Subject: Your letter of 23 July 2019 on Serbia's accession process and the handling of war crimes cases in this country

Dear UN Special Rapporteur,

Thank you very much for your letter dated 23 July 2019.

Please find herewith the reply signed by Mr Christian Danielsson, the European Commission Director General for DG Neighbourhood and Enlargement negotiations.

Should you have any question on this reply, please contact Ms Francesca Cardona (francesca.cardona@eeas.europa.eu) at the EU Delegation to the United Nations in Geneva.

Yours Sincerely,

Walter Stevens

Mrs Agnes Callamard
UN Special Rapporteur on extrajudicial, summary or arbitrary executions
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Dear Ms Callamard,

We thank you for your letter dated 23 July 2019 and for your continuous follow up of the matter raised in it. As highlighted in your correspondence, respect for the rule of law and fundamental rights are key elements of Serbia’s accession process to the European Union. The handling of war crimes cases and of the fate of missing persons are specific prerequisites to the European path of the EU’s Western Balkan partners.¹

We are pleased to share with you, as UN Special Rapporteur on extrajudicial, summary or arbitrary executions, the following observations on the matters raised in your letter:

1. As part of the accession process, the European Commission closely monitors the rule of law and fundamental rights in Serbia. This includes monitoring of the ongoing efforts to reform the Serbian judicial system in line with EU acquis. To do so, the European Commission monitors and identifies institutional and systemic issues to be addressed. However, it has no competence or mandate to intervene in individual cases, such as judicially reviewing or assessing them. The Commission therefore has no comment to make on the individual case of Mr Ylli Bytyqi, Mr Agron Bytyqi and Mr Mehemt Bytyqi.

2. As explained above, the European Commission does not intervene in individual cases.

   The EU accession process is merit-based and depends on the concrete results achieved by each individual country.

   The European Commission has been providing substantial financial and technical assistance to Serbia in order to support it in its reform efforts in aligning its legal and institutional framework with the acquis and international standards, and be in a position to properly apply and enforce it.


Ms Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions
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The European Commission is promoting and financing dedicated actions to ensure concrete results in handling war crimes cases in Serbia, including by strengthening prosecutorial and judicial capacities and enhancing regional cooperation with the assistance of the International Residual Mechanism for Criminal Tribunals (IRMCT). There has also been a strong emphasis on regional co-operation as an essential element in the fight against impunity, with the European Commission encouraging cooperation between prosecution offices, including between Kosovo and Serbia.

The European Union Common Position for Chapter 23 on Judiciary and Fundamental Rights in Serbia\(^2\) (hereinafter “Chapter 23”) sets a number of Interim Benchmarks that Serbia needs to meet in order to advance on its European path, including benchmarks specifically dedicated to progress made on the prosecution and trial of war crimes cases. They are included in the Annex attached to this correspondence.

In the context of the enlargement process, the European Commission is monitoring the progress made by Serbia in handling war crimes cases against these interim benchmarks. It closely works with Serbian authorities to identify and address remaining obstacles to effective war crimes prosecutions, including through trial monitoring with the Organization for Security and Co-operation in Europe. Where necessary, the European Commission alerts the authorities on the need to take further measures as warranted. In this respect, the prosecution of high-level suspects is a key area.

In addition, as pointed out in your letter, the European Commission regularly reports on progress made by Serbia in meeting these benchmarks. In the 2019 Communication on EU Enlargement Policy, the European Commission has explicitly called upon Serbia to demonstrate a firmer commitment to the domestic handling of war crimes at all levels, if it wants to maintain the overall balance of its EU accession negotiation\(^3\). The progress made by Serbia in handling war crimes is a key criterion for closing Chapter 23.

3. The European Union, through the office of its EU Special Representative in Kosovo, continues to facilitate mutual legal assistance in criminal and civil matters between judicial bodies in Kosovo and respective counterparts in Serbia. The processing by Serbia of requests for mutual legal assistance is one of the interim benchmarks included in the European Union Common Position for Chapter 35 on the Normalisation of relations with Kosovo and is also addressed in the above-mentioned regular reports. The 2019 reports for both Serbia and Kosovo clearly point out that while “requests for mutual legal assistance are in principle being processed, [...] mutual legal cooperation is extremely limited in war crimes cases.” The EU continues to raise this issue in its bilateral contacts.

4. Together with the International Commission on Missing Persons (ICMP) and the International Committee of the Red Cross, the European Commission is supporting efforts to identify mass graves sites, solve the remaining cases of

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missing persons and address the needs of their families in the Western Balkans, including in Serbia. It closely monitors progress made, including through the implementation of bilateral agreements and of the Framework Plan on Missing Persons\(^4\). This Plan, signed by Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serbia, underlines the signatories’ commitment to regional cooperation in tackling the issue of missing persons. The European Commission further regularly reports on progress made by Serbia, including in the context of the Belgrade-Pristina Working Group on Missing Persons\(^5\). Where necessary, the European Commission alerts the authorities on the need to take further measures as warranted\(^6\).

Through its financial support to the ICMP, the European Commission expects that further sites will be identified in close cooperation with the concerned authorities, including Serbia.

To conclude, any aspiring Member State has to ensure that it has the necessary administrative and judicial capacity in place to apply the *acquis* and European standards not only in law but also in practice.

We fully take note of your communication and stand ready to consider further action as warranted within the scope of our mandate.

We are looking forward to the continued cooperation between our offices.

Yours sincerely,

\[Signature\]

Christian Danielsson

Encl.: Annex 1, Interim Benchmarks specifically dedicated to progress made on the prosecution and trial of war crimes cases

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