

Conclusions of the meeting of prosecutors on regional co-operation in war crimes proceedings, in Belgrade 10-11 October 2022

Between 10-11 October 2022, the Office of the War Crimes Prosecutor of the Republic of Serbia hosted a high-level meeting of prosecutors from the region on co-operation in war crimes proceedings. The participants included representatives from the Prosecutor's Office of Bosnia and Herzegovina, prosecutors from the Federation of BiH, Republika Srpska and Brčko District, representatives from the Special Prosecutor's Office of Montenegro as well as the Office of the Prosecutor (OTP) of the International Residual Mechanism for Criminal Tribunals (Mechanism). This conference was convened and organized by the Organization for Security and Co-operation in Europe (OSCE) – Mission to Serbia, with support of the Federal Republic of Germany and the European Union.

The participants regret that for the first time since 2004, representatives from the State Attorney's Office of Croatia did not join in the regional conference.

Current Situation

The prosecutors agreed that pro-active, decisive and effective regional cooperation is needed to tackle the backlog of war crimes cases and meet the demands of the many victims still waiting for justice. The participants underlined that transparency, trust and responsiveness are essential elements to regional cooperation and reconfirmed their strong commitment to bringing to justice all perpetrators of war crimes without regard to nationality or official status.

It was recognized that prosecutor's offices in Bosnia and Herzegovina, Montenegro and Serbia have improved their cooperation in war crimes cases in recent years. Through conferences, meetings and direct engagement, many challenges identified in the past have been largely overcome. Requests for mutual legal assistance between these countries are being promptly answered. More cases are now being transferred for prosecution, including cases involving senior- and mid-level suspects as well as particular grave and complex crimes such as conflict-related sexual violence. Participants welcomed the support of Mechanism Prosecutor Serge Brammertz in facilitating these improvements.

Unfortunately, all participants noted that the trend is reversed when it comes to cooperation with Croatia. Every participating prosecutor's office faces significant challenges, with large numbers of requests for assistance remaining unanswered for many years, and only a handful of cases successfully transferred to Croatia for prosecution. Long-standing efforts, including by the Mechanism OTP, to resolve these matters with Croatian authorities have so far been unsuccessful. Delegates called upon the competent authorities in Croatia to address and resolve the issues standing in the way of effective regional cooperation and allay concerns of political interference in the justice process in Croatia.

Transferring cases and cooperation

The delegations provided updates on their offices' activities relating to the transfer of war crimes cases and other forms of mutual legal assistance and co-operation since the previous conference held in September 2021 in Belgrade. Progress has been made. At the same time, the participating offices agreed that much more needs to be done, particularly as victims, witnesses and suspects are growing older.

The participants agreed that the transfer of cases is a key instrument of regional cooperation for addressing the accountability gap for serious international crimes and that the use of this mode of cooperation should be enhanced. Recognising that a large number of suspects and indictees reside in neighbouring countries, which is the case in more than a third of the cases pending with the POBiH, the participants underlined the importance of transferring more cases and committed to ensuring the

successful prosecution of those cases. The delegations agreed to develop concrete plans for the transfer of such cases. The prosecutors further resolved to find solutions to any remaining obstacles and challenges in the processing of transferred cases.

Improving protection and support to victims and witnesses

The participants agreed that access to the surviving witnesses is imperative for successful war crimes prosecution. Participating offices noted that there have been challenges to secure witness cooperation in transferred cases—a problem which all acknowledged needs to be resolved. The participating prosecution offices undertook to assist their counterparts in identifying witnesses through the exchange of evidence and other relevant material and in securing witness cooperation and participation in national proceedings.

The participants agreed that further improvements in the field of support and assistance to victims and witnesses are needed in order to empower victims and witnesses to participate in criminal proceedings. The participating prosecution offices agreed to provide all support within their competence to witnesses. The participants called on national authorities to ensure witnesses are provided adequate protection and support.

Support from the Mechanism

Regional prosecutors expressed their great appreciation for the extensive support provided by the Mechanism OTP, including facilitating the transfer of war crimes cases, providing direct case assistance, assisting to resolve challenges and monitoring developments. It was agreed that there is a significant need for assistance from the Mechanism OTP in identifying and accessing ICTY/Mechanism evidence to assist in national war crimes investigations and prosecutions.

The participating offices also identified a number of challenges in obtaining the evidence of protected witnesses from the Mechanism. Emphasizing the critical need for such evidence, prosecutors noted that some cases had been delayed or suspended because Mechanism judicial decisions did not grant access to protected witnesses and their evidence. It was also noted that protected witnesses who previously agreed to provide evidence in national proceedings changed their minds after speaking with the Mechanism witness support unit. The Mechanism OTP committed to continue aiding regional prosecution offices to obtain relevant evidence from protected ICTY/Mechanism witnesses and advocate for improvements in Mechanism rules and procedures.

Missing persons

The participants agreed that regional prosecution offices have a significant role to play in searching for the thousands of persons still missing after the wars in the former Yugoslavia. The participants emphasized their commitment to exploring all feasible avenues to clarify the fate of as many missing persons as possible. The participants agreed that prosecution offices can complement and enhance the efforts of national bodies mandated to conduct the searches. The participating offices confirmed their commitment to search for missing persons without regard to nationality of victims and explore various means to encourage persons with information on missing persons to provide such information to their offices.

International Support

All participants expressed their gratitude to the European Union for its continuing support to war crimes justice and regional cooperation. The Mechanism OTP reported on the successful results of its joint project with the European Union to assist regional prosecution offices, and participants recognized the wide variety of financial and other assistance provided by the European Union.

Participants also positively recognized the continued assistance of OSCE in terms of organizing training and capacity-building, as well as the support of UNDP.