



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



Strasbourg, 26 October 2012

CommDH(2012)31

POST-WAR JUSTICE AND DURABLE PEACE IN THE FORMER YUGOSLAVIA

Round-Table with human rights defenders
organised by the Office of the Council of Europe Commissioner for Human Rights
Sarajevo, 18 March 2012

REPORT

Introduction

1. The Office of the Council of Europe Commissioner for Human Rights (the Commissioner) organised a Round-Table on Post-war justice and durable peace in the former Yugoslavia on 18 March 2012 in Sarajevo, Bosnia and Herzegovina.
2. The Round-Table gathered 14 human rights defenders from countries of the former Yugoslavia who are members of human rights NGOs carrying out important work in the field of transitional justice in the region, as well as representatives of the Office of the Commissioner and of the Office of the Council of Europe in Bosnia and Herzegovina.
3. The event provided an opportunity for the participants to comment and exchange views drawing upon the Commissioner's [Issue Paper "Post-war justice and durable peace in the former Yugoslavia"](#) (the Issue Paper), which was launched on 19 March 2012 in Sarajevo. Specific themes discussed included: measures for the elimination of impunity; provision of adequate and effective reparations to all war victims; the need to establish and recognise the truth concerning the gross human rights violations and violations of international humanitarian law that occurred in the region; and the need for institutional reforms in order to guarantee non-repetition.
4. The Commissioner would like to express his sincere gratitude to those who participated in the Round-Table in Sarajevo and who made valuable contributions from their professional experience and fields of expertise.

Opening remarks

5. The Commissioner welcomed the participants to the Round-Table, the fifth such event that his Office organised with human rights defenders. He indicated that the event would examine the key pending human rights issues in the aftermath of the wars which began in the nineties in the region of the former Yugoslavia. Civil society, and in particular human rights defenders, are instrumental in taking forward transitional justice issues, for example in collecting facts, assisting witnesses and supporting victims, undertaking efforts to establish the truth (e.g. through the RECOM initiative¹), raising public awareness on post-war justice issues, etc.
6. The Commissioner underlined that the discussions aimed at helping his Office in setting its priorities and activities in the field of [post-war justice and reconciliation in the former Yugoslavia](#) and in support of the work of human rights defenders in the Council of Europe area.
7. The Office of the Commissioner then provided an overview of the issues tackled by the Issue Paper, with a focus on the international framework and experience in the field of transitional justice. The Issue Paper is the first attempt of the Council of Europe to tackle systematically the remaining human rights challenges that countries of the former Yugoslavia are facing following the wars which began in the nineties. Post-war justice in the former Yugoslavia refers to a particularly difficult context, given the complexities of the conflicts in the nineties – involvement of several states, common history, etc.
8. Transitional justice needs systematic work at the national level, time and continuous evaluation. The Issue Paper is recommending the establishment of national human rights action plans which should support transitional justice mechanisms and procedures.
9. Following the presentation of the Issue Paper, participants engaged in a discussion on each of its four chapters. Participants pointed out that the Issue Paper was a very useful tool to support work in the field of transitional justice in the former Yugoslavia. They called for more active engagement of international and foreign actors with leadership in the region on issues related to transitional justice.

¹ See below paragraph 39.

I. Measures for the elimination of impunity

Presentation of the Issue Paper

10. This chapter concerns criminal justice efforts at the international, regional and national levels, which aim at ensuring accountability for wartime crimes. The Paper highlights the work of the International Criminal Tribunal for the former Yugoslavia (ICTY) and its contribution to the establishment of facts and truth about wartime events. Currently, the main challenge is for the states of the region to integrate the ICTY *acquis* into their legal and institutional frameworks. Several actors in the region view the work of the ICTY with suspicion and are reluctant to accept the facts that it established. Some states have even supported the defence costs of some of the defendants indicted at the ICTY. It should however be clarified that national or collective responsibility is not acceptable in international criminal law given that the foundation of criminal responsibility is the principle of personal culpability.
11. As far as domestic criminal proceedings are concerned, there are four major deficiencies. One relates to shortcomings affecting the national judicial systems (e.g. excessive length of proceedings, non-execution of domestic judgements). The second deficiency refers to the need of reinforcing regional cooperation on criminal matters (e.g. Bosnia and Herzegovina and Serbia bar the extradition of their nationals) and the importance for the states of the region to accede to certain major relevant Council of Europe instruments.² A third deficiency stems from the application of amnesties for war crimes (e.g. Croatian Law annulling certain legal acts against Croatian nationals that are suspected, indicted or convicted of war crimes; decision of the Parliament of “the former Yugoslav Republic of Macedonia” to apply the 2002 Amnesty Law to cases returned from the ICTY in 2008). The application of amnesty in the case of war crimes, crimes against humanity or genocide is impermissible according to UN and Council of Europe standards. A fourth deficiency concerns the weakness of witness protection systems, with Kosovo* being of particular concern.

Discussion

12. Participants agreed that the prosecution of war crime cases remains a slow process afflicted with numerous shortcomings. It appears improbable that all perpetrators of war crimes will be brought to justice. In Croatia for example, there are about 400 war crimes that have not been investigated. Human rights defenders from Bosnia and Herzegovina reported that the main problem lies with the lack of implementation of several national laws and policies which have already been enacted by the country’s authorities, including the National War Crimes Processing Strategy adopted in 2008.
13. Participants underlined that the non-application at national level of the principle of command responsibility (the responsibility of superiors) remains a key obstacle when combating impunity for war crimes in the region. They recommended that further work be conducted to analyse cases where command responsibility has been at stake and raise the issue more systematically with national authorities. In Croatia, individuals have started to be indicted on the basis of command responsibility.
14. Participants were seriously concerned that persons who were in leading positions during the wars in the nineties and who were associated with serious human rights violations still assumed important functions today. Their responsibility has not been considered and there has been no vetting. For example, some of those who were serving in the government at the time of the

² [1974 European convention on the non-applicability of statutory limitation to crimes against humanity and war crimes](#); [2010 third additional protocol to the European Convention on extradition](#).

* Throughout this text, all reference to Kosovo, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo.

“erasure” in Slovenia³ are still active in the leadership of the country. In Serbia, NGOs have raised the alarm about persons who were allegedly associated with war crimes in Kosovo and hold senior positions in the army, police or institutions in charge of witness protection.

15. The level of protection and support to witnesses and victims in war crime cases remains unsatisfactory, resulting in a low willingness of witnesses to testify. In Bosnia and Herzegovina, witnesses come from different parts of the country and are involved at different levels of the process. However, the witness support unit only exists in the state-level court. Participants pointed to a pressing need of establishing such units at the level of local and cantonal courts as well. Another shortcoming is that the witness protection programme in Bosnia and Herzegovina focuses on the trial stage, leaving out pre-trial and post-trial phases.
16. Witnesses could also be dissuaded from testifying by the knowledge that the conclusion of plea-bargaining agreements result in relatively light sentences for persons who committed serious human rights violations. The reform of the criminal justice system in Bosnia and Herzegovina, and especially the part relating to plea-bargaining agreements, should be carefully explained to witnesses and victims so that they will continue providing testimonies.
17. Participants noted that there were persistent obstacles to regional co-operation in the field of war crimes prosecution. Besides the prohibition in domestic legislation of extradition of nationals of Serbia and Bosnia and Herzegovina mentioned in the Issue Paper, participants referred to the fact that Croatia and Montenegro also bar extradition of their own nationals. An agreement between the prosecutors of Croatia, Montenegro and Serbia was concluded in order to cooperate on evidence collected on war crime cases. However, Bosnia and Herzegovina does not participate in this agreement.
18. Another major concern voiced by participants relates to the weakness of ICTY’s outreach and legacy in the region. There is a well-known lack of public awareness about war crime cases, trials and judgments issued at the ICTY and national levels. The ICTY outreach efforts have not succeeded fully to date. Countries of the region are not always eager to accept and use the judgments and facts established by the ICTY. For example, human rights defenders pointed out that the Croatian government rejected the implementation of proposed ICTY outreach activities,⁴ and “the former Yugoslav Republic of Macedonia” did not allow the opening of an office which was supposed to deal with the legacy of the ICTY in the country. Domestic authorities and the judiciary should act upon the verdicts rendered by the ICTY and instruct cases drawing upon the ICTY *acquis*. Facts established by ICTY judgments should be disseminated and presented adequately through proper outreach programmes to build awareness about the recent past.
19. Human rights defenders underlined the importance of using in their work the existing international human rights standards and documents concerning the duty of states to investigate and punish perpetrators of human rights violations. For example, human rights defenders in Montenegro used the 2005 UN Basic Principles and Guidelines,⁵ in a major litigation case on behalf of victims of wartime crime and deportation. Another useful document, which has been adopted more recently by the Council of Europe Committee of Ministers is the [2011 Guidelines on eradicating impunity for serious human rights violations](#).
20. Participants expressed their concern at the fact that some states in the region have supported defence costs of persons indicted in front of the ICTY. This also happens in front of domestic courts as for example in Bosnia and Herzegovina where the Canton of Sarajevo collected funds to support the defence costs of eight persons indicted for war crimes.
21. Finally, the application of amnesty laws in the case of war crimes has been raised. The prosecution of some of the crimes related to the 2001 conflict in “the former Yugoslav Republic of

³ See below paragraph 24.

⁴ The Office of the Commissioner has been subsequently informed that the new Croatian government agreed to the implementation of ICTY outreach activities.

⁵ [“Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”, UN GA Res. 60/147, 16 December 2005.](#)

Macedonia” has been seriously impeded by the adoption of a decision by the national Parliament rendering these cases out of reach of the domestic judiciary. Indeed, the application of the amnesty decision was extended not only to the four cases returned from the ICTY to “the former Yugoslav Republic of Macedonia” but also to any future cases that may be raised by the victims and their representatives before national jurisdictions against alleged perpetrators of serious human rights violations committed during the 2001 conflict.⁶

II. Provision of adequate and effective reparation to all war victims (reparatory justice)

Presentation of the Issue Paper

22. The first group of victims that the Issue Paper considers is that of refugees and internally displaced persons (IDPs). 300 000 to 400 000 persons remain without adequate and durable solutions mainly as regards adequate housing. People still live in sub-standard conditions in collective centres and the situation of former tenancy rights holders remains unresolved. If return on a voluntary basis and in a dignified manner is not possible, those who do not want to return should be integrated in the places where they currently live.
23. About 18 000 persons are stateless, out of whom many are Roma. State authorities should ratify two important Council of Europe instruments in relation to statelessness⁷ which would provide a framework for resolving this issue and ensuring the protection of stateless persons. Although not widely discussed, decontamination of large areas affected by landmines, cluster munitions, explosives and remnants of war is another important condition for returns.
24. The second victim group mentioned by the Issue Paper relates to the “erased” in Slovenia. The process of erasure started in 1992 when approximately 25 600 persons were unlawfully deprived of their permanent resident status by being erased from the registries. To this moment, approximately 13 350 erased persons have not yet managed to regulate their legal status in Slovenia, and this includes a significant number of children. There is no record of where these persons are, although it can be assumed that the majority was forced to leave the country, while some still reside in Slovenia without any legal status. This situation impedes access of the erased persons to basic rights (access to education, health services, etc.).
25. The third group considered by the Issue Paper refers to women victims of wartime sexual violence. Almost half of those convicted by the ICTY have been found guilty of elements of crime involving sexual violence. A report of the UN Special Representative on sexual violence in conflict has made a link between sexual violence experienced during the war and instances of domestic violence in peacetime. In many instances, men have also been victims of sexual violence.
26. There are three main forms of reparation for victims of human rights violations. The first form is restitution (*restitutio in integrum*), which is difficult to achieve in the former Yugoslavia where hardly any victim can be reinstated in the situation s/he was before the war. The second form is compensation, which is the main channel of reparation for victims in the region. However, it has not always been successful. There were instances where domestic courts have rejected claims for compensation for wartime gross violations. In the case of Croatia, claims for compensation have been rejected and victims have been asked to pay for court fees. The third form of reparation is satisfaction (e.g. public apologies, official declarations from official institutions, tributes to victims). This has occurred in the region on some occasions but it has not been followed up by concrete and systematic measures by the states concerned.

⁶ The ICTY has issued only two indictments in relation to the 2001 conflict in “the former Yugoslav Republic of Macedonia”, both relating to a police operation in the village of Ljuboten in August 2001. The indictments were against former police officer Johan Tarčulovski and former Minister of the Interior Ljube Boškovski. After spending three years in detention in the Hague, Mr Boškovski was acquitted of all charges (he has since been convicted domestically for abuse of office and illegal campaign financing and is now serving a seven-year sentence), while Mr Tarčulovski was found guilty of war crimes and sentenced to 12 years’ imprisonment. In 2008 the ICTY transferred back to the national jurisdiction four cases implicating the criminal responsibility of National Liberation Army members.

⁷ [1997 European Convention on nationality](#); [2006 Council of Europe Convention on the avoidance of statelessness in relation to state succession](#).

Discussion

27. The provision of reparation to war victims looks very different from one country to the other, and even within one country. Human rights defenders explained that Serbia lacks a mechanism in place to provide reparation to war victims. There are no financial resources foreseen for this purpose. A significant group of war veterans – including those who were conscripted forcibly - are also left out of the system in Serbia. Croats and Bosniaks detained in camps in Serbia during the war did not get compensation. These cases have been raised by civil society organisations assisting the victims in bringing their cases to court, but the Serbian authorities have denied responsibility for these abuses.
28. The situation in Slovenia does not give rise for hope regarding those who were “erased” in 1992 by the authorities of that time. Few of the persons who were “erased” have applied to get legal status under the legislation amended in 2010, as conditions are too difficult to meet. None of them has been able to obtain compensation from the state; senior judicial instances rejected claims for compensation. The authorities have not assumed any responsibility for the effects of the “erasure” and allege that the payment of compensation for this category would lead the country to bankruptcy.⁸
29. Human rights defenders from Croatia mentioned that the existing laws in Croatia did not allow victims and their families to get adequate reparation. Civilian victims of war and their representatives lost their cases before courts when claiming compensation under the two applicable Croatian laws (one concerns war damages caused by Croatian forces and the other relates to damages as a consequence of terrorist acts). Apart from being denied compensation, the victims had to pay high court fees. Victims and their families could not receive access to reparation through civil lawsuits either, as courts applied the statute of limitation. Human rights defenders questioned the application of the statute of limitation in civil cases related to reparation for wartime crimes.
30. In Montenegro, human rights defenders reported some progress, as compensation has been awarded to over 200 persons who were victims or relatives of victims of wartime crimes and deportation in 1992.⁹ However, there remain inadequacies in terms of the qualification of the crime and lack of punishment for perpetrators, including those who bear command responsibility.
31. Human rights defenders from Bosnia and Herzegovina explained that mechanisms for receiving compensation and amounts awarded varied significantly, depending on the municipality, canton and entity. Furthermore, military victims of war tend to obtain easier access to and higher amounts of compensation than civilian victims of war. Some people are reluctant to return to their pre-war home for fear of losing their entitlement to compensation. There is a need for adopting a systematic and non-discriminatory approach to the issue of reparation at the State level in Bosnia and Herzegovina.
32. Participants mentioned that in Bosnia and Herzegovina a law at the national level on torture victims is being prepared under the auspices of the State Ministry for Human Rights and Refugees. This may help to address the situation of detention camp survivors who have not been accorded a clear status and as a result have not received adequate compensation. Defenders

⁸ On 26 June 2012 the Grand Chamber of the European Court of Human Rights delivered a judgment in the case of *Kurić and others v. Slovenia*. In its judgment, the Court found, *inter alia*, a violation of Article 8 of the Convention noting that in spite of several legislative and administrative endeavours, including the adoption of the amended 2010 Legal Status Act, the Slovenian authorities have failed to “remedy comprehensively and with the requisite promptness the blanket nature of the “erasure” and its grave consequences for the applicants”. The Court indicated to the Government of Slovenia that it should, within one year, set up an ad hoc domestic compensation scheme to redress the applicants and those who are in the same situation. This judgement is currently pending execution before the Council of Europe Committee of Ministers.

⁹ This case concerns Bosnian Muslim refugees, who were arrested in 1992 by the police in Montenegro and handed over to Bosnian Serb forces in Bosnia and Herzegovina, where most of them were killed. A number of survivors and relatives of victims initiated proceedings and in 2008 received compensation from the Montenegrin authorities. Criminal investigations and proceedings, initiated by the State Prosecution Office in 2005 finally targeted only five low-level security force officers. The verdict rendered in March 2011 by the Podgorica Superior Court acquitted the defendants and was subsequently appealed by the State Prosecutor and two mothers who had lost their sons. See Issue Paper, pages 17 and 18.

from Bosnia and Herzegovina also raised the issue of lack of recognition and reparation for male victims of sexual violence during the war, which occurred mostly in detention camps. Such instances were clearly and factually established by the ICTY but this category of victims remains neglected by national and international actors.

33. A human rights defender from Croatia raised the issue of the threshold of evidence requested to prove wartime rape. The ICTY considers that women victims of wartime rape do not have to submit documentary evidence to prove that they have been raped, especially if they were detained. In Croatia, documentary evidence is requested for this type of crime.
34. Participants expressed the concern that, on the whole, memorials in countries of the region cannot be viewed as adequate reparation. Many memorials do not commemorate the victims and their suffering, and they do not warn against repetition. Some memorials are too general, dedicated to all victims of wars including those who were involved in the military effort. Human rights defenders even mentioned instances of memorials dedicated to perpetrators of wartime crimes.
35. Participants positively assessed public apologies made by senior leaders in relation to the past war-related crimes. There is, however, a need to go beyond these declarations and translate them into concrete strategies and actions to reach out to the victims and improve their conditions of living. All participants underlined the lack of recognition of the suffering of victims belonging to other groups and/or the opposite sides during the war. These ethno-centred views can lead to future polarisation and abuses.

III. The need to establish and recognise the truth (historical justice)

Presentation of the Issue Paper

36. Civil society actors and human rights defenders in the region have significantly contributed to the process of achieving historical justice. There is a particular need to establish and recognise the truth regarding the remaining 13 000 missing persons. The right of victims of gross human rights violations to the truth has been widely and firmly established in international (e.g. [UN Human Rights Committee](#), [UNHCHR](#)) and some regional (e.g. [Inter-American Court of Human Rights](#)) human rights law and practice. The ECtHR's case-law concerning a state's obligation to conduct effective investigations in cases of missing persons has been significant in this context.
37. Other regions of the world, such as Latin America, have a more extensive experience and are much more advanced than Europe in the field of transitional justice. For example, Brazil recently established a truth and reconciliation commission within the framework of a national human rights action plan. This has been accompanied by the adoption of a law on public access to information in order to make the facts established available to the public.
38. International experience has shown that there are certain minimum conditions which are necessary for effective of truth (and reconciliation) commissions. A truth commission should be established by law. They should have "teeth", for example the possibility to submit subpoenas in order to have witnesses to come and testify (even if these commissions are non-judicial bodies). Truth commissions should be headed by eminent and widely respected personalities. In addition, it is of utmost importance for truth commissions to have a balanced membership in terms of the political and social, profile of their members: a plurality of voices should be reflected in the composition of these bodies.

Discussion

39. Civil society actors in the region of the former Yugoslavia have been active in establishing the facts and the truth about what happened during the wars in the nineties and in launching

reconciliation activities. The RECOM initiative¹⁰ has been a significant endeavour at regional level, focusing on establishing facts and the truth. At this stage, numerous groups and individuals are part of the initiative. Now the goal is to have political leaders of the countries of the former Yugoslavia endorse the RECOM initiative. A group of RECOM public advocates will present the statutes of the initiative to political leaders. Participants suggested that the Council of Europe become better acquainted with the RECOM initiative.

40. The situation varies from one country to the other concerning this regional undertaking, as reported by human rights defenders. The former Croatian government has been less favourable to a regional initiative, maintaining that facts and truth should be established nationally. Some participants argued that the establishment of facts at the national level could result in further polarisation between countries of the region and that a regional undertaking would provide a more favourable basis for reconciliation. Some participants mentioned the difficulties in building a political consensus in Serbia around the support to RECOM. In contrast, the regional approach has been useful in “the former Yugoslav Republic of Macedonia”, where it has been difficult to address these issues on the national level; here, the initiative contributed to the start of a dialogue between different sections of the society on war crimes, including war veterans. The leadership in Montenegro also appears to be supportive of the RECOM initiative.
41. Several participants mentioned that the RECOM initiative was not adapted to the political reality of Bosnia and Herzegovina. Doubts were expressed on a possible consensus between the different political elites in the country on the RECOM initiative; it could even widen the gap between the country’s entities.
42. Past attempts of establishing truth and reconciliation commissions in Bosnia and Herzegovina, which were mostly pushed by outside actors, have failed. It appears that victims’ associations, while not favourable to national or regional truth and reconciliation efforts, are supportive of local initiatives which have a more practical and immediate impact. Indeed, healing appears to be more effective through public hearings at the local and community level. There should be a sense of ownership of these processes in Bosnia and Herzegovina.
43. Some participants mentioned that the RECOM initiative, as a regional truth and reconciliation process, was conceived too ambitiously, given the complexities of the situation – several countries are involved which have been affected very differently by the wars which began in the nineties. Reserves were expressed regarding the sincere commitment - or even the readiness to commit – on the part of authorities in the region to the initiative. It seemed unrealistic to some participants for the RECOM to combine: establishment of facts and truth; reconciliation; a regional approach; and getting leaders of the region on board.
44. Participants assessed that RECOM has already achieved some results in bringing people together, sharing information on war-related issues and raising transitional justice at the level of a regional debate. Some participants were of the opinion that the RECOM initiative should continue on its regional track: it could proceed in countries where it has favourable prospects, but it is too early to push it further in Bosnia and Herzegovina.
45. Other initiatives aiming at establishing facts and telling the truth should be pursued and developed, for example enhanced use of the ICTY legacy at the national level and local initiatives. Some participants were of the opinion that even if facts are established, there will not be only one truth because there may be different interpretations of the facts.
46. Truth and reconciliation through cultural events (e.g. “days of Sarajevo” in Belgrade) and youth exchange programmes also have a recognised effectiveness to understand each other better and decrease prejudice. Some participants assessed that much more could be done through culture for truth and reconciliation.

¹⁰ In 2008 a regional coalition of non-governmental organisations launched an initiative aimed at establishing a regional truth commission (RECOM).

47. It is essential that NGOs and other relevant actors continue to collect facts and elaborate a good archive of all that was collected so far. Defenders from Serbia also highlighted the importance of opening the files and archives belonging to the police and the military. Efforts engaged in this direction have been unsuccessful so far.
48. Some participants saw in the RECOM initiative an important chance, if not the last one, to establish truth about wars in the nineties, and therefore proposed that a stronger consensus be built with victims' associations.
49. Participants raised the issue of remaining missing persons from the wars in the former Yugoslavia. The process of clarifying the fate of these persons continues. It is therefore important to support institutions working in this direction. Participants pointed to the concrete and pressing need to support the Missing Persons Institute of Bosnia and Herzegovina (IMPBH) which is achieving crucial work in the field but is facing obstacles to its work. A participant from "the former Yugoslav Republic of Macedonia" referred to the 18 persons still missing as a result of the 2001 conflict.
50. Participants highlighted the role of the media in raising awareness of the public on facts established and in truth-telling efforts. However, it was assessed that the media does not fulfil this function adequately and that many shortcomings still exist. Media do not offer significant coverage of human rights, transitional justice and war crime-related issues.
51. Media and journalists often lack expertise, qualification and long-term engagement to cover issues related to wartime abuses and serious violations of human rights. Regarding war crimes cases and ICTY judgements, the media tends to focus on the persons tried rather than on the facts.
52. As noted before in relation to the political leadership, some persons that were conveying war propaganda through the media during the nineties are still active. Participants mentioned that journalists from the region who were engaged in researching and writing about human rights, wartime abuses and anti-corruption have been the target of serious threats and attacks against their life.

IV. The need for institutional reforms in order to guarantee non-repetition (administrative justice)

Presentation of the Issue Paper

53. Following the wartime period, State administrations should be reformed in order to safeguard human rights and the rule of law. The 2009 ECtHR judgment in the case of [*Sejdić and Finci v. Bosnia and Herzegovina*](#) shows the need for reform in years of post-conflict stabilisation, as well as for the elimination of discriminatory laws and practices that result in the exclusion of vulnerable social groups. It also underlines the importance of having national minorities represented in institutions and fully able to participate in political life.
54. The Issue Paper pays attention to three particular aspects of institutional reforms: judicial systems, national human rights structures (NHRs), and the need to reform education systems. It is essential to develop independent and efficient judicial systems that are able to guarantee the rule of law. It is important to have the public's trust and confidence in the justice system, without which democracy and the rule of law cannot function. Systemic dysfunctions of the judicial systems of the countries in the region (e.g. excessively lengthy proceedings and non-enforcement of judgments) need to be addressed by the states concerned.
55. Another important aspect is the need to enhance the efficiency and effectiveness of NHRs given their important role and their influence on human rights, legal and political agendas. It seems that in a number of countries in the region there is a lack of political support, and human and financial resources for NHRs.

56. Lastly, history education is an essential point factor in reconciliation and should be prioritised in the countries of the region. There have been several recommendations and guidelines adopted by institutions of the Council of Europe which can be further used, including by civil society actors, to influence decision-makers to enhance history teaching for reconciliation and establishment of durable peace.

Discussion

57. Participants pointed to the importance of independent and competent judiciaries. One NGO from Montenegro is working on measuring the effectiveness of judges and prosecutors in the country. It appears that there is no accountability for poor quality indictments and judgments at the national level in relation to war-related crimes.
58. Participants confirmed that NHRSs are being weakened through budget cuts or financial tighter control as well as institutional reforms aiming at reducing their capacity.
59. Participants actively discussed the current education systems in the countries of the region and assessed that the situation does not contribute to preparing the youth for peace and reconciliation, on the contrary. Education does not include adequate teaching of what happened during the wars in the nineties, based on the established facts. There is a need to explain why Yugoslavia collapsed so brutally and why so many war crimes occurred.
60. Also, current educational systems favour division in some countries, e.g. Bosnia and Herzegovina and “the former Yugoslav Republic of Macedonia” where national groups tend to be educated separately; sometimes, this is a less-favourable side effect of a well-developed system of minority-language teaching. History teaching should be overhauled by all states to eliminate the possibility that it will convey or compound hostility towards different ethnic or religious groups. Participants highlighted the importance of the role of teachers who should be well prepared to teach subjects like human rights, dealing with the past, etc.
61. In Bosnia and Herzegovina, there are several initiatives in the field of informal education being conducted mainly by NGOs, in cooperation with authorities and international organisations, with a view to providing human rights and civic education as well as teaching about the wartime events.
62. Participants agreed on the importance of having the youth born after the war know about what happened in the nineties and since then. Many underlined the nationalistic orientation of a significant part of the youth and underscored their ignorance of facts. Participants pointed to a moral crisis and lack of proper role-models for youth. Moreover, youth from different ethnic groups in the countries of the former Yugoslavia have limited contacts with each other, which could be conducive to reinforcing prejudices towards each other.
63. Throughout the Round-Table, participants had the opportunity to discuss the crucial role of civil society actors and in particular human rights defenders in activities related to post-war justice and durable peace in the former Yugoslavia. For example, human rights NGOs in Bosnia and Herzegovina provide psycho-social support to witnesses and victims before, during and after they testify. Several examples of co-operation between authorities and NGOs were presented, such as the good level of consultation when drafting the law on missing persons and concluding agreements with cantonal authorities for NGOs to assist witnesses and support their relations with prosecutors.
64. Besides the positive examples mentioned, NGOs working on transitional justice often face obstacles to their work, sometimes resulting from ignorance on the part of authorities. Problems encountered can range from public hostility to serious threats. There is not much support, including financial, for activities of these civil society actors who conduct independent human rights work and can be critical of the authorities. The important work of civil society actors and human rights defenders in the region should be recognised and supported. They should be part of any effort aiming at establishing post-war justice and durable peace in the former Yugoslavia.