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| **MINISTERS’ DEPUTIES** | Notes on the Agenda | **CM/Notes/1390/H46-6** | 3 December 2020 |

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| **1390th meeting, 1-3 December 2020 (DH)**Human rights**H46-6 Skendžić and Krznarić group v. Croatia (Application No. 16212/08)**Supervision of the execution of the European Court’s judgments Reference documents[DH-DD(2020)880](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2020)880" \o "1390th meeting (December 2020) (DH) - Action plan (08/10/2020) - Communication from Croatia concerning the group of cases of SKENDZIC AND KRZNARIC v. Croatia (Application No. 16212/08) [anglais uniquement] ), [CM/Del/Dec(2019)1348/H46-7](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Del/Dec(2019)1348/H46-7) |

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| **Application** | **Case** | **Judgment of** | **Final on** | **Indicator for the classification** |
| 16212/08 | SKENDŽIĆ AND KRZNARIĆ | 20/01/2011 | 20/04/2011 | Complex structural problem |
| 20106/06 | JULARIC | 20/01/2011 | 20/04/2011 |
| 57856/11 | JELIĆ | 12/06/2014 | 13/10/2014 |
| 71593/11 | B. AND OTHERS  | 18/06/2015 | 19/10/2015 |
| 50175/12 | M. AND OTHERS  | 02/05/2017 | 13/11/2017 |

**Case description**

These cases concern violations of the right to life on account of the lack of effective investigations into war crimes committed during the Croatian Homeland War (1991-1995) against the applicants’ next-of-kin, in particular an enforced disappearance in *Skendžić and Krznarić* and killings in the other cases (violations of Article 2 in its procedural limb).

The European Court found the following shortcomings in these investigations:

- inexplicable delays and absence of serious efforts to establish the identity of the perpetrators in *Skendžić and Krznarić* (§§ 82-85), *Jelić* (§ 93) and *Jularić* (§§ 47-49);

- lack of adequate investigations on account of the authorities’ failure to identify and bring the direct perpetrators to justice (only members of the superior chain of command were brought to justice, while the authorities were also under the obligation to identify and bring to justice those who were directly responsible for the killing of the applicants’ next-of-kin) (*B.*, § 66; *Jelić*, §§ 88 and 94, *M.*, § 76);

- the examination of the circumstances surrounding the killing of the applicants’ next-of-kin remained at the level of a police inquiry, excluding involvement of an investigating judge, despite the existence of a large number of direct witnesses (*B.*, § 71 and *M.*, § 86);

- lack of independence in investigations which were entrusted to police stations employing officers suspected of being involved in the disappearance/killings (*Skendžić and Krznarić* (§ 90) and *B.* (§ 73)).

**Status of execution**

*Individual measures:* In its last decision adopted at the 1348th meeting (DH), in June 2019, the Committee of Ministers decided to close the examination of individual measures in these cases given the steps taken.

Recalling that war crimes are not subject to a statute of limitation, it took note of the authorities’ full commitment to continuing their efforts if new evidence comes to light.

*General measures*

At the outset, it is recalled that the issues of independence of investigations, of victim involvement in and public scrutiny of investigations have been already closed by the Committee of Ministers (for more details in this respect see Committee’s decision adopted in March 2017 during its 1280th meeting).

The major outstanding issues currently examined by the Committee of Ministers concern adequacy and promptness as well as the independent oversight of investigations into war crimes. In their revised action plan of 8 October 2020 ([DH-DD(2020)880](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2020)880" \o "1390th meeting (December 2020) (DH) - Action plan (08/10/2020) - Communication from Croatia concerning the group of cases of SKENDZIC AND KRZNARIC v. Croatia (Application No. 16212/08) [anglais uniquement] )), the authorities provided information on these outstanding issues which may be summarised as follows:

1. ***Adequacy and promptness***

*Adequacy:* The authorities have set up special structures responsible for investigating war crimes, notably special prosecutors, police task forces and courts. The best qualified judges and prosecutors were assigned to these special structures with the aim of achieving best results in war crime investigations. The prosecuting authorities have instructed the police to investigate direct perpetrators in war crime cases where criminal charges are filed against those holding command responsibilities.

According to the statistics provided by the authorities the total number of alleged war crime perpetrators in respect of whom investigations were opened increased from 3,436 in 2012 to 3,708 in 2020 (i.e. 272 fresh investigations launched). In addition, the total number of *convictions* for war crimes increased from 557 in 2012 to 648 in 2020 (i.e. 91 additional convictions).

In its last decision adopted in June 2019, the Committee of Ministers stressed the important and undiminished humanitarian dimension of the issue of *missing persons*, noted with satisfaction the authorities’ efforts in this respect, notably the fact that 5,162 persons have been exhumed until then, and encouraged them to sustain these efforts with a view to establishing the fate of the remaining 1,903 missing persons.

In response, the authorities indicated that on 12 July 2019 the Act on the Missing Persons in the Homeland War was adopted (in force since 1 August 2019). The Act mainly aims at providing for a higher degree of protection for family members of missing persons and creating an effective legal framework. It stipulates the procedure, competence, record keeping, and other issues related to search, exhumation and identification of the persons who went missing during the war. In addition, on 17 July 2019, a Memorandum of Understanding was signed between the Ministry of Croatian Veterans and the International Committee of the Red Cross on the transmission and use of information and documents on missing persons. The authorities furthermore highlighted that until September 2020, a total of 150 mass graves and more than 1,200 individual burial sites have been located throughout Croatia. Remains of 5,181 persons have been exhumed, out of which 83% (4,303) have been identified. Between 2011 and end of September 2020 approximately EUR 6,7 million have been allocated in the State Budget to find the persons who went missing during the Homeland War.

In the above-mentioned last decision, the Committee, recalling the contracting State’s procedural obligation under Article 2 of the Convention to conduct effective investigations into war crimes, and stressing that all States have a corresponding Convention obligation to provide necessary assistance, underlined the importance of effective *regional cooperation*, in particular judicial cooperation, to ensure the effectiveness of investigations into such crimes. In response, the authorities stressed that judicial regional cooperation on war crimes has continued through several high-level meetings. In particular, from 25 to 27 November 2019, in Sarajevo (Bosnia and Herzegovina), the State prosecutors from the region met and discussed specific war crime cases, legal issues and differences between member states in prosecuting war crimes and the ways of overcoming them. From 17 to 19 December 2019, the Chief Prosecutor of Bosnia and Herzegovina hosted a high-level meeting of the prosecutors from the region on cooperation in war crimes proceedings.

The participants included the State Attorney of Croatia, the Chief War Crimes Prosecutor of Serbia, the Prosecutor of the Mechanism (IRMCT), representatives of the Supreme State Prosecutor’s Office of Montenegro and of the Brčko District, district and cantonal prosecution offices in Bosnia and Herzegovina. This high-level conference, as a follow-up to the Belgrade conference held in May 2019, was convened and organized by the UNDP with support of the governments of the United Kingdom and Italy.

*Promptness*: In its decision adopted in September 2014, the Committee noted with interest the amendments introduced in 2013 to the Criminal Procedural Code (CPC) to ensure that investigations into war crimes are concluded expeditiously. Pursuant to these amendments, competencies to conduct investigations were transferred from the police to state attorneys. The police are now under an obligation to inform the state attorney directing the investigation, without delay, of the steps taken. The CPC also introduced a six-month deadline for the state attorney to deal with criminal complaints. In 2015 an electronic case management system was introduced to ensure that procedural actions are carried out without delay. In 2018 the State Attorney General and the Ministry of the Interior set deadlines to accelerate investigations into war crimes. As a result, the cooperation between county state attorney offices and the police was enhanced to prevent delays in the investigations.

In addition, following the Committee’s last decision, with a view to preventing procrastination and ensuring effective criminal investigations into war crimes, the State Attorney General rendered decisions requesting state attorneys countrywide that all cases concerning war crimes (even those that are still in the stage of inquiries) be transferred to the four state attorney offices specialised in dealing with war crimes. In addition, on 2 September 2020, the State Attorney General held a meeting with county state attorneys and their deputies urging them to intensify their efforts in war crime investigations with a view to bringing them to an end. During the same meeting, county state attorneys were requested to deliver to the State Attorney General an estimation of a number of additional prosecutors and advisers to be assigned with war crime cases with a view to speeding up and enhancing the effectiveness of war crime investigations.

1. ***Independent oversight of investigations***

In its last decision, the Committee noted with interest the development of the Constitutional Court’s case-law allowing judicial review of the effectiveness of investigations into war crimes and invited the authorities to keep the Committee informed about further case-law developments. It is to be recalled that under the Constitutional Court Act, one may lodge a constitutional complaint even before all legal remedies have been exhausted if the relevant court has failed to decide within a reasonable time on his or her rights or obligations or if the contested decision grossly violates constitutional rights and it is completely clear that the complainant will face serious and irreparable consequences if Constitutional Court proceedings are not instituted. The Constitutional Court’s decisions have a binding effect and the domestic authorities are obliged to implement them in matters of their competence.

The authorities highlighted that according to the European Court’ decision of 10 December 2019 in *Kušić and Others v. Croatia*, (application No. 71667/17), a constitutional complaint now provides the complainants with the possibility to have the effectiveness of investigations under Articles 2 and 3 of the Convention examined in the light of the principles developed by the Court. The Government has, accordingly, met the burden to prove the effectiveness of the remedy in theory and practice (*Kušić and Others* § 99)[[1]](#footnote-1).

1. ***Capacity building and awareness-raising measures***

A number of further measures were adopted in order to enhance the capacity and effectiveness of authorities involved in war crime investigations.

In particular, in 2017, 91 prosecutors were employed in the State Attorney’s Offices and in 2018, 25 additional prosecutors and 13 legal trainees joined the Offices.

On 6 December 2019, the Croatian Association of Criminal Sciences and Practice organised a workshop “Effective criminal proceedings in war crime cases” which was carried out with the participation of representatives from the European Court and the Deputy State Attorney General in charge for war crime investigations.

The Judicial Academy envisaged two workshops for members of the judiciary and state attorneys dealing with war crime cases to be carried out in October 2020.

In 2018 and 2019 the Department for the Execution of the European Court’s judgments, in cooperation with the Government Agent’s Office, carried out two missions to Zagreb that brought together relevant stakeholders, namely the Constitutional Court, the State Attorney General’s Office, the Ministry of the Interior, the Judicial Academy and the Police Academy sharing its expertise on effective investigations.

In October 2019, the authorities addressed a joint letter to the Council of Europe Director General of Human Rights and Rule of Law and expressed their interest in substantive training for domestic judges and prosecutors focusing on effective investigations. Further consultations are ongoing.

**Analysis by the Secretariat**

*General measures:*

It appears that the authorities continued making strenuous efforts to put in place the required legal standards to ensure effective investigations of war crimes, showing their commitment to fulfil their obligations to identify and bring to justice war crimes perpetrators. It transpires from the information that further steps were taken to ensure that these investigations are swiftly brought to an end. In this respect, efforts made by the State Attorney General are particularly noteworthy.

When it comes to investigations of these crimes, it is recalled that since 2011 four specialised county courts are tasked with exclusive competence over these cases. The NGOs previously raised some concerns before the Committee of Ministers about the *length of proceedings* before these courts. In particular, in their joint communication ([DH-DD(2019)546](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2019)546" \o "1348th meeting (June 2019) (DH) - Rule 9.2 Communication from a NGO (Human Rights House Zagreb and Documenta - Center for Dealing with the Past) and response from the Croatian authorities (14/05/2019) in the SKENDZIC AND KRZNARIC group of cases v. Croatia (Application No. 16212/08) [Anglais uniquement] )) dated 6 May 2019, Human Rights House Zagreb and Documenta pointed out that the average case resolution time during 2017 was 2,529 days. The Ombudswoman’s 2019 Annual Report[[2]](#footnote-2) showed that the average length of these proceedings in 2018 increased to 5,156 days. The statistics published by the Supreme Court[[3]](#footnote-3) in April 2020 show that these figures improved in 2019 (average length of 1,063 days and clearance rate of domestic courts set at 170%). However, in order to enable the Committee of Ministers to make a conclusive analysis in this matter, it would be useful to receive the authorities’ assessment as to whether additional measures are required to ensure that investigations of war crimes are promptly brought to an end.

It is furthermore noted that the statistics provided by the State Attorney General’s Office demonstrate that the number of fresh investigations launched by the prosecuting authorities and the number of convictions for war crimes has increased since the last examination of this group of cases (106 fresh investigations were opened and 23 additional convictions were imposed).

Bearing in mind the humanitarian dimension of the issue of *missing persons* as set out in the last Committee’s decision, developments in this field are important to be noted. In this respect, the entry into force in August 2019 of the Act on the Missing Persons in the Homeland War which seems to be the first piece of legislation to regulate the area of search for missing persons at domestic level appears to be particularly relevant. Its adoption was recommended by the UN WGEID and was spelled out by the Ombudswoman as a qualitative step forward, together with the improvement of research methodology and procurement of additional modern equipment. These positive developments might be welcomed by the Committee of Ministers, while, at the same time, the authorities could be encouraged to sustain their efforts with a view to establishing the fate of the remaining missing persons.

The main achievement to date in the present cases is that a constitutional complaint is now considered as an *effective remedy* by the European Court for allegations concerning ineffective investigations, in compliance with the Court’s case-law. This important development might be welcomed by the Committee of Ministers.

As regards the *regional dimension of investigations* in these cases, in May 2020, in his progress report to the UN Security Council, the Prosecutor of the International Residual Mechanism for Criminal Tribunals noted that “Prosecution services in neighbouring countries still report… that many past requests remain unaddressed and that there are still significant difficulties in obtaining cooperation from Croatia, including access to evidence and suspects”.[[4]](#footnote-4) The European Union Commission’s 2020 Progress Reports[[5]](#footnote-5) pointed out that bilateral agreements between prosecutors in the Western Balkans had not been used to their full extent and that cooperation of Bosnia and Herzegovina and Serbia, respectively, with Croatia had continued to face a number of impediments and had not led to tangible results.

Similar concerns were reported by the civil society.[[6]](#footnote-6) It thus appears necessary for the Committee to encourage all states in the region to sustain their efforts in enhancing judicial cooperation in war crime cases.

Lastly, it appears that in response to the Committee’s last decision, the authorities, with a view to drawing upon the Council of Europe’s expertise addressed a letter to the Council of Europe Director General of Human Rights and Rule of Law expressing their interest in substantive *trainings for domestic judges and prosecutors*. Further arrangement of these trainings is currently underway. The Committee should be kept informed on further developments in this respect and of the results achieved.

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| Financing assured: YES |

1. In particular, the Court observed that in the decision of 13 November 2014 the Constitutional Court, in addition to finding a violation of the procedural aspect of Article 3 of the Convention, awarded damages to the complainant and ordered the competent prosecutor to conduct an effective investigation into the alleged ill-treatment (*Kušić and Others* § 45). It further noted that following a Constitutional Court decision of 10 January 2018, duly addressing the central issues of the complainant’s arguments and finding a breach of the procedural obligation under Article 3 taken in conjunction with Article 14 of the Convention, the competent prosecutor resumed an investigation into the complainant’s allegations. It noted that in its decision of 5 November 2019 the Constitutional Court, in addition to finding a violation of the procedural aspect of Article 2 of the Convention in a war crime case, awarded damages to the complainants (*Kušić and Others* § 55). [↑](#footnote-ref-1)
2. <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>; Annual Report for 2019, p. 107 [↑](#footnote-ref-2)
3. <http://www.vsrh.hr/EasyWeb.asp?pcpid=1072> ; Annual Report for 2019, p. 62 [↑](#footnote-ref-3)
4. See in §77 of the Progress report of the Prosecutor of the International Residual Mechanism for Criminal Tribunals, Serge Brammertz, for the period from 16 November 2019 to 16 May 2020. [↑](#footnote-ref-4)
5. [SWD(2020)350](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/bosnia_and_herzegovina_report_2020.pdf), p. 21; [SWD(2020) 352](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf), pp. 24-,25. ; [↑](#footnote-ref-5)
6. [Human Rights i Croatia: Overview of 2019](https://www.kucaljudskihprava.hr/wp-content/uploads/2020/04/KLJP_godisnjeIzvjesce2019_ENG_web.pdf); published by Human Rights Zagreb, p. 105 [↑](#footnote-ref-6)