecutors in cooperation with the WCIS define the steps for each individual case in the investigation, taking into account all relevant actions and measures that need to be undertaken in order for the investigation to be conducted as efficiently as possible.

The revised Strategy defines the concrete steps necessary for a high quality implementation of the preliminary investigation and the primary one, with the aim of

achieving the best possible results and increasing the number of issued orders on the implementation of the investigation and the filing of WCPPO indictments.

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

In each specific case, the possibility of applying the plea bargain agreement must be considered in accordance with the Strategy.

The Public Prosecutor's Office initiated the application of this agreement and negotiations were conducted, and in one case a plea bargain agreement was concluded, and together with the indictment, it was submitted to the court for further proceedings and a decision.

The implementation of this agreement was the topic of the regional meeting of prosecutors, judges and lawyers held in November 2022. The exchanged expert opinions and the presentations of the arbiters should contribute to its more frequent application, considering the undisputed advantages it brings to the participants.

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

In accordance with the relevant legal provisions and by-laws, and with the activity from the revised Action Plan for Chapter 23, the obligations to ensure the secrecy and confidentiality of data are consistently observed by WCPPO staff and they supervise the implementation of laws and by-laws in this area.

We continued to undertake measures to protect data from unauthorized access, publication and any other abuse, in accordance with the Personal Data Protection Act and other relevant regulations.

Financial investigations and asset forfeiture

The same procedures apply as in the previous reporting period. In the previous period, the Public Prosecutor's Office initiated the organizing of round tables with representatives of establishments involved in the matter of war crimes, with the participation of international establishments on the topic of financial investigations, for the purpose of exchanging experiences (with other public prosecutor offices and courts), and are to propose that the round table give its input as well as a representative of the Financial Investigations Unit (FIU), in order to share the previous experiences with other participants. Further realization of this activity is expected.

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

- **Protection of victims and witnesses**

The deputy war crimes prosecutors held regular meetings with the representatives of the Protection Unit (PU) in order to carry out the tasks under their jurisdiction as efficiently as possible.

An individual assessment of victims and witnesses is carried out, and if necessary, the determining of procedural and non-procedural protection measures is initiated, as well as their extension, according to need.

The revised Strategy contains several activities, the implementation of which will begin soon, and they are to contribute to a more effective protection of victims and witnesses.

- **Support for victims and witnesses**

On 3 November 2022, an agreement was signed with the Prosecutor's Office of B-H on cooperation between the services for assistance and support to victims and witnesses and for their participation in criminal proceedings, in accordance with the obligation from the NSWCP (2021-2026). The goal of the agreement is their facilitated participation in the criminal proceedings, especially in the case of transferred cases, that is, those in which criminal prosecution has been taken over from other prosecutor offices.

The Public Prosecutor's Office pays special attention to war crimes cases in which rape or other forms of sexual violence were committed. In the reporting period, among other things, indictments were brought against defendants who are justifiably suspected of having committed a war crime with the element of sexual violence in conflict.

The War Crimes Prosecutor attended the international conference entitled "Preventing Sexual Violence in Conflict Initiative" held in London on 28 and 29 November 2022.

- **Defense of the defendant**

There were no changes compared to the previous quarter. In every case, the deputy war crimes prosecutors and other case handlers continued to act 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 Q3 and Q4 2022, there were no requests 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").

Target – Achieving progress in uncovering the fate of missing persons

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

The cooperation of the Public Prosecutor's Office with the representatives of state bodies that act in war crimes cases has maintained its continuity. Meetings are regularly held in accordance with the established dynamics at the level of main representatives, as well as at the level of case handlers for the needs of specific cases.

On 19 September 2022, the War Crimes Prosecutor held a meeting with representatives of the Commission for Missing Persons (CMP), whereupon current issues and activities that should be implemented in the future were discussed. On that occasion, the positions were agreed that it is necessary to raise cooperation to an even higher level, which is to be done by concluding a new Memorandum on cooperation between the Public Prosecutor's Office and the CMP, which should be implemented in the following period.

WCPPO representatives took part in two round tables organized by the association of families of kidnapped and missing persons - 'The Stolen Truth.' The round table entitled "The missing are watching us" was held on 4 October 2022, and the round table "True family for truth, justice, reparation and memorialization" was held on 9 December 2022. These gatherings were attended by representatives of relevant competent institutions and international organizations, with the aim of making joint efforts to speed up the process of locating kidnapped and missing persons and realizing the rights of the families of the missing.

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

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

During the reporting period, cooperation maintained its continuity. In September 2022, WCPPO representatives paid a working visit to the IRMCT Office of the Prosecutor (OTP). A working group was formed between representatives of the OTP and the WCPPO, within which work on specific cases took place during the reporting period.

As part of the regional meeting of prosecutors held in Belgrade on 10 and 11 October 2022, the War Crimes Prosecutor held a meeting with the chief prosecutor of the IRMCT, Serge Brammertz, and his team. In addition, representatives of the prosecution offices held another working meeting on 10 November 2022 in The Hague, and the main topics were related to the improvement of cooperation on specific requests for assistance and easier access to the IRMCT database.

Case handlers continuously search the archive and evidence fund of the IRMCT through the Electronic Disclosure System. It is planned to continue staff training of the Public Prosecutor's Office in order to improve their knowledge regarding the use of the EDS database.

During Q3 and Q4, the liaison officer continued to send requests for assistance to the IRMCT for the needs of specific cases, and all the sent requests were answered. Case handlers regularly search the archive and evidence fund of the IRMCT through the Electronic Disclosure System.

The Public Prosecutor's Office is still actively involved in the process of providing assistance to the OTP regarding contempt of court and war crimes proceedings before the IRMCT.

a) Cooperation with the Prosecutor's Office of Bosnia and Herzegovina

In the reporting period, regional cooperation took place by holding bilateral meetings, exchanging requests for assistance, acting on submitted requests and implementing activities related to taking over criminal prosecution from the Prosecutor's Office of B-H.

On 19 September 2022, WCPPO representatives and the Prosecutor's Office of B-H held a regular three-month online working meeting with the aim of further improving regional cooperation, which includes, among other things, the implementation of the transfer and takeover of criminal prosecution. The topic that received attention, among other things, related to the work on current cases where cooperation is achieved in which mutual assistance was requested in certain procedural actions, on determining contact points at the prosecutor's office level for faster and more efficient communication, as well as on concluding an agreement on cooperation between regional services for assistance and support to victims and witnesses.

The focus of the meeting was on speeding up the mutual exchange of data regarding previously forwarded requests for assistance, and efficient handling of submitted requests.

The Prosecutor's Office filed indictments against 3 persons in cases in which criminal prosecution was taken over by the competent authorities of B-H.

The active exchange of requests for assistance with the Prosecutor's Office of B-H continued. During Q3, the Prosecutor's Office of B-H submitted a request for legal assistance in 13 cases. Six requests were granted, 6 requests are being processed, while 1 request was not granted, as it did not contain everything prescribed by the act on mutual prosecutorial cooperation. Of that, 1 request is a request for a hearing that is in progress.

In the same period, the WCPPO sent 64 requests for assistance to the Prosecutor's Office of B-H. Some 25 requests were granted, while 39 requests remain unanswered.

During Q4, the Prosecutor's Office of B-H submitted requests for legal assistance in 8 cases. One request was granted, and 7 requests are being processed. Of the submitted requests for assistance, 2 requests are related to requests for hearing and both are in progress.

On the other hand, within the same period, the WCPPO sent 74 requests for assistance to the Prosecutor's Office of B-H. Some 41 requests have been answered, while 33 requests have not yet been answered.

b) Cooperation with the State Attorney's Office of the Republic of Croatia

In Q3 2022, the State Attorney's Office of the Republic of Croatia asked the WCPPO for assistance in 5 cases. Of these, 2 requests were granted, while 3 requests are still being processed. Of 5 submitted requests, 2 cases include hearing requests and they are in the processing phase.

The WCPPO submitted 25 requests for assistance to the State Attorney's Office of the Republic of Croatia, of which 8 requests were processed, while 17 requests were unanswered.

During Q4 2022, the State Attorney's Office of the Republic of Croatia asked the WCPPO for assistance in 7 cases. Of these, 2 requests were granted, while 5 requests are still being processed. Of the total number of requests sent, one refers to the request for a hearing, and it is in progress.

The WCPPO submitted 23 requests for assistance to the State Attorney's Office of the Republic of Croatia, of which 8 requests were answered, while 15 requests remain unanswered.

c) 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 MLA procedures provided for in the Technical Protocol for the Implementation of IBM and within the scope of the cases in which they act.

In the reporting period, the WCPPO, on the basis of the MLA procedures, submitted 9 requests for assistance to the EULEX Special Prosecutor's Office in Priština, which were not answered until the moment of writing this report.

In the same, not a single request for legal assistance was submitted to the WCPPO through the EULEX Mission in accordance with the MLA procedures.

d) Data on legal assistance provided to other prosecution offices

- During Q3, 1 request for assistance was sent to the WCPPO by the Prosecutor's Office of the Republic of Montenegro, and that request was granted;

- In the same period, the District Public Prosecutor's Office in Maribor sent a request for assistance in 1 case, and that case is being worked on;

- Also, a letter of rogatory was submitted by the US Department of Justice for a hearing in 1 case and the rogatory was acted upon;

- The WCPPO requested legal assistance in 1 case from the competent authority of the Federal Republic of Germany. A decision on the submitted request is awaited.

- During Q4, the WCPPO received 1 request for assistance from the Prosecutor's Office of the Republic of Montenegro, and the procedure for that request is ongoing.

The target of "Raising awareness and improving societal attitudes towards the importance of prosecuting war crimes"

- **Transparency of WCPPO's work**

In order to further bring the work of the WCPPO closer to the public, on 20 December 2022, the War Crimes Prosecutor signed the Protocol on Cooperation with the Museum of Genocide Victims. This Protocol regulates cooperation in connection with the collection,

processing and use of data on war crimes for which this Public Prosecutor's Office is responsible.

At the conclusion of the Protocol, the Public Prosecutor's Office expressed its willingness to make evidence and facts related to war crimes and the crime of genocide available to the public, to the extent permitted by law and other regulations and in cooperation with the Museum of Genocide Victims. The mentioned materials submitted by the Prosecutor's Office will be used by the Museum of Genocide Victims for the purpose of fostering the culture of memory, as well as for the purpose of carrying out activities related to publishing, information, and education, both in the territory of the Republic of Serbia and abroad. In this regard, the Public Prosecutor's Office expressed its willingness to participate at domestic and foreign scientific gatherings, conferences and round tables that will be organized.

The information on the work of the Public Prosecutor's Office is publicly available to all interested parties in electronic form, although all interested parties can submit requests and review them, as well as download printed copies at the Public Prosecutor's Office.

The WCPPO website is regularly updated with new information regarding all activities. The public was informed in a timely manner about the meetings held by WCPPO representatives at the regional and wider international level, which are important for solving specific issues related to regional cooperation in war crimes cases.

Indictments which passed the stage of the preparatory hearing are presented in an anonymized form. Reports on the implementation of the NSWCP, the prosecutorial Strategy for the investigation and prosecution of war crimes, are published regularly, and a link is posted to access the report on the implementation of the revised Action Plan for Chapter 23.

During Q3 and Q4 2022, the Public Prosecutor's Office continued to respond in a timely manner through an authorized person to the inquiries of interested parties, taking into account the a proper conduct of the proceedings and the protection of personal data to which the inquiries refer.

At the beginning of January 2023, an updated report on the activities of the Public Prosecutor's Office in connection with criminal charges in war crimes cases is to be prepared in accordance with the indicators of results from the revised Action Plan for Chapter 23. After the preparation, the report is to be posted and available on the WCPPO website.

In October 2022, the Public Prosecutor's Office enabled the students of the Faculty of Law in Belgrade to become more familiar with its work. After a short presentation of the work of the Public Prosecutor's Office and a constructive dialogue, the students, with the support of the Higher Court in Belgrade, toured the courtroom where war crime trials are held. This practice will continue, as it can be a good basis for the affirmation of future lawyers and an incentive to follow trials and to continuously gain new experiences and knowledge about the work of domestic judicial institutions, which undoubtedly contributes to the

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