



PROJECT „ENHANCING WAR CRIME CASE PROCESSING IN BiH“ IPA 2019

Results and effects of the BiH judiciary on war crimes cases -
a brief report on results and perspectives



The Project is funded
by the European Union

PROJECT “ENHANCING WAR CRIME CASE PROCESSING IN BiH”

The state of Bosnia and Herzegovina still needs to fulfil a requirement of civilization to complete legal aspects of the transitional justice processes. The judiciary in Bosnia and Herzegovina plays a key role in objective fact finding by bringing all war crimes perpetrators to justice.

Focusing on enhancing the efficiency of the Courts and Prosecutors’ Offices in dealing with war crimes cases, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina coordinates the implementation of the European Union’s financial support for the establishment of systemic foundation for the implementation of the Revised National War Crimes Strategy framework.



This brochure, which is intended for the professional judicial community and the public at large, offers a detailed insight into implemented activities and achieved results and the current situation as well as into the prospects and obligations of the judiciary relating to the war crimes prosecution and trials.



STRUCTURE OF THE EUROPEAN UNION'S SUPPORT TO THE JUDICIARY IN BiH FOR WAR CRIME CASE PROCESSING

The implementation of the European Union's project "Enhancing War Crime Case Processing in BiH" began in 2014 and is planned to finish by the end of 2022. In an attempt to create the key systemic basis for war crimes prosecution and trials through improvement of various aspects of human and physical resources of the judiciary in BiH in the period 2014-2020, the European Union allocated, through the Instrument for Pre-Accession Assistance (IPA) funds, the amount of EUR 14.8 million in non-repayable assistance. The funds have been implemented through the IPA 2012/2013/2017 phases of the EU's support. At present, the fourth IPA 2019 phase of support in the amount of EUR 4 million is being implemented.

AIM OF THE PROJECT | TO IMPLEMENT FULLY THE GOALS AND OBJECTIVES OF THE REVISED NATIONAL WAR CRIMES STRATEGY

OBJECTIVE | TO ENHANCE THE EFFICIENCY OF WAR CRIME CASE PROCESSING THROUGH REDUCTION OF THE BACKLOG OF WAR CRIMES CASES WHERE SUSPECTS ARE KNOWN IN THE PROSECUTORS' OFFICES BY 65% DURING THE PERIOD OF 9 YEARS (2014-2022)



Preconditions
for supervision of
implementation of
the Revised
National War
Crimes Strategy
ensured

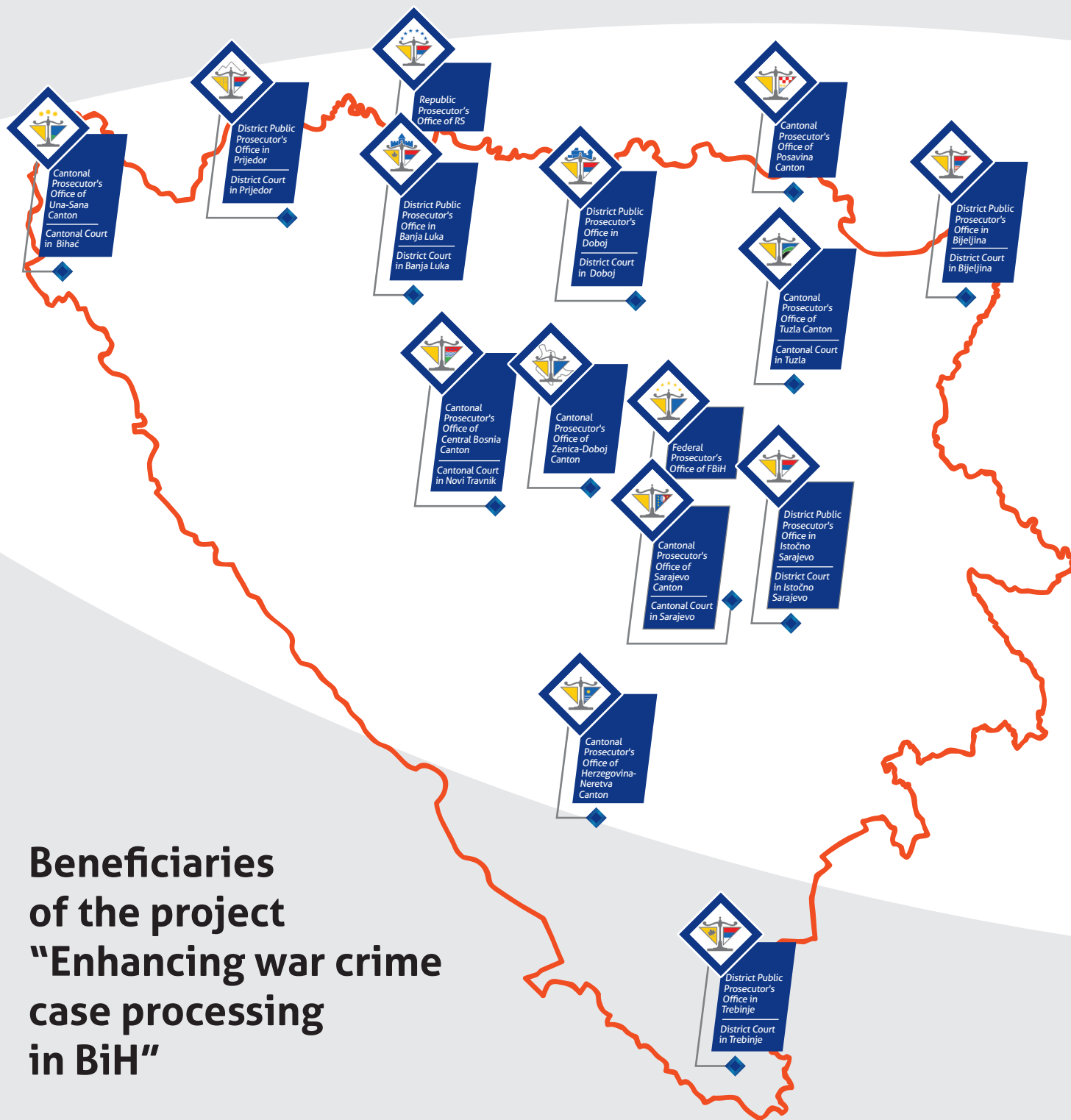
Improved
human and
material capacities –
96 additional
positions
funded

Support provided
to the BiH HJPC for
systemic oversight
of the Courts and
Prosecutors' Offices'
work on the war
crimes cases

Improved
practical skills and
professional
knowledge of
judges and
prosecutors

Improved
professional skills
of defence lawyers
in the war crimes
cases

**Expected
results of the
IPA 2019 phase**



**Beneficiaries
of the project
“Enhancing war crime
case processing
in BiH”**



**BiH Justice
Ministry -
Criminal
Defence
Section**



**High Judicial
and Prosecutorial
Council BiH**



***Grant agreement between
European union and
BiH Ministry of Finance
and Treasury***



**The Prosecutors'
Office of BiH**

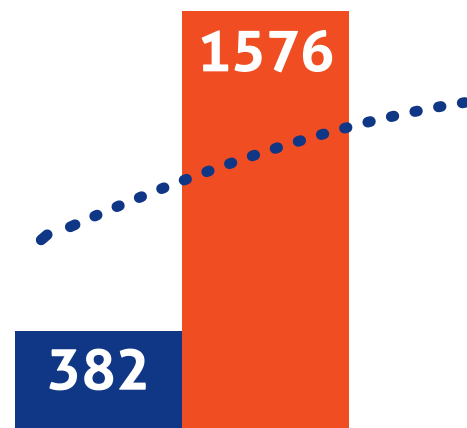


**The Court
of BiH**

ACHIEVED RESULTS

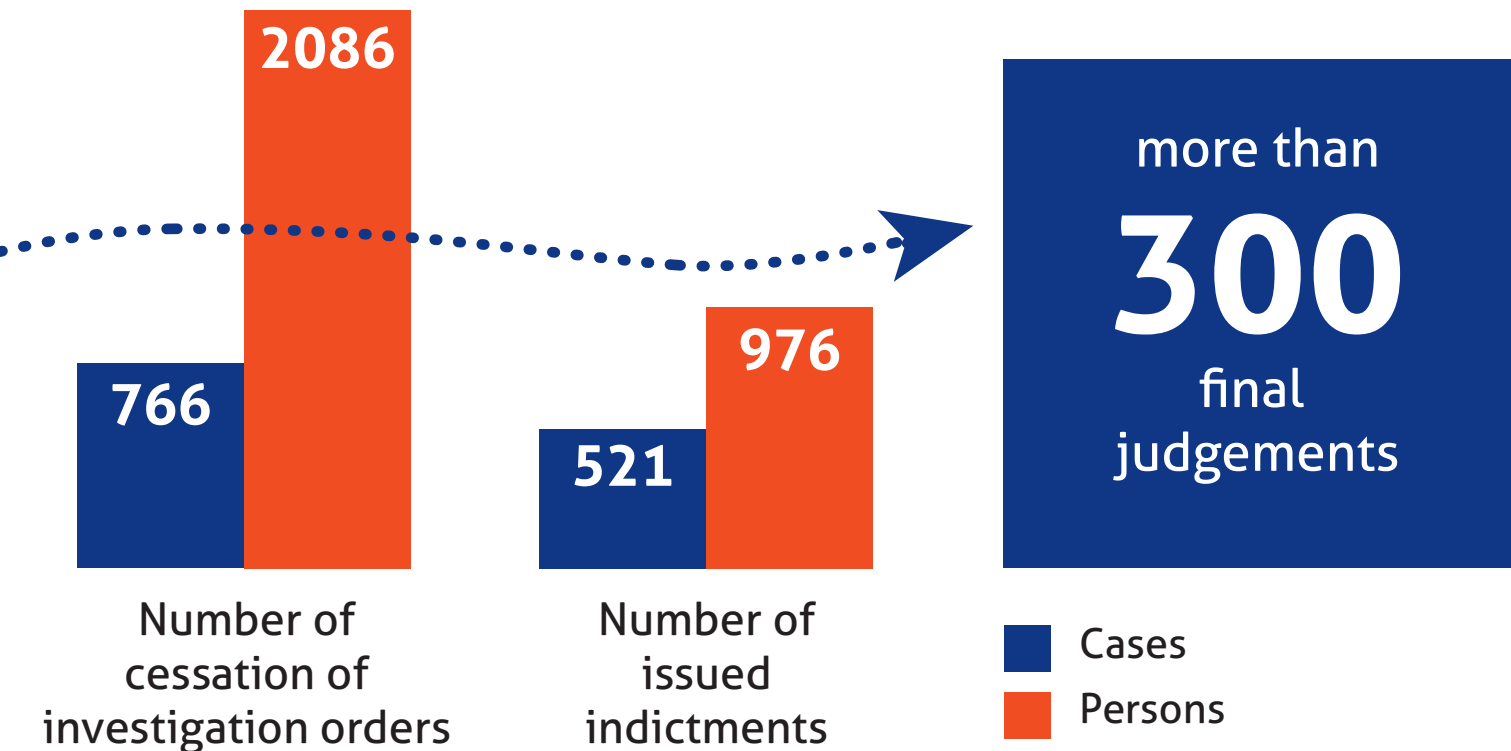
Focusing on improving human and material capacities and training and on ensuring professional support and regular monitoring of the work of the judiciary, the previous phases of the implementation of the European Union's support, IPA 2012/2013/2017, resulted in a decrease in the number of still pending war crimes cases.

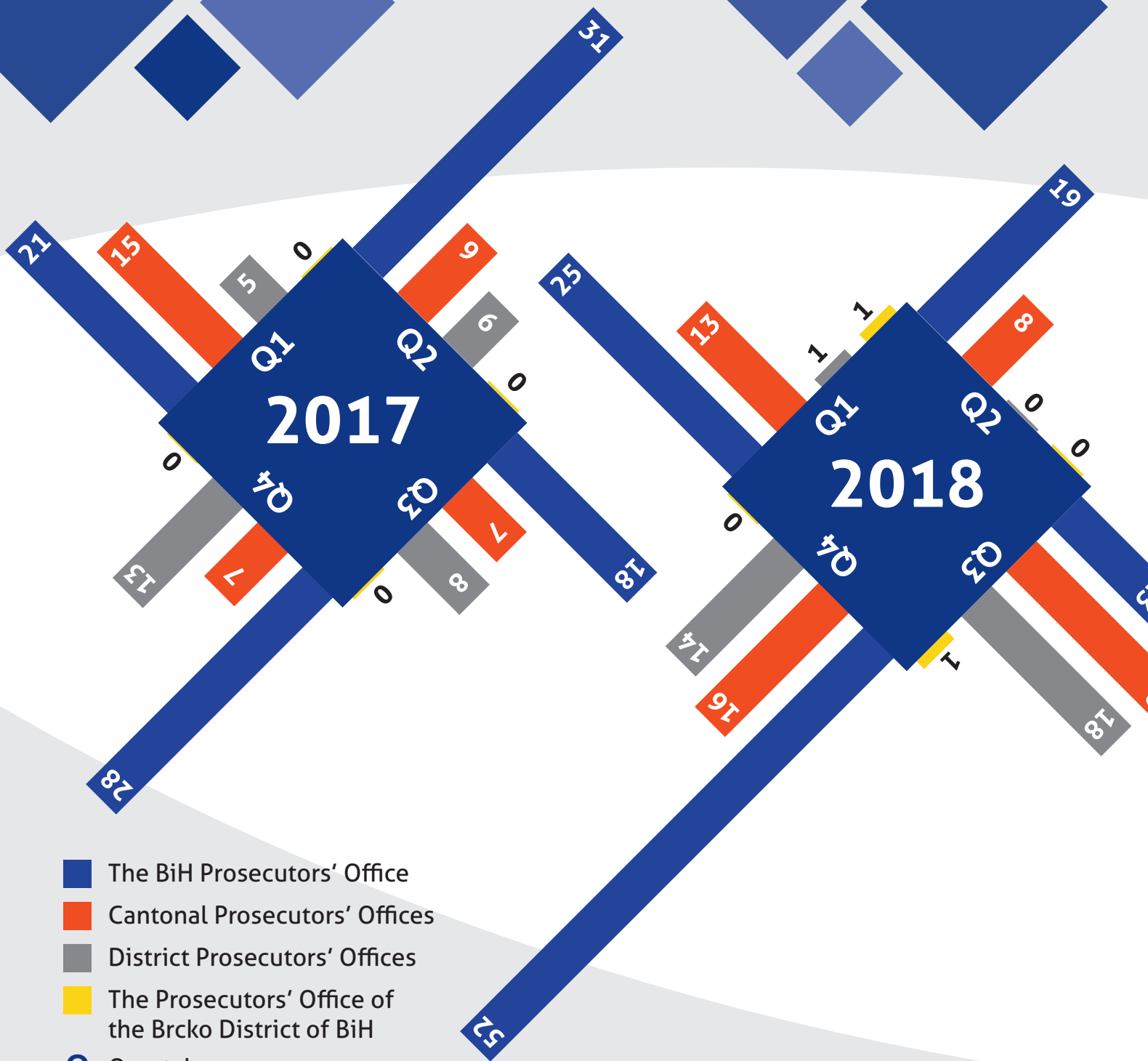
It should be noted that no judiciary has been faced with a challenge of complex and large war crimes cases or requests for efficient and quality completion of that number of cases. Despite the recorded backlog, the Prosecutors' Offices and Courts in BiH have achieved noticeable statistical results in their work on the war crimes cases during the previous phases of the implementation of the EU's support. Complementary to the implementation of the project activities is the EU's support to reducing the number of war crimes cases pending in the prosecutors' offices.



Number of
no investigation
orders

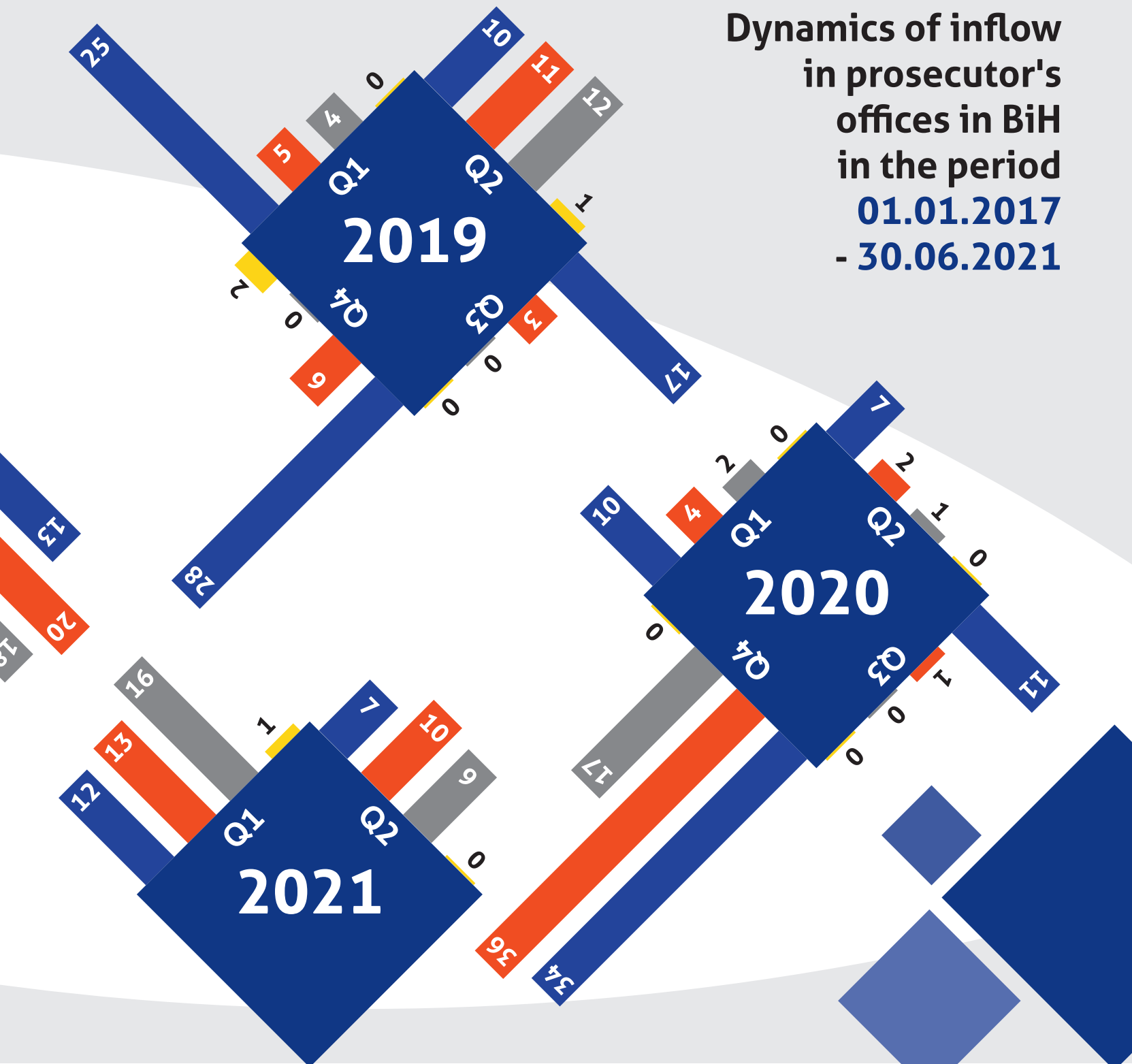
During the period 2013–30.06.2021, the prosecutors' offices in BiH solved by prosecutorial decisions 1669 war crimes cases against 4638 individuals. 521 indictments were issued (31%) against 976 individuals. An order not to conduct an investigation was issued in 382 war crimes cases (23%) against 1576 individuals, while an order to terminate an investigation was issued in 766 war crimes cases (46%) against 2086 individuals. During the same period, the Courts reached over 300 final and binding decisions in war crimes cases.





- The BiH Prosecutors' Office
- Cantonal Prosecutors' Offices
- District Prosecutors' Offices
- The Prosecutors' Office of the Brcko District of BiH
- Q** Quartal

**Dynamics of inflow
in prosecutor's
offices in BiH
in the period
01.01.2017
- 30.06.2021**



Systematic assumptions

- 27 judicial office holders financed - transferred to the regular budget as from 2020;
- More than 100 positions of additional staff for work on war crimes cases financed;
- Material capacities significantly improved - procurement of vehicles, reconstruction of the building, ICT equipment, AV.

- Regular monitoring of the dynamic and quality of work on war crimes cases on a quarterly basis, established by the BiH HJPC;
- A model of continuous professional support to the BiH HJPC standing commissions established;
- A new normative framework for priority planning and work of the prosecutors' offices on the most complex war crimes cases established;
- Specific aspects of disciplinary liability of prosecutors defined.

Professional support

Training of judicial office holders

- Regular semiannual training platform for improving professional skills of judges, prosecutors and lawyers established;
- 8 roundtables involving over 350 judges, prosecutors and lawyers organised.

- 27 meetings of the Supervisory Body organised and professional support provided to supervision of implementation of the National Strategy;
- Professional support provided to the Working Group in charge of developing a Revised National Strategy;
- The BiH HJPC Guidelines with measures to improve efficiency and quality of work of the prosecutors' offices on war crimes cases adopted.

Implementation of the Revised Strategy

**The percentage
of unresolved
KTRZ cases
in prosecutor's
offices in BiH**



The Prosecutors' Office of
the Brcko District of BiH **0,54%**

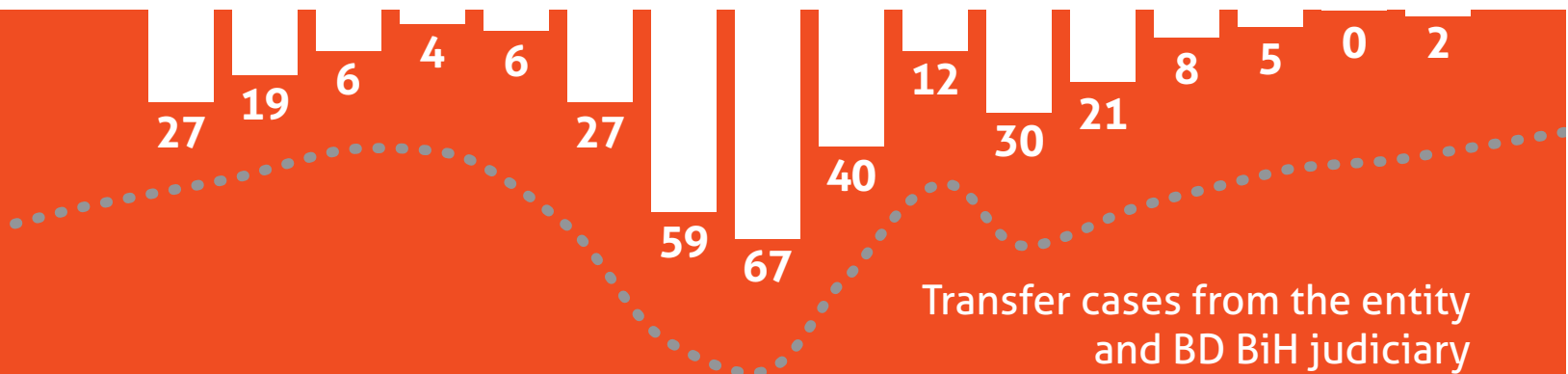
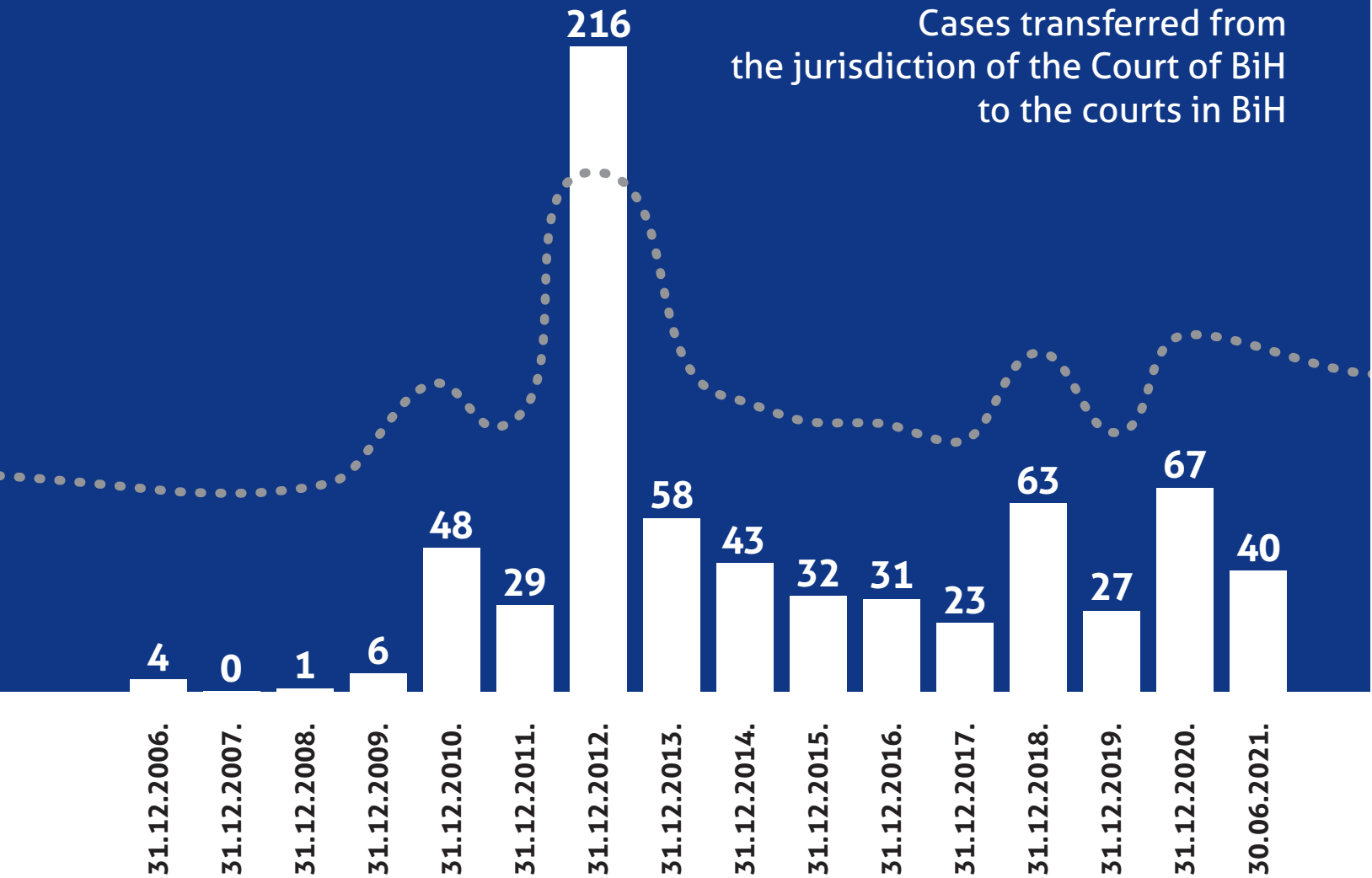


HUMAN RESOURCES ASPECT

The funds were secured through the EU's support provided within the IPA 2012/2013/2017 phase for the financing of 27 judicial office holders, of whom 25 were appointed as judges and prosecutors. The BiH HJPC's continuing activities towards ensuring the full scope of respect for the principles of independence and permanence of judicial and prosecutorial offices in parallel with coordination of budget programming with the managers of judicial institutions resulted in the transfer of all judicial office holders to funding from the regular institutional budget.

Within the ongoing IPA 2019 phase, the funds have been secured for the salary of 96 employees who provide professional and administrative support to judges and prosecutors in their work on

Cases transferred from the jurisdiction of the Court of BiH to the courts in BiH



Transfer cases from the entity and BD BiH judiciary

the war crimes cases (expert associates and advisers, investigators, psychologists, administrative and technical staff etc.). Additional funds have been secured for the regular activities of Courts and Prosecutors' Offices.

MATERIAL ASPECT

The judicial institutions in BiH have been equipped through IPA 2012 and IPA 2013 phases of the European Union's support with significant material resources in support of their effective work on the war crimes cases. Through public procurement procedures and support, vehicles and audio and video equipment were donated and a significant amount of funds provided to refund regular activities of the institutions related to the financing of court-appointed lawyers, witness expenses, professional training and regular monthly overhead expenses.

TRAINING ASPECT

The project activities included the organization of 8 professional conferences for the purpose of improving professional knowledge



and skills of the judicial office holders. In cooperation with the BiH Ministry of Justice, 5 two-day training sessions involving over 350 judges, prosecutors and lawyers, were organized. The professional meetings were organized for the purpose of identifying the best normative and practical solutions for harmonized application of substantive law throughout BiH, improvement of efficiency of investigations, in parallel with the possible models for speeding up the judicial proceedings. In addition, discussions focused on strategic issues related to the organization of the work of prosecutor's offices and application of the legal framework and establishment of coordination for the purpose of international cooperation.





/REVISED/ NATIONAL WAR CRIMES STRATEGY - IMPLEMENTATION

The massive character of violations of international humanitarian law in Bosnia and Herzegovina required a systemic approach to bringing a large number of war crimes perpetrators to justice. The National War Crimes Strategy (the National Strategy) was adopted in 2008 and a Supervisory Body was formed to monitor the implementation of the strategic goals and objectives.

Delays in the implementation of the key goals of the National Strategy led to the adoption of a Revised National War Crimes Strategy in September 2020. Professional support to the development of the strategic framework was provided through the BiH HJPC project component. The Revised National Strategy sets the end of 2023 as a final deadline for completion of those cases, thereby putting a great challenge before the judicial institutions in BiH and judicial office holders.

In the absence of the Supervisory Body for monitoring the implementation of the Revised National Strategy, the BiH HJPC took, within its power, a series of measures and activities, adopted general enactments and individual decisions in compliance with the requirement that the strategic goals be implemented in a timely fashion.

Declaring the legally binding nature and effect of the Revised National Strategy, the BiH HJPC adopted in November 2020 the *Guidelines for Chief Prosecutors of the BiH Prosecutors' Office, the Federation Prosecutors' Office, the Republika Srpska Public Prosecutors' Office and the Prosecutors' Office of the Brcko District of BiH on Issuing a General Binding Instruction on Mandatory Compliance with the Goals and Objectives of the Revised National Strategy and Decisions, Conclusions and Recommendations of the Supervisory Body*. The systemic measures include speeding up the process of solving the cases which are in the crime reporting phase, intensifying the work on the cases where suspects are unavailable, controlling an artificial inflow of new cases and the framework for the functioning of the case allocation mechanism. The Guidelines establish disciplinary liability for actions deemed contrary to the Revised National Strategy.

In parallel, a new Instruction for development of plans to solve war crimes cases pending before the prosecutors' offices in BiH was adopted. It is complementary to the Guidelines and lays down an obligation to investigate and prosecute the most complex and top priority war crimes cases with an emphasis on individuals involved in the Hague category "A" cases.



HJPC BiH ACTIVITIES IN IMPLEMENTING REVISED NATIONAL STRATEGY

The project implementation ensures existence of adequate human resource capacities in Courts and Prosecutors' Offices by the end of 2022

Strategic goals I and VIII

A comprehensive reporting system is established, followed by upgrading the functionality of the TCMS system for the purpose of monitoring the prosecution and trial of the individuals involved in the Hague category "A" cases

Complementary to the strategic goal II

Conditions established for a faster completion of unsolved war crimes cases through timely coordination of intensifying the functioning of the mechanism for allocation of war crimes cases to different levels of the judiciary in BiH

Strategic goal III

A new normative framework for the priority planning of and work on complex war crimes cases involving Hague category "A" suspects

Strategic goal IV

An analysis of the needs of the judiciary for efficient work on war crimes cases

Strategic goal VI

A framework for monitoring the dynamic of functioning of the regional cooperation mechanism

Complementary to the strategic goal VII

Mechanism for coordination and communication and regular reporting on the work of the Witness Support Sections established

Complementary to the strategic goal VIII

Disciplinary liability of prosecutors for non-compliance with strategic goals and specific objectives of the Revised National Strategy – Annex "B";

Individual binding decisions were adopted; they treat issues of intensifying the managerial supervision and responsibility of the judicial office holders, speeding up the dynamic of investigation and trial phases, in parallel with the normative mechanism for supervision and control of inflow of cases to the prosecutors' offices through establishment of strict standards for severing cases as well as obligations to consistently apply the legal framework of training. Further, recommendations are given for adequate procedural policies for cases where suspects are unavailable, increasing transparency.

CURRENT SITUATION AND PROSPECTS

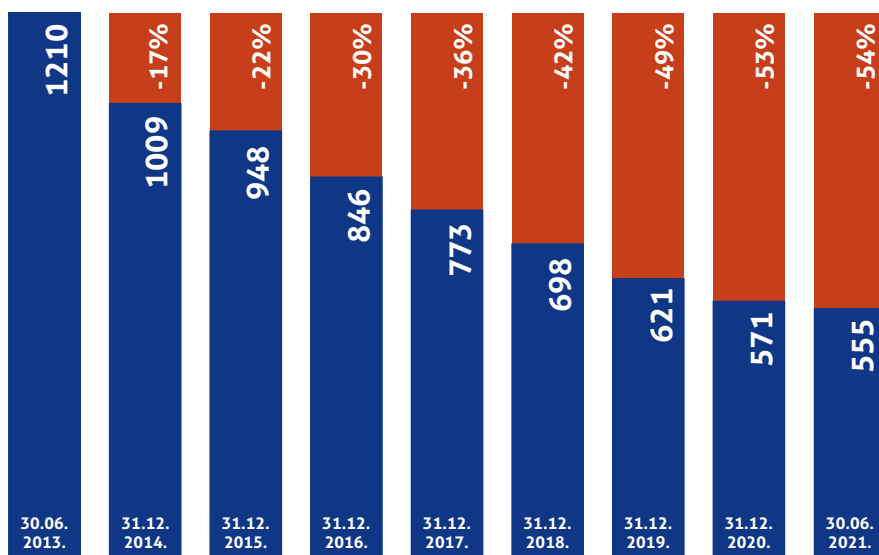
Despite tangible results, the judiciary in BiH is still burdened with a significant number of unresolved war crimes cases and individuals to be brought to justice. As of 30 June 2021, the Prosecutors' Office of BiH had 555 unsolved KTRZ cases against 4534 individuals.

Of that number, 451 individuals are not available to prosecution. In addition, the number of unsolved war crimes cases where suspects are unknown (KT-NRZ) is 1238, while the number of war crimes cases where there is still not enough evidence (KTARZ) is 2106.

The passage of time makes it more difficult to solve war crimes cases. Although the full completion of the transitional justice processes

depends on coordination and synergy between all three branches of government, an enhanced efficiency of work by the end of 2023 sets an obligation to the Courts and Prosecutors' Offices. In this regard, the judiciary in BiH is a neuralgic point. Bringing perpetrators of war crimes to justice in a timely fashion requires, first of all, an ethical and responsible attitude towards the demands of the judicial office.

PERCENTAGE AND NUMBER OF REDUCTIONS IN UNRESOLVED KTRZ CASES IN ALL PROSECUTOR'S OFFICES



MEASURES THAT JUDICIAL INSTITUTIONS HAVE TO PUT AT THE CENTER BY 2023

- ◆ To consistently implement the BiH HJPC's *Guidelines for Chief Prosecutors of the BiH Prosecutors' Office, the Federation Prosecutors' Office, the Republika Srpska Public Prosecutors' Office and the Prosecutors' Office of the Brcko District of BiH on Issuing a General Binding Instruction on Mandatory Compliance with the Goals and Objectives of the Revised National Strategy and Decisions, Conclusions and Recommendations of the Supervisory Body*
- ◆ To speed up the dynamic of court proceedings
- ◆ To intensify the practice of awarding compensation to victims within a criminal procedure
- ◆ To review in continuity and solve in a timely fashion the cases where suspects are unknown and where there is still not enough evidence.
- ◆ To carry out continuous control of inflow of new cases where suspects are known and adequate allocation of cases to different levels of the judiciary
- ◆ To improve coordination and communication of the Witness Support Sections and to increase standards of work with victims/witnesses
- ◆ To improve transparency of Courts and Prosecutors' Offices in accordance with the HJPC's Guidelines on Publication of Prosecutorial and Judicial Decisions on Official Websites
- ◆ To fully utilize the European Union's support to the work on war crimes cases



CHALLENGES BEFORE THE JUDICIARY IN BiH

- ◆ *It is necessary for form a Supervisory Body for monitoring the implementation of the Revised National War Crimes Strategy*
- ◆ *To improve regional cooperation, primarily with the countries of the region*
- ◆ *Adequate human and material capacities in Courts and Prosecutors' Offices*
- ◆ *Lack of a state/entity-level reparations fund*





Visoko sudsko i tužilačko vijeće Bosne i Hercegovine
Visoko sudbeno i tužiteljsko vijeće Bosne i Hercegovine
Високи судски и тужилачки савјет Босне и Херцеговине
High Judicial and Prosecutorial Council of Bosnia and Herzegovina



This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of High Judicial and Prosecutorial Council of BiH and do not necessarily reflect the views of the European Union



Visoko sudsko i tužilačko vijeće Bosne i Hercegovine
Visoko sudbeno i tužiteljsko vijeće Bosne i Hercegovine
Високи судски и тужилачки савјет Босне и Херцеговине
High Judicial and Prosecutorial Council of Bosnia and Herzegovina



Kraljice Jelene 88
71000 Sarajevo BiH
tel: +387 33 707 500
fax: +387 33 707 550
email:
vstvpress@pravosudje.ba
vstvbih@pravosudje.ba
web:
www.vstv.pravosudje.ba
www.pravosudje.ba