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**Ms Borjana KRIŠTO**

Chairwoman of the Council of Ministers of Bosnia and Herzegovina

**Mr Nermin NIKŠIĆ**

Prime Minister of the Federation of Bosnia and Herzegovina

**Mr Radovan VIŠKOVIĆ**

Prime Minister of Republika Srpska

Strasbourg, 15 January 2024

Dear Chairwoman, dear Prime Ministers,

As Council of Europe Commissioner for Human Rights my mandate is to foster the effective observance of human rights in all 46 member states of the Council of Europe through dialogue with authorities and thematic work. I am writing today to draw your attention to an Issue Paper which I released at the end of last year as part of my work related to transitional justice – an area of human rights that relates to states' obligations to address gross human rights violations and international crimes through holding the perpetrators accountable, providing reparations for the victims, truth-seeking and guarantees of non-recurrence.

A first Issue Paper on [Post-War Justice and durable peace in the former Yugoslavia](#) was published in 2012 by my predecessor Thomas Hammarberg, and a decade later, I am examining these issues again and evaluating the current situation in this new publication entitled "[Dealing with the Past for a Better Future: Achieving Justice, Peace and Social Cohesion in the region of the former Yugoslavia](#)". Building on my Office's long-standing work on these issues, it examines, from a regional perspective, the state of play of processes to deal with gross human rights violations and grave breaches of international humanitarian law committed in the 1990s and early 2000s, including in your country Bosnia and Herzegovina.

With this letter, and similar ones I am sending to the Prime Ministers of the concerned Council of Europe member states, allow me to share some of the key findings of this Issue Paper, followed by the most significant steps that, in my view, would be required for Bosnia and Herzegovina specifically to move toward justice and reconciliation more resolutely.

**Key findings from the Issue Paper**

The Issue Paper begins with highlighting the significant lessons to be learned from the region regarding the fight against impunity through international and domestic war crimes trials, the search for missing persons, the role played by civil society, the need for long-term international engagement and the handling of conflict-related sexual and gender-based violence.

However, it is my assessment that, instead of accelerating to reach completion, processes to deal with the past have slowed down or stagnated in recent years. I find particularly concerning the return to ethno-nationalist discourse, denial of wartime atrocities and the glorification of war criminals by political leaders and other influential societal actors such as the media, religious leaders and other public figures. This is contributing to a sharp rise in hate-speech, and inter-ethnic intolerance and an increasingly hostile environment for human rights defenders working on dealing with the past.

In this context, it is necessary to stress that dealing with the past is not a past-oriented endeavour that would somehow stand in the way of countries moving forward, but on the contrary, it is a pre-condition for building cohesive, democratic societies grounded in respect for human rights and the rule of law. There are considerable linkages between the failure to fully deal with the past and current human rights

challenges in the region, such as rising hate speech and discrimination, the weakness of rule of law institutions, challenges to freedom of assembly and civic space, threats to media freedom and gender-based violence.

In the final part of the Issue Paper, I underscore the responsibility of national authorities in the respective countries to take measures to curb these negative developments and to promote an inclusive and human rights based approach to dealing with the past, in order to truly advance justice and reconciliation among people. In this regard, I urge renewed efforts on war crimes trials, reparations, the search for missing persons and truth-seeking, which would truly centre around the needs of victims – irrespective of their ethnic background and with particular attention to those who tend to be forgotten. I also call for an urgent focus on the intergenerational dimension of dealing with the past, by involving young people and equipping them with the competencies to build peaceful, cohesive societies through integrated education, truthful history teaching and inclusive memorialisation. Providing an enabling environment for human rights defenders and enhancing regional co-operation are other important recommendations.

### **Recommendations to Bosnia and Herzegovina**

The Issue Paper also includes discussion of efforts to deal with the past in Bosnia and Herzegovina, while paying attention to differences in approaches between the country's entities. Acknowledging recent positive developments, the Issue Paper mentions for example an uptake in the prosecution of conflict-related sexual violence; the adoption in Brčko District in 2022 and in the Federation of Bosnia and Herzegovina in 2023 of laws recognising children born of wartime rape as civilian victims of the war; the implementation of measures to improve the protection of witnesses; and the adoption in 2023 in the Federation of Bosnia and Herzegovina of the Law on the Protection of Civilian Victims of War which improves the rights of civilian war victims.

In addition to my general recommendations above, I would like to emphasise some selected steps to be taken by the authorities and political leaders in Bosnia and Herzegovina which in my view would enhance respect for victims' rights and dealing with the past both in your country and regionally:

- Firmly condemn all instances of denial of wartime crimes and glorification of war criminals, as well as hate speech and ethnic discrimination, and promote reconciliation and social cohesion among various ethnic and religious groups; ensure the effective implementation of the 2021 amendments to the Criminal Code of Bosnia and Herzegovina criminalising the denial of genocide and other wartime atrocities. Public officials must immediately refrain from denying or downplaying genocide and war crimes and inciting hatred.
- Accelerate implementation of the 2020 war crimes strategy and focus on the most serious cases involving perpetrators higher in the chain of command; execute war crimes related extradition requests from other countries in the region when these have been positively assessed by the domestic judicial system or ensure that the suspects are tried before domestic courts, in line with the obligation to extradite or prosecute under international law.
- Amend the criminal legislation to ensure that persons convicted of war crimes cannot buy out their prison sentences; adopt clear procedures for the process of rehabilitation of convicted war criminals and ensure they are barred from running for public office.
- Harmonise the legislative framework on compensations for civilian war victims and remedy the reported shortcomings of existing laws; adopt a comprehensive national reparation programme.
- Effectively investigate and prosecute all acts of violence and intimidation against returnees.
- Foster an enabling environment for civil society organisations working on dealing with the past.
- Put an end to ethnic segregation in education by abolishing the system of "two schools under one roof" and monoethnic schools.
- Enable young people to learn about the events of the 1990s in an objective manner that allows multiple perspectives, condemns all atrocities, and promotes tolerance and openness, in school curricula and through inclusive memorialisation policies.

The failure to fully deal with the violent past in the region of the former Yugoslavia is having devastating consequences on respect for human rights and the rule of law today and possibly even endangers hard-won peace. I believe several countries are at a crossroad and governments have the responsibility to change course and to promote justice, recognition and reparation for all victims and reconciliation.

Firmly condemning past atrocities is essential to build peaceful democratic societies, fully aligned with the human rights values underpinned by the European Convention on Human Rights.

I look forward to hearing your views and potential suggestions on the way forward on these important matters.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dunja Mijatović', with a large, stylized initial 'D'.

Dunja Mijatović