

Addressing the Legacies of Conflict in the Western Balkans: Reconciliation and Transitional Justice Approaches

Reconciliation has become a catch-phrase in relation to the Western Balkans¹ EU integration efforts. According to the EU's conditionality, the countries of the WB region need to improve their neighbourly relations and foster reconciliation prior to EU accession. However, the objectives and mechanisms of reconciliation, as envisaged by the EU, are lacking in detail and need further analysis. In the present article, the concept of transitional justice to activities in the Western Balkans is applied and they are evaluated according to the EU's objectives. The hypothesis of the paper is that the call for reconciliation in the Western Balkans was previously mainly directed towards the elite level where there is hardly any interest in seriously facilitating transitional justice approaches, as it would undermine the politicians' power. Civil Society Organisations (CSO) are trying to address the legacy of the past in the region, but do not always receive the necessary support by the states. In conclusion, the paper finds that the EU is increasingly looking at CSOs to launch projects fostering reconciliation. Moreover, a realisation prevailed that reconciliation takes time and that a focus on youth and education programmes might be a way forward to making progress on reconciliation in the Western Balkans.

Key words: Transitional Justice, Reconciliation, Western Balkans, EU, Civil Society Organisations

Introduction

In the 1990s, the wars in former Yugoslavia made apparent that conflicts would have an impact on neighbouring regions. Even though the fighting was mainly contained within the concerned countries, refugees, movement of weapons, paramilitary activities, human trafficking and smuggling led to a destabilisation of the region, which alarmed the neighbouring countries and the EC (European Community), later European Union (EU).

Since the late 1990s, the EU supported the stabilisation of the region by tying the countries closer to the EU and asking them to

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¹ Western Balkan is a terminus technicus for the counties in South East Europe who have a perspective for accession to the EU, but are not members yet, such as Albania, Bosnia-Herzegovina, Montenegro, North Macedonia Kosovo and Serbia.

commit to regional cooperation. The guiding assumption is that regional cooperation is a tool to improve bilateral relations, which consequently supports reconciliation. The objective of the countries to obtain EU membership was seen by the EU as a motivation for the countries to engage in reconciliation activities. However, this assumption has proven to be wrong. Countries are not facing up to their responsibilities in dealing with their war past, but rather depicting themselves as victims, heroising alleged war criminals and reinterpreting historical events. The EU's enlargement approach towards the Western Balkans was based on the experiences with the Central European state, hence — according to Kostovicova — it was a *state-building*, but not a *post-conflict state-building* approach applied to the region.² Although the bilateral relations have improved on the functional and political level since the end of the wars, the communication by the political elites within the states is based on the victim-enemy narrative. These rhetoric strategies are aimed to strengthen more the nationalist policies of current political elites in the individual countries, and, consequently, contradict reconciliation. The intention of the EU's conditionality was to push the countries to move away from rivalry towards cooperation. Still, the paper argues that there is a lack of profound reconciliation efforts between the political level of the states. One problem is the lack of coherent and adequate concepts of coping with legacy issues in the region. However, Civil Society Organisations (CSO) became active and are working on issues the political leaders avoid. The EU has supported a number of CSO in the region, but without political support from their countries, a broader discourse within the general public on these contested issues will not take place.

The paper starts with providing an introduction to transitional justice and reconciliation in general and in the next step applies these concepts to developments in the Western Balkans.

EU's Relations with the Post-Conflict Western Balkan

The Western Balkan region (WB) consists of South-Eastern European countries which are not yet EU-member states but have an EU-membership perspective such as Albania, Bosnia-Herzegovina, North Macedonia, Montenegro, Kosovo and Serbia. Since the early 2000s, these states took part in the Stabilisation and Accession Process (SAP),³ which aimed to prepare the states for EU integration. So far, except from Croatia, none of these states were able to

² Denisa Kostovicova, „Civil society and reconciliation in the Western Balkans: great expectations“ in Eviola Prifti (ed.), *The European future of the Western Balkans — Thessaloniki@10*, EU Institute for Security Studies, Paris, 2013, pp. 101–109, here p. 103.

³ At the time Croatia was also member of the Western Balkans and was partner in the Stabilisation and Association Process.

join the EU. Apart from the adaptation of the *Acquis communautaire*, the compliance with the Maastricht and Copenhagen criteria, the Western Balkan states had to fulfil additional conditions to be eligible for EU membership, such as the cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) and the commitment to engage in regional cooperation activities to improve bilateral relations and foster reconciliation. The EU's belief that these activities will re-build trust between the countries after the violent break-up of Yugoslavia in the 1990s drove this policy. Reconciliation and good neighbourly relations are seen as a necessity by the EU to avoid an import of conflicts and destabilising bilateral problems into the EU. Hence, the EU's mantra is that bilateral disputes need to be resolved before joining.

At the start of the conflict in the early 1990s, the European Community (EC) was very much divided on their policy. When Germany supported the independence of Slovenia and Croatia in early 1992, not every member state approved this approach. At the time, the EC tried with diplomatic initiatives, such as the Brioni Agreement in July 1991, to avoid a war and negotiate a solution to the conflict, which failed. It was not able to actively intervene into the conflict and left the military approach to the NATO, mainly the US. The Dayton Agreement, ending the Bosnian conflict, was reached in 1995 and NATO bombardment of Serbian troops in Kosovo and infrastructure in Serbia in 1999 brought a preliminary solution to the Kosovo conflict. After the EU's declarations in Feira in June 2000 and in Thessaloniki in June 2003, promising the countries of the region a closer integration into the EU's institutions and structures, the EU strengthened its engagement with the region's transformation processes, supporting democratisation, fostering reconciliation and good neighbourly relations.

The issues of bilateral disputes, good neighbourly relations and reconciliation to stabilise the region, have been highlighted in official documents and declarations. However, the question still remains: What is the expected outcome of reconciliation and how should it be achieved? Susan Dwyer notes, „when calls for reconciliation issue from national or international political leaders, they must be backed up by concrete plans for a variety of supporting measures — for example, economic, health, and educational initiatives; [...]“⁴ The political leaders of the Western Balkan region have publicly committed themselves to support reconciliation, but occasionally nationalist narratives and national stereotypes are employed in speeches by the very same actors. Hence, the EU Commission has asked these leaders in its last Western Balkan Strategy, to „avoid and condemn any statements or actions which would fuel inter-ethnic tension and actively counter nationalist narratives. There is no place in the EU for

⁴ Susan Dwyer, „Reconciliation for Realists“, *Ethics & International Affairs*, Vol. 13, Issue 1, 1999, pp. 81–98, here p. 98.

inflammatory rhetoric, let alone for glorification of war criminals from any side.“⁵

So far, according to the assessment of Georg Kasapas in 2008, the EU mainly focused on retributive justice, in form of the ICTY, but neglected restorative and distributional justice models.⁶ With the closure of the ICTY and the transfer of open war criminal cases to the Western Balkan countries, this could be considered as an opportunity to develop a new focus within the range of transitional justice approaches. Ramović criticises that the EU follows the concept of liberal peacebuilding, which puts an emphasis on strengthening the state's institutions, but lacks the engagement with the people of the region and is not embedded in the region's local culture, history and identity.⁷ The CSOs dealing with the issue of reconciliation are financially supported by the EU, and have hence adapted their agenda to comply with the wishes of the EU, but not with the needs of the local community, claims Ramović.⁸ The question still remains open if the EU's initiative is failing to address the needs of the people affected by the conflict.

Transitional Justice

Transitional justice is an umbrella term used for a range of initiatives and mechanisms to address the legacies of a violent past. The concept was developed throughout the 1980s and the 1990s⁹ and became prominent after the end of the so-called Cold War. In general, transitional justice, simultaneously with the political and economic transition processes, should be assisting communities to deal and overcome the legacies of violent conflict and bring about a situation where reconciliation can take place. The term *transitional justice* is a rather broad concept with the aim to hold the perpetrators accountable for their human rights violations and committed atrocities, to uncover the truth about these atrocities, and at the same

⁵ European Commission, A credible enlargement perspective for and enhanced EU engagement with the Western Balkans, COM(2018) 65 final, Strasbourg, 6 February 2018, p. 7, https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf, accessed 14 July 2019.

⁶ George Kasapas, „An introduction to the Concept of transitional Justice: Western Balkans and the EU conditionality“, *UNISCI Discussion Papers*, No. 18, October 2008, p. 68.

⁷ Jasmin Ramović, „Peace in the Balkans: (En)countering the European Other“, in O. P. Richmond, et al. (eds.), *The Palgrave Handbook of Disciplinary and Regional Approaches*, Basingstoke: Palgrave Macmillan, 2016, p. 425.

⁸ Ramović, „Peace in the Balkans: (En)countering the European Other“, pp. 429–430.

⁹ International Center for Transitional Justice, What is Transitional Justice?, 2009, p. 1, <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf>, accessed 18 October 2018.

time, guarantee that the suffering of the victims is acknowledged, that compensation is made available and preconditions for sustainable peace are established. The acknowledgement of the human rights universal validity is central to transitional justice.

Alexander Boraine¹⁰ identifies five key concepts of transitional justice — accountability, truth recovery, reconciliation, institutional reform and reparations¹¹ — which are incorporated in the three main approaches within the overall transitional justice approach: retributive, restorative and distributive justice.

Retributive justice focuses on the sentencing and punishment of the perpetrator. The key concept for the retributive approach is the principle of accountability, which is based on the rule of law, requires the prosecution of perpetrators to unambiguously assign guilt and responsibilities to people, who have committed crimes.¹² The main idea is that crime cannot go unpunished. When a person has committed a crime s/he needs to be held accountable. It is a judicial process, where guilt is individualised and judgements are based on the facts of the crime. For victims, the idea of „received justice“ is of importance to cope with the impact of the committed crime.

In certain circumstances, there might be reasons against the implementation of retributive justice procedures. Especially in the immediate aftermath of a war, criminal procedures cannot be carried out fairly and as a just juridical process due to the lack of resources. Political instability might be another concern, as criminal justice processes could lead to further destabilisation, undermine a peace process or even risk a violent reaction by certain groups of people, leading to a political coup.¹³ Moreover, the judicial proceedings — if not handled adequately — might, due to ignoring the victims and neglecting their needs, even lead to a re-victimisation and in the end obstruct reconciliation.¹⁴ Hence, the judicial process is limited as it requires resources, an independent judiciary and it does not address the victims, nor structural discriminatory aspects of the political, economic and social system. Therefore, retributive justice has to be complemented with other aspects of transitional justice.¹⁵

On the other hand, redistributive justice underpins the legitimisation of a political regime, supports the democratisation process and avoids the return of the prosecuted elites to power. Convictions

¹⁰ Alexander Boraine is a former member of the South African TRC and founder of the International Center for Transitional Justice, ICTJ.

¹¹ Alexander Boraine, „Transitional Justice. A Holistic Interpretation“, *Journal of International Affairs*, 2016, Vol. 60, Issue 1, pp. 17–27, here pp. 19–25.

¹² Alexander Boraine, „Transitional Justice. A Holistic Interpretation“, *Journal of International Affairs*, Vol. 60, Issue 1, 2006, pp. 17–27, here pp. 19–20.

¹³ Luc Huyse, „Justice“, in David Bloomfield, Teresa Barnes and Luc Huyse (eds.), *Reconciliation After Violent Conflict. A Handbook*, International IDEA, Stockholm, 2003, pp. 97–115, here pp. 102–103.

¹⁴ Huyse, „Justice“, pp. 97–104.

¹⁵ Boraine, „Transitional Justice. A Holistic Interpretation“, pp. 19–20.

publicly assigned guilt to the perpetrators, acknowledging the innocence of the victims, which is perceived as a moral obligation to the victimised part of population. The process of individualising guilt, avoids the stereotyping of an entire people and reduces tensions within society. The punishment of perpetrators furthermore avoids revenge and vigilante justice, breaks the cycle of impunity and acts as a deterrence.¹⁶

The adequate pursue of justice and what role justice plays in a conflict situation are widely discussed issues within the „justice vs. peace“ debate. Can the pursuit of justice undermine peace efforts or can there be no peace without justice? In general, it depends on the context of the conflict, the stages and timing of the process, the issues needed to be addressed and the time-frame. The concept of justice is diffuse and might be differently interpreted from case to case. Albin defines justice very broadly as „general standards for allocating collective benefits, opportunities and burdens which may take many forms“.¹⁷ In this respect, justice would not only be limited to retributive justice, but to the other concepts as well. Hence, justice is linked to the fundamental needs of people and is therefore not negotiable.¹⁸

For special cases national or international criminal tribunals were installed with the support of the international community. These tribunals follow the general idea that justice has to be uncovered to provide for some closure of the conflict. The humanitarian standards as laid down in the international law are held upright and no one can stand over these rights. The perpetrators need to face justice and have to be punished for their actions. This can be seen as the foundation for the reconciliation to take place.¹⁹

The restorative justice approach emphasizes the idea of addressing the past violations and atrocities in a way that the victim and the perpetrator are empowered to deal with the past.²⁰ It is seen as complementary process to the pure retributive justice approach, as it requires the participation of the perpetrator, the victim and the community. The facts and the context of the committed crimes are established through story-telling or dialogue. Truth commission assists in uncovering the human rights violations by all parts of society during the conflict and gives people a possibility to tell their story, to express their hurt but there is also space for admitting the wrongdoings. The past is recounted, addressed, truth discovered, hurts and

¹⁶ Huyse, „Justice“, p. 98.

¹⁷ Cecilia Albin, „Peace vs. Justice — and Beyond“, in Jacob Bercovitch, Victor Kremenyuk and William I. Zartmann, *The SAGE Handbook of Conflict Resolution*, London: Sage Publications, 2013, pp. 580–594, here 582.

¹⁸ Albin, „Peace vs. Justice — and Beyond“, pp. 580–583.

¹⁹ Oliver Ramsbotham, Tom Woodhouse and Hugh Miall, *Contemporary Conflict Resolution. The prevention, management of deadly conflicts*, 3rd edition, Cambridge: Polity Press, 2012, pp. 255–256.

²⁰ Kasapas, „An Introduction to the Concept of Transitional Justice: Western Balkans and the EU Conditionality“, p. 66.

violations are acknowledged and forgiveness can be given.²¹ The main aim is to restore the relationships within the perpetrators and the victims, who often have to live side by side within their community. Mechanisms used during the process are mediation, dialogue and more traditional forms of dealing with injustices. Often traditional leaders, who are respected within their community, are appointed as mediators or facilitators for truth and reconciliations commissions. Truth and reconciliation commissions have been applied to various post-conflict countries, although taking in consideration the domestic structures of the communities. Witnesses — victims and perpetrators — tell their stories of the events and thereby assist the commission to document facts of the committed crimes and the context in which these took place.²² People have voluntarily participated in these commissions, as it provides a forum for telling their story, victims get their voice heard, learn more about the circumstances of the committed atrocities,²³ and make the perpetrator aware of the impact his/her actions had on the person. As a consequence, occasionally, perpetrators offer apologies to the victims of their crimes. Critics would argue that there is no clear proof that the tribunals or truth commissions have an overall positive impact on the community or bolster the healing process. However, there is no indication that these approaches hinder reconciliation or the transformation of post-conflict societies.²⁴

The distributive justice approach identifies and reforms the underlying structural disadvantages of society, which have contributed or even initiated the conflict.²⁵ The state has to be in the position to provide guarantees and protection of the fundamental freedoms for the entire population, fostering an anti-discriminatory environment. Institutional reform is the key to the overall transformation of the political or societal system, as discriminatory structures in state and society create unjust systems. Evidence of the impact on the conflict situation is required to hold institutions accountable for past failings and to initiate reform on the basis of the gathered findings. In relation to the security sector, personnel vetting needs to be applied. Institutional guarantees of minority rights or the official recognition of identity in deeply divided societies and economic justice of the majority of people is a requirement for creating the context of reconciliation.²⁶ Distributive justice is seen as going hand in hand with the

²¹ Ramsbotham, Woodhouse and Miall, *Contemporary Conflict Resolution*. The prevention, management of deadly, pp. 252–255.

²² Boraine, „Transitional Justice. A Holistic Interpretation“, pp. 20–21.

²³ Huyse, „Justice“, pp. 111–113.

²⁴ Martina Fischer, „Transitional Justice: The Emergence of a Paradigm“, Beatrix Austin (ed), *The Berghof Handbook for Conflict Transformation*, Berghof Foundation, Berlin, 2011, pp. 407–430, here pp. 413–414.

²⁵ Kasapas, „An Introduction to the Concept of Transitional Justice: Western Balkans and the EU Conditionality“, p. 66.

²⁶ Boraine, „Transitional Justice. A Holistic Interpretation“, pp. 23–24.

democratisation process and therefore with the implementation of a liberal agenda. Countries often adapt to various standards laid down by the international law. The population in deeply divided societies and national minorities are especially looking for minority protection. The transformation of the underlying conditions, in which the conflict is embedded, is essential to overcome a conflict and to build a basis of trust between the people, but also between the state and its people. The conflict transformation approach is a multi-level process, which includes actors on different societal-levels to overcome the discriminatory structures and together work on a democratic society based on equality before the law and respect of human rights.

Another approach to redress for experienced injustices is the payment of reparations. Reparations are the „most tangible manifestation of the state’s efforts to remedy the harms they have suffered“, which is considered an official acknowledgement of their suffering.²⁷ Compensation can in some cases take the form of financial payments, in other cases may imply the transfer of goods of material values or remembering the affected victims by renaming the public places.²⁸ The issue of financial payments is difficult as the amounts can never compensate the loss of a person or the physical and psychological wounds inflicted on a person, but compensation expresses a kind of acknowledgement of the crimes committed towards certain people. Symbolic gestures and the expression of regret as well as the acknowledgement of committed crimes on political levels is of importance for societies coming out of conflict. For the future generations, the launching of youth or cultural exchanges or projects of working on joint history books or teaching material is another approach to reconciliation.

Alexander Boraine argues that the formation of a holistic approach by combining all three approaches,²⁹ might help to create a situation where reconciliation is possible. Reconciliation is a complex and multi-level process, which should not be mistaken for an approach of forgetting the past and moving on, such as amnesty. Reconciliation has to be genuine and needs to be built on trust by the people that the underlying issues of the conflict will be addressed and provide a basis for developing future relations with the former enemy. „Unless the call for reconciliation is accompanied by acknowledgement of the past and the acceptance of responsibility, it will be dismissed as cheap rhetoric.“³⁰ In an ideal world reconciliation takes place when some of the transitional justice approaches are applied. However, there is no guarantee of success and the process varies from case to case.

²⁷ Boraine, „Transitional Justice. A Holistic Interpretation“, pp. 24–25.

²⁸ Ramsbotham, Woodhouse and Miall, *Contemporary Conflict Resolution*. The prevention, management of deadly conflicts, p. 256.

²⁹ Boraine, „Transitional Justice. A Holistic Interpretation“, p. 19.

³⁰ Boraine, „Transitional Justice. A Holistic Interpretation“, p. 22.

Table 1: Approaches of transitional justice

Transitional justice approaches	Aims	Mechanisms
Retributive justice	<ul style="list-style-type: none"> ▪ Punishing perpetrator ▪ Ensuring rule of law ▪ Accountability 	<ul style="list-style-type: none"> ▪ International and national criminal courts ▪ Prosecution
Restorative justice	<ul style="list-style-type: none"> ▪ Addressing past violations to enable victims and perpetrators to deal with it ▪ Truth recovery ▪ Re-establishing („Healing“) of relationships ▪ Reconciliation (in a sense of accepting of a certain situation or someone’s apology) 	<ul style="list-style-type: none"> ▪ Truth and reconciliations committees ▪ Mediation
Distributive justice	<ul style="list-style-type: none"> ▪ Institutional reform ▪ Removing structural disadvantages in society ▪ Anti-discriminatory public services 	<ul style="list-style-type: none"> ▪ Security vetting ▪ Lustration ▪ Compliance with international standard and laws ▪ Reparations ▪ Anti-discrimination law ▪ Minority protection laws

Source: Author’s own compilation based on Alexander Boraine, „Transitional Justice. A Holistic Interpretation“, *Journal of International Affairs*, No. 60, Issue 1, 2006, pp. 17–27; Luc Huyse, „Justice“, in David Bloomfield, Teresa Barnes and Luc Huyse (eds.), *Reconciliation After Violent Conflict. A Handbook*, International IDEA, Stockholm, 2003, pp. 97–115.

Reconciliation — how to get there?

Dealing with the lasting effects of conflict and its legacies is a rather complex and enduring task within the conflict transformation process. Societies, who have experienced violence and oppression, need to come to terms with their past to be able to rebuild relationships with the former enemy. Reconciliation is seen as the centre of peace building and a requirement for a lasting peace. „It consolidates peace, breaks the cycle of violence and strengthens newly established or reintroduced democratic institutions“.³¹

There is a backward-looking and forward-looking dimension to reconciliation. The backward-looking dimension comprises aspects of dealing with the feelings of survivors, paying reparations, understanding the past and accepting it, as well as re-establishing trust and

³¹ Luc Huyse, „The Process of Reconciliations“, in David Bloomfield, Teresa Barnes and Luc Huyse (eds.), *Reconciliation After Violent Conflict. A Handbook*, International IDEA, Stockholm, 2003, pp. 19–33, here p. 18.

(re)building relations between the people and communities. The forward-looking dimension addresses the issues of how a peaceful co-existence of victims and perpetrators can be created to ensure a positive experience in the future, hence looking at the implementation of structures and measures mediating between the conflicting partners, such as power-sharing and institutionalising political dialogue.³²

The term reconciliation is a rather broad concept, however four main meanings can be identified: Reconciliation in the meaning of accepting the status quo, someone has reconciled him/herself with a situation or with the past, such as „coming to terms with the past of violence“. Reconciliation can be interpreted in the sense of reconciling stories or narratives, to avoid them to completely diverge. The third meaning of reconciliation is to reconcile the differences and bridge the contradicting positions which might also initiate change in the person's attitude and perception. Finally, we have the meaning of reconciliation in the sense of „reconciliation between former enemies“³³, which is a kind of a cumulative approach of all the other terms. Reconciliation depends on personal contacts³⁴ which impact people on the personal and relational level and convinces them to agree to structural reforms to avoid any re-emerging of the conflict.

Reconciliation has to combine issues on the personal individual level — such as a change of attitude or acknowledging of situations, asking for or offering of forgiveness, relational issues, as rebuilding of trust — with structural issues, a change of the underlying structures of the conflict for building a just society where people with different background and beliefs can peacefully co-exist. Moreover, it has to go hand in hand with structural transformation.³⁵ The psychological dimension of reconciliation is based on a change of the social belief, because it is a „societal-cultural process that encompasses the majority of society members, who form new beliefs about the former adversary, about their own society, and about the relationships between groups“.³⁶ Reconciliation requires an understanding that the past injustices are acknowledged and responsibility accepted.³⁷ Empathy develops at a later state of the reconciliation process

³² Huysse, „The Process of Reconciliations“, p. 18.

³³ Ramsbotham, Woodhouse and Miall, *Contemporary Conflict Resolution. The prevention, management of deadly conflicts*, p. 247.

³⁴ Ramsbotham, Woodhouse and Miall, *Contemporary Conflict Resolution. The prevention, management of deadly conflicts*, pp. 246–247.

³⁵ Martina Fischer, „Reconciliation and Conflict Transformation“ in Beatrix Austin, (ed.): *The Berghof Handbook for Conflict Transformation*, Berghof Foundation, Berlin, 2011, pp. 415–430, here pp. 422–423

³⁶ Daniel Bar-Tal, „From Intractable Conflict Through Conflict Resolution to Reconciliation: Psychological Analysis“, *Political Psychology*, Vol. 21, No. 2, 2000, pp. 351–365, here p. 356.

³⁷ Berghof Foundation (ed.), „Transitional Justice & Dealing with the Past“, in *Berghof Glossary on Conflict Transformation*, Berlin 2012, p. 114, <https://www.berghof-foundation.org/fileadmin/redaktion/Publications/Books/>

when there is an understanding of the perpetrators reasons for his/her crime and feelings of the victims.³⁸

Reconciliation needs to be viewed as a multi-level process, which consists of a bottom-up and top-down approach³⁹ and goes hand in hand with the overall process of conflict transformation. For reconciliation to take place, trust and a safe stable environment is a basic requirement. Structural disadvantages and power asymmetries, which hinder reconciliations attempts, need to be identified and mitigated. Bloomfield defines reconciliation as a „process through which a society moves from a divided past to a shared future“,⁴⁰ therefore focusing on the relationship between people. In a post-conflict society, it is about „restoring broken relationships and learning to live non-violently with radical differences“. ⁴¹ According to Boraine a „common memory“ has to be created and accepted by all those who „implemented an unjust system, those who fought against it, and those who were the bystanders“. ⁴² Tolerance is required to be able to normalise the relations between the different groups. However, in the end it is for the individual to be able to accept the past events and offer forgiveness, which should be reciprocal, or they might deny certain facts or events, or try to avoid the topic. The phase of getting to reconcile starts with the end of violence, continues with the overcoming of the polarisation in society, the management of contradictions and, at the last stage, the celebration of differences.⁴³

Often the aims and the expectations of the reconciliation process are not clearly defined. Dwyer claims that in circumstances when justice cannot be achieved due to the complex political and social situations, reconciliation is often urged on people,⁴⁴ however without providing a clear explanation what the objectives should be. Publicly calling for „reconciliation, particularly between nations and their violent pasts and between groups of victims and victimizers, imply that seeking reconciliation is the morally right thing to do“. ⁴⁵

Book_Glossary_Chapters_en/berghof_glossary_2012_19_transitional_justice_and_dealing_with_the_past.pdf, accessed 10 September 2018.

³⁸ Huysse „The Process of Reconciliations“, p. 21.

³⁹ Fischer, „Reconciliation and Conflict Transformation“, p. 415.

⁴⁰ David Bloomfield, „Reconciliation an Introduction“, in David Bloomfield, Teresa Barnes and Luc Huysse (eds.), *Reconciliation After Violent Conflict. A Handbook*, International IDEA, Stockholm, 2003, pp. 10–18, here p. 12.

⁴¹ Ramsbotham, Woodhouse and Miall, *Contemporary Conflict Resolution. The prevention, management of deadly conflicts*, p. 246.

⁴² Alexander Boraine zit. in: „Transitional Justice & Dealing with the Past“, in Berghof Foundation (ed.), *Berghof Glossary on Conflict Transformation*, Berlin 2012, p. 114, https://www.berghof-foundation.org/fileadmin/redaktion/Publications/Books/Book_Glossary_Chapters_en/berghof_glossary_2012_19_transitional_justice_and_dealing_with_the_past.pdf, accessed 10 September 2018.

⁴³ Ramsbotham, Woodhouse and Miall, *Contemporary Conflict Resolution. The prevention, management of deadly conflicts*, pp. 258–261.

⁴⁴ Dwyer, „Reconciliation for Realists“, pp. 81–82.

⁴⁵ Dwyer, „Reconciliation for Realists“, p. 84.

Table 2: Meaning, Dynamics and Progress of Reconciliation

Reconciliation	Individual level Bottom-up	Relational Level Bottom-up	Structural Level Top-down
Backward-Looking Dimension	<p>accepting status quo & reconciling him/herself with a situation or the past</p> <p>initiate change in the person's attitude and perception</p>	<p>reconciling stories / narratives</p> <p>reconcile differences and bridging contradicting positions</p> <p>reconciliation between former enemies</p>	
Forward-Looking Dimension			<p>Reform of political system (e. g. inclusion, participation, anti-discrimination laws etc.)</p> <p>Permanent institution / forum for political dialogue</p> <p>Repatriation of refugees</p> <p>State support in dealing with the past</p> <p>Symbolic gestures / remembrance</p> <p>Education</p>

Source: Author's own compilation based on Martina Fischer, „Reconciliation and Conflict Transformation“, in Beatrix Austin (ed.): *The Berghof Handbook for Conflict Transformation*, Berghof Foundation, Berlin, 2011, pp. 415–430; Luc Huyse, „The Process of Reconciliation“, in David Bloomfield, Teresa Barnes, Luc Huyse (eds.), *Reconciliation After Violent Conflict. A Handbook*, International IDEA, Stockholm, 2003, pp. 19–33; Oliver Ramsbotham, Tom Woodhouse and Hugh Miall, *Contemporary Conflict Resolution. The Prevention, Management of Deadly Conflicts*, 3rd edition, Cambridge: Polity Press, 2012, pp. 246–247 & pp. 258–261.

Transitional Justice in the Western Balkans

Due to the international communities' acceptance of the policies and mechanisms of transitional justice and an understanding of their necessities, demands for reconciliation have found their way into the

EU's conditions for membership. Transitional justice became an international norm and states are under pressure to comply with these norms. The outcomes of the implemented initiatives in the target region, however, diverge from the expected objectives. Subotic speaks of „normative divergence“, when the outcomes of the transitional justice initiatives are different from the results expected by international community. Transitional justice mechanisms are — according to the wishes of the international community — implemented in the respective states, but political leaders use them to undermine the original purpose.⁴⁶

In the context of the EU's enlargement process the cooperation with the Criminal Tribunal for the former Yugoslavia (ICTY) became an additional EU accession requirement for the countries in the Western Balkan region. The establishment of the ICTY by the UN in May 1993⁴⁷ is a retributive justice approach to deal with the legacies of the conflict in the Western Balkans. The ICTY, an ad hoc UN Court of Law, was mandated with the task to prosecute individuals, who have committed crimes against humanity, genocide, violations of law or customs of war and grave breaches of the Geneva conventions.⁴⁸ „By bringing perpetrators to trial, the ICTY aims to deter future crimes and render justice to thousands of victims and their families, thus contributing to a lasting peace in the former Yugoslavia.“⁴⁹ Moreover, the ICTY claims that due to the collection of facts and testaments of the accused, truth could be established about the committed crimes, which is an important part of the reconciliation process.

The Tribunal has contributed to an indisputable historical record, combating denial and helping communities come to terms with their recent history. Crimes across the region can no longer be denied. For example, it has been proven beyond reasonable doubt that the mass murder at Srebrenica was genocide.⁵⁰

However, the cooperation with the ICTY was perceived by some states as biased and directly aimed to assign responsibility to certain countries only,⁵¹ therefore the work with the ICTY was considered to be problematic for some countries. Unfortunately, the objectives

⁴⁶ Subotic, „Truth, justice, and reconciliation on the ground: normative divergence in the Western Balkans“, pp. 362–364.

⁴⁷ United Nations, International Criminal Tribunal for the former Yugoslavia. The Tribunal — Establishment, <http://www.icty.org/en/about/tribunal/establishment>, accessed 28 September 2018.

⁴⁸ ICTY, About the ICTY, <http://www.icty.org/en/about>, accessed 25 July 2019, ICTY Fact and Figures, http://www.icty.org/sites/icty.org/files/images/content/Infographic_facts_figures_en.pdf, accessed 25 July 2019.

⁴⁹ ICTY, About the ICTY, <http://www.icty.org/en/about>, accessed 25 July 2019.

⁵⁰ ICTY, About the ICTY, <http://www.icty.org/en/about>, accessed 25 July 2019.

⁵¹ Fischer, „Transitional Justice: The Emergence of a Paradigm“, here p. 408.

and the image of the ICTY, which finished its work in 2017, remains very much disputed in the region. The lack of communication about the aims and objectives of their activities is partly to be blamed for the mistrust the ICTY was facing by the population of the countries. The ICTY prosecutions created a situation in which the states felt that they were victims of the international community, although individuals and not the entire states were punished for crimes against humanity.

The opening of Croatia's EU negotiations was delayed from March to October 2005 due to a lack of cooperation with the ICTY. Serbia's internal political situation and its involvement in the wars with Croatia, Bosnia-Herzegovina and later Kosovo hindered the compliance with this condition until 2001 when former Serbian President Slobodan Milošević was extradited to Den Haag. Despite the insistence of the EU that the countries comply and work with the ICTY, it raised the question if its work has contributed to establishing justice and providing a condition for positive peace and reconciliation.

The ICTY closed in December 2017 and the remaining open cases moved to the UN's International Residual Mechanism for Criminal Tribunals (MICT) and to national courts in the various Balkan states.⁵² The MICT kept cases, which were not dealt with by the ICTY and ICTR (International Criminal Tribunal for Rwanda). The main functions of the MICT, which are based in Den Haag and Arusha, are the prosecution of remaining fugitives, working on appeal and review processes, retrials, monitoring the transferred cases at the national courts, ensuring the protection of victims and witnesses, monitoring implementation of sentences and it acts as an assistance to the national courts.⁵³ The remaining cases of crimes against humanity have been passed on to the national judiciary of the states to be judicated. The handling of the war crime cases by the national judiciary courts is observed in the European Commission's progress reports.

Serbia

Due to the political circumstances, the Serbian cooperation with the ICTY was limited and often even opposed. Before 2000, when President Slobodan Milošević, who was wanted by the international community for war crimes, was in power the cooperation was rejected completely. Only after his political fall in October 2000, the then Prime Minister Đinđić started the cooperation with the ICTY, by

⁵² Cain Burdeau, „Experts Say Many Balkan War Crimes Will Never Be Prosecuted“, The Courthouse News Service, 18 September 2018, <https://www.courthousenews.com/experts-say-many-balkan-war-crimes-will-never-be-prosecuted/>, accessed 21 September 2018.

⁵³ International Residual Mechanism for Criminal Tribunals, www.irmct.org/en/about/functions, accessed 20 September 2019.

arranging Milošević's arrest and extradition to Den Haag in spring 2001. However, the Prime Minister was in opposition to the then president Vojislav Koštunica, who was not in favor of the cooperation with ICTY.⁵⁴ After Đinđić's assassination in 2003, the old security structures stemming from Milošević's times were disbanded and subsequently some arrests were made. Yet, the cooperation with the ICTY slowed down again, but was improved during the government of then Prime Minister Koštunica, when he introduced the new approach of „voluntary surrender“. Through intermediaries, a „voluntary surrender“ of war indictees were negotiated, who then stood trial in Den Haag. This approach was a way by the Serbian government to comply with the wishes of the EU and the US, who had linked the issue with financial support to Serbia. The indictees, agreeing with the extradition to Den Haag, were heralded as „heroes“ and „patriots“, who sacrifice themselves for Serbia.⁵⁵ Hence, the motivation to cooperate with the ICTY was driven by the benefits of financial aid and the further rapprochement to the EU, not because of the moral and ethnic reasons of contributing to the discovering of the truth and to deal with the legacies of the conflict. Spoerri argues that the policy conditionality was useful to get Serbia to cooperate with the ICTY and the only possible way for some of the war criminals to face justice. However, it also proved to undermine the actual objective of retributive justice, as ICTY cooperation was not perceived as supporting justice, but rather a means to gain access to EU and US funds.⁵⁶

Despite these developments, the more prominent high-level cases, such as Radovan Karadžić and Ratko Mladić were at large in Serbia until their arrests respectively in 2008 and 2011.

From 2012, under the government under the SPS Prime Minister Iвица Dačić — former party colleague of Milošević — and later from 2014 under the governments of Aleksandar Vučić and Ana Brnabić (SNS), the cooperation with the ICTY has been reluctant.

Even with the closure of the ICTY and the transfer of the cases to the national judiciary, the rate of prosecutions has not been very encouraging. The EU Commission considers the Serbian cooperation with the MICT as problematic. Still the bilateral protocols of cooperation in relation to war crimes, crimes against humanity and genocide between the Prosecutor's Offices in Serbia, Bosnia-Herzegovina,

⁵⁴ James Gow and Ivan Zverzhanovski, „The War Crimes Legacy“, in James Gow and Ivan Zverzhanovski (ed.), *Security, Democracy and War Crimes, Security Sector Transformation in Serbia*, London: Palgrave Macmillan 2013, pp. 124–150, here pp. 131–143.

⁵⁵ Marleene Spoerri, „Justice Imposed: Howe Politics of Conditionality Effect Transitional Justice in the Former Yugoslavia“, in Florian Bieber (ed.), *EU Conditionality in the Western Balkans*, Oxon: Routledge, 2013, pp. 53–77, here pp. 69–71.

⁵⁶ Spoerri, „Justice Imposed: Howe Politics of Conditionality Effect Transitional Justice in the Former Yugoslavia“, pp. 66–69.

Montenegro and Croatia have improved relations. The cooperation between Bosnia-Herzegovina and Serbia has led to indictments issued by Serbia. The cooperation between Serbia and Croatia has not led to any positive output and cooperation between Kosovo and Serbia is „extremely limited“.⁵⁷

The War Crimes Chamber (WCC) together with the War Prosecutors Office were set up in 2003 to prosecute cases of crimes against humanity in Serbia.⁵⁸ Subotic claimed that the WCC was under pressure from the Serbian political establishment and other political actors, consequently creating a situation where only low-ranked perpetrators from paramilitary groups, but not the members from the Yugoslav forces, were prosecuted. The media reporting on the cases was biased as well. In cases in which Serbs were accused of crimes, more coverage was provided.⁵⁹ Human Rights Watch also noted in a report from 2007 that the WCC did not have much political and therefore public support for their tasks and this seems has not changed.

Witness' protection improved with an additional law on the protection of personal data in 2006 and the set-up of a Witness Protection Unit, which was trained by the US staff and has been positively assessed throughout the region as being very professional. Also, the work of the Humanitarian Law Centre in Belgrade, which is acting as another support structure for witnesses especially when coming to Belgrade to give evidence, is assessed as a positive development. In relation to dealing with witnesses the cooperation between the Bosnian and Serbian War Crimes Chambers seem to be working well. In some circumstances, witnesses can give their evidence in the Bosnian War Crimes Chambers to be transmitted by a video-link to Belgrade for a trial.⁶⁰

To comply with some EU recommendations, Serbia has adopted the National Strategy for the Prosecution of War Crimes 2016 to 2020 in February 2016, an Action Plan for Chapter 23 in April 2016⁶¹ and Prosecutorial Strategy for Investigation and Prosecution of

⁵⁷ European Commission, „Serbia 2019 Report“, Commission Staff Working Document, *Communication on EU Enlargement Policy*, Brussels, 29 May 2019, pp. 17–18, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf>, accessed 21 September 2019.

⁵⁸ Human Rights Watch, *Unfinished Business Serbia's War Crimes Chamber*, 28 June 2007, No. 3, p. 5, <https://www.hrw.org/report/2007/06/28/unfinished-business/serbias-war-crimes-chamber>, accessed 19 July 2020. Subotic, „Truth, justice, and reconciliation on the ground: normative divergence in the Western Balkans“, here p. 366.

⁵⁹ Subotic, „Truth, justice, and reconciliation on the ground: normative divergence in the Western Balkans“, p. 369.

⁶⁰ Human Rights Watch, *Unfinished Business Serbia's War Crimes Chamber*, pp. 9–10.

⁶¹ Humanitarian Law Centre, *Fourth Report On the Implementation of the National Strategy for the Prosecution of War Crimes*, Belgrade, June 2019, p. 7, <http://www.hlc-rdc.org/wp-content/uploads/2019/07/>

War Crimes 2018–2023 in April 2018.⁶² The implementation of the Prosecutorial Strategy is assessed as being very slow or non-existent.⁶³

Regional cooperation between the Prosecutor's Offices has improved and information on cases was exchanged, especially with the offices in Bosnia-Herzegovina. The exchange with the Croatia Prosecution Office is considered as successful. The cooperation between the prosecution offices is based on regional or bilateral agreements to regulate the exchange of evidence, if an accused cannot be extradited, or in providing general information in relation to cases, which took place in other jurisdictions. Although, a ban on extradition of citizens to other countries exists in the respective legislation, the cooperation on war crimes was successfully facilitated,⁶⁴ except for the cooperation with Kosovo, which is considered to be much more difficult.

However, again most of the cases indicted by the Office of the War Crimes Prosecutor (OWCP) were against low-ranking and middle ranked perpetrators, but none high-ranking official. Closer cooperation between the OWCP and the War Crimes Investigation Service is envisaged.⁶⁵ The EU Commission urged the Serbian government to „demonstrate a firmer commitment to the domestic processing of war crimes at all levels“.⁶⁶

Montenegro

Montenegrin citizens have taken part or incited war crimes during the 1990s conflicts. At the time, Montenegro was part of the Federal Republic of Yugoslavia and since its independence from Serbia in 2006 was urged by the EU to face with its legacies. Although no fighting took place at the current territory of Montenegro, Montenegrins have fought in the Yugoslav Army in various locations of former Yugoslavia, e. g. in Kosovo⁶⁷ where crimes were committed.

The State Prosecutor's Office and Special Department for war crimes are responsible in Montenegro for dealing with war crimes cases. Amnesty International in its 2018 report expressed its concern that the process of war prosecution is extremely slow and no cases of people in commanding positions, were brought before the courts.

Fourth-Report-on-the-Implementation-of-the-National-Strategy-for-the-Prosecution-of-War-Crimes.pdf, accessed 22 June 2020.

⁶² Republic of Serbia, *The Prosecutors' Office for War Crimes*, March 2018, http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2018-05/strategija_trz_eng.pdf, accessed 22 June 2020.

⁶³ European Commission, „Serbia 2019 Report“, p. 18.

⁶⁴ Human Rights Watch, *Unfinished Business Serbia's War Crimes Chamber*, p. 5.

⁶⁵ European Commission, „Serbia 2019 Report“, pp. 17–18.

⁶⁶ European Commission, „Serbia 2019 Report“, p. 18.

⁶⁷ Radio Free Europe, „Montenegrin Accused Of War Crimes During Kosovo War Arrested“, 5 August 2016, <https://www.rferl.org/a/27901470.html>, accessed 28 July 2020.

Cases where a verdict was reached have „demonstrated inconsistencies and erroneous application of international humanitarian law and jurisprudence“. ⁶⁸ The cases under investigation by the State Prosecutor’s Office relied on requests by the MICT or by the neighbouring countries. Hence, the EU Commission urges the government to apply a more „proactive approach [to] effectively investigate, prosecute, try and punish war crimes in line with international standards“ and to prioritise these cases. ⁶⁹ The Special Prosecutors Office signed an agreement with the MICT for assistance with the war crimes cases. The implementation of the war crime prosecution strategy is ongoing. ⁷⁰ Still, by the end of 2019 only 8 cases of war crimes in Croatia, Bosnia-Herzegovina and Kosovo have been dealt with, the first one in 2016, and in 2019 no new cases was brought before court. Suspects in higher ranking positions have so far been avoiding prosecution. ⁷¹

Kosovo

After the war in 1999, the jurisdiction of Kosovo had to be rebuilt by the international community. The war crime cases were taken on by international prosecutors and a panel of international judges. The UNMIK Department of Justice was responsible for the prosecution of war criminals. ⁷² Due to the dispute over jurisdiction, the cooperation with the Serbian Prosecutors’ Office faced difficulties.

The Kosovo Specialist Chambers and Specialist Prosecutor’s Office, based in The Hague, were established as a temporary measure in August 2015 by an international agreement between Kosovo and the EU. It is tasked to prosecute „crimes against humanity, war crimes and other crimes under Kosovo law, which were commenced or committed in Kosovo between 1 January 1998 and 31 December 2000

⁶⁸ Amnesty International, „Amnesty International reiterates concern that impunity for war crimes persists“, *Amnesty International Public Statement*, 29 June 2018, <https://www.amnesty.org/download/Documents/EUR6686952018ENGLISH.pdf>, accessed 21 July 2020;

Amnesty International, „Montenegro: Failure to Implement International Law“, January 2018, London, <https://www.amnesty.org/download/Documents/EUR6669562017ENGLISH.PDF>, accessed 21 July 2020.

⁶⁹ European Commission, „Montenegro 2019 Report“, Commission Staff Working Document, *Communication on EU Enlargement Policy*, Brussels, 29 May 2019, p. 19, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-montenegro-report.pdf>, accessed 28 July 2020.

⁷⁰ European Commission, „Montenegro 2019 Report“, p. 19.

⁷¹ Samir Kajosevic, „Montenegro Fails to Launch Any War Crimes Cases in 2019“, *BalkanInsight*, 31 December 2019, <https://balkaninsight.com/2019/12/31/montenegro-fails-to-launch-any-war-crimes-case-in-2019/>, accessed 28 July 2019.

⁷² Human Rights Watch, „Unfinished Business Serbia’s War Crimes Chamber“, p. 18.

by or against citizens of Kosovo or the Federal Republic of Yugoslavia“.⁷³ Both institutions are formally part of the Kosovo judicial system and comply with the law of Kosovo. The Special Prosecution Office is challenged with the volume and the types of cases. The number of cases increased towards the end of the EULEX mandate of criminal execution. More staff and training are required to handle all the cases. There is a lack of willingness to investigate cases from former members of the Kosovo Liberation Army. The Kosovo Prosecution Council has adopted a Strategy of War Crimes in February 2019 and the Kosovo Specialist Chamber and Special Prosecutor's Office have agreed to investigate and prosecute all allegations mentioned in the European Council report from 2011. Victims of sexual violence during the conflict can apply for official recognition and benefits. Close to 1000 people have applied until May 2019 and approximately 300 have been approved.⁷⁴

From summer 2018 onwards, the Special Prosecution Office started to summon a number of politicians and former fighters of the Kosovo war to interview them about their roles in the conflict. In the summer of 2018, the then Prime Minister Ramush Haradinaj was asked to appear in front of the Hague prosecutors to answer question in relation to his role in the Kosovo war. He was previously acquitted of war crimes by the International Criminal Tribunal for the Former Yugoslavia. He resigned as a Prime Minister before leaving to The Hague.⁷⁵ In October 2019, Kadri Kastrati, a current Commander of the Kosovo Security Forces and former Officer in the Kosovo Liberation Army and Nuredin Ibshi, another former senior officer in the Kosovo Liberation Army were interviewed by the Kosovo Special Prosecution Office regarding their roles in the 1998–1999 war, especially regarding an operation in the Llapi Operational Zone.⁷⁶ The North Macedonian politician and former KLA and NLA fighter Ali Ahmeti, who participated in the Kosovo war and the Macedonian crisis in 2001 was also summoned to The Hague.⁷⁷

⁷³ Kosovo Specialist Chambers & Specialist Prosecutor's Office, <https://www.scp-ks.org/en>, accessed 13 November 2020.

⁷⁴ European Commission, „Kosovo 2019 Report“, Commission Staff Working Document, *Communication on EU Enlargement*, Brussels, 29 May 2019, pp. 18–19, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>, accessed 21 September 2019.

⁷⁵ Blerta Begisholli, „Kosovo's Haradinaj Refuses to Answer War Prosecutors' Questions“, *BalkanInsight*, 24 July 2019, <https://balkaninsight.com/2019/07/24/kosovos-haradinaj-refuses-to-answer-war-prosecutors-questions/>, accessed 31 July 2020.

⁷⁶ *BalkanInsight*, „Hague Prosecutors Summon Kosovo Security Force Ex-Commander“, 18 October 2019, <https://balkaninsight.com/2019/10/18/hague-prosecutors-summon-kosovo-security-force-ex-commander/>, accessed 31 July 2020.

⁷⁷ Perparim Isufi and Sinisa Jakov Marusic, „Hague Prosecutors Summon North Macedonia's Albanian Leader“, *BalkanInsight*, 23 July 2020, <https://balkaninsight.com/2020/07/23/hague-prosecutors-summon-north-macedonias-albanian-leader/>, accessed 31 July 2020.

Apart from the more well-known leaders, who were asked to give a testimony, more than over 100 other former fighters of the Kosovo Liberation Army were invited to appear before the Special Prosecutor's Office.⁷⁸ In July 2020, President Hashim Thaci, a former Kosovo Liberation Army leader was summoned to the Prosecutors Office to The Hague to answer questions in relation to allegedly committed war crimes and crimes against humanity.⁷⁹ Later that year, in November 2020, President Thaci, was asked again to present himself in front of the Kosovo Specialist Chambers in The Hague to face charges of war crimes.⁸⁰

Bosnia and Herzegovina

Bosnia and Herzegovina adopted a National War Crimes Strategy in 2008. Since the implementation of the strategy the number of cases was reduced. However, the number of complex cases were not finalised as planned by the end of 2015. The Prosecutors Office of Bosnia and Herzegovina has reduced its backlog. The HJPC (High Judicial Prosecutorial Council) has a weak mandate. Regional cooperation in the field of war crimes is by large ineffective. The Council of Ministers need to adopt a revised National War Crimes Strategy.⁸¹

The 2005 established War Crimes Chamber of the Court of Bosnia and Herzegovina (BWCC or War Crimes Chamber) has put the most notable effort in investigating and prosecuting persons responsible for serious human rights violations during the conflict in the 1990s.⁸² The problem of the chamber was the high case load and the low trust of the public in institutions. The War Crimes Chamber was seen as an „international“ institution imposed from the outside

⁷⁸ Xhorxhina Bami and Xheneta Murtezaj, „Hague War Crime Prosecutors Quiz Kosovo President Thaci“, *BalkanInsight*, 13 July 2020, <https://balkaninsight.com/2020/07/13/hague-war-crime-prosecutors-quiz-kosovo-president-thaci/>, accessed 31 July 2020.

⁷⁹ Xhorxhina Bami and Xheneta Murtezaj, „Hague War Crime Prosecutors Quiz Kosovo President Thaci“, *BalkanInsight*, 13 July 2020, <https://balkaninsight.com/2020/07/13/hague-war-crime-prosecutors-quiz-kosovo-president-thaci/>, accessed 31 July 2020.

⁸⁰ Xhorxhina Bami, „Kosovo President Thaci Resigns to Face War Crimes Charges“, *BalkanInsight*, 5 November 2020, <https://balkaninsight.com/2020/11/05/kosovo-president-thaci-resigns-to-face-war-crimes-charges/>, accessed 5 November 2020.

⁸¹ European Commission, „Analytical Report, Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union“, Brussels, 29 May 2019, pp. 36–38, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-bosnia-and-herzegovina-analytical-report.pdf>, accessed 21 September 2019.

⁸² Bogdan Ivanišević, „The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court“, International Center for Transitional Justice, 2008, p. 1, <https://www.ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Domestic-Court-2008-English.pdf>, accessed 17 September 2019.

to deal with these cases. Another problem of Bosnia and Herzegovina is the fragmented political system. The Republika Srpska conducts court proceedings according to their own rules and standards.⁸³

In June 2019 the OSCE released a report on the War Crimes Case Management at the Prosecutor's Office of Bosnia and Herzegovina,⁸⁴ which states that the „Prosecutor's Office of BiH (PO BiH) „is not delivering justice to all victims of war crimes due to persistent deficiencies it has failed to address in recent years“.⁸⁵ According to the revised National War Crimes Processing Strategy, which was drafted in 2018, but not adopted, the work on war crimes cases should be finished by 2023. The OSCE believes that due to the delay, this timeline will not be kept. The reasons for not adopting the strategy,⁸⁶ which would set clear deadlines for dealing with the backlog of open cases, are the 850 „Category A-Cases“ which have been transferred from the ICTY to Bosnia. The official reason given is that the relevant institutions in Bosnia and Herzegovina have not received all the information on the status of the cases. Already in 2008, Bosnia and Herzegovina adopted a strategy for processing the war crime cases and it was decided to have the most difficult cases processed within 7 years and other should be dealt with on the level of the entity by 2023. The timeline was not kept and a new strategy was revised in 2018, announcing that more cases should be transferred to the entity level and the new deadline to deal with the cases was set is 2023.⁸⁷

North Macedonia

The ICTY investigated 5 cases of crimes committed during the short-lived civil war in 2001, which ended with the signing of the Ohrid Agreement facilitated by the EU. The Macedonian cases were in relation to crimes committed by the National Liberation Army (NLA) against ethnic Macedonians and Macedonian state forces against the Albanian insurgents. The only case which was dealt with by the ICTY was a case of the police men Johan Tarculovski, who was indicted to have committed crimes against the people of the

⁸³ Subotic, „Truth, justice, and reconciliation on the ground: normative divergence in the Western Balkans“, p. 369.

⁸⁴ OSCE Mission to Bosnia and Herzegovina, „War Crimes Case Management at the Prosecutor's Office of Bosnia and Herzegovina“, 2019, <https://www.osce.org/mission-to-bosnia-and-herzegovina/423209?download=true>, accessed 17 September 2019.

⁸⁵ OSCE Mission to Bosnia and Herzegovina. „War Crimes Case Management at the Prosecutor's Office of Bosnia and Herzegovina“, p. 5.

⁸⁶ Haris Rovcanin, „Balkan Transitional Justice, Bosnian Ministers Fail to Adopt National War Crimes Strategy“, *BalkanInsight*, 24 July 2019, <https://balkaninsight.com/2019/07/24/bosnian-ministers-fail-to-adopt-national-war-crimes-strategy/>, accessed 17 September 2019.

⁸⁷ Haris Rovcanin, „Balkan Transitional Justice, Bosnian Ministers Fail to Adopt National War Crimes Strategy“.

Albanian village of Ljuboten in August 2001. The Macedonian police under the command of Tarculovski killed six Albanian civilians and mistreated another 13 people. Houses were also burnt down. Tarculovski received a sentence of 12 years of imprisonment. The at the time Interior Minister Ljube Boskoski, indicted for the same case, was acquitted due to a lack of clear evidence of cover up or obstructing of the judiciary system for prosecuting the responsible.⁸⁸ The other four case — „NLA Leadership“ case, „Mavrovo Road Worker“ case, the „Lipkovo Water Reserve“ case and the „Neprošteno“ investigation⁸⁹ — were referred back from the ICTY to North Macedonia in 2008.⁹⁰ The majority of cases related to atrocities, such as abduction, abuse and the killing of the abducted, committed by the NLA, only the „Lipkovo Water Reserve“ case accuses an individual of stopping the water supply to the village of Kumanovo for several weeks in the summer 2001. The prosecution of 10 known members of the NLA leadership was not further carried.⁹¹ In 2011 it was decided by the parliament that these cases should not be further prosecuted. The decision was political one, as some of the cases referred to crimes committed by the Albanian National Liberation Army (NLA). The NLA turned in to a political party in 2001 and its leader Ali Ahmedi formed a coalition with the ruling conservative VRM-NO-DMNPE party.⁹²

Croatia

After the death of the Croatian President Franjo Tudman in 1999 and after the political shift towards the EU, Croatia was faced with the reality of fulfilling the EU conditionality in relation to the

⁸⁸ Merdijana Sadović Sadović, „Macedonian Officer Jailed for Crimes Against Albanians“, Institute for War and Peace Reporting, 14 July 14, 2008, <https://iwpr.net/global-voices/macedonian-officer-jailed-crimes-against-albanians>, accessed 1 November 2020.

⁸⁹ International Criminal Tribunal of Former Yugoslavia, „The Former Yugoslav Republic of Macedonia Requested to Defer Five Cases to the Competence of the International Tribunal“, Press Release, Den Haag, 7 October 2002, <https://www.icty.org/sid/8069>, accessed 1 November 2020.

⁹⁰ Sinisa Jakov Marusic, „Macedonia Sends War Crimes Cases to History“, *Balkan Transitional Justice*, *BalkanInsight*, 26 October 2011, <https://balkaninsight.com/2011/10/26/macedonia-sends-war-crimes-cases-to-history/>, accessed 1 November 2020); Subotic, „Truth, justice, and reconciliation on the ground: normative divergence in the Western Balkans“, p. 370.

⁹¹ Trail Chambers „Decision on the Prosecutor’s Request for Deferral and Motion for Order to the Former Yugoslav Republic of Macedonia“, 4 October 2002, https://www.icty.org/x/file/Legal%20Library/jud_supplement/supp37-e/misc.htm, accessed 1. November 2020.

⁹² Sinisa Jakov Marusic, „Macedonia Sends War Crimes Cases to History“, *Balkan Transitional Justice*, *BalkanInsight*, 26 October 2011, <https://balkaninsight.com/2011/10/26/macedonia-sends-war-crimes-cases-to-history/>, accessed 1 November 2020.

cooperation with the ICTY. The cooperation was difficult for the political leaders, as the Croatians wanted for war crimes were considered heroes in Croatia. The extradition of indictees was delayed, hence the EU postponed the start of the EU negotiations in March 2005 to increase the pressure on Croatia to comply with the ICTY's requests. Especially, the case of Ante Gotovina was of interest to the ICTY. Ivan Čermak and Mladen Markač, who were charged for the same case as Gotovina, were transferred to Den Haag in 2004. However, Gotovina disappeared and was only captured in December 2005. Gotovina and Markač were found guilty in April 2011 and sentenced to 24 and 18 years of imprisonment. Čermak was acquitted in April 2011.⁹³ After an appeal, Gotovina and Markač were acquitted in November 2012. Janko Bobetko, a Croatian General, was indicted in 2002 by the ICTY, but refused to go to Den Haag to stand trial and died in 2003.⁹⁴ The EU negotiations started after Gotovina's transfer to Den Haag, and Croatia joined the EU in 2013.

In Croatia the domestic courts dealing with war crime cases were very slow and cases against non-Croatian citizens were not often taken up by the courts. Only in January 2013 did a Croatian Court rule that the Croatian state was responsible for the killing of two Serbs civilians in 1995.⁹⁵ Although the Croatian government established a legislative and institutional framework to deal with the war crime cases, which took place between 1991 until 1995, it does not take up responsibility of the prosecution process. Therefore, in 2015 a large backlog of cases was noted and a low level of prosecution of seniors and mid-level officials. Politicians also tended to deny facts of the conflict and applied more national narratives. The ICTY repeatedly asked the government to ensure that there is no impunity of war crimes.⁹⁶

Croatia has signed the cooperation agreements as it was the case with other counties in the region. In 2006, the Prosecutor's Office in Croatia signed a protocol with Serbia and Montenegro committing to cooperate in the facilitation of war crime cases. In June 2013, a similar protocol with the Prosecutor's Office in Croatia and Bosnia and Herzegovina was signed. In 2015, Bosnia-Herzegovina, Serbia

⁹³ International Criminal Tribunal for the Former Yugoslavia, „Tribunal Convicts Gotovina and Markač, Acquits Čermak“, Chambers, The Hague, 15 April 2011, <https://www.icty.org/en/press/tribunal-convicts-gotovina-and-marka%C4%8D-acquits-%C4%8Dermak>, accessed 4 November 2020.

⁹⁴ The New York Times, „Janko Bobetko, 84, Is Dead; Fought to Free Croatians“, 30 April 2003, <https://www.nytimes.com/2003/04/30/world/janko-bobetko-84-is-dead-fought-to-free-croatians.html>, accessed 4 November 2020.

⁹⁵ Subotic, „Truth, justice, and reconciliation on the ground: normative divergence in the Western Balkans“, p. 370.

⁹⁶ Commissioner of Human Rights, „Report by Nils Muiznieks Commissioner for Human Rights of the Council of Europe following his Visit to Croatia 25 to 29 April 2016“, Council of Europe, 6 October 2016, p. 6, [https://rm.coe.int/ref/CommDH\(2016\)31](https://rm.coe.int/ref/CommDH(2016)31), accessed 1 November 2020.

and Croatia agreed on the improvements of the cooperation in the region in regard of war crimes prosecution and missing persons. In 2011, a Strategy for the Investigation and Prosecution of the War Crimes and later a plan of implementation were adopted and a database with all the war crimes on the territory of Croatia was setup.⁹⁷

Since Croatia became an EU-member the issue of prosecution has not been that much pursued as previously.

RESTORATIVE JUSTICE IN THE WESTERN BALKANS

Truth and reconciliations commission or tribunals, where victims and perpetrators can be heard and tell their story of the events of the conflict, have been useful in a number of countries⁹⁸ to address and deal with the violent past. Still, there needs to be a willingness and acceptance that victims need to be heard and perpetrators have a chance to ask for forgiveness. Restorative justice initiatives implemented by states require the state to acknowledge that injustice was done and actions are required to rectify some of the damages. Establishing the truth might be an unattainable goal, but attempts to listen and to be heard enables to shed light on the committed crimes and their impact on people's lives.

Serbia

The former Federation of Yugoslavia made an attempt of implementing some aspects of restorative justice, when in March 2001 the then federal president of the Republic of Yugoslavia, Vojislav Koštunica established a Truth and Reconciliation Committee by a presidential degree.⁹⁹ The aim of the commission was „to confront the truth on the conflicts in the SFRY and the successor states, which resulted in crimes against peace, numerous violations of human rights, as well as the laws of war and humanitarian law, and thus to contribute to the general reconciliation inside Yugoslavia and with neighbouring nations“.¹⁰⁰ Unfortunately, due to the end of the president's term, the mission's lack of clarity and the perception by other countries that the commission was partial, it was closed in 2003 without

⁹⁷ Commissioner of Human Rights, „Report by Nils Muiznieks Commissioner for Human Rights of the Council of Europe following his Visit to Croatia 25 to 29 April 2016“, pp. 6–8, [https://rm.coe.int/ref/CommDH\(2016\)31](https://rm.coe.int/ref/CommDH(2016)31), accessed 1 November 2020.

⁹⁸ E. g. South Africa, Rwanda, Guatemala.

⁹⁹ Vojin Dimitrijević, „The Fate of the Truth and Reconciliation Commission in the Federal Republic of Yugoslavia — Serbia“, in *Tenth Anniversary of the International Criminal Court: the Challenges of Complementarity*, Politorbis, No. 54–2 / 2012, Bern: Federal Department of Foreign Affairs, FDFA, pp. 61–64.

¹⁰⁰ Dimitrijević, „The Fate of the Truth and Reconciliation Commission in the Federal Republic of Yugoslavia — Serbia“, p. 61.

publishing a report.¹⁰¹ The commission faced problems from the start, when the appointed members resigned because the mandate was too broad, the commission did not have enough power, because it was considered not to be politically independent and members from Montenegro were not appointed.¹⁰² President Koštunica appointed some new members to the commission in 2002, including Montenegrins, Muslims and Catholics.¹⁰³ The work was planned to be concluded within 3 years. Due to the fact that the commission were not able to summon witnesses to a hearing, it relied on voluntary statements. No public hearing was organised, only a round table in May 2002. The commissions' work has considered to be a failure.¹⁰⁴

In March 2010 the Serbian parliament adopted a declaration on Srebrenica, which condemned the murder of more than 8000 Bosniaks. Internationally, this was considered as a positive sign of Serbia accepting the responsibility for its part in the genocide. The International Court of Justice held Serbia responsible for failing to prevent the Srebrenica massacre and for not putting to trial the perpetrators of the massacre, however, the Court acquitted the Serbian state of the charge of complicity in the massacre.¹⁰⁵ Prior to the declaration, the general population was not even aware of the exact role of the Serbian state in the crimes committed in Srebrenica and in other countries of former Yugoslavia. However, this helped to open up new perspectives on Serbia's role in the war crimes.

Part of restorative justice is the establishing of the facts of crimes, to get the voices heard and to consolidate the information to establish a broadly accepted fact-based narrative. Facing inconvenient events in the past is not an easy task for any society. On the surface, Serbia has shifted in some aspects and tried to deal with the legacies of the wars linked to the disintegration of Yugoslavia. Politicians are careful not to move too quickly, and in circumstances when it does not support their political approach or might offend their clientele, no activities are initiated. Often, civil society organisations become active to fill this void. These initiatives are working together on a regional level and have organisations or offices in the countries of the Western Balkan. One of the better-known organisations is RECOM, a regional network of NGOs from the Western Balkan countries, aiming

¹⁰¹ United States Institute for Peace, „Truth Commission: Serbia and Montenegro“, 1 February 2002, <https://www.usip.org/publications/2002/02/truth-commission-serbia-and-montenegro>, accessed 19 October 2018.

¹⁰² Dimitrijević, „The Fate of the Truth and Reconciliation Commission in the Federal Republic of Yugoslavia — Serbia“, p. 61.

¹⁰³ Dimitrijević, „The Fate of the Truth and Reconciliation Commission in the Federal Republic of Yugoslavia — Serbia“, p. 62.

¹⁰⁴ Dimitrijević, „The Fate of the Truth and Reconciliation Commission in the Federal Republic of Yugoslavia — Serbia“, in p. 63.

¹⁰⁵ Jasna Dragović-Soso, „Apologising for Srebrenica: the declaration of the Serbian parliament, the European Union and the politics of compromise“, *East European Politics*, Vol. 28, No. 2, June 2012, pp. 163–179, here 166.

to establish the truth about war crimes and other violations of human rights in the former Yugoslavia. The Humanitarian Law Center based in Belgrade is one of the founding organisations of RECOM. RECOM is seeking support by the state of the region to have access to certain information, which are stored in state archives or which are in the hand of state institutions with restricted access. Serbia has expressed its support for the RECOM initiative.

Bosnia and Herzegovina

This issue of how to address the legacies of the war in Bosnia and Herzegovina is a prevailing topic in the politics of the country. Internationally, it was established by a ruling of the ICTY that Bosnian Serb armed forces had killed more than 7,000 men in Srebrenica in July 1995, which was classified as genocide.¹⁰⁶ Bosnia and Herzegovina initiated some initiatives of transitional justice, but these are very limited due to the country's internal division, which is mirrored on the political level. Actually, the countries are prosecuting war crimes, searching for missing persons, paying or providing reparations for victims and have implemented some reforms to address the issues of discrimination. These initiatives mainly emerged due to the international pressure, rather than from the population or the political leaders themselves.¹⁰⁷

Especially, the Republika Srpska has engaged in politics of diluting its responsibility in the wars. In 2004, the Bosnian Human Rights Chamber, a chamber foreseen in Annex 6 of the Dayton Agreement, requested information on human rights violations in relation to the Srebrenica genocide. The Republika Srpska installed a Srebrenica Commission and issued a report, which included the omission that according to the international ruling Bosnian Serb forces had killed thousands of Bosniaks in Srebrenica in July 1995. It also acknowledged that the executions were a serious violation of humanitarian law.¹⁰⁸ In 2018, this report was cancelled by the parliament of the Republika Srpska stating that the 2004-report was compiled under pressure of the international community. President of the Republika Srpska, Milorad Dodik, has now installed two new commissions — the Independent International Commission for Investigating the

¹⁰⁶ Danijel Kovacevic, „Bosnian Serb MPs Annul Report Acknowledging Srebrenica“, *BalkanInsight*, 14 August 2018, <https://balkaninsight.com/2018/08/14/bosnian-serb-mps-annul-report-acknowledging-srebrenica-08-14-2018/>, accessed 7 November 2020.

¹⁰⁷ Aleksandra Letic, „How We Perceive the Past: Bosnia and Herzegovina, 17 Years On“, in *Tenth Anniversary of the International Criminal Court: the Challenges of Complementarity*, Politorbis No. 54-2 / 2012, Bern: Federal Department of Foreign Affairs, FDFA, pp. 79-81, here p. 79.

¹⁰⁸ Danijel Kovacevic, „Bosnian Serb MPs Annul Report Acknowledging Srebrenica“.

Sufferings of all Peoples in the Srebrenica Region in the Period from 1992 to 1995 and the Independent International Commission for Investigating the Sufferings of Serbs in Sarajevo in the Period from 1991 to 1995 – to examine war crimes during the 1990s.¹⁰⁹

Restorative justice can also be misused to interpret facts and findings to suit a certain political interest. This seems to be the difficulty in the case of Bosnia-Herzegovina, where the most severe crimes were committed in the 1990s. There is the demand of addressing these issues, not only by the international community, but also by the victims, and there are attempts to divert blame or minimise guilt. Due to the diverging interests in politics and within society, specialized civil society organisations are addressing the need to establish the facts of the crimes committed to allow victims to get their voices heard in the process.

The Mothers of Srebrenica was founded in 2002 by Hatidza Mehmedovic, a woman who had lost her husband and two of her sons in Srebrenica and her brothers during the massacre of 1995. After the war, she returned to her home and started organising victims to lobby for justice. The Mothers of Srebrenica brought cases against the Dutch state, who provided troops for the UN battalion to secure a safe area for civilians in the enclave of Srebrenica in the summer of 1995, for failing to protect Muslim men of deportation and murder.¹¹⁰ The organisation also testified in front of the ICTY. It acted as a lobbying group, provided a voice for the victims of the conflict and received international support. The organisation's president Mehmedovic, who believed in the co-existence of different people and would not assign collective guilt to any ethnic group, died in 2018.¹¹¹

Kosovo

In April 2018, the Kosovo president Hashim Thaçi has initiated the establishment of a Truth and Reconciliation Commission and assigned a preparatory team to work on the procedural decisions. Throughout 2019 and 2020, several consultation meetings have been organised with legal professionals, media representatives, artists, Albanian historians, former prisoners, family of the missing

¹⁰⁹ Albina Sorguc, „Bosnian Serbs' War Commissions: Fact-Seeking or Truth-Distorting?“, *BalkanInsight*, 25 February 2019, <https://balkaninsight.com/2019/02/25/bosnian-serbs-war-commissions-fact-seeking-or-truth-distorting/>, accessed 7 November 2020.

¹¹⁰ International Crime Database Mothers of Srebrenica et al v. State of The Netherlands and the United Nations, 2013, <http://www.internationalcrimesdatabase.org/Case/769/Mothers-of-Srebrenica-v-the-Netherlands-and-the-UN/>, accessed 7 November 2020.

¹¹¹ Barbara Surk, „Hatidza Mehmedovic, 65, Dies; Spoke Out for Bosnia Massacre Victims“, *The New York Times*, 28 July 2018, <https://www.nytimes.com/2018/07/27/obituaries/hatidza-mehmedovic-65-dies-spoke-out-for-bosnia-massacre-victims.html>, accessed 7 November 2020.

people, KLA veterans, representatives from the Serbian minority, transitional justice experts and other groups. Public meetings were held as well.¹¹² There is an attempt to include a number of different groups of people in the process. Preliminary aim is to look at the facts of crimes committed during the war in 1989 and 1999 and to discover the truth, which should bridge the different narratives of Serbs and Albanians. Justice has to follow as the next step. Critics would argue that the objectives of the commission are unclear and that the political intentions are primarily not to foster reconciliation, but to prove to the international community that some initiatives have been taken to tackle the issue of reconciliation.¹¹³ It will be seen, if the commission has a clear and independent mandate to continue its work after the resignation of the President Thaçi in November 2020. However, it seems that the politicians will be criticised either for not showing any commitment in fostering reconciliation or for not acting out of a moral responsibility but to please the international community when launching initiatives to engage with the population on the issue. Civil Society Organisation (CSO) having the advantage that their activities are driven by the needs of the people to discover the truth about the past and to receive justice in one way or the other.

Kosovo was supportive of the RECOM initiative as in 2013 the then President Atifete Jahjaga appointed an envoy for RECOM. The envoys sent by the presidents of the regions — Croatia, Kosovo, Montenegro, Serbia, and the Bosniak and Croat members of the Bosnia and Herzegovinian presidency — were part of a regional expert group to analyse the organisation's statute regarding the possibility to be established as an organisation in each of the individual states in the region. In 2014, the amendments of the RECOM statutes were adopted and the legal requirements were in place for the establishment of RECOM in each of the countries.¹¹⁴ Kosovo officially supported this process.

Regional Civil Society Organisations

RECOM is an initiative by a network of civil society organisations from four Western Balkan countries, which aim to establish the

¹¹² President of the Republic of Kosovo, „Preparatory Team for the Establishment of the Truth and Reconciliation Commission“, <https://www.president-ksgov.net/en/preparatory-team-for-the-establishment-of-the-truth-and-reconciliation-commission>, accessed 4 November 2020.

¹¹³ Serbeze Haxhijaj, Can Kosovo's Wartime Truth Commission Achieve Reconciliation? *BalkanInsight*, 27 June 2018, <https://balkaninsight.com/2018/06/27/can-kosovo-s-wartime-truth-commission-achieve-reconciliation-06-25-2018/>, accessed 7 November 2020.

¹¹⁴ RECOM Reconciliation Network, „A brief history of the RECOM process“, <https://www.recom.link/en/a-brief-history-of-the-recom-process/>, accessed 7 November 2020.

truth about war crimes and other violations of human rights in the former Yugoslavia. Founded in 2008 in Pristina, Kosovo, it aims to complement the judicial process, not to replace it. Four NGOs, The Humanitarian Law Centre (HLC), The Humanitarian Law Centre of Kosovo (HLC Kosovo), The Research and Documentation Centre (RDC) and Documenta were collecting information on the victims of the conflict and on missing people during the wars on the territory of the former Yugoslavia between January 1991 and the end of the 2001.¹¹⁵

The main objective of RECOM is to act as a public platform for the victims to speak about their war experiences of the past. It tries to strengthen the support by governments of the region of former Yugoslavia and the citizens for the initiative. It wishes to engage with various social groups in local communities to debate initiatives in the area of reconciliation. And finally, RECOM aims to change social relationships between the victim and the perpetrator.¹¹⁶ „RECOM also has the potential to contribute to reconciliation and regional cooperation in the Western Balkans — by building trust across the conflict divide between the various communities that are living in the states of the Western Balkans, and by building civic trust between communities and state institutions.“¹¹⁷ Jelena Krstić, who formerly worked for the Humanitarian Law Center in Belgrade, explained that RECOM is financially supported by the EU and receives political support by the European parliament.¹¹⁸ In September 2018, the members of the European Parliament have again reiterated their support for „the initiative to establish the Regional Commission for the establishment of facts about war crimes and other gross violations of human rights violations on the territory of the former Yugoslavia.“¹¹⁹ However, even before that, RECOM

¹¹⁵ RECOM initiative! Voice“, 2012, p. 2. <http://cdtp.org/wp-content/uploads/2014/05/RECOM-Initiative-Voice-6-2012-ENG.pdf>, accessed 17 August 2019.

¹¹⁶ Koalicija za Rekom, „Why RECOM?, <http://www.europarl.europa.eu/document/activities/cont/201009/20100927ATT83634/20100927ATT83634EN.pdf>, accessed 17 August 2019.

¹¹⁷ European Parliament, „European Integration and transitional justice: Prospects and Policy Options for Restorative justice in the Western Balkans“, Seminar organised by the Humanitarian Law Centre and the Centre for the Study of Global Governance, London School of Economics and Political Science, Brussels, 1 December 2009, <http://www.europarl.europa.eu/document/activities/cont/201009/20100927ATT83634/20100927ATT83634EN.pdf>, accessed 17 August 2019.

¹¹⁸ Krstić, Jelena former member of the Humanitarian Law Centre, interview with author on the 2 November 2018 (Skype).

¹¹⁹ European Parliament, „2018 Report on Serbia, European Parliament resolution of 29 November 2018 on the 2018 Commission Report on Serbia, 2019, http://www.europarl.europa.eu/doceo/document/TA-8-2018-0478_EN.pdf?redirect, accessed 17 August 2019.

was on the agenda of the European Parliament in 2010.¹²⁰ RECOM is looking for the states support, as their project can only be successful when states of the former Yugoslavia commit to the establishment of a regional committee to find out what happened to the victims of the wars in the region. This is considered to be a contribution to reconciliation by giving victims a voice in the process and by „building trust across the conflict divide between the various communities that live in the states of the Western Balkans, and by building civic trust between communities and state institutions“.¹²¹ RECOM wants to be a „victim-centred body that will investigate and disclose the facts about everything that happened in the recent past“.¹²²

DISTRIBUTIVE JUSTICE IN THE WESTERN BALKANS

Reform of the political structure, addressing systemic discrimination and compensating victims of injustice committed by the state are the activities considered to support distributive justice. These activities can be considered as the forward-looking dimension of reconciliation, in the sense that the objective is to create structure for a fairer, more equal and just society. Hence, education reform and support of youth in the region is of importance, as reconciliation might only be able to emerge in the future generation. Some aspects of distributive justice are also linked with the EU’s conditionality, ensuring that the rule of law, civil rights and minority rights and the independence of the judiciary are guaranteed.

The international community assisted in ending the conflicts in the Western Balkans. The International agreements of Erdut (November 1995), Dayton (December 1995) and Ohrid (August 2001) were signed to bring the conflict to an end and to address the interests of the various actors. These contracts are linked to the acceptance and recognition of international norms, which also include the protection of minorities and human rights in general. To ensure that these rights are protected and the state is refrained from violating them, institutions can be set up for control purposes.

¹²⁰ European parliament, „Exchange of views on the RECOM Initiative (Hearing)“, 30 September 2010, <http://www.europarl.europa.eu/committees/en/droi/events-hearings.html?id=20100923CHE83530>, accessed 17 August 2019.

¹²¹ European Parliament, „European Integration and transitional justice: Prospects and Policy Options for Restorative justice in the Western Balkans“, Seminar organised by the Humanitarian Law Centre and the Centre for the Study of Global Governance, London School of Economics and Political Science, Brussels, 1 December 2009, <http://www.europarl.europa.eu/document/activities/cont/201009/20100927ATT83634/20100927ATT83634EN.pdf>, accessed 17 August 2019.

¹²² European Parliament, „European Integration and transitional justice: Prospects and Policy Options for Restorative justice in the Western Balkans“.

The Erdut agreement, which addressed the transition of the region of Eastern Slavonia from Serb administration after a transitional phase to the Croatian state, made a reference that human rights and fundamental rights have to be respected in the area during the time of transition.¹²³

In the case of Bosnia and Herzegovina, the Office of the Ombudsman and the Human Rights Chamber were installed, as it was included in the Annex 6 of the Dayton Agreement.¹²⁴

The Ohrid Agreement addresses a number of grievances the Albanian population had against the Macedonian government of the time. The political and cultural rights of the Albanian populations were strengthened and discrimination in the area of public services or employment were addressed. Identity issues are of major concern for the North Macedonian citizens of Albanian background. Some of them could be addressed due to the reform of the constitution. In the 1990s, the newly established countries of former Yugoslavia used an ethnic-based interpretation of their citizenship rather than — as in the Yugoslav times — a more civic one. The preambles were changed to reflect this change and minorities started to become concerned that they would be excluded from their role as a citizen. Still, the international community tried to make sure that minority rights would be included and that minorities are able to participate in political life. In Croatia, in total eight seats in the parliament are reserved for minorities, whereby three are normally taken by Serb representatives, and elections for those seats are held in a separate constituency.¹²⁵ In Kosovo, 20 seats are reserved for minorities, whereby a maximum of the 10 minority seats are assigned to the Serb minorities,¹²⁶ which is seen by some of the opposition as too high a number. Bosnia and Herzegovina is a special case with its political structure built upon three entities and a federation, which provides for a consensus between the three constituent peoples — Bosniaks, Croatians and Serbs — in the political decision-making process, but also creates to blockages. However, the case of Dervo Sejdić and Jakob Finci — who are officially

¹²³ UN, „Basic agreement on the region of Eastern Slavonia, Baranja and Western Sirmium“, 15 November 2020, https://peacemaker.un.org/sites/peacemaker.un.org/files/HR_951112_ErdutAgreement.pdf, accessed 7 November 2020.

¹²⁴ Dayton Agreement, „Annex 6: Agreement on Human Rights“, Paris, 14 December 1995, <http://hrlibrary.umn.edu/icty/dayton/daytonannex6.html>, accessed 7 November 2020.

¹²⁵ Croatian Parliament, „Constitutional Act Amending the Constitutional National Minority Rights Act“, Zagreb, 18 June 2010, https://www.sabor.hr/sites/default/files/uploads/inline-files/amending_minority_80_10.pdf, accessed 8 November 2020.

¹²⁶ Zora Popova, „Minority Participation in Kosovo Elections: Opportunities and Challenges“, *ECMI-Working Paper*, 27 June 2013, No. 69, Flensburg: European Centre for Minority Issues, <https://www.ecmi.de/publications/ecmi-research-papers/69-minority-participation-in-kosovo-elections-opportunities-and-challenges>, accessed 8 November 2020.

citizens of Bosnia and Herzegovina, but are not allowed to stand for political office because they are not members of one of the constituent people — shows that an ethnic interpretation excludes citizens from full and equal participation in politics. Minority parties can be established in Serbia and the threshold for ethnic minority parties to enter the parliament has been removed.¹²⁷ Likewise, the constitution of Montenegro includes a number of minority rights and reserves the seats in parliament for ethnic minorities according to the overall percentage in relation to the entire population.¹²⁸ Strengthening of minority rights can alleviate tensions in multi-ethnic societies and establish some trust, especially within the societies emerging from conflict. Therefore, the EU's focus on political and democratic reforms in the area of the rule of law and justice is of such an importance, as state institutions should be neutral and treating every citizen equally, avoiding discrimination and therefore ensuring that there are institutions of control in place for the people. Another institution of control is the freedom of media, which has declined in the countries throughout the last years. Especially, when reporting on cases of war crimes, it is considered that the media is biased in its reporting,¹²⁹ occasionally supporting a more nationalistic „mutually exclusive, contradictory, and fundamentally irreconcilable“¹³⁰ narrative.

Political reform in post-conflict societies sometimes requires an exchange of personnel, mainly the removal of certain personnel from political positions in the government. These lustration processes can also be abused by political actors. In North Macedonia the lustration activities in 2008 were aimed to prosecute the political opponents. But the case of Serbia where the Prime Minister of the time, Zoran Đinđić, was murdered by people from inside the state's security apparatus in 2003, demonstrates the necessity of these policies.¹³¹ Lustration is a difficult move, but will have to be looked

¹²⁷ Forum for Ethnic Relations, Belgrade, „Minority Policy in Serbia — Fostering Integration Analysis and Recommendations for Improving Minority Policy and Integration Process in the Republic of Serbia“, Belgrade, Forum for Ethnic Relations, Policy Paper, May 2014, Year 4, Number 1, pp. 39–40, <http://fer.org.rs/wp-content/uploads/2017/12/76-Minority-Policy-in-Serbia-Fostering-Integration.pdf>, accessed 8 November 2020.

¹²⁸ The Law on Minority Rights and Freedoms Official Gazette of the Republic of Montenegro, 12 May 2006, <http://www.mmp.gov.me/ResourceManager/FileDownload.aspx?rid=332479&rType=2&file=The%20Law%20on%20Minority%20Rights%20integral%20text.pdf>, accessed 7 November 2020.

¹²⁹ Subotic, „Truth, justice, and reconciliation on the ground: normative divergence in the Western Balkans“, p. 368.

¹³⁰ Subotic, „Truth, justice, and reconciliation on the ground: normative divergence in the Western Balkans“, p. 371.

¹³¹ Subotic, „Truth, justice, and reconciliation on the ground: normative divergence in the Western Balkans“, p. 373.

at by governments overcoming conflicts to retain the trust of the entire population.

Membership of international organisations requires its members to accept a number of pre-set rules and the understanding that politicians will have to work together. Regional cooperation as interpreted by the EU is a mechanism to foster reconciliation in the countries of the Western Balkan and therefore part of the EU's accession conditionality. Regional organisations, stretching from political high-level organisations to CSO initiatives, try to facilitate the cooperation between the countries and created platforms for discussions and dialogue. These international structures are supposed to help addressing the political conflict and disputes and can contribute to reconciliation on the long run.

The conflicts in the region were always linked with the expulsion of a large part of the population to create an ethnic homogeneous territory. Hence, the international community included the right of return of refugees into the international peace agreements, the Erdut, Dayton and Ohrid Agreements, and the EU declared it as an additional condition for the EU-integration of the Western Balkan countries. However, the countries were slow to facilitate the return of the refugees, sometimes out of political reasons or due to the difficulties of returning property. Other refugees preferred not to return, as they would not feel safe in their home area any longer. Payment of compensation is a hard-fought issue. There is also the difficulty to agree who is actually considered for compensation and what value the compensation could have. The countries need to address these issues individually in their national legislation. However, the delay of pushing through adequate legislation might be linked to political reasons.

During the conflict in the Western Balkans civilians were killed and buried in mass graves. For many relatives it is still not clear what exactly happened to their loved ones. The searching for bodies in mass graves and their reburial can bring some peace to the survivors and some closure. In the case of Bosnia and Herzegovina, 25 years after the genocide in Srebrenica still burials are organised for the remains found in the area. The grim task of The International Commission on Missing Persons (ICMP), which is active in all the Western Balkan states¹³², is to search for the missing people and to assist in the exhumation of bodies. The ICMP is also assisting the Albanian authorities in finding the missing people killed during the communist regime. Still, there are people who disappeared during the conflicts in the 1990s and are unaccounted for. The international organisations have an important role in cooperation with state authorities to search for the people to provide closure for the survivors.

¹³² ICMP, Western Balkans, <https://www.icmp.int/where-we-work/europe/western-balkans/>, accessed 9 November 2020.

Memorials, the founding of museums and places to remember is another approach to deal with the past. It is not about forgetting, but rather remembering and maybe trying to understand the dynamics and consequences of the troublesome events. The cemeteries in places such as Srebrenica and Vukovar symbolise places of remembrance. Memorials installed in specific places help to make victims visible so that they are not forgotten by society. Exhibitions and museums addressing issues in relation to the war past can provide some context and background to the situation at the time. However, memory and remembrance occasionally are abused by politicians, as some places of remembrance can be exclusive, only remembering certain victims, but not all of them.

Another approach to remember events and people is the appointment of specific days as remembrance days, such as the Srebrenica Memorial Day on the 11 July 2020. These days are annually commemorated to ensure that victims and the circumstances leading to the atrocities are not forgotten.

Reconciliation combines a backward-looking dimension with a forward-looking one, which aims to change the current structure to build the basis for a more equal and just future. A huge issue is the topic of education. Students in the Western Balkans are taught a specific perspective on the history and the events in the 1990s depending on the country's narrative. The most complicated case can be found in Bosnia and Herzegovina where different curricula are taught according to the ethnic community of the pupils. Textbooks are often provided by the neighbouring countries for the respective ethnic group in Bosnia and Herzegovina, rather than one book for all pupils.¹³³ This approach is reproducing a one-sided perspective of specific events in the past even strengthening the stereotypical attitude towards the other groups and countries. Center for Democracy and Reconciliation in Southeast Europe (CDRSEE) has published common history textbooks for schools in the Western Balkans. There are in total 6 books covering the history from the Ottoman Empire until 2008. The centre translated the books in 11 language and also trained teachers in the topic to ensure that students learn how to think critically. The project was supported by the EU and by six ministries of education in the region of the Western Balkans.¹³⁴

Other initiatives, which are forward-looking and support reconciliation efforts are youth exchange programmes and projects. The Youth Initiative for Human Rights (YIHR) was established

¹³³ Tamara Trošt and Jovana Mihajlović Trbovc, „Contemporary Language-Naming Practices in the Western Balkans“, in Adam Bence Balazs and Christina Griessler, *The Visegrad Four and the Western Balkans. Framing Regional Identities*, Andrassy Studien zur Europaforschung, Baden-Baden: Nomos Verlagsgesellschaft, 2020, pp. 197–230.

¹³⁴ CDRSEE, Centre for Democracy and Reconciliation in Southeast Europe, <https://www.facebook.com/cdrsee/>, accessed 12 November 2020.

in 2003 as a regional non-governmental organisation, which is active in Serbia, Kosovo, Montenegro, Bosnia-Herzegovina, and Croatia. The main objective of the regional network is the enhancement of „youth participation in the democratization of their societies, to strengthen the rule of law in dealing with the past, and to establish the new links between the countries of former Yugoslavia“. The initiative has a focus on „the inclusion of divided communities, and encouraging the Europeanization of the Western Balkans through regional co-operation of young people from different countries of the former Yugoslavia.“¹³⁵ It aims at educating the young people on issues of culture of remembrance, democratization, human rights and minority rights and on issues in relation to the EU integration processes. The organisation has offices in Sarajevo, Priština, Podgorica, and Zagreb.¹³⁶

The Regional Youth Cooperation Office (RYCO) was launched in July 2016 in Paris in the context of the Berlin Process, a political process initiated by Germany to re-ignite the EU Enlargement Process. The objective of RYCO is to bring young people from the Western Balkan regions together to facilitate understanding, trust and reconciliation. This should be achieved through the cooperation in regional projects, which will be financed by RYCO, the EU and other funding organisations. The headquarters is based in Tirana and local offices are located in the other capitals of the Western Balkan states.¹³⁷

Distributive justice included a range of activities and initiatives, which are partly implemented in the Western Balkan countries, especially in the area of minority rights and protection and fundamental rights. However, for digging deeper and engaging in the reconciliation activities, the politicians seem to be driven by another agenda than the CSOs'. Supporting these bottom-up initiatives might be an easy way out for states in relation to facing the state's responsibilities of the conflict, but the states' assistance is needed by the organisation. The CSOs' work in the area of reconciliation shows that there is a need to address the legacies of the past, which comes from the people themselves. Some aspects of transitional justice might be better served by the CSOs, whose agenda is more driven by the people of the region.

¹³⁵ Office of the Youth Initiative for Human Rights in B&H, „The Initiative in B&H — Five years on“, Sarajevo 2011, p. 6, http://yihr.ba/yihr/wp-content/uploads/2015/09/Pet-godina-inicijative-mladih-za-ljudska-prava-u-BiH_ENG_press-.pdf, accessed 09 October 2019.

¹³⁶ Youth Initiative of Human rights, <https://yihr.org/about-us/>, accessed 4 November 2020.

¹³⁷ RYCO, „Key information“, 21 August 2019, <https://www.rycowb.org/wp-content/uploads/2017/09/The-Regional-Youth-Cooperation-Office.pdf>, accessed 10 October 2020.

Table 2: Approaches of transitional justice in the Western Balkans

Transitional justice approaches	Western Balkans
Retributive justice	<ul style="list-style-type: none"> ▪ ICTY, transfer cases to the national courts ▪ International Residual Mechanism for Criminal Tribunals
Restorative justice	<ul style="list-style-type: none"> ▪ In Serbia from 2002–2003 Truth and Reconciliation Commission. ▪ Since 2008 the regional RECOM Initiative. ▪ In Kosovo in 2018 the establishment of a Truth and Reconciliation Committee. ▪ Civil Society Initiatives, e. g. Mothers of Srebrenica
Distributive justice	<ul style="list-style-type: none"> ▪ Minority rights, anti-discrimination laws, ▪ compensations, reparations ▪ exhumation and reburial of killed people from mass graves ▪ memorials, Museums, days of remembrance ▪ Educational programme of dealing with the past — new curricula ▪ Youth cooperation and Youth exchanges (YIHR, RYCO)

Source: Own compilation based on George Kasapas, „An Introduction to the Concept of Transitional Justice: Western Balkans and the EU Conditionality“, *UNISCI Discussion Papers*, No. 18, October 2008; Alexander Boraine, „Transitional Justice. A Holistic Interpretation“, in *Journal of International Affairs*, 2016, Vol. 60, Issue 1, pp. 17–27; Luc Huyse, Justice, in David Bloomfield, Teresa Barnes, and Luc Huyse, (eds.), *Reconciliation After Violent Conflict. A Handbook*, International IDEA, Stockholm, 2003, pp. 97–115.

RECONCILIATION IN THE CONTEXT OF THE WESTERN BALKANS

There is an acknowledgement by the international community that the task to deal with the legacies of war are difficult. Erhard Busek, coordinator of the South-East Cooperation Initiative (SECI) and the Special Co-ordinator of the Stability Pact of South-East Europe (SPSEE) for the period of 2002–2008, points out: „The greatest challenge is probably the need for reconciliation between the various ethnic groups and religions and between the majority and minority populations. There are no blueprint solutions to these challenges, which all require long-term strategies and commitments“.¹³⁸ However, he is also aware that initiatives to support reconciliation do not make sense if the resources are not provided and believes that „[t]

¹³⁸ Erhard Busek, „10 Years of Southeast European Cooperative Initiative: Lessons Learned“, *Transition Studies Review*, 2006, Vol. 13, Issue 3, pp. 461- 471, here p. 462.

he process of reconciliation is definitely a long-term one as European history has shown“.¹³⁹

Reconciliation is a term frequently used in the EU’s Western Balkan Strategies. Reconciliation is defined as a peace anchor which contributes to political stability in the region.¹⁴⁰

The EU is aware that reconciliation cannot be imposed from the outside, but has to come from the countries themselves, hence urging the respective political leaders to take the leadership and ownership of the process. In the 2018-strategy, the EU states that transitional justice is incomplete, referring to the shortcomings in addressing the war crimes, cases of missed and displaced persons, the removal of landmines and the cooperation with the Mechanism for International Criminal Tribunals and the Kosovo Specialist Chambers. The EU urges to foster the promotion of European values and tolerance through education and to initiate cultural cooperation between the countries. Furthermore, the EU urges the Western Balkan states to solve their bilateral disputes which, if no agreement can be reached between the parties, should be put forward for a final binding to international arbitration and consequently its ruling should be accepted by the parties.¹⁴¹ Good neighbourly relations should be fostered and maintained through cooperation in the frame of the connectivity agenda, initiatives bringing the heads of states from the region together and activities strengthening the region’s ownership of regional co-operation which are encouraged by the EU. The EU promises to support the Mechanism for International Criminal Tribunal and the Kosovo Specialist Chamber in dealing with cases of war crimes. The EU plans further efforts and cooperation with the International Committee for the Red Cross and the International Commission on Missing Persons to shed light on the whereabouts of missing persons and how to deal with the issue of landmines. In the 2018-Strategy the EU Commission a reference is also made to the role of education in the process of reconciliation. Hence, exchange in the area of education, culture, youth and sports is fostered. The role of the recently established Regional Youth Cooperation Office (RYCO) is going to be enhanced and cultural event to promote heritage will be supported.¹⁴²

¹³⁹ Busek, „10 Years of Southeast European Cooperative Initiative: Lessons Learned“, p. 464.

¹⁴⁰ European Commission, „A credible enlargement perspective for and enhanced EU engagement with the Western Balkans“, Strasbourg, 6 February 2018, p. 6, https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf, accessed 23 September 2018.

¹⁴¹ European Commission, „A credible enlargement perspective for and enhanced EU engagement with the Western Balkans“, p. 7.

¹⁴² European Commission, „A credible enlargement perspective for and enhanced EU engagement with the Western Balkans“, p. 15.

The improvement of neighbourly relations between the states in the region is seen by the EU as a mechanism to overcome the hostile attitudes towards each other, which supports the stabilisation of the region. The EU Commission states: „All countries must unequivocally commit, in both word and deed, to *overcoming the legacy* of the past, by achieving reconciliation and solving open issues well before their accession to the EU. Regional co-operation, good neighbourly relations and reconciliation cannot be imposed from outside. The leaders of the region must take *full ownership* and lead by example“ (emphasis in text).¹⁴³

Reconciliation processes go hand in hand with the implementation of the transitional justice initiatives. Reconciliation in the Western Balkans is „a complex and multidimensional process involving wide scope of actors“ and, according to the EU, should be focused on „overcoming the legacies of the past“.¹⁴⁴ CSOs are considered to be an important part of the process, especially when the political leaders remain hesitant in embracing the idea of reconciliation. The prerequisite for an emerging reconciliation process is a broad consensus within society¹⁴⁵ that constitutes a meaningful and honest approach to deal with the legacies of the past. Moreover, reconciliation can be better managed when new norms are applied in society and the political leaders have a genuine interest to overcome the conflict-prone divisions between states or within society.¹⁴⁶ Hence, the biased narratives and the references to stereotypes in public speeches by politicians are hindering the introduction of new norms and standards in public life. Therefore, the role of the NGOs and CSOs in the region is not to be underestimated, as their initiatives and activities are grounded in the people’s need to address the war legacies of the region, as the necessity prevails that people have to find a way to live next to each other and to trust each other. The rebuilding of relationships between the people in the region is the motivational factor behind the reconciliation activities.

¹⁴³ European Commission, „A credible enlargement perspective for and enhanced EU engagement with the Western Balkans“, pp. 6–7.

¹⁴⁴ Gentiola Madhi, Jana Juzová, Tomáš Strážay, Adam Balcer, Jelica Minić and Nikolett Garai, „Reconciliation in the Western Balkans: Overcoming the past together“, *Policy Paper*, Europeum, Prague, June 2019, p. 5, <http://www.europeum.org/en/articles/detail/2832/policy-paper-reconciliation-in-the-western-balkans-overcoming-the-past-together>, accessed 16 July 2019.

¹⁴⁵ Gentiola Madhi, Jana Juzová, Tomáš Strážay, Adam Balcer, Jelica Minić and Nikolett Garai, „Reconciliation in the Western Balkans: Overcoming the past together“, p. 3.

¹⁴⁶ Volker Stanzel, „Aussöhnung und Gesellschaft. Zur Überwindung kollektiv erlebten Leids“, *SWP-Studie*, Berlin: Stiftung Wissenschaft und Politik Deutsches Institut für Internationale Politik und Sicherheit, 2016, p. 6, https://www.swp-berlin.org/fileadmin/contents/products/studien/2016S11_sze.pdf, accessed 17 July 2019.

Conclusion

Reconciliation has to emerge from the people and this process might take generations to succeed. In an ideal world reconciliation would find its support within the political environment. Unfortunately, the Western Balkans are different, as promoting national narratives is more beneficial for politicians than reaching out to a multi-ethnic and more diverse audience. Still, the connections with the international community, especially the EU, motivates politicians to comply with certain conditions.

The criticism formulated by Kasapas in 2008 that the EU only focuses on the retribution justice, rather than asking to complement these activities with distributive justice and restorative justice mechanisms,¹⁴⁷ might still be valid today when focusing on the states' activities. However, the EU has realised that in relation to reconciliation, the CSOs are better partners and are providing substantial support for projects. Especially, youth and education programmes and regional cooperation projects by and for young people seem to have moved up on the EU's agenda. Initiative in the field of restorative and in some areas also distributive justice requires a bottom-up dynamics, whereas retributive justice has an established international framework to be imposed from outside. With the closure of the IC-TY and the transfer of cases to the national jurisdiction the control of the process fell into the responsibility of the states and this led to a slowing down in dealing with cases and in fewer and less important judgements being reached.

Restorative justice approaches are more difficult to implement. The time needs to be ripe for those initiatives and even when politicians launch activities, people might be sceptical about the motivations behind them. Other approaches to deal with the past legacies of the conflict are not pursued due to the lack of support by the politicians in the region. Again, CSOs will have to step into the void to create platforms for exchange and constructive dialogue.

It seems that due to the successful national building process, which accompanied and even triggered the conflicts in the region, restorative justice initiatives, aiming to address the damages and violations against the victims, are considered by the political leadership of the respective countries not to be of importance. The first step would be to acknowledge that wrongdoing was committed and to face the legacies of the conflict. When there is an interest or even desire by the people to address the legacies issues of the region, states will have to give in to the pressure from civil society. The time will come, when society is able to engage in a constructive and open dialogue about the past. For the moment, the EU should continue its support for the CSOs and especially invest money in youth and education

¹⁴⁷ Kasapas, „An Introduction to the Concept of Transitional Justice: Western Balkans and the EU Conditionality“, pp. 66–68.

programmes, as these are affecting a generation who will ask all the questions in relation to the legacies of the conflict and who will increase the pressure on the politicians to start an honest reconciliation with the countries' neighbours.

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RJEŠAVANJE NASLJEĐA SUKOBA NA ZAPADNOM BALKANU:
PRISTUPI POMIRENJA I TRANZICIONE PRAVDE

Pomirenje je postalo poznata fraza u vezi sa naporima Zapadnog Balkana da se integriše u EU. U skladu sa uslovima EU, zemlje Zapadnog Balkana trebaju poboljšati svoje dobrosusjedske odnose i podsticati pomirenje prije pristupanja Evropskoj uniji. Međutim, ciljevi i mehanizmi pomirenja, kako ih predviđa EU, nisu detaljno obrazloženi i trebaju daljnju analizu. U ovom se članku primjenjuje koncept tranzicione pravde na aktivnosti zemalja zapadnog Balkana i one se ocjenjuju u skladu s ciljevima EU. Hipoteza ovog rada je da je poziv na pomirenje na Zapadnom Balkanu ranije bio usmjeren uglavnom prema političkim elitama gdje jedva da postoji interes za ozbiljno olakšavanje pristupa tranzicionoj pravdi, jer bi to podrivalo moć samih političara. Organizacije civilnog društva pokušavaju da se pozabave nasljeđem prošlosti u regionu, ali ne dobijaju uvijek potrebnu državnu podršku. U zaključku, ovaj rad otkriva kao EU sve više gleda na civilno društvo kao adresu koja treba da pokrene projekte koji podstiču pomirenje. Štaviše, prevladala je spoznaja da pomirenju treba vrijeme i da bi fokus na mlade ljude i obrazovne programe mogao biti korak naprijed za napredak u pomirenju na Zapadnom Balkanu.

Cljučne riječi: tranziciona pravda, pomirenje, Zapadni Balkan, Evropska unija, civilno društvo