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Lejla Gačanica and Caroline Finkeldey

CALLING WAR ATROCITIES BY THEIR RIGHT NAME

Regulating a Ban on Denial, Trivialisation, Justification
or Condonation of Genocide, the Holocaust, Crimes
against Humanity or War Crimes



forumZFD – TRIAL International

Sarajevo, 2019

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FOREWORD

After conflict, war, after war crimes, gross human rights violations, after killing of civilians and torture and detention, it is of crucial importance for a society to reemphasize what is “right” and what is “wrong”. To get things right for its own sake, for the sake of survivors, its citizens, its future. In democratic countries, courts are “speaking justice”, establishing beyond reasonable doubt what has happened and who is to be held responsible.

In Bosnia and Herzegovina, severe atrocities have been committed – genocide, ethnic cleansing, rape, mass killings, detention camps, torture, the whole spectre of any possible war crime and crime against humanity. Many have been tried before international and national courts and will be tried in the future. Facts have been established in courtrooms beyond any reasonable doubt. The war in Bosnia and Herzegovina is probably one of the best documented because of all the trials, all the evidence collected, all the witnesses having testified, because of the immense documentation stored and made available online.

However, this is not enough. It is not enough when (some) war crimes are tried at courts, outside or inside the country, but the sentences, the “messages”, are ignored, neglected, denied in public and findings of the courts are not acknowledged.

Forum Civil Peace Service (forumZFD) and TRIAL International as two organisations active in Bosnia and Herzegovina in the field of transitional justice and dealing with the past, are deeply worried about the public discourse and political atmosphere in Bosnia and Herzegovina and the neighbouring countries. Not only is there no political will to seriously and constructively face the past and deal with it, to build a state based on the rule of law, democratic values and knowledge of “right and wrong”, based on respect for the judiciary and democratic institutions, based on respect for victims and survivors. Not only is it possible to bluntly deny that war crimes, established during court proceedings, happened, or happened in that severity, that sentenced war criminals are glorified without any sanctions – state institutions, politicians, official representatives are often actively participating in denial, trivialising, manipulation of narrative, publicly legitimizing denial, perpetuating the conflict.

We truly believe that a society needs to face its past, how painful this might be, in order to build a present and a future different from the times of conflict and war. We also believe that, if not accepted out of moral responsibility, out of a feeling of moral obligation, laws need to ensure that denial is sanctioned, that justice cannot be selectively accepted or rejected. We are not the first or the only actors to urge for sanctioning of denial. However, sometimes those requests refer to genocide only. For us, it is of crucial importance that the denial, the trivialising of all war crimes established as such by courts is sanctioned. That no convicted war criminal can be glorified, no matter by whom. That victims, no matter the background, are recognized, that the wrongdoing, no matter where it was committed, is accepted, understood and treated as wrong, without excuses, without a “but...”

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INTRODUCTION

In the increasingly strained national rhetoric in Bosnia and Herzegovina (BiH), a particular place of contention is the denial of crimes committed during the 1992-1995 war. In addition to the denial of the Srebrenica genocide (which draws its conceptual foundation from the judgments of the International Criminal Tribunal for the former Yugoslavia (ICTY)), many other crimes are being denied – both in terms of responsibility and contestation that they had happened at all. In this entire post-conflict process of “negotiating the past”,¹ a battle is in fact led to determine what will be preserved as “truth”, rarely or never taking into consideration the victims that these national narratives are built upon. Memory does not only reconstruct the past, it also organises the experience of the present and the future.² Therefore, it is relevant who and how controls the narrative about the past – what is “preserved” in it and what “forgotten” (suppressed). Thus, the BiH battle for “truth about the past” includes contestations about the crimes being committed, by whom, in what scope, and under whose responsibility. Entangled in these theses are the questions of collective responsibility and collective guilt, the ICTY activities and reception of the Tribunal’s judgments, (lack of) effective transitional justice mechanisms, as well as the continuous maintenance of the polarized perception of a divided society, incapable and uninterested to work on peace building and institutional process of facing the past. In consideration of the need to regulate denial or diminishing of committed crimes, an important element are the reasons behind the denial.

Is giving the name of a convicted war criminal to a public institution a justification or condonation of committed and convicted war crimes? Does an inscription in the public space (names of streets, memorials, monuments) of judicially proven crimes and criminals from the most recent war also constitute denial, justification or condonation of crimes? Do flags and symbols glorify that which should be condemned? And how does all this affect the building of peace and trust in BiH?

The purpose of this paper is to explore to what extent the BiH society and state are open to regulating a ban on denial, trivialisation, justification or condonation of genocide, the Holocaust, crimes against humanity or war crimes. On the other hand, what emerged during the research as a counterweight to the above is the question of how needed is a regulation of denial ban. “Following the physical destruction of a people and their material culture, memory is all that is left” (Hovannisian, 1998). This paper examines the causal relationship between the importance of regulation and its realistic implementation in BiH, i.e., how the sources of denial, justification and trivialising are being renewed, what they serve and how does that impact the social situation of permanent conflict maintained through a state of “frozen conflict”. Positioned between possibility and need, a legal ban on denial, trivialising, justification or condonation of genocide, the Holocaust, crimes against humanity or war crimes still seems to be one of the issues in BiH having no simple solution.

¹ There are three dominant narratives about the past in BiH – they are contrasting and mutually exclusive and are the reason for the past to still be perceived as open and to be kept in tension of the key points from the past – of which denial of committed crimes (in all three narratives) is among the fundamental ones.

² Jan Assmann, *Kulturno pamćenje: Pismo, sjećanje i politički identitet u ranim visokim kulturama*.

1. METHODOLOGY

The goal of this paper is to explore the possibility of regulating a ban on denial, trivialisation, justification or condonation of genocide, the Holocaust, crimes against humanity or court established war crimes in BiH. The paper is divided into three thematic units – BiH context, an overview of comparative regulation practice in other countries, and examination of opportunities and models for BiH. The research questions were:

- Does denial exist in BiH? How and when does it manifest?
- What is the practice in other countries – do regulations exist and of what kind?
- Why is it important to regulate a ban on denial, trivialisation, justification or condonation of genocide, the Holocaust, crimes against humanity or war crimes?
- What are the potential proposals for regulation in BiH?

The research included a desk review, overview of available reference literature, media analyses and semi-structured interviews. The period covered by the research are the past two years in terms of media monitoring and the questions asking the interviewed experts to give an assessment of the situation in BiH. The interviews were oral (with the exception of written answers of those collocutors we were unable to hold an live interview with) and carried out with legal experts, transitional justice experts, victims' associations, relevant civil society representatives, and journalists. A total of fifteen semi-structured interviews were carried out based on predeveloped questionnaires (see Annex 1).

1.1. Scope of the analysis

The importance of addressing regulation stems from the continuous discourses which imply public denial, trivialising, justification or condonation of genocide, the Holocaust, crimes against humanity or court established war crimes in BiH. This is evident during the entire post-Dayton period, even more intensified in the analysed time period. The expected weakening of war narratives with time has not yet happened in BiH, and the conflicting narratives continue to cause tensions in the divided BiH society. Lustration is another open issue with its

still incomplete regulation by means of law in 2019. All the above indicates a lack of systemic approach to the issues that include, but are not limited to, transitional justice, peacebuilding, facing the past. Where trivialisation, condonation and justification are frequent and lack the social responsibility for reinstating peace, making them thus normalised and even institutionalised, it is necessary to work on a different approach (to the simple counting on social awareness as a regulatory mechanism) in their prevention. The model for changing such political and social environment should be sought in regulation – a legal ban of denial, trivialisation, justification or condonation of genocide, the Holocaust, crimes against humanity or court established war crimes. This is no novelty; regulation practices exist in other countries and BiH, due to the lack of moral responsibility, should fill this void by a law.

1.2. Terminology

Although the majority of analyses specifically deal with genocide denial and its consequences, it is important to underline that this paper, given the complexity of the conflict in BiH and criminal justice effects, includes broader terminology and covers also crimes against humanity and war crimes. At the same time, there is a distinction between the terms “denial” and “negation”: Maria Karlsson suggests in her paper *An Argumentative and Comparative Analysis of Western Denial of the Holocaust and of the Armenian Genocide* that denial is a term used to describe the phenomenon of denial as a whole, whether it is represented by absolute denial, trivialisation or relativisation. Negationism, on the other hand, is mainly used in reference to absolute denial, where the reality of genocide is negated altogether. No genocide, no victims, no perpetrators, no gas chambers, and no death marches. In this definition, “denial” has the possibility of being both absolute and partial, while “negationism” remains at all times the absolute negation of the reality of genocide.

For the purpose of defining denial, trivialisation, justification or condonation of genocide, the Holocaust, crimes against humanity or war crimes, the working definition of the Holocaust denial can serve as a start:

Holocaust denial is discourse and propaganda that deny the historical reality and the extent of the extermination of the Jews by the Nazis and their accomplices during World War II, known as the Holocaust or the Shoah. Holocaust denial refers specifically to any attempt to claim that the Holocaust/Shoah did not take place. Holocaust denial may include publicly denying or calling into doubt the use of principal mechanisms of destruction (such as gas chambers, mass shooting, starvation and torture) or the intentionality of the genocide of the Jewish people.³

This definition can be applied in the case of Ruanda or Srebrenica, as it includes two important aspects: denial of factually established elements and contesting the intent to commit a crime. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide provides a definition of genocide.⁴

Genocide denial is an attempt to deny or trivialise facts on the scope and severity of genocide as a phenomenon. Denial of crimes is directly related to revisionism. René Lemarchand defines denial as contestation of genocide happening to the lack of proven intent to destroy a particular group. Revisionism, on the other hand, implies the creation of new circumstances related to genocidal violence and devising new motivations in which victims often turn out to be the perpetrators. Both denial and revisionism imply leaving out certain details and manipulating historical facts to portray the victims as aggressors and relieve the perpetrators. Stephen Cohen points to three possible forms of denial with respect to what is being denied: literal, interpretive and implicatory. Literal denial implies that knowledge or facts are manifestly negated: "nothing happened", "there was no massacre". In interpretive denial, the facts are not negated but are assigned a different meaning: "it was an exchange of population" or "collateral damage" (not massacre). Implicatory denial refers to denying or trivialising its significance or implications: "the

murders have nothing to do with me". Adam Jones further identifies various denial strategies: the crimes were self-defence, diminishing the scope of the massacre, stating the lack of genocidal intent, indicating the lack of clear or direct orders, describing oneself and/or group as pure and thus incapable of mass atrocities or, in contrast, as the true victims. Denial – the final state of the ten stages of genocide as defined by Gregory H. Stanton – happens in every stage and continues after the genocide.⁵ As Maria Karlsson claims, denialism (which refers to a broader, orchestrated, ideological, political and historical denial structure) includes an agenda, worldview, argumentative traditions and structures, motives and advocates.⁶

A serious deficiency in the public and political discourse emerges in the qualification of regulation of this matter as it is often reduced exclusively to genocide denial (in Srebrenica). Genocide is a part of what happened during the war and a part of what is being denied, trivialised, condoned and justified today. However, it is necessary to view the regulation through all the forms that are relevant here: trivialisation, justification, condonation also of crimes against humanity and war crimes. Only with a single regulation of all the above forms can we influence the change of the current practice.

Glorying war criminals,⁷ rejection/concealment – lack of condemnation, naming public spaces after

⁵ For more, see: <https://scholarcommons.usf.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1369&context=gsp>

⁶ <https://www.cfe.lu.se/sites/cfe.lu.se/files/cfewp45.pdf>

⁷ Such as public awards, acknowledgments, naming public institutions, and similar. An example is awarding decorations to Biljana Plavšić (who confessed to committing war crimes and was convicted to 11 years of imprisonment), Momčilo Krajišnik (convicted to 27 years of imprisonment) and Radovan Karadžić (convicted by first instance judgment to 40 years of imprisonment for genocide).

³ <https://www.holocaustremembrance.com/hr/node/122>

⁴ For more, see: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/02/Konvencija-o-sprečavanju-i-kažnjavanju-zločina-genocida.pdf>

convicted war criminals or qualified wartime events, overt revisionism⁸ are manifestations of primarily trivialisation, followed by justification or condonation of genocide, crimes against humanity or war crimes. It is important to regulate all these forms, in addition to genocide, as legally prohibited acts, to prevent the denial or affirmation of crimes committed in BiH.

In order to address a denial ban, it is necessary to establish the source of validity of facts whose denial is being prohibited. Denial bans refer to events, responsibilities or data clearly established as (historical) facts. More specifically, facts are, in light of regulation, events and data established in legitimate court proceedings⁹ (see section 3.3. *Comparative practice* for more details).

Another term important for the understanding of genocide denial was introduced by Janja Beč-Neumann: post-genocidal period. What the entire region is experiencing, according to her, is the third phase of genocide: "We are now in the phase when the killings stopped, but fears remain, as well as hatred."¹⁰ By labelling the region as post-genocidal, as one marked by the experience of genocide, Stanton's final stage concept is repeated – the failure to face trauma, individual or collective, is an ideal basis for repetition.¹¹

⁸ Such as revitalisation of Herzeg-Bosnia.

⁹ Here meaning courts with a clearly established jurisdiction for war crime cases in BiH whose judgments are binding: Security Council Resolutions 808 of 22 February 1993 and 827 of 25 May 1993 established the International Criminal Tribunal for the former Yugoslavia (ICTY) to prosecute the perpetrators of crimes against humanity and war crimes. Given Resolution 1503 of 28 August 2003 on termination of ICTY's activity, war crimes departments have been established in the Court and Prosecutor's Office of Bosnia and Herzegovina (BiH) with the task of continuing the work on war crimes cases in accordance with the highest international criminal law and human rights standards. Furthermore, courts and prosecutor's offices in the Entities and the Brčko District also have the jurisdiction to prosecute these cases (source: National War Crimes Strategy).

¹⁰ <http://www.prometej.ba/clanak/vijesti/ziveti-u-postgenocidnom-drustvu-2246>

¹¹ <https://www.slobodnaevropa.org/a/1108340.html>

2. THE CASE OF BOSNIA AND HERZEGOVINA: NEGATION, DENIAL, TRIVIALISATION

The first pillar of transitional justice is the so-called criminal justice, which implies the prosecution of those responsible for crimes. The purpose of this pillar is to establish the liability of the perpetrators of crimes, above all of those most accountable, so that the principle of criminal liability and the judicial/forensic truth can be established, thus preventing the denial that the crime had occurred.¹² The concept of transitional justice is not exhausted through this first pillar i.e. mechanism; on the contrary, it implies truth commissions; mechanisms aimed at delivering restorative justice for victims, including reparations, the construction of monuments and memorial centres, and mechanisms aimed at achieving peace and security, including amnesty and forgiveness, constitutional changes and institutional reforms. Seeking to establish legal liability and correct the wrongs done to the victims, transitional justice provides for the recognition of victims' rights and fosters trust among the citizens and enhances democracy¹³ Retributive justice (courts) - most commonly applied in post-conflict countries, including BiH - itself is not sufficient to meet the goals of transitional justice.¹⁴

Interviewees in this survey agreed that transitional justice in BiH has not actually taken root (either conceptually or actually). There has never been a comprehensive understanding of transitional justice mechanisms,¹⁵ hence we cannot talk about the transitional justice process but rather about the attempts to act within that spectrum of mechanisms (the successes of which were quite patchy).¹⁶ Not only was there lack of understanding, but also there was a lot of ignorance and abuse, said Murat Tahirović, president of the Association of Genocide Victims and Witnesses. Essentially, BiH engaged in prosecution only, and it often did so in a very substandard manner, argued Denis Džidić, editor of BIRN. As a result, the authorities of Bosnia and Herzegovina, as well as other segments of society, felt completely relieved of responsibility in these matters, said Refik Hodžić, an independent strategic communications consultant in the field of transitional justice. The victims still live the war and

cope with the remaining consequences.¹⁷ As far as reparations are concerned, the progress has been made, but it is very limited, given the time elapsed since the end of the war. BiH still faces the lack of a systemic solution, and the progress made so far pertains to the partial resolution of reparations, not a comprehensive approach for all victims in BiH.¹⁸ The memorialisation was reduced to religious memorialisation.¹⁹

The previous section explains what should be the basis for determining the content of a ban (what must not be denied, trivialised, justified or condoned) - the judgements of the ICTY and national courts. However, perhaps the biggest source of problems for BiH is the contesting of judgements. "A hero, not a criminal", is what each ethnic group claims, thus closing the door on the possibility of accepting the judgements and the realities so established. "The judgments were relevant only during the pronouncement of the sanction. It seems to me that we support court decisions only when in our interest, whatever it is", says Midhat Izmirlija, an assistant professor of Theory of Law and State at the Law School of the Sarajevo University.²⁰ Hodžić notes that war narratives have been recognized as the most potent fuel or as a smokescreen behind which the population has been kept all these years". So transitional justice failed to leave the courtroom in its first pillar, thus creating room for manipulations, contestations, and myths upon which to build identities in a divided society. Is it

¹² *Vodič kroz tranzicijsku pravdu BiH.*

¹³ ICTJ 2009, citirano prema D. Delaye.

¹⁴ *Ibid.*

¹⁵ ZNI06.

¹⁶ ZNI15.

¹⁷ ZNI07.

¹⁸ When it comes to reparation as a social right, in 1999 the Federation of BiH adopted a Law on Basis of Social Protection, Protection of Civilian Victims of War and Families with Children, which was amended in 2004, 2006 and 2009, while Republika Srpska adopted a Law on Protection of Victims of War Torture in 2018. Also, the recent practice of parties filing compensation claims and courts awarding non-pecuniary damage to war crimes victims in criminal proceedings represents very significant progress. In 2015, for the first time, the Court of Bosnia and Herzegovina awarded damages in criminal proceedings for wartime sexual violence. Despite several attempts (in 2006, 2011 and 2017), the state-level law on torture victims has not yet been adopted. As BIRN stated, the country's state-level *law on torture victims is being obstructed by an ethnically-based political dispute* (for more, see: <https://balkaninsight.com/2019/05/06/zrtve-ratne-torture-u-bih-napustene-od-strane-drzave/?lang=sr>).

¹⁹ ZNI06.

²⁰ *Ibid.*

actually worse today than it was before? Edina Bećirević, a full professor of security studies at the Faculty of Criminalistics, Criminology and Security Studies argues that the narrative about war is more present today than ever before in post-Dayton BiH.²¹ Zlatica Gruhonjić, president of Banja Luka CDTP, believes that the situation and rhetoric are getting even worse. In the past, there was more willingness and faith to do something and determine what had happened.²² “What we live now is not peace, there is no common vision for the future”, concludes Hodžić.

As the EU accession talks take place, victims' associations remind of the outstanding issues and the unfinished (or systemically non-existent) process of transitional justice. In response to a letter sent by 12 victims' associations to more than a thousand domestic and foreign addresses²³ seeking implementation of the Radovan Karadžić judgment for genocide and crimes against humanity (by enacting a law banning denial of genocide and crimes) and revocation of decorations awarded to Karadžić and other convicted war criminals by the Republika Srpska, Federica Mogherini, High Representative of the Union for Foreign Affairs and Security Policy and Johannes Hahn, provided the following answer²⁴:

International criminal justice not only contributes to ending impunity but also to spreading trust and reconciliation within Bosnia and Herzegovina as well as in the entire region. The EU expects all political leaders to support the decisions of international tribunals and to refrain from any statements or acts that cast doubt on the independence or impartiality of the adjudication process. (...) There is no place in the EU for inflammatory rhetoric, let alone for the glorification of war criminals from any side. Denial or revisionism contradict the most fundamental European values.²⁵

²¹ ZNI10.

²² ZNI11.

²³ The letters were sent to all Members of the European Parliament and the leadership of the European Commission and the Council of Europe, Pope Francis, the United Nations, the Helsinki Commission of the United States Congress and other human rights organizations and institutions.

²⁴ Izvjestilac Evropskog parlamenta za BiH Cristian Dan Preda uputio je također pitanje Evropskoj komisiji šta namjerava učiniti kako bi se zaustavilo negiranje bosanskohercegovačkog genocida i veličanje ratnih zločina u Republici Srpskoj.

²⁵ <http://ba.n1info.com/Vijesti/a354076/Mogherini-i-Hahn-odgovorili-na-pismo-bh.-udruzenja-zrtava-genocida.html>.

Regardless of the position of the European Union, the practice of denial and trivialisation has continued in BiH. The situation is further complicated by the existence of at least three parallel, contradictory narratives. War narratives are present today not only in public space but also on a personal level (family, personal relationships, jobs).²⁶ There is not a strong enough movement to work on peacebuilding and dealing with the past, while the individual initiatives are sometimes limited by projects and political will, claim our interlocutors.²⁷ The experiences of the interviewed civil society representatives speak about the repercussive responses to the actions by civil society.²⁸

If we “read” the case of BiH, denial or trivialisation are visible in different places of political activity and, consequently they are imprinted on many places across divided communities: the mural of Ratko Mladić in Nevesinje; the dormitory in Pale named after Radovan Karadžić; decorations for Radovan Karadžić; crime rehabilitation;²⁹ displaying photographs of convicted war criminals in public assemblies; establishing associations and organisations bearing the names of war criminals; existence and legal operation of fascist organisations;³⁰ gathering support for convicted

²⁶ ZNI06, ZNI04, ZNI11.

²⁷ ZNI03, ZNI07, ZNI15.

²⁸ Example of Štefica Galić: “I reported the banned Herzegovina flags that were hoisted around the city two years ago; the police refused to take my report, claiming that the flag in question was not the flag of Herzeg-Bosnia but of the Croatian people. A police officer called me a bitch in the middle of the office of the Mostar Ministry of the Interior. He has not been punished in any way” (ZNI09). Seida Karabašić from the Prijedor Women Association Izvor shared a similar experience: “We have been sanctioned by local authorities for using the word genocide during the commemoration of the 20th anniversary of Prijedor crimes. Crime against humanity has been proven by judgements, but not genocide, and this is why we must not use that word. In a special Assembly meeting, a conclusion was rendered blacklisting eight organisations against which criminal charges would be brought, but the charges have not been pressed so far. We have been banned from Municipal financing” (ZNI03).

²⁹ Such as the rehabilitation of Draža Mihailović and the Chetnik movement.

³⁰ “In BiH there are 16 Chetnik associations registered with the RS courts”: <https://www.klix.ba/vijesti/bih/u-bih-registrovano-16-cetnickih-udruzenja-svakom-rjesenje-izdato-u-sudovima-rs-a/190311042>

war criminals;³¹ commemorating the anniversary of the establishment of Herzeg-Bosnia,³² but also a very direct denial of the crimes.³³ In BiH, “genocide denial evidently happens in its continuity”, as noted by Enis Omerović, assistant professor of international law at the Law School of the Zenica University.³⁴ Authorities do not respond to these events³⁵ even when they constitute prohibited hate speech. The attitude is the same concerning other crimes committed in BiH, in addition to genocide, but in a way, these other crimes fade into the background (see Chapter 4.1). Such discourses are used on all sides to homogenise each ethnic group,³⁶ with the lack of empathy.

31 In 2017, on the eve of the second-instance judgment in case Prlić and others, a prayer meeting was organised for the Hague indictees in Mostar. The Hague Tribunal sentenced six former Herzeg-Bosnia officials (so-called the Herzeg-Bosnia Six – Jadranko Prlić, Slobodan Praljak, Bruno Stojić, Milivoj Petković, Valentin Ćorić, and Berislav Pušić) to a total of 111 years in prison for crimes committed against Bosniaks in 1993 and 1994 during the war in BiH. The Court also established the existence of a joint criminal enterprise the aim of which was to ethnically cleanse the territories of BiH from non-Croats and to annex them to Croatia.

32 The anniversary of the establishment of so-called Herzeg-Bosnia is commemorated every year, and in 2019 Božo Ljubić, president of the General Council of the Croatian National Congress said that the Croatian Republic of Herzeg-Bosnia is a pledge, a symbol, and foundation of the Croatian constitutionality, and a signpost showing the direction in which to seek solution to the constitutional and institutional crisis in BiH (for more, see: <https://www.klix.ba/vijesti/bih/obiljezavanje-godisnjice-tzv-herceg-bosne-ostre-reakcije-i-kritike-velicanja-zlocina/190829066>).

33 Like the 2019 statement made by the Chair of the BiH Presidency (at the time of the statement) Milorad Dodik: “There was no genocide in Srebrenica, it’s a myth, just like the Kosovo one.”

34 ZNI14.

35 ZNI11.

36 Refik Hodžić indicates that “the Serbian narrative implies complete and open revisionism as a dominant policy of not only the RS political parties but serves as a cohesive factor within the Serbian people to suppress any questioning of political decisions from the era of Milošević”. At the same time, “the Bosniak politics very clearly utilises the fact that the Bosniak people have been the target of systematic crimes, and instead of addressing the consequences of these crimes, including genuine care for the victims, they are interested in using those facts about the suffering of the Bosniak people to homogenise their own people and somehow maintain the status quo by using victims to make unrealistic demands on the political leadership of Serbia, Croatia, and the international community, which will never be met (such as changing BiH’s state arrangement as a way of annulling crimes), thus spinning the heads of their own people, their own electorate, which constantly expects something to happen.”

3. BANNING DENIAL BY MEANS OF LAW

Regulating particular conduct (incrimination) i.e., its ban implies regulation of the conduct by law, including a description of the conduct (what are the elements of the conduct), how is such conduct banned (what is banned) and sanction (punishment for acting against the prohibition). The absence of denial thus has its foundation in the healing processes of society and is necessary for true and lasting peace. This is because denial, trivialisation, justification or condonation have profound consequences for both victims and perpetrators, maintaining a climate of permanent conflict.³⁷

The following section will outline the theoretical framework for prohibiting denial, trivialisation, justification or condonation of genocide, the Holocaust, crimes against humanity and war crimes, and the regulation practice in different countries.

3.1. Why is a legal ban needed?

Banning genocide denial by law is a way to condemn historical crimes, but also a way to restore the dignity of victims. Laws against genocide denial, when properly implemented, rather than establishing a single orthodox version of the past, prosecute for verbal assault on the dignity of the victims of these crimes.³⁸ Laws against genocide denial also play an important role in democratic societies because they are a preventative measure against racism and xenophobia and can prevent the promotion of ideologies used by repressive governments. They also protect democratic institutions from political extremists.

A frequent argument one can hear in the discussions about laws prohibiting the denial of genocide and crimes against humanity is that these laws restrict freedom of expression, as guaranteed by the Charter of Fundamental Rights of the European Union. As stated in the Charter, restriction on the freedom of expression of those who deny may be acceptable to protect the fundamental rights of others.³⁹ According to Bećirević, absolute freedom

of speech does not exist in the positive law of BiH or in any progressive-liberal state, because absolute freedom of speech could threaten others.⁴⁰ The European Court of Human Rights in its judgment of 24 June 2003 against Roger Garaudi, a denier from France, gave an authoritative response on restricting freedom of speech by prohibiting genocide denial noting that the justification of a pro-Nazi policy could not be allowed to enjoy the protection afforded under Article 10 of the ECHR.⁴¹

A Memory Law⁴² can also help build a sense of community instead of mutual suspicion and distrust. Rather than contributing to the myths of glorious past and the sense of moral and political superiority, they may help achieve “a self- understanding that each nation’s complex past consists of the moments of glory and those which are shameful, that no nation is either a collective villain or a hero”⁴³.

⁴⁰ For more information on the case Poggi, see: https://www.swissinfo.ch/eng/srebrenica-massacre_swiss-politician-cleared-of-racial-discrimination-charges/44645500

⁴¹ In an interview, ZNI12 Memišević said that the denial of clearly established historical facts such as the Holocaust is exempt by Article 17 from the protection of Article 10. The court held that the applicant in his book *The Founding Myth of Israeli Politics* questions the reality, extent, and seriousness of these historical events relating to the Second World War that are established, such as the persecution of the Jews by the Nazi regime, the Holocaust and the Nuremberg Trials. According to the court judgement, denying crimes against humanity is, therefore, one of the most serious forms of racial defamation and incitement to hatred of Jews. It undermines the values on which the fight against racism and anti-Semitism are based and constitutes a serious threat to public order. Besides, it is noted that such acts are incompatible with democracy and human rights because they infringe the rights of others, while their proponents indisputably have designs that fall into the category of aims prohibited by Article 17 of the Convention.

⁴² Memory Law regulates the interpretation of a historical event and shows the legislator's or court's preference for a particular narrative about the past. In the process, competing interpretations can be reduced, set aside, or even banned. Bans on denying the Holocaust and genocide are memory laws *stricto sensu*. Such laws imply a criminal sanction for denying and trivialising historical events that constitute crimes.

⁴³ Belavusau et al, 2017: 19.

³⁷ Richard G. Hovannisian defines denial as the final stage of a genocidal process and the erasing of the memories of the victim group: “Following the physical destruction of a people and their material culture, memory is all that is left and is targeted as the last victim... Violence adjusts to the explanation, and history is reshaped to fit the contemporary agenda.”

³⁸ Baranowska and assoc. 2017; Belavusau et al. 2017.

³⁹ Baranowska and assoc. 2017, Gliszczyńska-Grabias 2013.

3.2. European Union: regulation and challenges

Council Framework Decision 2008/913/JHA introduced the obligation on the member states to harmonise the legal ban on the most serious forms of hate speech, including the denial of genocide and other crimes.

Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law was adopted after seven years of negotiations. The objective of the Framework Decision is to protect the rights of individuals, groups, and society in general by making punishable certain forms of racism and xenophobia while respecting the fundamental rights to freedom of expression and association. The Framework Decision mandates the member states to make the following intentional conduct punishable:

publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court; or

publicly condoning, denying or grossly trivialising the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945.

directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group.

The member states may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting. Moreover, a member state may commit a criminal offence by denying or grossly trivialising the crimes referred to in the text above only if such crimes have been established by a final decision of a national court of the member state and/or an international court, or by a final decision of an international court.

Member states were required to take the necessary measures to comply with the provisions of this Framework Decision by 28 November 2010 and transmit to the General Secretariat of the Council and the Commission the text of the provisions transposing these into their national law by the same date. The Council had to, by 28 November 2013, assess the extent to which member states have complied with the provisions of this Framework Decision.⁴⁴ The transitional period ended on 1 December 2013 and until this date, the Commission had no powers to initiate infringement proceedings under 256 TFEU, since the framework decisions were made before the entry into force of the Lisbon Treaty (European Commission, 2014).

In April 2015, a group of Members of the European Parliament asked the Commission whether it had initiated infringement proceedings against the member states which did not comply with the Council Framework Decision (European Parliament, 2015a). The Commission replied that it was currently conducting bilateral dialogues with the member states to ensure the full implementation of the Framework Decision (European Parliament, 2015b). However, to this day (October 2019), not all European member states have introduced laws banning genocide denial.

3.3. Comparative practice in regulation

Genocide denial is prohibited by law in most countries, however, the content of what is strictly forbidden varies from country to country. In Austria, Germany, and Israel only Holocaust denial is forbidden. The Czech Republic, Hungary, Lithuania, and Poland have explicitly banned the denial of Nazi and Communist crimes. Latvia explicitly prohibits the denial of Nazi and Communist crimes, but denying other genocides and crimes against humanity is also regarded as illegal. Bulgaria, Croatia, Italy, Liechtenstein, Malta, Montenegro, Portugal, Spain and Switzerland prohibit denial of any genocide. Belgium, Cyprus, France, Luxembourg, Romania, Slovakia and Slovenia also prohibit denial of any genocide, but Holocaust denial is also explicitly mentioned.

⁴⁴ Source: Gliszczyńska-Grabias, p. 48.

In most countries, a law prohibiting the denial of genocide is part of national criminal laws. However, there are exceptions. In France, the so-called Gayssot Act is an amendment to the Press Act. The Austrian 1945 Prohibition Act is a subsidiary law, and therefore outside the Criminal Code.

Sanctions for genocide denial include imprisonment and, in some countries, community service (Latvia) or a fine (Belgium, France, Germany, Lithuania, Luxembourg, Poland). The most common sentence in Europe is imprisonment of up to three or five years, while some countries, e.g. France and the Czech Republic also impose a minimum prison term of one month and six months, respectively. The sanctions are most severe in Austria, where a prison sentence of one to ten years - in severe cases, up to twenty years - may be imposed.

Laws prohibiting genocide denial in the different EU member states differ not only in terms of punishment but also in the scope and the prohibited terms. Germany and Austria decided to explicitly ban only the Holocaust denial, but they do not prosecute denial of other genocides, such as Srebrenica, under their law banning genocide denial. However, both states have transposed laws on public incitement, meaning that someone may be prosecuted for denying Srebrenica, but this will be treated as a different offence. Some Central European countries have decided to include in their laws against genocide denial the negation of communist crimes, which usually include the denial of the Holocaust, but not other genocides or crimes against humanity. This is the case in the Czech Republic, Hungary, and Lithuania. Denial of other genocides and crimes against humanity is also punishable in Latvia and Poland. Some countries, such as France and Luxembourg, explicitly prohibit Holocaust denial, but their laws on prohibiting genocide denial also include any genocide, war crime or crime against humanity. The fourth group makes no mention of the Holocaust, but it prohibits the denial of genocide, crimes against humanity and war crimes in general.

Another important difference in the laws against genocide denial is the definition of crimes provided for in the laws. Some countries, such as Italy and Slovakia, refer to Rome Statute of the International Criminal Court, while others, such as Luxembourg, refer to their national legislation. Furthermore, there are legislations, such as those of Luxembourg and Cyprus, which decided to include a paragraph stating that the genocide denial or war crime must be recognized by international or national courts.

Some states also restricted the application of their laws against genocide denial by making it a prohibited conduct only if carried out in a manner likely to incite to hatred or violence. This is the case in most countries, including Spain and Portugal.

Neighbouring countries of Bosnia and Herzegovina - Croatia, Montenegro, and Serbia - have also introduced laws prohibiting genocide denial. However, it seems that the introduction of these laws was at least partly politically motivated.

In 2011, Croatia introduced a new provision into its Criminal Code, Article 325 on public incitement to violence and hatred. This Article prohibits the public condoning, denial or gross trivialisation of genocide, crimes of aggression, crimes against humanity and war crimes directed against a group of people or a member of such a group defined by reference to their race, religion, national or ethnic origin, descent or colour. However, this offence is punishable only if it is likely to incite violence or hatred against such a group. If so, the court may impose a sentence of up to three years in prison. The law is, therefore, in line with the Framework Decision of the European Council, but lacks a reference to the Holocaust or crimes committed during the Second World War. Yet, until 2017, this Article of the Criminal Code was never applied. In an investigative article by Balkan Insight published in 2017, the Croatian Ministry of the Interior claimed that the police have never filed a report on genocide denial. Out of 22 local attorneys general interviewed, only three claimed to have received reports on genocide or Holocaust denial. These three reports have been filed by different human rights and refer to Holocaust denial. At the time of publication, the attorney in one of the cases decided not to initiate the proceedings, while the prosecutors in the other two cases have not yet made the decision.⁴⁵

The situation in Serbia is different: the law against genocide denial was passed in 2016 and foresees imprisonment sentences ranging from six months to five years. Article 387-5 of the Criminal Code includes public condoning, denial or gross trivialisation of genocide, crimes against humanity and war crimes committed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin. However, there are two important restrictions. First, the law is restricted only to offences that are likely to incite violence or hatred

⁴⁵ Opačić, 2017.

against such a group. Second, and a more severe restriction, is that it applies only to those crimes established by the Serbian courts and the Criminal Court. This means that the decisions of the ICTY and the International Court of Justice are excluded from the ban. Hence, denying the Srebrenica genocide in Serbia is legal.⁴⁶ Unfortunately, no information has been found on whether and how many genocide denials reports have been filed in recent years.

There is very little literature on the law against genocide denial in Montenegro. Montenegro introduced a ban on genocide denial in 2010, six years before Serbia. Article 370-2 of the Criminal Code of Montenegro makes the acts of public condoning, trivialising crimes of genocide, crimes against humanity and war crimes carried out in a way likely to incite hatred or violence against a group punishable. However, this only applies to crimes "established by final and enforceable judgements of a court in Montenegro or an international criminal court".⁴⁷ However, it remains unclear what is meant by an international criminal court.

⁴⁶ Muslimović et al. 2019.

⁴⁷ Kosopov, 2017, p. 173.

4. IS THERE A SOLUTION FOR BIH?

The issue of regulating a ban on denial in BiH encounters numerous challenges. The first challenge, perhaps the most serious one, is the existence of three formal war narratives, widely accepted and mutually exclusive, all of which deny, contest, or glorify as heroic deeds the crimes committed and established as such by courts. Such regulation is made even less plausible by how Bosnia and Herzegovina is organized internally as a state of two Entities, which are often found to be strongholds of hard line opinion-makers who are reluctant to accept the state-level regulation as a necessity.

Two initiatives have thus far been raised at the state level to legislate against the denial of genocide, both of which unsuccessful. The first legislative proposal was made in 2011 under the title *Proposed Law on the Ban of Denial, Trivialisation, Justification, or Condonation of the Holocaust, Crimes of Genocide and Crimes against Humanity*, submitted by Azra Hadžiahmetović and Beriz Belkić (MPs in the BiH Parliament, Party for Bosnia and Herzegovina). Through four articles the proposed law provides definitions of the terms *the Holocaust, genocide and crimes against humanity*; it describes prohibition and sanctions. Full professor at the Faculty of Economics of Sarajevo University, Azra Hadžiahmetović, says that the real reasons for this initiative were to appease the social climate by introducing regulation into this particular area in order to ensure that the events in question get their genuine historical and political meaning, and to create a vital precondition for BiH society to move forward from the current situation.⁴⁸ The subject matter of prohibition in this law focused on those groups of crimes that are defined by a number of relevant and universally accepted provisions of international law, which were recognized and confirmed as such by the International Military Tribunal (Nuremberg Tribunal), by other international courts and tribunals, and ultimately by the Court of Bosnia and Herzegovina. Interestingly enough, from the terminological point of view, this law makes clear references to “targeted denial”, but then again it also includes criminalisation of dissemination of materials that deny, substantively trivialise, attempt to justify or condone the Holocaust, the crime of genocide or the crime against humanity. Fines (between BAM

1,000 and BAM 10,000) and imprisonment (eight days to three years) were foreseen as punishment under this proposal.⁴⁹ The Constitutional and Legal Affairs Committee found that the proposed law complied fully with the Constitution and the legal system of Bosnia and Herzegovina. However, after several attempts, the law was not adopted on account of “lacking sufficient Entity majority vote”, which actually meant a strong opposition coming from the Republika Srpska MPs, two-thirds of whom voted against it. Hadžiahmetović points out that the discussions about the law make it clear that “there is still no sufficient degree of willingness and maturity” among MPs, and that the details were never discussed because the law was voted down only due its substantive relevance for this particular matter (denial of genocide and war crimes). What was happening with this law has actually coincided with what was happening with other laws too, says Hadžiahmetović, simply because we still do not live in a multi-ethnic society, but in a bowl of multiple multi-ethnic societies: “We still breathe with the lungs filled with the air of ethnicity. And as long as we are not yet ready to leap over this, it is highly unlikely that any such initiatives – the initiatives that would generally contribute to repairing the rifts in the social fabric of BiH State –will ever find their way to get to solid ground”.⁵⁰

In addition to the attempts to provide regulation through separate laws, there was also an attempt to legislate any public condonation, denial or any serious attempt to diminish the crimes of genocide, the Holocaust, crimes against humanity, war crimes against civil population, by making amendments to the BiH Criminal Code. The law amending the BiH Criminal Code proposed in 2009 provided that Article 173 of the Criminal Code, which incriminates war crimes against the wounded and the sick, should be followed by Article 173a), which reads as follows: “Whoever publicly condones, denies or seriously belittles or diminishes the crimes of genocide, the Holocaust, crimes against humanity, war crimes against civilian population established

⁴⁸ ZNI01

⁴⁹ Proposed Law on the Prohibition of Denial, Trivialisation, Justification, or Condonation of the Holocaust, Crimes of Genocide and Crimes against Humanity, available on: <https://www.parlament.ba/law/LawDetails?lawId=733>.

⁵⁰ ZNI01

by final and binding judgments rendered by any national or international tribunal or court, shall be punished by imprisonment for a term between six months and three years.” Article 173 (b) reads as follows: “Whoever disseminates or otherwise makes available to the public – through computer, media, electronic or other systems – any material that denies, substantially trivialises, attempts to justify, or condones, the Holocaust, crime of genocide or crimes against humanity, established as such in final and binding judgments rendered by any national or international tribunal or court shall be punished by imprisonment for a term between six months and three years.” This law was not adopted either, as two-thirds of the Republika Srpska MPs voted against it.⁵¹

Yet another proposal was submitted by Denis Bećirović, an MP in the House of Peoples of the BiH Parliamentary Assembly from the Social Democratic Party (SDP), to the Parliament of Bosnia and Herzegovina in 2016 in the form of a *Proposed Law Banning Public Denial, Trivialisation, Justification or Condonation of the Holocaust, Genocide Crimes and Crimes against Humanity*. This proposal also makes references to denial of judgments (delivered by the International Court of Justice and the International Criminal Tribunal for the former Yugoslavia) and foresees a range of fines and imprisonment sentences. Unlike the previous one, this law offers definitions for *public denial, trivialisation, justification and condonation*. Besides the offences like dissemination of materials, this proposal introduces the offence called “denial of judgments”, prescribing sanctions both against citizens and separately against official and responsible persons in BiH institutions.⁵² The proposed sanctions are nearly on par with those defined in the 2011 proposal. Nonetheless, this law was never adopted. Then, the same MP tabled a proposal of amendments to the BiH Criminal Code addressing this issue in 2017, which was prepared as a result of “concerted efforts made together with dozens of different associations, and the bill received a general majority of votes but failed to receive an entity majority of votes from

the smaller BiH Entity”.⁵³ The amendments to the BiH Criminal Code proposed a ban on public denial, but also on diminishing of the crimes of genocide, the Holocaust, and crimes against civilians, which have been confirmed as such by a number of final judgments rendered by various international and national tribunals and courts.⁵⁴ Like the proposal of a separate law, this proposal of amendments also included the offence of judgment denial.

Zlatko Miletić, an MP in the House of Peoples of the BiH Parliamentary Assembly, submitted to the Parliamentary procedure a proposal of amendments to the BiH Criminal Code in June 2019. The proposal of amendments foresees the punishment of imprisonment for a term between six months and five years for persons who have committed the offences of public instigation or incitement to ethnic, racial or religious hatred by publicly denying or justifying the acts of genocide, crimes against humanity or war crimes established by a final ruling of the International Court of Justice, ICTY, or any national court. Furthermore, it foresees sanctions for persons who commit the same offence by deciding to give recognitions, awards and privileges to convicted war criminals or by deciding to name any public facilities – such as streets, squares, parks, bridges, institutions, human settlements and populated areas – after any war criminals convicted by any such final decisions. The explanatory note attached to the proposal provides that any public denial of judgments rendered by the ICTY or any national courts with jurisdiction to try war crimes, genocide or crimes against humanity, or any decisions naming any public facilities after the persons convicted of war crimes, genocide or crimes against humanity are deeply offending and frightening for the victims, thus contributing to further destabilisation of the political situation in BiH and bringing its peoples further away from complete reconciliation.⁵⁵

During its previous term of office in the Federation

⁵¹ ZNI14

⁵² Proposed Law Banning Public Denial, Trivialisation, Justification or Condonation of the Holocaust, Genocide Crimes and Crimes against Humanity of BiH, available on: <https://www.javnasprava.ba/bih/Zakon/1305>.

⁵³ Proposed Law Prohibiting the Public Denial, Trivialisation, Justification or Condonation of the Holocaust, Genocide Crimes and Crimes against Humanity in BiH, available on: <https://www.javnasprava.ba/bih/Zakon/1305>.

⁵⁴ Bill Amending the BiH Criminal Procedure Code, available on: <https://www.javnasprava.ba/bih/Zakon/1415>.

⁵⁵ <http://fronta.ba/zlatko-miletic-predlozio-dopunu-krivi-cnog-zakona-bih-kaznjavati-negiranje-genocida-i-davanje-imena-javnim-objektima-po-ratnim-zlocincima/>

Parliament, *Naša stranka* political party tabled a *Draft Law Banning the Denial of Genocide, the Holocaust and Other Crimes against Humanity*. The proposal was adopted in the House of Representatives of the Federation Parliament (in 2016), but it never appeared on the agenda of sessions of the Federation House of Peoples. Despite an unexpectedly great deal of resistance experienced this time in the FBiH (e.g. SDA MPs argued that the proposal violates the freedom of thought and speech), as claimed by Kojović, *Naša stranka* will continue to insist on pushing this proposal through and having it adopted eventually. Although they believe that this law should be adopted at the state level, they find that if such a thing cannot be done on that particular level, such efforts should than be shifted to wherever they might appear to be successful.

All proposed texts of the law were highly similar in terms of their content and very concise. Several articles provide regulation to respond to the following questions: what acts shall be banned (ban on denial, trivialisation, justification or condonation); in what scope (the Holocaust, genocide crime and crime against humanity established by final judgments of international and/or national courts)⁵⁶, what specific forms of acts shall be banned (dissemination of materials, judgement denial); and the foreseen sanctions. The explanatory notes attached to these proposals are also quite similar,⁵⁷ they suggest the same motives and rely on practices of other countries. However, the failure of these initiatives is attributed exclusively to the lack of political will.⁵⁸

Currently, the Criminal Code of the BiH Federation⁵⁹ is the only code that prescribes the act of *Inciting National, Racial or Religious Hatred, Discord or Hostility* as a criminal offense, in its Article 163 (5) (as amended in 2014):

⁵⁶ The explanatory notes attached to the 2016 Draft Law provides that “the proposed law does not allow any far-reaching, off-the-cuff or arbitrary assessments of the existence of prescribed crimes, and it contains the necessary precision that guarantees the protection of all relevant rights of any potentially accused individuals”.

⁵⁷ Like: “Incrimination of Genocide Denial is Necessary to Prevent Future Genocide” (Bećirović, 2016), which is based on these comparative models with regard to sanctions, etc.

⁵⁸ ZNI01, ZNI08, ZNI15.

⁵⁹ FBiH Criminal Code, “FBiH Official Gazette” Nos. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14, 76/14. & 46/16

Whoever publicly incites and inflames ethnic (national), racial or religious hatred, discord or hostility among constituent peoples and others who live in the Federation (...) by public denial or justification of genocide, crimes against humanity or perpetrated war crimes established under a final and binding decision of the International Court of Justice (ICJ), the International Criminal Tribunal for the former Yugoslavia (ICTY) or any national court, shall be punished by imprisonment for a term between three months and three years.

There is a deficiency of this regarding the conditionality between denial and justification of a crime and incitement to hatred, discord, or hostility (i.e. if denial has not resulted in the latter, there will be no criminal offence – since denial alone is not regarded a criminal offence). Over the past five years, the FBiH Prosecutors’ Office has not dealt with any case that could even remotely be brought into connection with paragraph (5) of this Law.⁶⁰ Accordingly, it is hardly possible to speak of the existence of a “prescribed criminal offence of denial”. Following the initiative of *Naša stranka* to adopt a separate law on denial ban, Kojović has nevertheless pointed out that the implementation of the currently applicable article of the FBiH Criminal Code is completely impracticable in the court practice, as it constitutes a so-called conditional article: “It is just like saying that throwing flower pots out of the window is prohibited only if an innocent bystander gets hit – so, we want to ban throwing of flower pots.”⁶¹ Even when a specific legal formulation exists, such as this one in FBiH, Memišević outlines that “it would be necessary not only to criminalise denial by law, but also to implement the law successfully, or, in other words, prosecute the deniers”.⁶²

During this research, following an initiative of 12 victims’ associations, on 13 May 2019 the House of Representatives of the FBiH Parliament adopted a *Resolution Concerning the Judgments of the International Criminal Tribunal for the former Yugoslavia and the International Residual Mechanism for Criminal Tribunals*. For the most part, the

⁶⁰ According to information received from the FBiH Prosecutors’ Office, letter no. A-283719 of 29.5.2019, courtesy of ZDF Forum.

⁶¹ ZNI08.

⁶² ZNI13.

Resolution is dedicated to Srebrenica, whereas in paragraph (6) it “calls for the development of educational and cultural programmes that promote understanding of the causes of war atrocities and raise the levels of awareness with regard to the need to promote peace”; in paragraph (9) it calls for adoption of laws that would ban denial of genocide, the Holocaust and other crimes, and prohibit glorification of crimes and criminals; and in paragraphs (11) and (12) it urges the authorities to revoke the decisions taken to name various institutions, facilities, streets, etc. after convicted war criminals and repeal the decisions awarding decorations to the convicted war criminal Radovan Karadžić and other individuals convicted of genocide and war crimes.⁶³

4.1. Civilizational or political issue

One of the questions addressed to all interviewees was to explain why in their view we still do not have the regulation in this domain in BiH, or why the initiatives undertaken thus far have proved to be unsuccessful. An entirely unanimous answer was: political will or, more specifically, the lack of political will. Among other reasons singled out by the interviewees were the unwillingness to face the past,⁶⁴ the lack of appropriate and implementable transitional justice mechanisms in BiH,⁶⁵ the insufficient period of time that has passed since the end of the inter-ethnic armed conflict.⁶⁶ Denial, says Hodžić, is anything but spontaneous – it is highly calculated because its aim is to split the ethnic narratives, dig deep down and create such a wide gap between the peoples that cannot possibly be bridged.⁶⁷ But if we juxtapose the reasons in favour of adopting these legal provisions with the reasons against their adoption, we will actually see a clash between two concepts: denial ban as a civilizational issue vs. denial ban as a mere political issue.

Many interviewees⁶⁸ argued that regulation of denial, diminishing, or condonation ban is a

⁶³ “FBiH Parliament Adopts Resolution on Judgment against Radovan Karadzic”, <https://vijesti.ba/clanak/446571/na-osnovu-presude-karadzicu-parlament-fbih-usvojio-rezoliciju-udruzenja-porodica-zrtava>.

⁶⁴ ZNI03, ZNI04, ZNI09, ZNI14.

⁶⁵ ZNI02, ZNI06, ZNI07, ZNI14.

⁶⁶ ZNI14

⁶⁷ ZNI15

⁶⁸ ZNI02, ZNI05, ZNI06, ZNI08, ZNI11, ZNI15.

civilizational issue.⁶⁹

“It is important for every country, it is a fundamental civilizational issue. It is all the more important in BiH, I daresay, just because we have done so little in other transitional justice spheres and because it is now too late for many victims to get other forms of satisfaction.”⁷⁰

Yet another identified factor is the process of dehumanisation,⁷¹ which unfolded in the 1990s and necessitates discussion:

“The primary thing in the process of wound-healing and creating a better society is to understand what had actually happened. And to understand how it was possible to completely dehumanise one group by using media and politics in order to enable perpetration of mass war crimes.”⁷²

According to Galić’s words, the banning of denial by law is extremely important in order to “finally acknowledge the truth about the war in our country, punish war criminals, individual perpetrators – rather than to let the an entire ethnic group carry a stigma of crime – and also to make sure that such crimes would never be repeated.”⁷³ Yet, one may wonder how realistic it is to expect a consensus and adoption of the legal provisions banning denial in the current socio-political situation?

In her account about 2011, when the first law-making initiative ended up unsuccessfully, Hadžiahmetović highlights that even then this law was a matter of political decision, rather than of human dimension (noting in particular that none

⁶⁹ Interestingly enough, several interviewees in the interview emphasize that they wished “we were not such a society as to place ourselves in a position where we would ever need laws in order to prohibit something like this” (ZNI01, ZNI07, ZNI08). On the other hand, there is an emphasis on the magnitude of the committed crimes and their effects that have characterized many generations in BiH, as well as the systemic denial that “is not allowing us to move forward.” This specific gap helps to recognize the regulation as a solution to something that we are unable to cope with as a society.

⁷⁰ ZNI02.

⁷¹ ZNI08, ZNI15 – dehumanisation repeats itself even today, where others are often reduced to the level of a problem that needs to be eliminated.

⁷² ZNI08.

⁷³ ZNI09

of the Republika Srpska political parties were willing to support this law, as they understood that by adopting the law they would actually “admit” that genocide had happened). Later initiatives, she believes, were successful in obtaining individual support, but the politics appears to be a blocking factor that would not allow adoption of any form of this regulation at the state level. On the Federation level, some reluctance to legislate in this area is visible. She makes her argument in favour of the notion that, regardless of social and civilizational reasons, the ban of crime denial by law still remains a mere political issue in practical terms.

It is worth emphasizing at this point that in data collection and analysis, it was observed that genocide denial in BiH is most often thematised as a matter of chosen trauma,⁷⁴ which is quite understandable given the scale of this crime and its continued contestation. However, other (remaining) war crimes committed in BiH are simply disappearing from sight, just as the very fact that their denial, trivialisation and condonation would also be covered by the legal ban. Therefore, most media reports and a number of interviews have made exclusive references to Srebrenica genocide in light of the debate on denial legislation.

4.2. Possible models of regulation

According to the views expressed by interviewees, regulation of this matter in BiH should pertain to the ban of denial, trivialisation, public condonation and serious diminishing of genocide, the Holocaust, crimes against humanity and war crimes against civilians. There is an agreement about the way in which we make precise and comprehensive arrangements, not only with regard to actions but also to criteria that would define what genocide, the Holocaust, war crimes against humanity actually are – these terms should be determined as such by final judgments of international and national courts.⁷⁵

⁷⁴ The term *chosen trauma* refers to a shared mental representation of the large group’s massive trauma experienced by its ancestors at the hands of “enemy group” (Vamik).

⁷⁵ For genocide, crimes against humanity and other crimes against Bosniaks from Srebrenica committed in July 1995, the ICTY and various national courts have sentenced 46 individuals to about 700 years in prison, plus four life sentences. The most recent convicting judgment was handed down in late March 2019 in The Hague against former RS President Radovan Karadžić, who was sentenced to life imprisonment for the Srebrenica genocide and other crimes (source: <http://detektor.ba/belgic-law-of-best-negiranja-genocide-impossible-to-region/>).

Opinions of (legal) experts about the form in which the denial ban should be legislated are divided; while some believe that this area should be legislated within the criminal code (at the state level)⁷⁶, others argue that this area requires a separate law.⁷⁷ Yet others, on the other hand, believe that both formulations are equally acceptable, but only at the state level.⁷⁸

Those who advocate the model of addressing this matter through a separate law believe that the most appropriate solution would be to introduce a separate law to ban the denial, diminishing and condonation of a crime, since these provisions could be systematically elaborated and would protect the fundamental rights and freedoms. A separate law would be required simply on account of the events that happened in the cultural, psychological and historical sense of the word.⁷⁹ In the event of adoption of the criminal code amendments, this would then not be the case; consequently, the protection of fundamental rights and freedoms would be applicable indirectly. On the other hand, those who advocate the model of addressing this matter within the criminal code itself believe that this regulation can find its place in the section governing criminal offenses related to hate speech, and that consequently the adoption of a separate law is quite unnecessary.⁸⁰

Another important question is – what is the particular level where this regulation should be adopted? There is a general agreement about the opinion that this regulation is required at the state level, and/but differences arise during an assessment whether it would be appropriate to have this regulation at the entity level only. Those who have a favourable opinion about the entity-level regulation claim that the entity-level regulation is indisputable as an alternative to what cannot otherwise be legislated at the state level.⁸¹ “The whole point is as follows: when someone comes to the Federation and says that there was no genocide in Srebrenica, such an individual would be immediately incarcerated. Yet, we need to embark upon this process open-mindedly and fairly, this is not a competition to prove whose justice statistics would score a victory.”⁸² On the other hand, some interviewees believe that entity-level regulation is by no means a

⁷⁶ ZNI12, ZNI13, ZNI03.

⁷⁷ ZNI01, ZNI10.

⁷⁸ ZNI14, ZNI09.

⁷⁹ ZNI01, ZNI08.

⁸⁰ ZNI12.

⁸¹ ZNI13, ZNI08, ZNI07.

⁸² ZNI08.

viable solution, because it opens up a number of possibilities for different provisions, i.e. the likelihood that such regulation would be put in place in only one entity (FBiH),⁸³ thus making the absurdity of the entire situation in the RS yet deeper. If it is meant to be legislated at the entity-level, the question is who will then prosecute those crimes.⁸⁴ As far as the implementation of potential legal solutions is concerned, we should follow the framework of the 2008 Decision and the (earlier) practice of European countries, especially those in whose territory the genocide was perpetrated. The most commonly imposed forms of punishment are a fine or imprisonment for a term between one and three years, with the state-level courts having jurisdiction to prosecute the denial.⁸⁵ Regarding the standards that would be covered by these legal solutions in BiH, the practice of other countries can certainly be useful in defining them, which is what was also used by the previous initiatives

However, legal experts have highlighted here another relevant dimension of regulation: can it be effective and efficient? They tend to believe that it would be an extremely bad situation to adopt laws that would not be implemented – “this undermines trust in the state system, primarily in the rule of law.”⁸⁶ Laws in BiH are generally not respected or implemented.⁸⁷ At the same time, warnings are issued about how much the general public and BiH citizens actually know about judicial facts and judgments (beyond the most commonly mentioned crimes, such as the Srebrenica genocide)⁸⁸ and how to bridge that gap.

It is specifically in this particular regard that another viewpoint emerged during this research which does not see its stronghold in regulation, but in the societal resolution of the problem of denial, diminishing or condonation of war crimes. The advocates of this idea⁸⁹ believe that laws as norms will not solve the problem in BiH, but that the approach to this matter should come from (civil) society and obtain its articulation through the education system and dialogue platforms, perhaps even use the same channels as those used by politics to bring about change: to that effect, it would be necessary to “get engaged in the deconstruction

of denial through constant circulation of facts in the public discourse”, says Hodžić. It is noteworthy at this point that those who advocate the model of legislating this matter also believe that it would be necessary to work on this parallelly through education, culture, media, rather than to address this problem through the law alone.⁹⁰

4.3. Possibilities of regulation in BiH

“None of the criminal codes have ever caused a complete eradication of crimes. Crimes continue to be perpetrated, regardless of the existence of a repressive legal norm. However, such legal solutions, i.e. norming, but also their complete indiscriminate implementation, would probably partly curtail such processes, or, in other words, we would then have an ‘adequate’ repressive form of the state’s legal response to such social phenomena”, says Omerović. The above concerns about the enforceability of the laws certainly do not invalidate the need for their adoption. On the contrary – if they are to be enacted, such an enactment will require a serious change in the social climate and the real concern here seems to lie in the fact that there is still no essential political maturity. BiH has not dealt with the past systematically, which makes this country a fertile ground for manipulations with war narratives.⁹¹ The question of maturation of the state (and society, as a cause-and-effect-relationship) enabling it to face the past and deal with the denial ban in general is a highly sensitive issue and cannot be calculated with accuracy – as we may even have missed the opportunity⁹² (as Gruhonjić claims – people are losing hope and seem to be sick and tired of stories about the past⁹³). This creates yet another dilemma – if no possibility for such maturation is in prospect, in a society whose victims are already leaving this world, but whose irreconcilable narratives still

⁸³ “Imposition of laws or their adoption in FBiH can only cement these narratives – non-constructively”, ZNI15.

⁸⁴ ZNI06, ZNI05, ZNI15.

⁸⁵ ZNI13.

⁸⁶ ZNI06.

⁸⁷ ZNI04, ZNI05, ZNI06, ZNI11.

⁸⁸ ZNI06, ZNI15.

⁸⁹ ZNI04, ZNI05, ZNI15.

⁹⁰ ZNI08, ZNI09, ZNI11, ZNI14.

⁹¹ Džidić goes on: “Had this issue been resolved, say, in 2008, when we did not have such strong and enflamed nationalist and populist narratives and when we had stronger left-wing parties, it is quite certain that many phenomena we are facing today, such as, for example, extolment and glorification of war criminals, would have been prevented. But even then it required international intervention, in a softer way, which could have been viable even without imposing any law”, ZNI02.

⁹² In an interview with DW, Vesna Teršelić says: “If we compare the situation in the society from ten years ago with the one today, we will see that the situation is getting worse. There is less and less critical reflection about liability for crimes.”

⁹³ ZNI11.

remain, one can rightfully wonder whether certain things should perhaps be “imposed” and triggered?

In BiH, this would then mean an intervention of the High Representative for BiH. Having in mind the Bonn powers, this is still an option. Yet, considering the usefulness of such an activity, opinions are once again divided – the use of Bonn powers has so far proved (for the most part) to be extremely useful, but the sensitivity of this matter could either really impose a need to address the currently petrified status quo or bring about a law that will not be implemented.⁹⁴ The OHR's passivity provokes criticism and resentment, while the OHR is still expected to take some action,⁹⁵ or in other words, “it should do its own part once we see that destructive forces have come on the scene, which are obstructing the implementation of both the Dayton Agreement and the international conventions that are an integral part of our constitutional order.⁹⁶ However, during the commemorative event on 11 July 2019, Valentin Inzko, High Representative for BiH, stated: “I will absolutely advocate the adoption of the Law against Genocide Denial in the Bosnian Parliament and we will surely have such a law, next year, amid the 25th anniversary of the Srebrenica genocide.”⁹⁷ Should BiH's progress towards the EU be made conditional upon the resolution of the issues of denial, diminishing, justification or condonation of genocide, war crimes and crimes against humanity, it will necessarily require some pressure or even a potential mechanism for the eventual adoption of this legislation.

Were the 2018 judgments really the genuine momentum for action? “It would be essential that we place the events from our recent past where they actually belong, verify them, qualify them, make their evaluation, rather than to put a full stop to them and

completely forget about them, but instead to move on and create preconditions that would save the future generations from carrying the burden of ours past on their own shoulders.”⁹⁸ Now we may get back to the same question from the Introduction: where exactly is BiH standing in between the needs and the possibilities to legislate the ban on denial, diminishing, and condonation of genocide and war crimes? We will realize that the answer lies in the realistic (im)possibility to adopt such legislation. “War narratives are absolutely the backbone of politics in BiH today - “⁹⁹ which summarizes the entire problem related to the possibility of legislating a ban on denial, diminishing or condonation of all crimes in BiH. In the current constellation of political relations in BiH, we can hardly expect that such a law will be adopted at the state level,¹⁰⁰ but it is possible that this will happen somewhere along the way in the process of BiH's EU accession.¹⁰¹ At the moment, it seems impossible to reinforce the ban normatively because of the lack of political will. The crimes are used for the purposes of daily politics, and this turns out to be a quite acceptable modus operandi for the representatives of some political options.¹⁰² “In this way, the societies are kept frozen in combat mode.”¹⁰³

⁹⁸ ZNI01.

⁹⁹ ZNI15.

¹⁰⁰ As Hodžić says, “This means taking away their (politicians’ – authors’ remark) primary political tools - it is very unlikely that they will agree to this”.

¹⁰¹ ZNI12.

¹⁰² ZNI13.

¹⁰³ Marion Kraske, *U borbenoj zoni*.

⁹⁴ Thus, Refik Hodžić points out that by imposing a law banning the denial of war crimes, we would have a situation where a violation of that law would be a decoration that people would proudly wear on their lapel; which means that such a law will never be implemented the way it should be implemented and would thus become counterproductive (ZNI15).

⁹⁵ A recent example comes from members of the Organizing Committee to mark 11 July 1995, on the 24th anniversary of the genocide against Bosniaks in the “UN Safe Zone” Srebrenica, who adopted a conclusion to send an initiative to the Office of the High Representative to impose a law against genocide denial.

⁹⁶ See: <http://ba.n1info.com/Vijesti/a337164/Becirovic-o-zakonu-o-zabrani-negiranja-genocida.html>

⁹⁷ See: <http://ba.n1info.com/Vijesti/a355813/Inzko-o-zakonu-o-negiranju-genocida.html>

CONCLUSION

Fragmentation of the existing legislation (the conditional Article in CC FBiH) and the atmosphere of political unsuitability of a ban on denying, trivialising, condoning or justifying genocide, crimes against humanity and war crimes put the regulation of this matter under “the impossible” umbrella in BiH. However, there are no other mechanisms or will of the political elites to grant this field a “moral”, social dimension. On the contrary: use of denial, trivialisation, condonation to maintain the permanent state of conflict is becoming part of mainstream political action. This in fact serves as an argument for the necessity of regulation – a ban.

The goal of adopting this regulation would be to end the culture of impunity: those responsible should be punished and this must not be subject to manipulation. The awareness of challenges informs the finding that regulation should exist in BiH – at its state level. Due to its importance, a separate law banning denial, trivialisation, condonation or justification of genocide, crimes against humanity and war crimes at the BiH level would constitute an appropriate regulation. A comprehensive legal framework is required: all forms must be included (denial, trivialisation, justification, condonation) and all crimes (genocide, crimes against humanity, war crimes) committed in BiH, i.e., those forms and crimes that keep being either contested or glorified in practice. Furthermore, parallel non-legislative activities should accompany the legislation, such as education, activism and local community work.

If we find the obstacles so high then we must think about where to start. A substitute to an ideal legal framework should not be a partial, incomplete legal solution but a focus on what is possible. If not the state level, entity-level laws can be acceptable in light of reducing the space that allows denial, trivialisation, condonation or justification of genocide, crimes against humanity and war crimes. This matter can equally well be regulated by (state or entity level) criminal codes. All these solutions are acceptable for as long as they substantially regulate the necessary – denial, trivialisation, condonation or justification of crimes established as such by courts whose jurisdiction this state recognises. In this way, arbitrariness, manipulation and reinterpretation are being avoided.

A note must be made here of the fact that a regulation will not resolve all the problems in this area: the implementation of laws (when they exist) is necessary, as is continuous work in these areas which will, in addition to the legal ban, awaken social awareness to a sufficient extent that the society will treat the ban as just one of the reasons to say “no” to denial, trivialisation, condonation or justification of established crimes.

RECOMMENDATIONS

GENERAL RECOMMENDATIONS

Adopt a separate law at the state level regulating a ban on denial, trivialisation, justification or condonation of genocide, the Holocaust, crimes against humanity or war crimes.

Adopt entity-level and Brčko District laws regulating the ban on denial, trivialisation, justification or condonation of genocide, the Holocaust, crimes against humanity or war crimes within standards relevant to BiH (judgments of national and international courts).

Parallel to the adoption of regulation, efforts should be made at lower levels in those fields in which denial, trivialisation, justification or condonation of genocide, the Holocaust, crimes against humanity or war crimes can be overcome, such as decision-making in local communities about names of streets, public institutions, monuments or other forms of memorialisation in public space.

RECOMMENDATIONS FOR ALL LEVEL INSTITUTIONS IN BIH

Without delay, consider the legal proposals addressing the ban on denial, trivialisation, justification or condonation of genocide, the Holocaust, crimes against humanity or war crimes.

Work towards establishing a dialogue on possibilities and contents of potential legislation.

Adopt laws on memorialisation and names of public spaces.

RECOMMENDATIONS FOR INTERNATIONAL INSTITUTIONS IN BIH

Pursuant to Council Framework Decision 2008/913/JHA and given the status of BiH accession to the EU, point to the importance of regulating the ban on denial, trivialisation, justification or condonation of genocide, the Holocaust, crimes against humanity or war crimes, especially having in mind the grave nature of consequences for peace and security caused by the current practice of both BiH Entities.

Thematised within the Peace Implementation Council the theme of continuous non-adherence to judgments passed by the Hague Tribunal and the International Residual Mechanism for Criminal Tribunals.

Ensure networking of initiatives and activities of the OHR, the Peace Implementation Council, civil society and political actors to overcome fragmentation and reinforce efforts to adopt regulation and ensure support to other processes leading to reconciliation.

CIVIL SOCIETY AND OTHER STAKEHOLDERS

Insist on the use of established facts (judgments of national and international court, resolutions) in public space.

Ensure a public space for dialogue by creating long-term platforms for activists, legal experts, educational institutions, government representatives.

Insist on institutional dealing with the past at the state/political level.

GLOSSARY

Genocide

Any of the following acts *committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group*, as such:

- a) killing members of the group;
- b) causing serious bodily or mental harm to members of the group;
- c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) imposing measures intended to prevent births within the group;
- e) forcibly transferring children of the group to another group.

Crimes against humanity

Any crime defined as such by international law and recognized as such by final and binding decision and/or judgments of the International Court of Justice, or any other international tribunal established by relevant international mechanisms. The Rome Statute stipulates that crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- a) Murder
- b) Extermination
- c) Enslavement
- d) Deportation or forcible transfer of population
- e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law

f) Torture

g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity

h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, in connection with any crime within the jurisdiction of the Court

i) Enforced disappearance of persons

j) The crime of apartheid

k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

War crimes

The notion of war crime is broad and it encompasses different acts committed during the armed conflict, including violations of the rules of war, grave breaches of the Geneva Conventions and their Additional Protocols, "violations of the laws and customs of war" as employed by the Tribunal for the former Yugoslavia and "exceptionally" serious war crimes as employed by the International Law Commission. War crimes fall under the general scope of international humanitarian law and can be defined as a branch of international law restricting the use of violence in armed conflict.

Denial

Any statement, act or activity, as well as any oral, written, audio, visual or electronic material that, regardless of its form or manner of presentation, denies the Holocaust, the crime of genocide or the crime against humanity.

Trivialisation/diminishing

Any act or activity, and in particular any oral, written, audio, visual or electronic material, regardless of the form or act of presentation or transmission, by which the Holocaust, the crime of genocide or the crime against humanity are being trivialised or diminished, with the aim of reducing the number of their victims or with the intention of presenting them as an event or group of events having positive, useful or acceptable characteristics and outcome.

Justification

Any statement, act or activity, and in particular any oral, written, audio, visual or electronic material, regardless of the form or act of presentation or transmission, which justifies the Holocaust, the crime of genocide or the crime against humanity.

Condonation

Any statement, act or activity, and in particular any oral, written, audio, visual or electronic material, regardless of the form or act of presentation or transmission, which condones the Holocaust, the crime of genocide or the crime against humanity.

Reparations

As one of the transitional justice mechanisms, reparations have the aim of providing pecuniary and non-pecuniary satisfaction to victims due to pecuniary/non-pecuniary damage inflicted upon them, as well as their resocialisation. United Nations General Assembly adopted in 2006 the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, underlining that victims of gross violations of human rights should be entitled to a remedy by the state. This right is an integral part of the reparations instrument which comprises four elements: restitution, rehabilitation, compensation and guarantees of non-repetition.

Transitional justice

The method applied in societies burdened with legacy of gross, mass and systemic violation of human rights and international humanitarian law as a response to those violations aiming to establish the rule of law, implement activities to mitigate the consequences of committed crimes and create conditions to promote peace and democracy (reconciliation), with the goal of preventing the repetition of the past. There are four main transitional justice mechanisms: criminal justice, truth telling, reparations and institutional reforms.



Forum Civil Peace Service (ForumZFD) is a German founded non-governmental organisation that is engaged in the Western Balkans through four country offices. ForumZFD Bosnia and Hercegovina aims at contributing to constructive public debates and initiatives on dealing with the past. Together with local partners, we support the development of sustainable structures for peacebuilding.

More on ForumZFD:

www.forumzfd.de/en/western-balkans



TRIAL International is a non-governmental organisation fighting impunity for international crimes and supporting victims in their quest for justice. The organisation provides legal assistance, litigates cases, develops local capacity and pushes the human rights agenda forward. TRIAL International has been present in BiH since 2008 and provides support to war time victims of serious human rights violations and their families in the quest for justice, truth and reparations.

More on TRIAL International:

www.trialinternational.org,

www.trial.ba

ANNEX 1

Interview questionnaire, legal experts

1. Full name, occupation/function
2. How would you assess the situation in BiH in the last two years with respect to narratives about the war (1992-1995) and peacebuilding?
3. What would you single out as especially “problematic” in BiH in this field?
4. In general, is it important to regulate a ban on denial, trivialisation, justification or condonation of genocide, the Holocaust, crimes against humanity or war crimes? Why?
5. Do you think that freedom of speech might be restricted by a legal ban in this field?

Please explain.

6. Are you aware of the initiatives in BiH attempting to regulate the denial ban?

Filter: Yes

- 6.1. What do you think about these initiatives? Were they complete; preuranjene; good?
 - 6.2. Why do you think they have not been adopted?
 - 6.3. Had they been adopted, do you think they would have prevented some of the events?
 - 6.4. Do we need a lustration law (i.e., regulation of lustration)? Why?
7. In your opinion, does BiH need a regulation banning denial, trivialisation, justification or condonation of genocide, the Holocaust, crimes against humanity or war crimes? For what reasons?
 8. In your opinion, what would be the appropriate solution for BiH?
What should the legal term “ban” include and what should be the measure for determining something a Šta bi pravni termin “zabrane” trebao obuhvatati i šta bi trebalo biti mjerilo utvrđenosti nečega kao crime/genocide (judgments?)?
What kind of a legal act would be best; at what level?
How would denial ban relate to hate speech?
 9. What would be the consequences of legal (criminal) denial ban in BiH?
 10. Any additional comments in relation to this topic?

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OTHER SECONDARY SOURCES

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- Letter of the FBiH Prosecutor's Office no. A-283/19 of 29 May 2019 (delivery of data upon Request for access to information), in possession of Forum ZFD

INTERVIEWS

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ZNI03	Seida Karabašić	President of Prijedor Women Association "Izvor"	5/6/19
ZNI04	Branko Ćulibrk	Director of Youth Centre "Kvart Prijedor"	5/12/19
ZNI05	Goran Zorić	Activist and independent researcher	5/12/19
ZNI06	Midhat Izmirlija	Assistant Professor of Theory of Law and State at the Law School of the University of Sarajevo	5/13/19
ZNI07	Murat Tahirović	President of the Association of Genocide Victims and Witnesses	5/21/19
ZNI08	Predrag Kojović	<i>Naša stranka</i> President	5/24/19
ZNI09	Štefica Galić	Editor of Tacno.net portal	5/28/19
ZNI10	Edina Bećirović	Full Professor of Security Studies at the Faculty of Criminalistics, Criminology and Security Studies	6/12/19
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ZNI15	Refik Hodžić	Independent strategic communications consultant in the field of transitional justice	7/9/19

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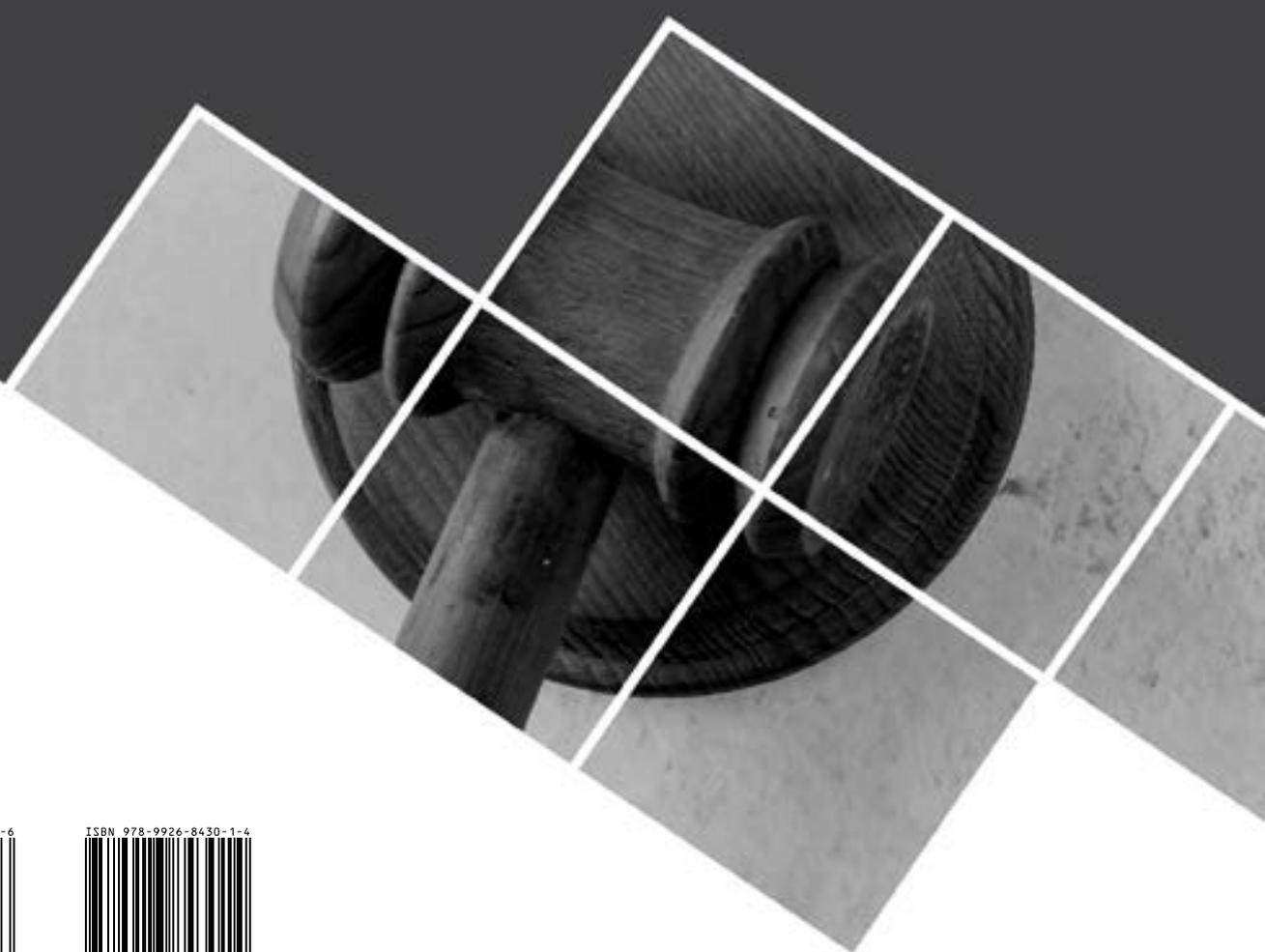
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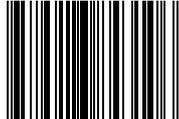
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