

# Denial of genocide and other war crimes in Bosnia and Herzegovina and its impact on violation of human rights

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## Abstract

Since the war in Bosnia and Herzegovina (BiH) ended in 1995, hundreds of people have been found guilty by international, domestic and foreign courts, of various war crimes, including the most terrible crime of the genocide in Srebrenica. Nevertheless, in the past three decades, examples have been continuously registered in public sphere of denying, minimising and approving these crimes. It is especially dangerous that the denial of these crimes takes an institutional form. These denialist practices are primarily encountered in the BiH's entity Republika Srpska (RS) and neighbouring Serbia, as well as in Montenegro and North Macedonia. In 2021, the High Representative in BiH, imposed amendments to the Criminal Code of BiH, by which he criminalised the denial of genocide and other war crimes. Unfortunately, the criminalisation of denying these crimes did not stop the deniers. Although over 100 criminal charges have been reported, the Prosecutor's Office of BiH has filed only two charges, but none of the reported persons have been convicted to date. This article criticises this kind of prosecution practice.

The article's aim is to investigate the ways, in which certain political elites deny the genocide and other war crimes in BiH, as well as to analyse the prosecution of deniers before the BiH criminal justice authorities. The author attempts to answer the following research questions: (1) What are the dominant ways of denying genocide and other war crimes in the public sphere, and who are the most frequent deniers? (2) How has the denial of these crimes been criminalised, and do the competent courts in BiH prosecute the deniers? (3) What is the possible impact of denying these crimes on the human rights and freedoms of the victims, and does the incrimination and potential prosecution of deniers limit their freedom of expression? The research methods include analysis and synthesis, induction and deduction, as well as normative and dogmatic approach. At the end, the author concludes about the impact of processing genocide denial on human

rights and freedoms, including the freedom of expression guaranteed by Art. 10 of the *European Convention on Human Rights*.

**Keywords:** Bosnia and Herzegovina, Europe, genocide denial, war crimes, freedom of expression, the Srebrenica genocide, violation of human rights

## Zaprzeczanie ludobójstwu i innym zbrodniom wojennym w Bośni i Hercegowinie oraz jego wpływ na łamanie praw człowieka

### Streszczenie

Od zakończenia wojny w Bośni i Hercegowinie (BiH) w 1995 r. setki osób zostało uznanych za winne popełnienia zbrodni wojennych przez sądy międzynarodowe, krajowe i zagraniczne, w tym najcięższej zbrodni, jaką było ludobójstwo w Srebrenicy. Mimo to, w ciągu ostatnich trzech dekad w przestrzeni publicznej stale pojawiają się przypadki zaprzeczania i usprawiedliwiania tych zbrodni. Szczególnie niebezpieczne jest to, że zaprzeczanie tym zbrodniom przyjmuje formę instytucjonalną. Zjawisko to najczęściej obserwuje się w Republice Serbskiej (RS) będącej częścią BiH oraz w sąsiedniej Serbii, a także w Czarnogórze i Macedonii Północnej. W 2021 roku Wysoki Przedstawiciel w BiH wprowadził zmiany do Kodeksu karnego BiH, które kryminalizują zaprzeczanie ludobójstwu i innym zbrodniom wojennym. Niestety, mimo wprowadzonych zmian, działania negacjonistyczne nie zostały skutecznie powstrzymane. Chociaż zgłoszono ponad 100 przypadków, Prokuratura BiH wniosła jedynie dwa zarzuty, ale żadna ze zgłoszonych osób nie została do tej pory skazana. Niniejszy artykuł krytycznie ocenia tego rodzaju praktykę ścigania.

Celem artykułu jest zbadanie sposobów, w jakie pewne elity polityczne negują ludobójstwo i inne zbrodnie wojenne w BiH, a także analiza ścigania negacjonistów przed organami wymiaru sprawiedliwości w BiH. Autor próbuje odpowiedzieć na następujące pytania badawcze: (1) Jakie są dominujące sposoby zaprzeczania ludobójstwu i innym zbrodniom wojennym w przestrzeni publicznej i kto jest najczęstszym negacjonistą? (2) W jaki sposób kryminalizowano zaprzeczanie tym zbrodniom i czy właściwe sądy w BiH ścigają negacjonistów? (3) Jaki jest możliwy wpływ zaprzeczania tym zbrodniom na prawa człowieka i wolności ofiar oraz czy oskarżenie i potencjalne ściganie negacjonistów ogranicza ich wolność wypowiedzi? Metody badawcze obejmują analizę i syntezę, indukcję i dedukcję, a także podejście normatywne i dogmatyczne. W konkluzjach autor podsumowuje rozważania na temat wpływu przetwarzania spraw dotyczących zaprzeczania ludobójstwu na wolność wypowiedzi gwarantowaną przez art. 10 *Europejskiej Konwencji Praw Człowieka*.

**Słowa kluczowe:** Bośnia i Hercegowina, Europa, zaprzeczanie ludobójstwu, zbrodnie wojenne, wolność słowa, ludobójstwo w Srebrenicy, łamanie praw człowieka

## 1. Research goal and methodology

**The research goal of this article** is to investigate the ways, in which certain political elites in the country and in the neighbouring countries deny the genocide and other war crimes in BiH, as well as to analyse the prosecution of deniers before the BiH criminal justice authorities.

The article attempts to answer the following **research questions**: (1) What are the dominant ways of denying genocide and other war crimes in the public space, and who are the most frequent deniers of these crimes? (2) How has the denial of these crimes been criminalised, and do the competent courts in BiH prosecute the deniers? (3) What is the possible impact of denying these crimes on the human rights and freedoms of the victims, and does the incrimination and potential prosecution of deniers limit their freedom of expression?

**The research methods** used in the article include analysis and synthesis, induction and deduction, as well as normative and dogmatic approach. In order to answer the research questions, online sources and the content related to the denial of these crimes were analysed, as well as the relevant criminal laws in BiH, certain decisions of the European Court of Human Rights, some EU legal acts, as well as relevant scientific literature. The analysis is essentially qualitative and descriptive in nature.

The article is structured as follows. The introduction discusses the prosecution of war crimes committed in BiH before the competent courts, whose decisions have confirmed that many denied crimes have actually been committed. The following three sections serve as the framework for providing the answers to each of the research questions. The end of the article brings the concluding considerations.

## 2. Introduction to processing war crimes

In 2025 year will be three decades since the end of the international armed conflict in Bosnia and Herzegovina (BiH), whose four-year duration was marked by serious violations of human rights, such as persecution of civilian population, deportation to camps, rape, destruction of property, devastation of religious buildings, etc. (Čekić 2018: p. 41). However, the most terrible consequences of this conflict, whose apocalyptic images of have become known worldwide, were mass and cruel murders, that is, taking people's lives, in the numbers still not determined to this day.

The collaborators of the Research and Documentation Center Sarajevo in their study *The Bosnian Book of the Dead* determined that during the observed period in BiH the death or disappearance of a total of 95,940 citizens was documented, out of whom 62,013 were Bosniaks (64.63%), 24,953 were Serbs (26.0%), 8,403 Croats (8.75%) and 571 (0.59%) – persons of other nationalities. At the same time, the ratio of civilian (31,107 or 50.16%) and military victims (30,906 or 49.84%) among Bosniaks is approximate, while among the persons of Serbian nationality the number of military victims is much higher (20,775 or 83.26%) compared to civilian victims (4,178 or 16.74%). When it comes to the persons of Croatian nationality, a total of 2,484 civilians (29.56%) and 5,919 soldiers (70.44%) were killed while among the persons of other nationalities, 470 civilians and 101 soldiers were killed (Tokača 2012: p. 111–117).

On the other hand, Ewa Tabeau and Jan Zwierchowski, the associates of the Demographic Unit, Office of the Prosecutor (OTP), in the International Criminal Tribunal for the Former Yugoslavia (ICTY) estimate that the number of war victims in BiH, i.e., the „minimum

number of war-related deaths" is 104,732 persons, out of whom 68,101 (65%) are Bosniaks, 22,779 (21.7%) Serbs, 8,858 (8.5%) Croats, and 4,995 (4.8%) persons of other nationalities.<sup>1</sup>

A significant part of the aforementioned human loss as well as other previously mentioned consequences of the armed conflict in BiH took on the characteristics of individual war crimes, i.e., other crimes against humanity and values protected by international law. In the past period, these crimes were prosecuted before various international, foreign, and domestic courts in BiH.

At the international level, the aforementioned crimes were prosecuted before the ICTY, that is, since 2018, before the International Residual Mechanism for Criminal Courts (IRMCT), which represent the judicial bodies of the United Nations, which are (were) competent for trials for war crimes and other violations of international law committed on the territory of the former Yugoslavia, that is, on the territory of BiH, Croatia, Kosovo, Serbia, and North Macedonia. In the period from 1993 to 2017, during the operations of the ICTY before this international *ad hoc* tribunal, a total of 161 persons were accused or prosecuted, with as many as 113 (70.2%) were accused of war crimes committed on the territory of BiH. A total of 75 people were convicted of crimes committed in BiH, eight people were acquitted, the charges against seven people were withdrawn, while 12 accused persons died before or during the trial and the proceedings against them were suspended (Gurda 2020: p. 47). In the end, the conviction of the IRMCT Appeals Chamber dated 8 June 2021 marked the legal end to the proceedings against Ratko Mladić, the former commander of the Army of Republika Srpska (VRS),<sup>2</sup> while the conviction of the same Chamber dated 31 March 2023 marked the legal ending of the proceedings against Jovica Stanišić and Franko Simatović, the two highly positioned officers of the Serbian State Security during the wars on the territory of the former Yugoslavia (Judgement of the Appeals Chamber 2023).

Out of the total number of people convicted before the ICTY and IRMCT of crimes committed in BiH, the military and civilian commanders of the VRS: Ratko Mladić, Radovan Karadžić, Radoslav Krstić, Zdravko Tolimir, Vujadin Popović, Drago Nikolić, and Ljubiša Beara were convicted of the crime of genocide as a „crime beyond all crimes“. They were directly committed by individual members of the VRS and the Ministry of Internal Affairs of Republika Srpska (MUP RS) against the Muslim (Bosniak) population in the area of Srebrenica, while the other defendants were found guilty of crimes against humanity, violation of the laws and customs of war or serious violations of the *Geneva Conventions* (Gurda et al. 2021a: p. 262).

Apart from international courts, war crimes committed in BiH were also prosecuted before the judicial bodies of the neighbouring countries Croatia and Montenegro, and to a somewhat larger number before the competent courts in Serbia (Gurda 2020: p. 29). Also, based on universal jurisdiction, these crimes were sporadically prosecuted before the courts of individual European countries. This refers to the proceedings conducted

<sup>1</sup> Out of the total number of war casualties 42,106 (40.2%) were civilians and 62,626 (59.8%) were soldiers (Zwierzchowski, Tabeau 2010: p. 16–17)

<sup>2</sup> See more: United Nations WWW.

before the courts in Germany against Nikola Jorgić, Maksim Sokolović, Đurađ Kušljčić, and Novislav Đajić (Karčić 2015: p. 59–66), in Austria against Duško Cvjetković, in Denmark against Refik Sarić, in Norway against Mirsad Repak, and in Sweden against Džeki Arklov and Ahmet Makitan (Klamber 2009; De Vlaming, Clark 2014: p. 172). It is worth pointing out that the members of the (para)military formations of Republika Srpska, Nikola Jorgić and Maksim Sokolović, were declared guilty by the final judgement before the German courts for committing genocide against Bosniaks in Doboj (Jorgić) and in Osmaci near Kalesija (Sokolović) (see: Karčić 2015: p. 59–66). Finally, Siniša Đurđić was prosecuted before the judiciary in the United States of America (Perviz 2021).

However, the largest number of crimes committed in BiH during the aforementioned international armed conflict were prosecuted before the domestic courts in BiH. The primary jurisdiction for prosecuting these crimes lies with the Court of BiH, i.e. its War Crimes Chamber. From the beginning of its work in 2005 until mid-2024, it prosecuted 562 persons accused of various types of war crimes.<sup>3</sup> It is worth mentioning that about 15 former members of the VRS were convicted of committing genocide, as the most brutal crime committed against Bosniaks in the area of Srebrenica (Gurda et al. 2021b: p. 262). However, in addition to the Court of BiH, as the court operating at the state (national) level, from the beginning of 2004 until mid-2024, a similar number of defendants were prosecuted before the judiciary of the entities, that is, before the cantonal courts in the Federation of BiH (325), the district courts in Republika Srpska (217), which are a medium level of judicial authority in BiH, and the courts of the Brčko District of BiH (32).<sup>4</sup>

In view of these facts, it can be concluded that since the war ended, about 1,300 defendants have been prosecuted for war crimes committed in BiH before international, foreign and domestic courts, whereby some two thirds were found guilty, while approximately one third of them were acquitted (Gurda et al. 2021a: p. 260–267).

Finally, it should be noted that in addition to the criminal prosecution of natural persons before international, foreign and BiH courts, the crimes in question were also prosecuted before the International Court of Justice (ICJ), which functions as the principal judicial organ of the United Nations with the jurisdiction to resolve disputes between states as subjects to public international law. This refers to the case initiated by BiH in 1995 against the then Federal Republic of Yugoslavia (FRY), later the State Union of Serbia and Montenegro and, since 2006, the Republic of Serbia, for the violation of the *Convention on the Prevention and Punishment of the Crime of Genocide*. The case ended in 2007, with the court finding that the members of the army and police of Republika Srpska, which today represents an entity in BiH, committed genocide against the Muslim (Bosniak) population in Srebrenica in July 1995, and that the neighbouring country, the Republic of Serbia is not responsible for the direct commission or complicity in the commission of that heinous crime. However, the court decided that Serbia was responsible for violating the mentioned Genocide Convention, because this country did not take

<sup>3</sup> The aforementioned information was provided to the author by the OSCE Mission in BiH. They were collected within the programme of monitoring court proceedings in war crimes cases.

<sup>4</sup> Data was provided to the author by the OSCE Mission in BiH.

any measures to prevent the crime, nor did it prosecute the perpetrators of the crime, as it had an influence on the military and police forces of its compatriots in neighbouring Republika Srpska.<sup>5</sup>

Despite many legally adjudicated judgments, in which the court chambers found many defendants guilty of committing genocide, crimes against humanity or other war crimes, during the past three decades in BiH public various forms of denial, minimisation and approval of these crimes have been constantly identified. In this regard, both the factual background as well as the legal qualification of certain crimes are disputed, and consequently, the formal judicial truth is also denied.

### 3. Denial of genocide and other war crimes in a public arena

Denial of genocide and other war crimes is dominantly evident in the BiH entity Republika Srpska, but also in neighbouring Serbia. The parts of Bosnian Serb political elites spearhead this heinous anti-civilisation narrative, but many revisionist statements, lies and quasi-truths related to the crimes res legally ruled by the competent courts can also be found on the Internet. What is especially devastating is the fact that since 2010, as Karčić states, the denial of the Srebrenica genocide, as well as other crimes, has become much more institutionalised and systematic, both in Republika Srpska and in neighbouring Serbia (Karčić 2021: p. 60–61). The reason why some political elites as well as a significant part of the public in Republika Srpska and neighbouring Serbia, deny the war crimes ruled by court decisions is primarily related to the perception that international (ICJ and ICTY), as well as domestic courts, did not judge objectively, but were rather biased and tendentious while prosecuting the members of the Serbian people.<sup>6</sup>

It is a fact that more members of the Serbian ethnic community have been prosecuted before the ICTY and domestic courts in BiH than the members of the other two majority communities in BiH (Bosniaks and Croats). However, this is quite reasonable, bearing in mind the fact pointed out by objective Serbian academics as well, that „ethnic Serbs participated in almost all conflicts on the territories of the former Yugoslavia, that the Serbian side had significant military superiority and the most organised military formations, especially in BiH and Kosovo, and that they also committed the largest number of crimes, especially the most serious ones, including the Srebrenica genocide” (Dimitrijević et al. 2013: p. 39–41).

#### 3.1. Denial of other war crimes

As stated by Džananović, the denial of certain crimes began as early as during the war. The first recorded case of denying and relativising the crime was related to the massacre in

<sup>5</sup> Judgment of the ICJ of 26 February 2007 in case concerning application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*). See the summary in the publication: Softić 2020: p. 57–89.

<sup>6</sup> For example, such point of view, among many others, was expressed by the recent Prime Minister of Serbia Ana Brnabić (see: *Premijerka Srbije...* 2017).

Sarajevo's Vase Miskina Street, where on 27 May 1992, a grenade fired from a position of the VRS killed 26 and wounded 108 civilians. In the well-known Belgrade newspaper *Politika* on 28 June 1992, in an article entitled „The streets were mined”, the claims were made that this crime was not committed by the members of the VRS, but that it was „mining” and „self-shelling” made by the authorities of BiH (*Podržavaju ga šire mase...* 2023). It is the identical matrix of revisionism and negation action, which was done in the past, for example, by the head of propaganda of the Franco regime, claiming that it was not the Nazis, but the Basques, who destroyed their cultural capital Guernica.

A similar matrix of denial of crimes is evident in the case of two horrific crimes committed against civilians at Sarajevo's Markale market. The first crime occurred on 5 February 1994, when 68 civilians were killed and 144 were wounded. The second crime took place on 28 August 1995, when 43 people were killed and 84 were wounded. Both crimes were committed by the members of the VRS by firing grenades at the civilian population at the market in the centre of Sarajevo. Stanislav Galić, the commander of the Sarajevo-Romanian Corps of the Army of Republika Srpska, was found guilty before the ICTY of the crimes at Markale, as well as of other crimes that included killings and spreading terror against the civilian population of Sarajevo, and was sentenced to life imprisonment (Judgement of the Trial Chamber of ICTY 2003: par. 256–296). Also, the wartime president of Republika Srpska, Radovan Karadžić, and the Commander of the General Headquarters of the VRS, Ratko Mladić, were found guilty before the ICTY of the Srebrenica genocide, as well as of other war crimes committed in BiH, including individual crimes (terrorism and illegal attacks on civilians) committed as a part of the campaign of sniper attacks and shelling of Sarajevo (Gurda 2022: p. 49–53).

However, only a few days after the first crime at Markale, the members of the highest Bosnian Serb political leadership, Radovan Karadžić in the newspaper „*Glas Srpske*” and Momčilo Krajišnik, the wartime president of the National Assembly of Republika Srpska in the Belgrade newspaper „*Borba*”, denied the responsibility of the VRS for these crimes. Karadžić even monstrously claimed that „Muslims were killing themselves” (Karović 2013: p. 96–97). Unfortunately, not even three decades after these horrific crimes and the legally binding decisions of The Hague Tribunal, which established the real and legal nature of these crimes as well as individual criminal responsibility, the political leader of the Bosnian Serbs and the current president of Republika Srpska, Milorad Dodik, denies the responsibility of the „Serbian side”, that is, the fact that these crimes were committed by individual members of the VRS (Kovačević 2024).

An identical matrix of revisionist activities is also related to the crime committed on May 25, 1995 at the site „*Kapija*” in the centre of Tuzla, the second largest city in the Federation of BiH. A grenade fired from the position of the VRS killed 71 and wounded more than 173 civilians, whose average age was 24. The VRS general Novak Đukić was convicted of this crime before the Court of BiH. In the meantime, he fled to neighbouring Serbia and is currently at large (Karović Babić 2023: p. 343–346). In relation to this crime, the Serbian author Ilija Branković published a book in 2017, and then in 2019, another book titled *Tuzlanska kapija – directed tragedy*. In these books, in a perfidious manner he

disputes the historical and legally established facts related to this terrible crime and its executors. It is particularly devastating that these books were published and promoted under the auspices of the Ministry of Defense of Serbia, which points to an institutional form of denying crimes, which was strongly criticised by the Council of Europe Commissioner for Human Rights, Dunja Mijatović (*Kritike Srbiji* 2019). However, such an institutional approach to denying this crime is nothing new, bearing in mind that as early as in 2009, the then (and current) President of Republika Srpska Milorad Dodik declared that in this particular case it was a „forced explosion” and a staged crime, stating that „a day earlier in the training center of the Muslim army in Živinice, a significant number of young men were killed by an explosion”, and that their bodies, according to his monstrous claims, were brought from the nearby town of Živinice to Tuzla, where the „situation was staged” related to the crime at „Kapija” (Kahrović 2009).

### 3.2. Denial of genocide as the highlight of denialist narrative

The public arena offers numerous examples of denial of other war crimes committed in BiH, as well as the glorification of their perpetrators. Undoubtedly, the largest number of cases of denial is related to the denial and minimisation of the Srebrenica genocide. According to the results of the study carried out by the associates of the *Srebrenica Memorial Center* over the last few years, 241 cases were registered of the Srebrenica genocide denial in 2021, 681 cases in 2022, and 90 such cases in 2023. Milorad Dodik, the president of the BiH entity Republika Srpska, Branimir Kojić, the president of the *Organization of Families of Captured and Killed Fighters and Missing Civilians from Srebrenica*, and Miodrag Linta, the member of the Serbian National Assembly stand as the main deniers of the genocide (Džananović et al. 2023: p. 21–22).

Denial of the Srebrenica genocide takes place in several forms or stages, as follows:

**a) Denial of the legal nature of this heinous crime**, by disputing the fact that the atrocities committed in the area of Srebrenica during July 1995 are a crime of genocide is the first form. Rather, it is claimed that they are a „crime” or a „terrible crime”. This denialist approach represents the minimisation and trivialisation of genocide in a „qualitative sense” and as such it is used by the majority of the ruling political elites as well as by a significant part of the general public in Republika Srpska and neighbouring Serbia, and sporadically in Montenegro as well.

Serbian President Aleksandar Vučić often states that a „horrific crime” happened in Srebrenica, but denies that this crime can and should be legally qualified as a „crime of genocide”. While explaining why he, as the personification of the current government in Serbia, would find it unacceptable to admit that the crime in Srebrenica, despite the judgments of the ICJ and ICTY, is a crime of genocide, he states that it would be then realistic to expect demands for the abolition of Republika Srpska, since some would claim that it was created as a result of genocide and that as such it has no right to continue to exist. In addition, according to his statements, requests may be expected from the BiH authorities to Serbia and Republika Srpska for the payment of war reparations (Vučić: *U Srebrenici se desio stravičan zločin...* 2019). Apart from Vučić, the former Prime Minister,

and the current President of the National Assembly of Serbia, Ana Brnabić (*Brnabić: „Ratni zločin se desio, ali nije bio genocid“* 2024), as well as the Vice President of the Government of Serbia Aleksandar Vulin in a similar manner denied the Srebrenica genocide on multiple occasions (*Vulin poručio Stanu: Genocida u Srebrenici nije bilo* 2024).

Also, in neighbouring Montenegro, there have been cases, when high-ranking Serbian politicians denied the Srebrenica genocide. Vladimir Leposavić, the former Minister of Justice, Human and Minority Rights in the Government of Montenegro,<sup>7</sup> Jovan Vučurović, the member of the Parliament of Montenegro, and Marko Kovačević, the mayor of Nikšić, all denied the Srebrenica genocide (Mehmedović et al. 2022: p. 31). Finally, a certain number of high-ranked politicians from the BiH's entity Republika Srpska constantly deny the legal nature of the Srebrenica.

**b) Reduction in the number of the Srebrenica genocide victims** as another form of its denial. This is actually the „quantitative reduction“, that is, a sort of minimisation of the scale of the Srebrenica genocide. In this regard, the Bosnian public accepted the concept that 8,372 people were killed in the genocide in the area of Srebrenica.<sup>8</sup> The International Commission of Missing Persons (ICMP) operates with similar figures; according to its data over 8,000 Bosnian Muslim men and boys were killed in this area.<sup>9</sup> Finally, based on the evidence presented in court proceedings before the ICTY, it was established that during the Srebrenica genocide, around 7,000 people were killed.<sup>10</sup>

However, despite the judicially established facts and forensic evidence, institutional efforts are made in Republika Srpska to reduce the number of victims of this genocide. In this context, according to the 2021 *Report by the Independent International Commission of Inquiry on the Sufferings of All Peoples in the Srebrenica Region between 1992 and 1995*,<sup>11</sup> whose findings were verified by the National Assembly of Republika Srpska in April 2024, the number of victims cannot exceed 3,715 people (Mehmedović et al. 2022: p. 31), while this commission believes that the crime committed in the area Srebrenica is not the crime of genocide. On the other hand, Siniša Karan, the minister in the Government of Republika Srpska, besides denying the genocidal nature of the crimes in Srebrenica, claims that the number of Bosniaks (Muslims) killed in Srebrenica is 2,000 (*Karan opet negirao genocid* 2024). Additionally, some Serbian (quasi) scientists, such as Marko Atlagić and Aleksandar Martinović, completely ignoring the previously mentioned data and estimates of the ICMP

<sup>7</sup> On 17 June 2021, the Parliament of Montenegro removed Minister Leposavić from office for the denial of the Srebrenica genocide. At the same session, the Montenegrin Parliament adopted a resolution that strongly condemns the Srebrenica genocide, confirms that more than 8,000 Bosniak civilians died in the genocide, prohibits the public denial or downplay of the Srebrenica genocide, and declares 11 July as the day of remembrance of Srebrenica victims (see: *Crna Gora...* 2021).

<sup>8</sup> The names of the Srebrenica genocide victims are available on the website of the organisation *Remembering Srebrenica* (<https://srebrenica.org.uk/what-happened/list-victims>).

<sup>9</sup> By July 2022, the ICMP managed to identify 7015 Srebrenica victims using the DNA or some other method based on the found remains (see more: ICMP 2022).

<sup>10</sup> See <https://www.irmct.org/specials/srebrenica20/index.html>

<sup>11</sup> The commission was formed by the Government of Republika Srpska in 2019. At its head was the Israeli historian Gideon Greif, who, after accusations of minimising the number of victims of the Srebrenica genocide, allegedly told the Israeli newspaper *Haaretz* that about 8,000 people were killed in Srebrenica and that the Commission would correct its report, which has not been done to date (Spaić 2022).

and the findings of the ICTY, claim that the number of Muslim victims in Srebrenica and its surroundings is between 800 and 1,200 (Atlagić, Martinović 2021). Also, the President of Republika Srpska, Milorad Dodik, a few months ago, went one step further in minimising this crime, stating that no one was killed in Srebrenica on 11 July 1995 (*Dosad najdrskiji istup lidera bosanskih Srba* 2024). Finally, it should be noted that the President of the Republic of Croatia, Zoran Milanović, on two occasions in a certain way trivialised the Srebrenica genocide in a certain way (*Tužiteljstvo BiH radi...* 2022).

Despite the fact that over 6,500 victims of the Srebrenica genocide have been buried in the Memorial Center in Potočari (Srebrenica), after the forensic identification of their remains, and that about 300 victims of the Srebrenica genocide have been buried at other graveyards, a certain part of the public in the BiH's entity Republika Srpska denies those figures, that is, they do not believe that the genocide victims were actually buried there. Given that some of the political and intellectual elites in Republika Srpska promote such narratives, some Republika Srpska citizen actually believe that the dead Bosniak victims were „brought from other places to be buried there” or that „the coffins are simply empty” (Simic 2024: p. 6).

**c) The third form of denial of the genocide in Srebrenica**, or more like a new phase in committing this crime, is the glorification of the crime and the legally adjudicated war criminals, as well as their criminal heritage, and the ridicule of the victims of the genocide. Contemporary literature on genocide in BiH marks this phase in committing genocide as „triumphalism”, i.e. the glorification of the genocidal legacy, the term coined a few years ago by the Bosnian-Australian scientist Hariz Halilović (Halilovich 2017).<sup>12</sup>

Namely, as a result of the mythomaniacal denial of the Srebrenica genocide by a part of the Serbian political elite, individuals within the general population in Republika Srpska and Serbia started glorifying the crime of the Srebrenica genocide in public and celebrating the convicted criminals as national heroes. In this regard, banners with the monstrous message „*Knife, wire, Srebrenica*” were displayed in football stadiums in Republika Srpska and Serbia, for which FIFA fined the Football Association of Serbia in 2005 (Šunjić 2022). Unfortunately, this slogan did not become a part of the past, because in 2023 the fans of the football club *Vojvodina* from Novi Sad at a match in Novi Pazar shouted this slogan together with the name of Ratko Mladić, the former commander of the VRS (*U srcu Sandžaka...* 2023).<sup>13</sup> In parallel, over the last decade, recordings of folk celebrations appeared on the Internet, where a terrible song was sung: „Srebrenica,

<sup>12</sup> Although in the context of studies on genocide for several decades, certain scientific authorities (Gregory Stanton) established that the crime of genocide is not committed and ended at one moment, but that it takes place and is carried out through several (ten) stages, the last of which is denial of genocide, Hariz Halilović pointed to the fact that the denial of genocide does not necessarily represent its last stage but that an even more terrible stage can follow, which he labeled as triumphalism. It is a stage, as pointed out, that is reflected in celebrating the criminals who committed genocide and glorifying their criminal heritage, while at the same time humiliating the victims (Halilovich 2017: p. 7).

<sup>13</sup> Due to fans of the football club *Kozara* from Bosanska Gradiška (BiH) chanting this heinous slogan at a match in October 2016, the Football Association of Republika Srpska dismissed the entire management of this club, which is seen as a positive example of a resolute response to the until then fairly widespread form of fan vandalism in BiH (*Skandal koji je zgrozio BiH...* 2016).

you are so dear to me, yes, God grant it happened three times" (Bursać 2020), which very quickly became widespread on the Internet. It is particularly scandalous that at the beginning of 2022, a video appeared, in which police officers and members of the Ministry of Internal Affairs of Serbia in Priboj sang this infamous song during a celebration (*Skandalozno...2022*).

In addition, glorification of the former president of Republika Srpska, Radovan Karadžić, and especially the commander of the VRS, Ratko Mladić is rather evident in Republika Srpska and neighbouring Serbia. They are praised as national Serbian heroes, despite the fact that both were convicted before the ICTY for the Srebrenica genocide whereby Mladić personally commanded the military operation of the VRS taking Srebrenica in July 1995. This glorification is manifested in printing t-shirts,<sup>14</sup> setting up billboards, creating murals with their faces on residential buildings, etc.<sup>15</sup> This is not surprising, considering that the competent authorities institutionally encourage the creation of a broader picture and general perception of them as national heroes.<sup>16</sup>

However, the most heinous form of denial and trivialisation of the Srebrenica genocide is undoubtedly its ridicule. A few months ago, Nenad Nešić, a Serbian politician and the current Minister of Security of BiH, told a monstrous joke minimising the victims of genocide during his guest appearance on a Belgrade TV programme (*Nešić sramotno ismijavao žrtve genocida u Srebrenici* 2024). Even more heinous was the speech of Ivan Stojiljković, the president of the Democratic Party of Serbs in North Macedonia and a member of the parliament of this country. This April on social media he shamefully characterised the Srebrenica genocide as a „necrophilia Disneyland“ (*Predstavnik Srba u Makedoniji genocid u Srebrenici nazvao „nekrofilskim diznilendom“* 2024). Finally, the morbidity of the denialist narrative of some Serbian politicians is perhaps most vividly reflected by the fact that the undisputed political leader of the Bosnian Serbs during the last two decades and the current president of Republika Srpska, Milorad Dodik, in mid-2023 at a meeting of representatives of the political parties currently in power at the national level in BiH, cursed the genocide in Srebrenica (*Helez: Dodik je opsovao genocid u Srebrenici* 2023).

<sup>14</sup> For example, the company „011 Shop“ from Belgrade printed t-shirts with the morbid inscription „Knife, wire“. It is commendable that the Market Inspection of Serbia banned this company from selling and advertising all products with this inscription in January 2021, due to causing national, racial, and religious hatred. (See more: *Vlasti Srbije zabranile oglašavanje robe sa natpisom „Nož, žica“* 2021).

<sup>15</sup> It is interesting that at the beginning of 2023, the Youth Initiative for Human Rights identified as many as 308 graffiti and murals celebrating the convicted war criminal Ratko Mladić in 10 cities and municipalities in Serbia, of which at least 250 in the Belgrade area. They submitted 308 reports to the competent communal services requesting the removal of these graffiti and murals (Nastevski 2023). Unfortunately, there is no information available as to whether the Serbian municipal authorities complied with this request.

<sup>16</sup> For example, it should be pointed out that in 2016, Milorad Dodik, then in the capacity of Prime Minister of Republika Srpska, opened a student dormitory in Pale called „Dr. Radovan Karadžić“, intended for housing students of the University of East Sarajevo. However, under the pressure of the international community and the Office of the High Representative (OHR), following the legally adjudicated conviction of Radovan Karadžić by the ICTY, the plaque on the student dormitory with Radovan Karadžić's name was removed in December 2020 (see more: *Uklonjena ploča sa imenom Radovana Karadžića na Palama* 2020).

Additionally, due to the institutional and systematic denial of the Srebrenica genocide by some of the Serbian political and intellectual elites in Republika Srpska and neighbouring Serbia, which is wholeheartedly supported by the regime media, and has become a part of „popular culture“, for a significant part of the public this denialist opinion has become the heritage. It is particularly devastating that the young generation has been indoctrinated with these ideas. It is therefore not surprising that on 11 July 2023, the day of the funeral and burial of the newly identified victims of the Srebrenica genocide, two female students of the Faculty of Criminalistics, Criminology and Security Studies of the University of Sarajevo posted the pictures of Ratko Mladić, the criminal convicted of the Srebrenica genocide, on their Instagram profiles with the message: „Condemned to immortality. You were and will remain our hero. Long live general“.

Bearing in mind that this happened on the day of the 28th anniversary of the Srebrenica genocide, such an announcement caused a painful revolt by the families of the victims, their fellow students, and a significant part of the BiH public. Certain Serbian political leaders came to their defence, including the President of Republika Srpska, Milorad Dodik, who pointed out that these female students were exposed to an unprecedented lynching „because of the opinion they expressed“. In parallel with that, Dodik, in cooperation with Aleksandar Vulin, then the director of the Security and Information Agency, and today's vice president of the Government of Serbia, arranged for these students to continue their studies at the National Security Academy of Serbia in Belgrade, at the expense of the Government of Serbia (*Na poziv Aleksandra Vulina...* 2023). These facts demonstrate that the representatives of the authorities of Republika Srpska and Serbia not only deny the genocide, but also officially reward its deniers (Simic 2024: p. 12).

#### **4. Criminalisation of denial of genocide and other war crimes**

In September 2014, the Parliament of the Federation of BiH adopted the amendments to the Criminal Code (CC) of this BiH entity, criminalising denial of genocide as a special (the most severe) form of the criminal offence of „provoking national, racial, and religious hatred and intolerance“ (Article 163 of the CC FBiH).<sup>17</sup> The basic form of this criminal offence is committed by „Whoever publicly provokes or incites national, racial or religious hatred, dissension or intolerance among the constituent peoples and others living in the Federation“ (Art. 163 par.1 of the CC FBiH), while the amendments from 2014 stipulate three months to three-year imprisonment for whomever commits this criminal offence „by publicly denying or justifying genocide, crimes against humanity or committed war crimes determined by a final decision of the International Court of Justice, the International Criminal Court for the former Yugoslavia or the domestic court.“

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<sup>17</sup> The Law on Amendments to the Criminal Code of the Federation of Bosnia and Herzegovina (“Official Gazette of FBiH”, no. 76/2014)

This legislative novelty of the Parliament of the Federation of BiH was praiseworthy, but not particularly significant, given that the aforementioned law is applied in the territory of this entity, where only sporadic cases of denial of war crimes were registered during the previous years. The dominant practice of denialism is registered in another BiH entity, Republika Srpska, whose National Assembly members did not show political will to vote on such amendments to the criminal code. This was to be expected, bearing in mind the fact that precisely the representatives of the official authorities in Republika Srpska were the most ardent proponents of denialism, and that by adopting such amendments to the Criminal Code, they would actually criminalise themselves.

As a result, the representatives of the political parties from the Federation of BiH initiated on several occasions similar or identical amendments to the Criminal Code of BiH in the Parliamentary Assembly of BiH, which stands as the umbrella parliamentary body at the national/state level. However, the parliamentary representatives from Republika Srpska used the entity's right to veto and prevented the adoption of amendments that would criminalise the denial of genocide and other war crimes (Išerić et al. 2022: p. 12–15). However, given that the policy of denialism was gaining momentum, the High Representative in BiH, Valentin Inzko, in 2021, in accordance with the powers vested in him, imposed amendments to the CC BiH,<sup>18</sup> which, among other things, criminalised certain denialist practices as a special form of criminal offence of „provoking national, racial and religious hatred and intolerance” (Art. 145a of the CC BiH).

In this regard, the provisions of Art. 145a par. 3 of the CC BiH stipulate that „Whoever publicly approves, denies, grossly trivializes or tries to justify a crime of genocide, crime against humanity or a war crime established by a final adjudication pursuant to the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945 or by the International Criminal Tribunal for the former Yugoslavia or the International Criminal Court or a court in Bosnia and Herzegovina, directed against a group of persons or a member of such a group with regard 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, shall be punished by imprisonment for a term between six months and five years” (version amended by: HR's Decision... 2021). Apart from this most significant incrimination, which criminalises public denial, minimisation or justification of genocide, crimes against humanity or war crimes ruled by final judgments of certain courts, the amendments also criminalised giving recognition to persons legally convicted of war crimes, i.e., naming public buildings, institutions and settlements/cities by such persons, as well as some other activities (Nurkić 2021: p. 143–151; Hasanović 2021: p. 212–218).

Even though since the adoption of these amendments, over the last three years, about a hundred criminal charges have been filed for denying war crimes, the vast majority of which relate to the denial of the Srebrenica genocide, no one has been convicted

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<sup>18</sup> HR's Decision on Enacting the Law on Amendment to the Criminal Code of Bosnia and Herzegovina n 26/21, 23 July 2021.

to date before the Court of BiH for this criminal offence, i.e. incrimination.<sup>19</sup> Moreover, until half a year ago, no one was charged with this criminal offence by the Prosecutor's Office of BiH. In the majority of cases, the Prosecutor's Office issued *orders not to conduct an investigation*, because there are no reasonable grounds that this criminal offence was committed. Such prosecutorial decisions caused disappointment and anger among the families of the victims and a part of the general public, as quite a few cases referred to denying or minimising the Srebrenica genocide in the media, which the entire BiH public could witness. The prosecutors mainly explained their decisions stating that it is not disputed that the reported persons verbally denied the genocide, but that this was not done „in a way that could incite violence or hatred directed against (members of) a national, racial or religious group”, which together with the previous action represents an essential feature of the observed criminal offence.<sup>20</sup>

Such prosecutorial practice can be justifiably criticised as the characteristic of the given criminal offence is the fact that the denial act was carried out in a way that objectively „might have provoked” violence or hatred, rather than it „provoked” violence or hatred. It can be concluded that the consequence of this criminal offence is an abstract danger, during which recognition it is extremely important to appreciate its context, that is, the personality and status of the denier. When denialist statements are made by a person holding a significant position, as was the case of Radovan Kovačević, who was the spokesperson of the SNSD, the largest political party in Republika Srpska and adviser to Milorad Dodik (Grebo 2023) or the President of Republika Srpska Milorad Dodik himself, as the most prominent figure and political authority in this entity, the existence of this abstract danger is much more certain. This is especially true if repeated denials of genocide are committed, such as the case of Milorad Dodik, who, since the adoption of the aforementioned amendments to the CC BiH until the end of April 2024, according to the research by the Balkan Investigative Reporting Network (BIRN BiH), denied the

<sup>19</sup> Also, no person has been convicted for denying genocide before the courts in the Federation of BiH in accordance with the CC FBiH. However, it is interesting to point out that the Swiss judiciary issued certain convictions on this matter, although not final. Criminal proceedings were conducted against the politician Donatello Poggi because in several articles published in 2012 on local portals he denied and trivialised the Srebrenica genocide, based on the criminal charges filed against him by a lawyer of Bosnian origin. On all those grounds, in 2016 in the first instance, and then in 2017 in the second instance, he was sentenced to a two-year suspended prison sentence, for denying genocide as a form of racial discrimination. However, in 2018, the Supreme Court of Switzerland acquitted Poggi of responsibility for the crime and determined that his freedom of expression was limited by the decisions of the lower courts, stating that Poggi's texts were humiliating and represented a form of genocide denial, but that the defendant did not have the intention to discriminate against others, nor to cause racial hatred and intolerance towards Muslims (See more: *Swiss politician...* 2018).

<sup>20</sup> In the explanations of their orders, the prosecutors also emphasised other reasons whose relevance is extremely questionable. For example, they stated that „it was not possible to determine the identity of the notifiers”, which is completely irrelevant to the prosecutor actions, who *ex officio* should investigate and detect potential criminal acts. They also emphasised that the denialist statements *did not provoke* violence and hatred, which is not a feature of this criminal offence, to the point that it was *stated approximately* that the reported and interrogated persons invoked their *freedom of expression*, which would be limited in the event of potential accusations of denialist statements. This is also an unfounded explanation, because the freedom of expression guaranteed by the ECHR does not have absolute effect and can be limited for the sake of achieving certain legitimate goals (see more: Išerić et al. 2022: p. 43-53).

Srebrenica genocide at least 23 times (Husarić Omerović 2024), which is why several criminal charges were filed against him at the Prosecutor's Office.

A small sign of encouragement can be seen in the fact that the Prosecutor's Office of BiH filed the first two indictments for this criminal offence in the first quarter of this year, which were confirmed by the court.<sup>21</sup> However, bearing in mind the increasingly frequent denial of genocide and other war crimes in the public discourse, which is certainly encouraged by this practice of the prosecutors of the mentioned Prosecutor's Office, in order to prevent additional victimisation of the victims of these crimes, as well as inter-ethnic hatred, which may cause much more serious consequences, this Office would have to redefine its current rather rigid practice of identifying the existence of characteristics of the analysed criminal offence. As it is not certain, we appreciate that the High Representative (OHR) should again amend the CC BiH and redefine the characteristics of this criminal offence. Indeed, the legal description of the analysed crime imposed by the High Representative in 2021 relies to a significant extent on the provisions of the *Council Framework Decision of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law* (The Council of the European Union 2008). However, according to the reports of the European Commission, not even individual member states of the European Union (EU) had implanted in their national legislation all the provisions of this decision. In this regard, for example, France, Italy, Latvia, Luxembourg, and Romania have not incorporated into their criminal laws the requirement that denial must be done in a way that provokes violence or hatred (Memišević 2015: p. 158). Therefore, it would similarly *pro futuro* make sense to redefine the characteristics of the analysed criminal offence, at least on a temporary basis, in order to facilitate the prosecution of deniers of genocide and other war crimes.

Such changes to the CC would indeed mean a temporarily step back in the process of harmonising domestic legislation with the EU *acquis communautaire*, but they would make a significant step forward in the process of protecting the rights of victims, as well as the general civilisational values, on which the EU rests. One of these values is the obligation to respect the rule of law and final court decisions, including the decisions of various international and national courts that confirmed the committing of many war crimes in BiH, including the most terrible crime of genocide in Srebrenica. Finally, a part of the EU *acquis* is also the *European Parliament resolution on the Srebrenica commemoration (2015/2747(RSP))*, which confirms that more than 8,000 Muslim men and boys were killed in the horrific crime committed by „Bosnian Serb forces under the command of General Mladić and paramilitary formations" in the Srebrenica area, and that international courts legally qualified that crime as a crime of genocide (European Parliament 2015).

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<sup>21</sup> In this regard, the Prosecutor's Office of BiH pressed charges against Samir Nukić from Bihac, because after the visit of the High Representative Christian Schmidt to the monument in Vitez, erected for eight children of the Croatian nationality killed in 1993 by a grenade fired from a position of the Army of the Republic of BiH, he posted on Facebook curses and expression of hatred towards the murdered children. Also, the charges were pressed against Vojin Pavlović from Bratunac, the president of the Eastern Alternative Association, known for his actions and statements in which he denies the Srebrenica genocide and glorifies war criminals (see: *Dvije optužnice za tri godine...* 2024).

## 5. Potential impact of denial on human rights violations

The denial of genocide and other war crimes in BiH can undoubtedly have a certain impact on the violation of fundamental human rights and freedoms. This is because the denialist discourse represents the most difficult form of provoking national and ethnic hatred and intolerance, which, at least on an abstract level, can be the driver of various criminal activities, whose consequences are reflected in the violation of these rights and freedoms. In this regard, in the BiH entity Republika Srpska, since the end of the war, there have been continuous attacks on Bosniak returnees, including the attacks on their lives, physical integrity, property, and other legal assets. According to the data of the Association of Genocide Victims and Witnesses, in the period from 1996 to 2022, 13 returnees were killed on the territory of Republika Srpska, 22 returnees were seriously wounded, 1,020 returnees were the victims of physical attacks, while 3,500 returnees suffered some kind of verbal attack, most often based on their nationality (Huseinović 2023). The last in a series of such attacks was registered in the middle of last year. In August 2023, four police officers from MUP RS at the police station in Osmaci harassed and beat a fourteen-year-old boy of Bosniak nationality, Ajdin Jusić. For this crime charges were pressed against them at the beginning of this year by the competent prosecutor's office (Radio Sarajevo 2024). Also, in June 2023, in the neighbouring municipality of Bratunac, three young men of Serbian nationality physically attacked, using a knife, a nineteen-year-old young man of Bosniak nationality, Osman Mehanović, inflicting serious physical injuries on him, with terrible threats: „We will slaughter you like we slaughtered you in 1995" (Ovčina 2023).

Bearing in mind that these criminal events are undoubtedly hate crimes,<sup>22</sup> we cannot rule out that, at least on an abstract level, the denialist and xenophobic statements of the President of Republika Srpska Milorad Dodik and other members of his denialist political milieu contributed to the development of national and ethnic hatred that fueled the young men who committed the criminal offence in the area of Bratunac. This is primarily because young people, due to being immature, are extremely susceptible to various ideological influences, especially if such influences come from national political leaders, who spread destructive hate speech and xenophobia on a daily basis.<sup>23</sup>

Finally, the question arises whether the very criminalisation of genocide denial represents a violation of certain rights and freedoms of persons who make denialist statements, more specifically the freedom of expression proclaimed in Art. 10 of the *European Convention on Human Rights* (ECHR). After the High Representative imposed the amendments to the CC BiH, which criminalised the denial of genocide and other war crimes, the representatives of the ruling political parties in Republika Srpska strongly opposed the act, claiming that

<sup>22</sup> For more on the characteristics of hate crimes see: Hodžić, Mehmedović 2014.

<sup>23</sup> Apart from his constant denial of genocide, the president of Republika Srpska Milorad Dodik is also known for his xenophobic statements towards Bosniaks, whom he often calls „Muslims" in order to challenge their national identity. The highlight of his xenophobic narrative is represented by the statement that „... we do not want to share air with Bosniaks, let alone other values" (See: *Dodik poručio „Ne možemo dijeliti ni zrak"* 2024).

these amendments to the CC BiH introduce a "speech crime" and potentially restrict the freedom of thought and expression (Nurkić 2021: p. 142).

It is worth emphasising that freedom of expression is not freedom of the absolute nature and it belongs to the category of the so-called qualified convention rights and freedoms, which states may limit pursuant to Article 10 par. 2 of the ECHR, in order to enable the realisation of other rights and freedoms. In this regard, many European countries through their (criminal) laws criminalised denying, trivialising or justifying the Holocaust, genocide, and other (war) crimes (see more: Pruitt 2017: p. 270–281), legally limiting the freedom of expression of their citizens. Based on these legal provisions, several dozen persons were prosecuted and convicted before the competent national courts in the past few decades for denying or trivialising the Holocaust. They filed appeals with the *European Court of Human Rights* (ECtHR), claiming, *inter alia*, that these convictions were an alleged violation of their freedom of expression defined by the provisions of Art. 10 of the ECHR. In most cases, the ECtHR, referring to the provisions of Art. 17 of the ECHR declared the appeals *prima facie* inadmissible and rejected them without entering into their substantive merits,<sup>24</sup> as such denialist speech is the abuse of rights.<sup>25</sup>

Such conduct of the ECtHR related to (criminal) convictions for *denying the Holocaust*, which, as this court has often stated, represents *a clearly established historical fact*. However, in the case of *Doğu Perinçek vs. Switzerland*, which referred to the denial of the Armenian genocide, the ECtHR decided in a fundamentally different way. In the specific case, the Court ruled on the appeal of the Turkish politician Doğu Perinçek, who claimed at three public events in Switzerland in 2005 that the genocide committed by Turkey against the Armenians was nothing more than an „international lie“. Due to the aforementioned statements, Perinçek was prosecuted before the Swiss judiciary and convicted of the criminal offence of racial discrimination (sw. *Rassendiskriminierung*). After exhausting all legal remedies before the Swiss judiciary, he turned to the ECtHR claiming, among other things, that the mentioned criminal conviction violated his freedom of expression, proclaimed by the provisions of Art. 10 of the ECHR. The ECtHR, in this specific case, in its decisions in 2013 and 2015<sup>26</sup> court did not declare the appeal inadmissible based

<sup>24</sup> There are many such decisions of the ECtHR. For example, decisions in the following cases can be cited: *Remer v. Germany* (Application no. 25096/94, 6.09.1995); *Marais v. France* (Requête no 31159/96, 24.06.1996); *D.I. v. Germany* (Application no. 26551/95, 26.06.1996), *Nachtmann v. Austria* (Application no. 36773/97, 9.09.1998); *Schimanek v. Austria* (Application no. 32307/96, 1.02.2000); *Garaudy v. France* (Requête no 65831/01, 24.06.2003); *Witzsch v. Germany* (Application no. 7485/03, 13.12.2005); *Williamson v. Germany* (Application no. 64496/17, 8.01.2019).

<sup>25</sup> Article 17 of the ECHR stipulates: "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention." This means that no one is allowed to use the Convention's rights and freedoms in a way that violates the rights and freedoms of others, and that such behaviour represents a kind of abuse of rights. Given that the ECtHR uses the provisions of this article as a procedural mechanism for rejecting appeals, i.e. declaring them inadmissible, without entering into the merits of the appeal, in the literature this procedural mechanism is sometimes referred to as the case-killer mechanism (see more in: Herceg Pakšić 2017: p. 240).

<sup>26</sup> On 17 December 2013, the ECtHR brought its first decision, in which it found that Switzerland, by convicting Doğu Perinçek for his public denial of the Armenian genocide, violated his freedom of expres-

on the provisions of Art. 17 of the ECHR but it entered into a discussion on its substantive merits. The Court found that the Swiss judicial authorities violated the appellant's freedom of expression by the aforementioned criminal conviction. Several positions of the Court from the relevant decisions are significant, which the ECtHR took in assessing whether there was a „justified social interest“ for the Swiss judiciary to limit the appellant's freedom of expression by its criminal convictions in pursuant to the provisions of Art. 10 par. 2 of the ECHR.

The first is that the appellant did not deny the historical event, but its genocidal legal qualification, which according to the ECtHR does not constitute a statement that aims to incite violence or hatred, which is why the Court did not *prima facie* declare the appeal inadmissible. In addition, the Court, analysing the subtle balance between the protection of the appellant's freedom of expression and the dignity of the victims' families, concluded that Switzerland failed to prove the social need to punish such denialist statements, that is, the social need to limit the freedom of expression. In this regard, the Grand Chamber emphasised that the criteria for the Holocaust cannot be applied in this particular case, because it is an event that happened 90 years ago in the Ottoman Empire, and it is discussed in Switzerland (Herceg Pakšić 2017: p. 243–247). The third position is related to the fact that the Swiss courts in their decisions claimed that the crime committed by Turkey against the Armenians, both in Switzerland and globally (generally), is legally qualified as a crime of genocide. The ECtHR did not accept such a standpoint emphasising in its decisions that until then only about 20 countries recognised this crime as genocide, and concluded that there is no general (global) consensus about it, which would represent the basis for the national (Swiss) condemnation of the crime. Finally, as one of the reasons for its decision on the violation of the appellant's freedom of expression, the Court cited the fact that the context in which his statements were made was not marked by heightened tensions or a special historical overtone in Switzerland (Judgment of Grand Chamber 2015: par. 280).

Even though these decisions of the ECtHR are criticised by some authors (Thus 2015; Basak 2019; Wojcik 2020<sup>27</sup>),<sup>28</sup> the presented criteria and positions viewpoints suggest that if a denier of the Srebrenica genocide was declared guilty before domestic courts of such an act, such conviction would not constitute a violation of his freedom of expression, bearing in mind that it is: (a) the genocide on which a global consensus has been reached, given that it was judged by international courts, and recognised as such by the resolutions of the UN General Assembly and the European Parliament; (b) the

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sion. After that, the Swiss government requested that the Grand Chamber of the ECtHR reconsider the appeal in question. On 15 October 2015, the Chamber made its decision, which also confirmed that the Swiss courts, with their convictions for denying the Armenian genocide, violated the appellant's freedom under Art. 10 of the ECHR.

<sup>27</sup> On the other hand, quite expectedly, certain Turkish authors evaluate these decisions positively (Tacar 2014).

<sup>28</sup> The controversial character of these decisions is confirmed by the fact that the first decision was made with 5 votes for and 2 votes against, and the decision of the Grand Chamber was made with 10 votes for and 7 votes against. Therefore, seven judges of the Grand Chamber, including the President of the Court, were of the opinion that the Swiss courts did not violate the appellant's freedom of expression. Additionally, four judges were of the opinion that the provisions of Art. 17 of the ECHR should have been implemented as the Armenian genocide is a clearly established fact. To deny it is to deny something that is obvious (Voorhoof 2016).

genocide that was committed a only a couple of decades ago on the territory of the state in which it is denied; (c) in the post-conflict Bosnian society the discussions about the genocide happen on a daily basis, which leads to serious inter-ethnic tensions.<sup>29</sup>

## Conclusions

Almost three decades after the end of the international armed conflict in BiH, despite the verdicts of international, foreign and domestic courts that confirmed the committing of many war crimes, including the most terrible crime of genocide in Srebrenica, examples of denial of these crimes are constantly registered in the public discourse. Denialist statements are encountered daily on the Internet and social media, but it is especially dangerous that the denialist practice is encouraged and inherited by parts of the Serbian ruling political elites in the BiH entity Republika Srpska as well as in neighbouring Serbia, and sporadically in Montenegro and North Macedonia. Although other legally adjudicated war crimes are also denied, the highlight of the denialist narrative is the denial of the Srebrenica genocide in Srebrenica, spearheaded by the current president of Republika Srpska, Milorad Dodik.

In order to prevent this, the Parliament of the Federation of BiH criminalised the denial of genocide and other war crimes, prescribing it as the most serious form of criminal offence of „Provoking national, racial, and religious hatred and intolerance“. However, in the Assembly of the other BiH entity (Republika Srpska) there was no political will to vote on the amendments to the criminal code and to criminalise the denial of these crimes. By doing so, the representatives of the official authorities in Republika Srpska as the most ardent inheritors of denialism, would criminalise themselves. Also, the political representatives of the ruling structures from Republika Srpska at the Parliamentary Assembly of BiH on several occasions blocked the adoption of amendments to the CC BiH that would criminalise the practice of denial.

However, as such practice was gaining momentum, in 2021, the High Representative in BiH, Valentin Inzko, following the example of the laws of certain European countries, in accordance with the powers vested in him, imposed amendments to the CC BiH,

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<sup>29</sup> As previously pointed out, in a significant number of cases, the deniers of the Srebrenica genocide denied solely its genocidal legal nature, which is why the acting prosecutors were of the opinion that such denial was not committed „in a way that could provoke violence or hatred“ and concluded that there were no characteristics of the criminal offence from Art. 145a of the CC BiH. Consequently, the prosecutors suspended investigations. However, if the prosecutors were to redefine their practice in the foreseeable future, or if the High Representative were to impose amendments to the CC BiH, which would delete that the denial must be carried out in a way “that could provoke violence and hatred” as a feature of this criminal offence, it would make the prosecution and criminal conviction of genocide deniers easier, while convictions would also not constitute the violation of genocide deniers’ freedom of expression.

In such cases, if the convicted denier would turn to the ECtHR for an alleged violation of their freedom of expression, the Court would not, according to the criteria from the decisions in the case of *Doğu Perinçek vs. Switzerland*, pursuant to Art. 17. of the ECtHR dismiss their appeal as inadmissible, but it would enter into a discussion of its content. However, if the other previously described criteria from these decisions were to be consistently followed, the Court would certainly decide that such an appeal was not founded, that is, that the appellant’s freedom of expression was not violated.

which, among other things, criminalised the denial of genocide and other war crimes as a special form of criminal offence of „provoking national, racial and religious hatred and intolerance” (Art. 145a CC BiH). This kind of endeavour was worthy of praise, because it may contribute to reducing denialist practices, preventing historical revisionism, preventing the committing of new crimes, and inflicting further injuries on the victims and their descendants (Karčić 2007: p. 295). The criminalisation of denialism is particularly important for preventing the secondary victimisation of crime victims and their family members, because as Grand Mufti of the Islamic Community in Bosnia and Herzegovina Husein Kavazović pointed out: „By denying a crime, the victims are killed twice.” (*Ef: Kavazović: Negiranjem genocida žrtve se svjesno ubijaju po drugi put 2020*).

Although after the aforementioned amendments to the CC BiH came into force over 100 criminal charges were filed for denying the Srebrenica genocide, as well as several for other war crimes, not one of the reported persons has been convicted to date. Moreover, it was only at the beginning of the year that the first two indictments were brought and confirmed for denying these crimes, which represents a qualified form of the criminal offence of „provoking national, racial and religious hatred and intolerance” (Art. 145a CC BiH). At the same time, in the majority of cases, the prosecutors of the Prosecutor’s Office of BiH made orders not to conduct the investigation, because they assessed that there were no reasonable grounds that the reported persons made statements which actually had the characteristics of the criminal offence under Art. 145a CC BiH.

In this regard, the paper criticises the current prosecutorial practice and processing of the reports for denying these crimes, and advocates its redefinition, so as to prevent additional victimisation of the victims of these crimes, as well as inter-ethnic hatred. Alternatively, the paper pleads for the High Representative in BiH to impose new appropriate amendments to the CC BiH related to the given criminal offence, in order to enable better processing and sanctioning of denialist practices.

Finally, taking into account the fact that after the criminalisation of the denial of genocide and other war crimes in BiH, opinions could be heard in the public discourse that such actions represent an impediment to the exercise of freedom of expression guaranteed by the provisions of Art. 10 of the ECHR, through the analysis of the ECtHR practice, it was concluded that such claims are unfounded, and that the denial of these crimes does not fall under the freedom of expression protected under the relevant convention, but is one of the most serious forms of hate speech, which is strictly prohibited and deserves the harshest social condemnation.

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z dziedziną prawa karnego, w szczególności z gatężiami prawa karnego nieletnich, systemem sankcji karnych oraz ściganiem ludobójstwa i innych zbrodni wojennych.

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