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**Ms Ana BRNABIĆ**  
Prime Minister of the Republic of Serbia

Strasbourg, 15 January 2024

Dear Prime Minister,

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, including through dialogue with the member states' governments 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 on 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 the long-standing work by the institution of the Commissioner for Human Rights on transitional justice 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 Serbia.

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 a reiteration of my recent recommendations regarding the most significant steps that, in my view, would be required for Serbia 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, in several countries, 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 Serbia

The Issue Paper also includes some discussion of efforts to deal with the past in Serbia, which I also documented in more detail in the recent [report](#) following my visit to Serbia in March 2023. Acknowledging positive developments, the Issue Paper mentions for example the adoption of the 2021-2026 National Strategy for the Prosecution of War Crimes, the adoption in 2020 of a strategy to improve the protection of victims and witnesses in judicial cases, and support for the voluntary return of refugees from other countries of the region, among others.

In addition to my general recommendations above, I would like to emphasise selected steps to be taken by Serbia to enhance respect for victims' rights and dealing with the past both in your country and regionally:

- Recommit to effective regional co-operation in all areas of dealing with the past, notably war crimes prosecutions and the search for missing persons. This includes executing war crimes related extradition requests from other countries in the region when these have been positively assessed by the domestic judicial system or ensuring that the suspects are tried before Serbian courts, in line with the obligation to extradite or prosecute under international law. Open military archives to facilitate the search for missing persons.
- Firmly condemn all instances of denial of wartime crimes and glorification of convicted war criminals, as well as hate speech and ethnic discrimination, and promote reconciliation and social cohesion among various ethnic and religious groups. Remove murals glorifying convicted war criminals and criminalise the denial of atrocities committed in the 1990s as a serious form of hate speech. Public officials in particular should immediately refrain from denying or downplaying genocide and war crimes and from inciting hatred.
- Execute the arrest warrants issued by the International Residual Mechanism for Criminal Tribunals (IRMCT) in the pending contempt of court case and, in line with Serbia's obligations under international law, respect and uphold all judgments issued by the ICTY and IRMCT.
- Adopt clear procedures for the process of rehabilitation of convicted war criminals and ensure they are barred from running for public office.
- Ensure better protection of the rights of families of missing persons through legislation and remedy the shortcomings in the 2020 Law on the rights of veterans, disabled veterans, civilian disabled war victims and their family members.
- Foster an enabling environment for civil society organisations working on dealing with the past.
- 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, the recognition of inclusive reparation and memorialisation 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,



Dunja Mijatović