

WAR CRIMES TRIALS REPORT FOR 2020/2021

Slow approach to justice

SUMMARY

Report on war crimes trials prepared by the legal team of *Documenta* and the Center for Peace, Nonviolence and Human Rights Osijek provides an insight into criminal proceedings for war crimes that were carried out during 2020/2021 or are still ongoing before the four competent county courts. The report also covers the work of the county state attorneys' offices when it comes to the prosecution of criminal acts of war crimes through a review of the investigations launched and indictments filed. It also discusses the last two criminal proceedings under the jurisdiction of the International Residual Mechanism for Criminal Tribunals (IRMCT), which are conducted for crimes committed on the territory of the former SFRY and the Republic of Croatia, as well as the recently concluded criminal proceedings against Ratko Mladić and the criminal proceedings against Jovica Stanišić and Franko Simatović.

During 2020/2021 we monitored criminal proceedings in **59 cases before four competent county courts; 44 in 2020 (in 21 criminal proceedings, trials from previous years were continued, while in 23 criminal proceedings, hearings began in 2020) and 42 in 2021 (in 27 criminal proceedings, hearings were conducted during both years, while in 15 criminal proceedings, trials/hearings started during 2021)**. Of the total number of monitored criminal proceedings, **during 2020, 40 (91%) were against members of Serbian paramilitary units/Yugoslav People's Army, while during 2021 there were 38 (90%) of such proceedings**. At the same time, 4 criminal proceedings were conducted against members of the Croatian units and members of the Croatian Defense Council.¹ Criminal proceedings were conducted against a total of **174 defendants [77**

¹ During 2020, three criminal proceedings were carried out against members of Croatian units (Crime in Osijek, defendant Branimir Glavaš et al., Crime in Lora 1 and 2, defendant Tomislav Dujić et al. and Crime in Kuline against prisoners of war, defendant Tvrtko Pašalić et al.) and one criminal proceeding against members of the Croatian Defense Council (Crime in the Dretelj, Silos and Gabela camps, BiH, defendant Marinko Marić et al.). More about the proceedings: Crime in Osijek, Crime in Lora 1 and 2, and Crime in Kuline. On the other hand, during 2021, 2 criminal proceedings against members of the Croatian Army continued (Crime in Osijek, defendant Branimir Glavaš et al., Crime in Lora 1 and 2, defendant Tomislav Dujić et al.) while the trial of a member of the Croatian Defense Council (defendant Marinko Stojanović, Crime in Kiseljak, BiH) has begun.

defendants were tried during² 2020, of which 63 persons (82%) were members of Serbian paramilitary units/Yugoslav People's Army, while in 2021, criminal proceedings were conducted against 101 defendants, of which 88 (87%) were members of Serbian paramilitary units/Yugoslav People's Army].

The trend of trials in absentia in war crimes cases is still dominant and has been recorded exclusively in criminal proceedings carried out against members of Serbian paramilitary units/Yugoslav People's Army. In the reporting period, in four competent courts, **41 out of 59 (70%) criminal proceedings were conducted against unavailable defendants**. As an illustrative example, during 2020 and 2021, 86% of former members of Serbian paramilitary formations/Yugoslav People's Army were tried in absentia.³ In other words, out of 44 criminal proceedings, trials in absentia were conducted in 32 (73%) proceedings during 2020, while in 2021, out of 42 criminal proceedings, 29 (69%) of them were conducted against unavailable members of Serbian paramilitary formations/Yugoslav People's Army who were mostly resided in the territory of the Republic of Serbia. Also, during the reporting period, in **7 out of 59 (12%) criminal proceedings**, defendants convicted in absentia requested the **renewal of the proceedings** after they became available to the judicial authorities of the Republic of Croatia.⁴ Out of a total of 59 criminal proceedings, in 11 (19%) proceedings in which a retrial was ordered, 7 proceedings (64%) were conducted against unavailable defendants, who will have *de lege lata* possibility of submitting a request for the renewal of the criminal proceedings, if a final conviction is in force against them at the time of availability. This data vividly illustrates the futility of trials in absentia and speaks of insufficient political will for trials in the country of residence, i.e., for finding a way to liberalize the extradition mechanisms of nationals for criminal offenses against values protected by international

² This number does not include the defendants against whom the criminal proceedings have been discontinued due to death reasons.

³ Of the total number of indicted members of Serbian paramilitary units (63 persons), trials in absentia were conducted against 54 persons (85%), while in 2021, out of the total number of indicted persons (88), 76 (86%) members of the aforementioned units were tried in absentia.

⁴ These are criminal proceedings for crimes in Varaždin, Baranja, Mikluševci, Borovo Commerce, Đakovo, military prison "Lora" and Drniš. It should be noted that in the criminal proceedings for the crime in Baranja against the defendant Milenko Marić, after the renewal of the proceedings, a retrial was ordered, which is ongoing before the County Court in Osijek.

humanitarian law in the countries where the crimes were committed. Furthermore, this data also shows the level of cooperation of prosecutors' offices because cases are only very rarely⁵ transferred for processing to the countries where the defendants currently live.

Competent courts issued **27 first-instance verdicts** and three decisions on suspension of proceedings (in 2020, 16 verdicts were passed, while in 2021, 10 non-final verdicts and three decisions on suspension of proceedings were passed - Crime in the police station and penitentiary institution in Glina, defendant Đuro Opačić, criminal proceedings against defendant Špiro Miodrag and criminal proceedings against defendant Milan Zelenović for crimes in the wider Zadar area) **against 46 defendants, of which 30 persons were convicted (27 were members of Serbian paramilitary formations/Yugoslav People's Army), 8 persons were acquitted** (all members of the Serbian paramilitary units/Yugoslav People's Army), **against 7 defendants a verdict dismissing an action was passed** due to the reclassification of the criminal offense, and three decisions were passed on the suspension of the proceedings. The three (3) persons with non-final verdicts are members of the Croatian Defense Council.⁶ The competent state attorneys' offices filed appeals against the acquittals, which will be decided by the Supreme Court of the Republic of Croatia. We emphasize that appeals against decisions of first-instance courts made after January 1, 2021 will be decided by the newly established High Criminal Court.⁷

In the reporting period, **25 criminal proceedings** were concluded. In 21 cases, the first-instance verdict was fully confirmed. In three cases, the Supreme Court overturned the first-instance decision⁸, while in the case against defendant Đorđe Rkman for the shelling of Đakovo, it overturned the first-instance verdict in the decision on the calculation of the time of deprivation of liberty.⁹ Furthermore, in the case of the crime in Baćin, the Supreme Court of the Republic of Croatia decided in the third instance and confirmed the second-instance decision by which the

⁵ For example, in the case of crimes committed by Croatian Defense Council members on the territory of Bosnia and Herzegovina.

⁶ They are: defendant Marinko Marić and defendant Željko Rodin – crime in the Dretelj, Silos and Gabela camps, and defendant Marinko Stojanović – crime in Kiseljak, Bosnia and Herzegovina.

⁷ <https://sudovi.hr/hr/vksrh/o-sudovima/o-sudu>

⁸ Criminal proceedings against Dušan Žarković et al., Verdict No. Kž-rz-27/2020-4, of November 27, 2020, criminal proceedings against Vladimir Kekić, Verdict No. Kž-rz-12/2017-8 of April 29, 2021, criminal proceedings against defendant Radivoj Ivković, Verdict No. Kž-rz-19/2019-4 of October 7, 2021.

⁹ <https://documenta.hr/novosti/granatiranje-dakovstine-1991-i-1992-ponovljeni-postupak/>

defendants were sentenced to 20 years¹⁰ in prison and, as a second-instance court, confirmed the conviction to 20 years in prison.¹¹

41 defendants were included in the final verdicts. In relation to **31 defendants, 18 convictions were passed, 15 against 29 (89%) members of the Serbian paramilitary units/Yugoslav People's Army, and 3 against 3 (11%) members of the Croatian Defense Council.** When it comes to three members of Serbian units, in two criminal proceedings, a verdict dismissing an action was confirmed.

The report gives an overview of the criminal proceedings in which during 2020/2021 hearings were rarely scheduled, were not scheduled, or were postponed, as well as an overview of the criminal proceedings which are, as usual, inappropriately long. This situation is partly caused by the epidemiological situation and restrictions caused by the coronavirus.

Criminal proceedings for war crimes are undoubtedly of special importance, both because of the qualification of the act and the degree of social danger, as well as because of the social interest and demonstrated interest of the public and their significance for processes of dealing with the past. Their effectiveness guarantees justice to the victims. Witnesses who are also victims/injured parties, express dissatisfaction with trials in which there is no defendant and where it is uncertain whether, in the case of convictions, they will ever serve the sentence.

During 2020, hearings in numerous criminal proceedings for war crimes were not scheduled. These are criminal proceedings for criminal acts of war crimes and crimes against humanity in the court hearing phase. In most cases, evidentiary procedures are carried out for two or three years, and even longer. Due to the expiration of the legal deadline for tolerating the length of the interruption, or change of the president of the council/council member, hearings very often start from the beginning, so witnesses who have already been directly heard multiple times are called to testify again.

For example, in the criminal proceedings against three unavailable defendants who are charged with a crime in Petrinja committed in September 1991 (the case of defendant Jovan Vitorac et al.), the

¹⁰ Criminal proceedings for the crime in Baćin, defendant B. Dmitrović, Verdict No. III Kž-4/2020-5 of November 16, 2020

¹¹ <https://documenta.hr/novosti/zlocin-u-donjem-hrastovcu-ponovljeni-postupak/>

trial began in February 2020, and one hearing was held in March of the same year. In the criminal proceedings against the defendant Ratko Andrić (the indictment refers to crimes committed in the Manjača camp, near Banja Luka), the trial was repeatedly postponed last year, and only one hearing was held in 2020. One hearing was also held in the repeated proceedings for crimes in Hrvatska Dubica (defendant Đorđe Ratković et al.). In the repeated proceedings for crimes in Osijek (defendant Branimir Glavaš et al.), the last hearing was held in March 2020/July 2021. The situation is similar with criminal proceedings under the jurisdiction of the County Court in Osijek, such as criminal proceedings for crimes in the Serbian camps Begejci, Stajičevo, Sremska Mitrovica (defendant Aleksandar Vasiljević), in which, at the request of the convict, the renewal of the proceedings is allowed, and for crimes in Mikluševci (defendant Petar Lender).

We also point out the inappropriately long criminal proceedings in which trials were finally disposed of during 2020/2021, three or more years after the first-instance verdict, i.e., seven or more years from the start of the trial.¹²

In this regard, we note that the High Criminal Court established on January 1, 2021, with the jurisdiction to decide in the second instance on appeals against the decisions of county courts in criminal cases, made a decision only in two cases of war crimes, after an appeal to the first instance verdict.¹³ Such criminal proceedings are also those in which trials are conducted for years, or are repeated again and again before first-instance panels.¹⁴ This *modus operandi* exhausts the personal and financial resources of the judiciary, victims are systematically re-traumatized, and witnesses express fatigue during repeated testimonies in court.

Such actions of the judicial authorities call into question not only the economic efficiency of the

¹² These are proceedings for crimes in the Medački džep (defendant Josip Mršić and defendant Josip Krmpotić), crimes in Bačin (defendant Branko Dmitrović et al.), crime in Vojnić (defendant Vladimir Kekić).

¹³ Criminal proceedings for crimes in Kakma near Benkovac (defendant Milan Veselinović et al. and criminal proceedings for crimes in Glina prison, defendant Stanko Palančan et al.). <https://sudovi.hr/hr/vksrh/priopcenja-i-obavijesti>

<http://www.vsrh.hr/EasyWeb.asp?pcpid=473>

¹⁴ Criminal proceedings for the crime in Sunjska Greda (defendant Milenko Vidak), for the crime in Osijek (defendant Branimir Glavaš et al.), for the crime in the Kuline military prison (defendant Tvrtko Pašalić), for the shelling of Zagreb (defendant Milan Martić et al.), criminal proceedings against defendant Borislav Đukić, who is accused of committing a war crime by attempting to mine the Peruća dam, criminal proceedings for the crime in Udbina (defendant Dane Radočaj), and for the crime in Kablar near Karlovac (defendant Marko Carević).

proceedings, the rights of the defendant, as well as the victims and their family members, but also raise the question of citizens' confidence in **the effectiveness of the rule of law, and undermine trust in the state.**

Ensuring the presence of the defendants during the investigative procedure and at the indictment stage is still difficult. Of the 98 defendants who were under investigations or indictments during 2020/2021, 74 of them (76%) are not available to the criminal prosecution authorities of the Republic of Croatia.

In 2020, the county state attorneys' offices competent for dealing with war crimes cases issued decisions on conducting investigations against 18 people. Indictments for war crimes were brought against 28 people.¹⁵ Of the 46 persons under investigation and indictments, 42 of them, or 91%, are members of the Serbian forces, and 39 of them, or 85%, are unavailable to the Croatian judiciary, and criminal proceedings against them are carried out in absentia. The investigation into crimes against prisoners of war in the Rakitje military barracks includes one member of the Croatian Army, who was extradited to Croatia from Slovenia. For crimes committed on the territory of Bosnia and Herzegovina (Mostar and the wider area of Mostar and Uskoplje - Gornji Vakuf), an investigation was launched against three members of the Croatian Defense Council residing in the Republic of Croatia.

According to the data of the State Attorney's Office of the Republic of Croatia, during 2021, decisions on conducting an investigation were made against 27 persons, 20 of whom are unavailable. When it comes to indictments, out of a total of 25 accused, 15 people do not have the possibility of effective participation in the criminal proceedings. In other words, out of 52 persons involved in investigative procedures and indictments, 35 of them (67%) are unavailable and mostly reside in the Republic of Serbia.

Indictments brought in the nineties, and even in the decade after, against defendants unavailable to the Croatian judiciary, are still the basis of a significant number of criminal

¹⁵ Letter from the State Attorney's Office of the Republic of Croatia dated May 7, 2021. Report of the Chief State Attorney of the Republic of Croatia on the work of state attorneys' offices in 2020.
<http://www.dorh.hr/Default.aspx?sec=645>

proceedings for war crimes.

There is a lack of political will to prosecute crimes in the states on whose territories the alleged perpetrators reside. The nationalist policies of the governments, and the somewhat justified perception of the dubious impartiality of the judiciary in the region, continue to make cooperation difficult. We also note that Serbia reluctantly initiates criminal proceedings based on the so-called command responsibilities against high-ranking members of the former Yugoslav People's Army.¹⁶ Also, many defendants against whom criminal proceedings in absentia are being conducted in Croatia, live in Serbia. However, in the Report we highlight examples of effective conduct of proceedings in the country of residence, for example the criminal proceedings that were carried out in Serbia against the defendant Boško Soldatović, a low-ranking member of the JNA, for the crimes in Bogdanovci.¹⁷

We would like to remind that when working on war crimes cases, state attorneys have at their disposal the case monitoring system in the State Attorney's Office (CTS), which contains systematized data on all war crimes. Unfortunately, the part of the system with information on trials finally disposed of is not publicly available, so the websites of human rights organizations remain the platforms with the most comprehensive information on prosecuted war crimes.

In addition, the State Attorney's Office cooperates with the International Residual Mechanism for Criminal Tribunals (IRMCT)¹⁸, which was established by resolution of the Security Council of the United Nations in order to take over the competences, rights, obligations and basic functions of the International Criminal Tribunal for the former Yugoslavia (ICTY), and in its work it also uses IT tools created for searching ICTY-s its database.

There is still no prosecution of crimes committed against Serbs (for example, the crime in

¹⁶ For example, despite the evidence presented and the court's conclusions, the commander of the unit who issued the order to attack Lovas during which 22 civilians were killed (in the order, among other things, it was stated that the village should be cleansed "of the population that is hostile"), was not prosecuted. Also, no one from the Yugoslav People's Army chain of command was prosecuted.

¹⁷ <https://documenta.hr/novosti/zlocin-u-bogdanovcima-potvrdena-osudjujuca-presuda/>

¹⁸ <https://www.irmct.org/bcs/o-mehanizmu>

Medari).¹⁹ The crimes in Varivode and Gošić²⁰, as well as in Dvor na Uni²¹ are still unsolved and proceedings are being conducted against unknown perpetrators. The crime against Serb civilians committed on August 1 and/or August 2, 1991, in Sarvaš²² remains uninvestigated to this day. On the same day, two police officers from Osijek, Zdravko Pokrajac and Milorad Đekić, who were sent to Sarvaš as part of their regular duties, also disappeared.²³

Until today, the judiciary of the Republic of Croatia has not prosecuted the crimes committed against civilians on November 10 and 11, 1991 in Bogdanovci.²⁴ After the fall of Bogdanovci (the last line of defense of Vukovar, very soon, on November 18, 1991, Vukovar also fell) units of the former Yugoslav People's Army and Serbian paramilitary forces committed numerous crimes against local civilians in the basements of their houses, and on the streets. Some of the civilians

¹⁹ <https://documenta.hr/novosti/pamtimo-zlocin-u-medarima>

²⁰ In August and September 1995, in Varivode and Gošić, villages not far from Kistanje, members of Croatian military and police units killed 16 residents of Serbian nationality, well after the cessation of hostilities and the end of the military-police operation „Storm“, when the civilian population was supposed to be guaranteed the security of living. A large number of elderly people were brutally executed without any reason, the youngest of whom was 55 and the oldest 85 years old. By merging the criminal proceedings, six members of the Croatian military and police forces were charged with the crimes in Gošić and Varivode. The proceedings were initiated before the County Court in Zadar, then transferred to the County Court in Šibenik. In February 2002, the criminal proceedings for the aforementioned crimes, legally qualified as murder for self-interest, were suspended due to the withdrawal of the prosecutor from further prosecution - the County State Attorney's Office in Šibenik. This brought the investigation back to the beginning, being conducted against unknown perpetrators.

²¹ For the war crime committed in Dvor on August 8, 1995, several eyewitnesses, members of the Danish battalion from the UN peacekeeping mission (UNPROFOR forces) were questioned in Denmark. The crime against twelve civilians, mostly persons with physical and mental disabilities, was committed in the area of separation of the armed forces of the Croatian Army and members of Serbian units, by unknown persons in military uniforms. On several occasions during 2012 and 2013, representatives of the State Attorney's Office of the Republic of Croatia and the War Crimes Prosecutor's Office of the Republic of Serbia interrogated witnesses, members of the Danish Battalion, on the territory of the Kingdom of Denmark, because of their useful information about possible perpetrators.

²² In 1996, the relatives of the victims filed criminal charges in which they pointed out the possible perpetrators. For four years there was no information about the investigation, and then on July 11, 2000, the Municipal State Attorney's Office and the County Court in Vukovar transferred the complete file to the County State Attorney's Office in Osijek, which continued the process under the designation DO-K-49/2000. The police investigation did not yield results, so on October 22, 2001, the County State Attorney's Office in Osijek dismissed the criminal charges filed for the massacre in Sarvaš. We remind that civilians Gospava Adamović (1949), Veselin Adamović (1944), Branka Bojanić (1952), Bojanić Dušan (1950), Melanija Bojanić (1927), Lazar Jerinić (1954), Dušan Milojević (1964), Zora Petrović (1926) and Svetislav Sandić (1939) were killed in Sarvaš.

²³ The body of Zdravko Pokrajac was found in April 1992 in the Drava River, while the body of Milorad Đekić was found in March 1992 in Danube.

²⁴ The complete list of victims can be found here: <https://documenta.hr/novosti/obilježavamo-30-godisnjicu-pada-bogdanovaca/>

were found in a shallow grave by the side of the road; some are still missing; some were found in a mass grave at the local cemetery.

To date, the only criminal proceedings for war crimes against civilians committed in Bogdanovci, have been conducted against one defendant before the High Court - Department for War Crimes in Belgrade (1st degree criminal proceedings) and before the Court of Appeal in Belgrade (2nd degree criminal proceedings). On June 11, 2021, the Court of Appeal in Belgrade confirmed the conviction against Boško Soldatović, a former member of the Military Police of the II Proletarian Guard Mechanized Brigade of the Yugoslav People's Army. He was found guilty of war crimes against civilians of Albanian nationality, who lived in Bogdanovci. He was sentenced to 15 years in prison. To date, there have been no investigations or criminal prosecution of the perpetrators of war crimes committed against civilians of Serbian nationality in Vukovar.²⁵ The crimes were committed in the summer of 1991. Some of the victims are still listed as missing persons.

The families of these victims have repeatedly tried to file criminal charges, but to this day they do not know their status. For many years, they have received information from the competent county state attorneys' offices that investigations are being conducted, which is, to say the least, unprofessional, and speaks of a reluctance to investigate all crimes and punish the perpetrators.

Translation to English: Đino Đivanović

²⁵ Civilian victims killed in Vukovar and its surroundings in the summer of 1991: Mladen Mrkić, disappeared on July 31, 1991 in Vukovar; Jovan Jakovljević Rakijica, killed on the doorstep of his house on June 29, 1991 in Vukovar; Željko Pajić, killed on August 10, 1991 in Vukovar; Ljuban Vučinić, killed on July 22, 1991 in Vukovar; Savo Damnjanović, killed on July 25, 1991 in Vukovar; Miodrag Nađ, killed on July 4, 1991 in Sotin; victims Ana Lukić, Darinka Grujić, Slavko Miodrag...