

PROTOCOL

of the Prosecutor's Office of Bosnia and Herzegovina and the Office of the War Crimes Prosecutor of the Republic of Serbia on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide

Noting the fact that Bosnia and Herzegovina and Republic of Serbia have signed and ratified the Agreement on Legal Assistance in Civil and Criminal Matters and the Agreement on Amendments and Supplements to the Agreement on Legal Assistance in Civil and Criminal matters, as well as the fact that the two are Parties to the Convention of the Council of Europe on Mutual Assistance in Criminal Matters, the Prosecutor's Office of Bosnia and Herzegovina and the Office of the War Crimes Prosecutor of the Republic of Serbia (hereinafter: Parties) have, in the aim of implementing these international documents, expressed their willingness to enhance cooperation in the criminal prosecution of perpetrators of War Crimes, Crimes against Humanity and Genocide (hereinafter: War Crimes).

Expressing confidence and readiness to bring to justice all perpetrators of war crimes, and considering the fact that criminal offenses of War Crimes are not subject to statute of limitations, the Prosecutor's Office of Bosnia and Herzegovina and the Office of the War Crimes Prosecutor of the Republic of Serbia express their willingness to promote cooperation and information exchange in the sphere of criminal offenses of war crimes committed on the territory of both countries.

Respecting the rights of victims and bearing in mind that the common goal of the Prosecutor's Office of Bosnia and Herzegovina and the Office of the War Crimes Prosecutor of the Republic of Serbia is to bring those responsible for war crimes to justice.

Convinced that improvement of direct cooperation, exchange of evidence, other documents and information shall contribute to the common interests of the prosecutor's offices and the States as well, in terms of ensuring improved efficiency in investigation, evidence collecting and punishment of all perpetrators of war crimes.

Mindfull of the fact that both Bosnia and Herzegovina and the Republic of Serbia prohibit extradition of own nationals, the Parties believe that the exchange of evidence, and provision of assistance and cooperation in further collection of required evidence and information may serve to accomplish the goal, which is to have the perpetrators of war crimes brought to justice and punished, while acting in accordance with the constitutional and legal provisions of Bosnia and Herzegovina and the Republic of Serbia related to the jurisdiction and mutual legal assistance in criminal matters, as well as the Council of Europe's Convention on Mutual Assistance in Criminal Matters, and have therefore reached an agreement on the following issues:

SCOPE OF APPLICATION

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

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

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 criminal proceedings, until the final 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 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, particularly in cases of dual citizenship of suspects, accused or indicted persons.

In the event of subsequent detection of the perpetrator (perpetrators), the Parties shall, within three months from the date of obtaining knowledge of the perpetrator (perpetrators), inform the Chief Prosecutor/the War Crimes Prosecutor.

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 Chief Prosecutor and the War Crimes Prosecutor.

5. The Chief Prosecutor or the War Crimes Prosecutor may, on the basis of their own findings request 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. After reviewing copies of files, data and documentation the Party in question shall, within a reasonable time, inform the Other Party about its opinion regarding the cases, as well as about the possibilities of undertaking criminal prosecution in the particular case and shall submit a request for the transfer of evidence in the specific case.

7. Following the review of the information, evidence and other writs and data the Chief Prosecutor / the War Crimes Prosecutor may undertake the necessary procedural steps required to render an opinion referred to in Article 6 of the Protocol.

8. The written information referred to in Article 7 of the Protocol shall be delivered to the Chief Prosecutor / the War Crimes Prosecutor. The information may indicate which documents should be original and which certified copies, which verifications are required prior to transfer of evidence and the time frame in which the evidence should be delivered.

EXECUTION OF REQUEST

9. The Parties are obliged to transfer data and evidence as soon as possible, and no later than two months from the date the request referred to in Article 7 of the Protocol is submitted, unless it requires undertaking of additional procedural actions.

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.

10. At the request of the Party deciding to undertake criminal prosecution, the Other Party shall obtain all 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 criminal proceedings.

The fact that one Party is undertaking 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 countries, until the case is a matter already adjudicated (*res iudicata*) of which it shall be informed by the Other Party through delivery of an original final decision or its certified copy.

11. The Party Delivering the evidence or other information per this Protocol shall notify the Other Party 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.

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

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

LIMITATIONS IN USE OF INFORMATION AND EVIDENCE

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

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 country in question allows such use.

17. Results of the verifications obtained in a particular case may subsequently be used by the Chief Prosecutor / the War Crimes Prosecutor for all lawful purposes.

PROVIDING RECORDS AND ESTABLISHING THE IDENTITY OF PERSONS

18. The Chief Prosecutor / the War Crimes Prosecutor may request to be provided with reports from publicly available records of the other State Party, which are important for the proceedings. These reports shall be submitted as originals or certified copies.

19. The Chief Prosecutor/the War Crimes Prosecutor 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 country and providing that it does not conflict with the laws of the country complying with the request.

20. If a request is submitted to establish the identity and the location of a person through competent police services, the Chief Prosecutor/the War Crimes Prosecutor shall do whatever is possible, in order to comply with this request and in accordance with the laws and regulations of his/her country.

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 materials that were delivered shall be returned.

22. 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 INTERNATIONAL AGREEMENTS

24. The Parties hereby agree that mutual relations and specific actions 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 Serbia on Legal Assistance in Civil and Criminal matters.

FINAL PROVISIONS, COMMENCEMENT AND TERMINATION OF APPLICATION

25. The Party to this Protocol, which no longer wants to participate, shall notify the Other Party about it in writing three months in advance.

26. Amendments and Supplements to this Protocol may be drafted with the written consent of the Parties. With the consent of the Parties to the Protocol other services may be incorporated into this Protocol.

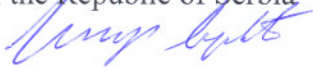
27. This Protocol shall enter into force on the date of its signature.

The above listed provisions constitute the agreement reached between the Chief Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina and the War Crimes Prosecutor of the Republic of Serbia.

Signed in Serbian and official languages of Bosnia and Herzegovina - Bosnian, Serbian and Croatian, Cyrillic and Latin script, where all texts are deemed as being equally valid.

31. I 2013

War Crimes Prosecutor
of the Republic of Serbia



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

