

# **PROTOCOL**

## **of the State Attorney's Office of the Republic of Croatia and the Prosecutor's Office of Bosnia and Herzegovina on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide**

The State Attorney's Office of the Republic of Croatia and the Prosecutor's Office of Bosnia and Herzegovina (hereinafter: Parties)

Expressing their mutual willingness to enhance cooperation in the criminal prosecution of perpetrators of War Crimes, Crimes against Humanity and Genocide (hereinafter: War Crimes),

Considering the fact that criminal offenses of War Crimes are not subject to the statute of limitations and the very importance of bringing war crimes perpetrators to justice thus expressing their willingness to promote cooperation and exchange information in the sphere of criminal offenses of War Crimes committed on the territory of both states,

Respecting the rights of victims and bearing in mind that the common goal of the Parties is to bring those responsible for war crimes to justice,

Convinced that improvement of direct cooperation, exchange of evidence, other documents and information will contribute to the common interests of the Parties and the cooperation of the States in the judicial area, as well to improved efficiency in investigation, evidence collecting and punishment of all perpetrators of war crimes.

Mindful of the fact that the Agreement on Extradition between the Republic of Croatia and Bosnia and Herzegovina signed in Zagreb on November 28, 2012 prohibits extradition of own nationals for criminal offenses of Genocide, Crimes against Humanity and War Crimes and with belief that, within that context, exchange of evidence and cooperation in further collection of the required evidence and information may serve to accomplish the goal, which is to have the perpetrators of war crimes brought to justice and punished,

have therefore reached an agreement on the following issues:

### **SCOPE OF APPLICATION**

1. Pursuant to this Protocol, the State Attorney's Office of the Republic of Croatia may provide the Prosecutor's Office of Bosnia and Herzegovina with all information and evidence on procedures related to the criminal offenses of War Crimes committed in the territory of the Republic of Croatia or Bosnia and Herzegovina, whose perpetrators have citizenship of Bosnia and Herzegovina or dual citizenship and whose place of residence is in Bosnia and Herzegovina

Pursuant to this Protocol, the Prosecutor's Office of Bosnia and Herzegovina may provide the State Attorney's Office of the Republic of Croatia with all information and evidence on procedures related to the criminal offenses of War Crimes committed in the territory of the Republic of Croatia or Bosnia and Herzegovina, whose perpetrators have the citizenship of the Republic of Croatia or dual citizenship and whose place of residence is in the Republic of Croatia.

2. The cooperation in the exchange of evidence and other information in war crimes cases under Paragraph 1 of this Article shall be possible throughout the entire criminal proceedings, until the final and binding verdict of the competent court of the Party to the Protocol is rendered.

#### THE MANNER OF EXCHANGE OF EVIDENCE AND OTHER INFORMATION

3. The Parties shall, within three (3) months of the signing date of this Protocol, inform each other, by exchange of initial data in all pending cases under Article 1 of this Protocol aiming to confirm the dual citizenship of suspects, accused or indicted persons and their place of residence.

In the event of subsequent detection of the perpetrator/s, confirmation of dual citizenship or place of residence, the Parties shall, within three (3) months from the date of obtaining knowledge of the perpetrator/s, inform the other party thereof.

4. After reviewing the initial data and information, the Parties shall successively transfer to each other copies of evidence from the files in order of priority agreed and determined by the State Attorney General of the Republic of Croatia /Chief Prosecutor of the Prosecutor's Office of BiH for the purpose of rendering the decision to undertake criminal prosecution.

5. The State Attorney General of the Republic of Croatia/Chief Prosecutor of the Prosecutor's Office of BiH may, on the basis of their own findings, request the delivery of copies of files and other documents relating to the criminal offenses listed under Article 1 of this Protocol.

#### FORM AND CONTENT OF THE REQUEST FOR TRANSFER OF EVIDENCE

6. Following the review of the information, evidence and other writs and data, the competent State Attorney's Office or the Chief Prosecutor of the Prosecutor's Office of BiH may undertake the necessary procedural actions required to inform about the rendering of a decision referred to in Article 7 of the Protocol.

7. After reviewing copies of the files, data and documentation the Party in question shall, within a reasonable time, inform the other Party in writing about its decision regarding the undertaking of criminal prosecution and shall submit a request for the transfer of the evidence in the specific case.

8. The written information referred to in Article 7 of the Protocol shall be delivered to the State Attorney General of the Republic of Croatia or the Chief Prosecutor of the Prosecutor's Office of BiH. The information may indicate which original documents are sought and which should be certified copies as well as which verifications are required prior to the transfer of the evidence and the time frame in which the evidence should be delivered.

## EXECUTION OF THE REQUEST

9. The Parties are obliged to transfer data and evidence as soon as possible, and no later than three (3) months from the date the request referred to in Article 7 of the Protocol is submitted.

If there are any reasons as to why it cannot be done during the above-mentioned time frame, the Other Party shall be informed in writing thereof.

10. At the request of the Party deciding to undertake criminal prosecution, the Other Party shall obtain all the necessary documents, make the necessary verifications, provide certified copies of documents and undertake all other required actions.

The Party at whose territory the criminal offense of War Crime was committed shall provide certified evidence to the Other Party, unless such delivery is strongly opposed by witnesses - the injured parties whose statements are relevant to the successful completion of the criminal proceedings.

The fact that one Party has undertaken criminal prosecution shall not prevent the Party at whose territory the criminal offense of War Crimes was committed to prosecute the perpetrator found on its territory or to request the person from other states, until the case is a matter already adjudicated (*res iudicata*).

11. The Party Delivering the evidence or other information per this Protocol shall notify the Other Party thereof immediately after receiving new evidence or information.

## INFORMATION ON THE STATUS OF THE CASE

12. The Party Receiving the information and evidence per this Protocol shall, at the request of the Other Party, keep it informed about the status of the case.

The Party Requesting the status report may always inform the interested persons about its content, if the Party Delivering the evidence agrees to it.

Each Party completing the final procedure shall inform the other about it without delay.

The Party may, if it deems necessary, report on the status of the case to the Other Party even when not requested to do so.

## USE OF INFORMATION AND DOCUMENTS

13. The Party Receiving the information or request shall take all necessary actions to ensure that the contents of the request, evidence and other writs remain secret, if the Other Party requests such secrecy.

14. If the execution of the request will or may lead to a breach of secrecy, Each Party shall inform the other thereof and act in accordance with its legal obligations regarding the disclosure of secret data and the relevant decision of the Court.

## LIMITATIONS IN THE USE OF INFORMATION AND EVIDENCE

15. Information, evidence and other data may not be used for any other purpose other than for making decisions within the criminal proceedings without the permission of the Party Delivering the evidence and other information.

16. Information relating to other persons may be delivered to other competent bodies only if the Party Delivering the information expressly authorizes it in writing, and if the law of the state in question allows such use.

17. Results of the verifications obtained in a particular case may subsequently be used by the State Attorney General of the Republic of Croatia/Chief Prosecutor of the Prosecutor's Office of BiH for all lawful purposes.

## PROVIDING RECORDS AND ESTABLISHING THE IDENTITY OF PERSONS

18. The State Attorney's Office of the Republic of Croatia/Chief Prosecutor of the Prosecutor's Office of BiH may request to be provided with reports from publicly available records of the Other Party, which are important for the proceedings. These reports shall be submitted as originals or certified copies.

19. The State Attorney General of the Republic of Croatia/Chief Prosecutor of the Prosecutor's Office of BiH to whom the request is filed may transfer copies of all the records that are not publicly available only to the extent and under the same conditions which would make them available to the competent authorities of that State and providing that it does not conflict with the laws of the state complying with the request.

20. The competent State Attorney's Office or the Chief Prosecutor of the Prosecutor's Office of BiH shall undertake activities within their authority to establish the identity and the location of a person through its competent police forces in accordance with the laws and regulations of their respective states.

## RETURN OF EVIDENCE AND OTHER DATA

21. If possible and if a Party to whom the request or information was submitted so requests, the original documents and other original materials that were delivered shall be returned.

22. The return of original documents and other materials that were delivered may be postponed, if necessary, due to requirements of criminal or civil proceedings.

23. The Party to whom the information or request is submitted may seek to protect the interests of third parties in connection with the documents, materials or other information.

## COMPLIANCE WITH THE PRINCIPLES DETERMINED IN THE EUROPEAN CONVENTION ON PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS AND OTHER INTERNATIONAL AGREEMENTS

24. The Parties hereby confirm that their mutual relations and specific actions within this Protocol shall be in accordance with the principles laid down in the European Convention on

Protection of Human Rights and Fundamental Freedoms, European Convention on Mutual Assistance in Criminal Matters and the Agreement between Bosnia and Herzegovina and the Republic of Croatia on Legal Assistance in Civil and Criminal Matters.

#### FINAL PROVISIONS

25. This Protocol shall enter into force on the date of its signature.

26. Each Party may terminate this Protocol by delivering a notice in writing to the other Party three (3) months in advance.

27. This Protocol shall be subject to amendments and supplements at any time if the Parties thereto consent to do so.

Signed in *Sarajevo*, on *June 3, 2013* in two copies, both in Croatian and the official languages of Bosnia and Herzegovina - Bosnian, Serbian and Croatian, where all texts are deemed as being equally valid.

For the State Attorney's Office  
of the Republic of Croatia

State Attorney General  
of the Republic of Croatia

Mladen Bajić

For the Prosecutor's Office  
of Bosnia and Herzegovina

Chief Prosecutor of the Prosecutor's Office  
of Bosnia and Herzegovina

Goran Salihović