

ANNUAL REPORT ON MONITORING WAR CRIMES TRIALS FOR 2023

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**ANNUAL REPORT ON MONITORING WAR CRIMES TRIALS FOR 2023 -
SUMMARY**

In this year's report, we look back at the trials held during 2023. We recorded a total of **64 criminal proceedings in the trial phase** that are under the jurisdiction of the county courts in Zagreb, Rijeka, Osijek and Split. In three criminal proceedings under the jurisdiction of the County Court in Osijek, preliminary hearings were held. The fact that the trend of trials in absentia is still dominant is a concern. It was 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, **42 out of 64 (66%) criminal proceedings were conducted against absent defendants** who mostly reside in the territory of the Republic of Serbia.¹ Of the total number of monitored proceedings, **60 (94%) were against members of Serbian paramilitary units/Yugoslav People's Army**. At the same time, only **4 criminal proceedings** were or are being conducted **against members of Croatian units and members of the Croatian Defence Council** (Crime in Osijek, defendant Branimir Glavaš et al., Crime in Hrasnica, defendant Perica Kustura, Crime in Kulina, defendant Tvrtko Pašalić et al., Marko Radić, Crime in Uskoplje, BiH).

Nine (9), i.e. 14% of criminal proceedings, are in retrial stage before first-instance councils. Two (2) criminal proceedings are in retrial stage after the retrial was approved (criminal proceedings against defendant Davor Mandić and defendant Goran Vujanić). During 2023, the competent courts passed 19 first-instance verdicts **against 30 defendants: 16 people were convicted, of which 12 were members of Serbian paramilitary formations/Yugoslav People's Army, and 4 members of Croatian forces** (Crime in Osijek, defendant Branimir Glavaš et al.), **while 10 persons were acquitted** (9 members of the Serbian paramilitary units/Yugoslav People's Army and one member of the Croatian Defence Council). In three criminal proceedings against 4 defendants, verdict in which the indictment was suspended was passed (Crime in Podlapača, defendant Mirko Radeka et al., Crime in Ervenik, defendant Goran Vujanić, Crime in the village of Vujići and Kijevo, defendant Dmitar Radinović).

During 2023, we recorded **11 appeal proceedings** before the Supreme Court of the Republic of Croatia, i.e. the High Criminal Court of the Republic of Croatia. In one criminal proceeding, the Supreme Court of the Republic of Croatia² passed the verdict in the third instance: the criminal proceedings for the crime in Joševica from December 1991, against defendant Dušan Žarković and defendant Bogdan Jednak.³ Deciding on the appeal against the first-instance verdict, the Supreme Court increased their prison sentences from 15 to 20 years.⁴ **6 criminal proceedings**⁵

¹ We have no information about the availability status of two defendants against whom criminal proceedings are pending before the county court in Osijek (criminal proceedings against defendant Jovan Gavranović and criminal proceedings against defendant Miloš Grujić).

² Verdict of the Supreme Court of the Republic of Croatia dated February 15, 2023, No. Kž-rz 25/2018-6

³ <https://documenta.hr/en/novosti/prosinacki-zlocin-u-josevici/>

⁴ Verdict of the Supreme Court of the Republic of Croatia dated September 21, 2023, No. III Kž 4/2023-9

⁵ In the following cases, the first-instance verdicts were confirmed in the appeal proceedings:

- 1) Crime in Joševica, December 1991, defendant Dušan Žarković et al.
- 2) Crime in the Bjelovar barracks, defendant Jure Šimić
- 3) Crime in Varaždin, defendant Vladimir Davidović
- 4) Crime in Zagreb, Karlovac and Jastrebarsko - shelling, defendant Milan Martić et al.
- 5) Crime in Ervenik, defendant Goran Vujanić
- 6) Crime in Vardarac, defendant Milorad Trivunović

have been finally concluded, while the verdicts of the appeal courts in three criminal proceedings are not publicly available (criminal proceedings for the crime in the "Manjača" camp, defendant Ratko Andrić, criminal proceedings for the crime in Bršadin, defendant Radovan Karagić et al. and criminal proceedings for the crime in Negoslavci and Petrovci, defendant Mirko Demonjić). The High Criminal Court ordered a retrial, after on March 1, 2023, it dismissed the first-instance verdict of the County Court in Split, by which the defendant Duško Vujnović was acquitted of war crimes in a renewed trial in December 2021.⁶

The majority of criminal proceedings, which are mainly carried out against unreachable defendants, but also against present members of Croatian troops, are characterized by an **unreasonably long duration**. We single an example of the criminal proceedings for the crime in the "Manjača" camp against the defendant Ratko Andrić.⁷ On September 28, 2023, the Constitutional Court of the Republic of Croatia adopted the defendant's constitutional complaint, finding a violation of the right to a trial within a reasonable time guaranteed by Art. 29, paragraph 1 of the Constitution of the Republic of Croatia. The Constitutional Court considered the actions of the competent courts and the petitioner of the constitutional complaint from the beginning of the criminal proceedings on October 11, 2011 (decision on the conduct of the investigation) to the adoption of the concrete decision.⁸ Long-term court hearings that have been conducted before first-instance councils for nine years have been recorded in several criminal proceedings.⁹ Appeal proceedings against first-instance verdicts are also lengthy. Of the 6 finally concluded proceedings, the decisions of the appellate courts in three criminal proceedings were made

⁶ At the Šibenik County Court, Duško Vujnović was sentenced in absentia to 10 years in prison in 1997. The verdict was confirmed by the Supreme Court of the Republic of Croatia in February 2000. After he was arrested in Frankfurt in August 2020 on the basis of a European arrest warrant, he requested a renewal of the proceedings. The defendant has American citizenship.

⁷ The criminal proceedings in this case began on October 11, 2011 with the adoption of a decision on the conduct of the investigation. The indictment against the defendant Ratko Andrić was filed on December 22, 2014, and confirmed on November 23, 2015. The trial began on May 2, 2019. The first-instance verdict in which the defendant was found guilty and sentenced to 15 years in prison was passed on November 9, 2022. The public session at the High Criminal Court, whose jurisdiction includes the appeal proceedings, was scheduled for December 13, 2023, after the Constitutional Court of the Republic of Croatia adopted the constitutional complaint on September 28, 2023, establishing a violation of the right to a trial within a reasonable time guaranteed by Art. 29, paragraph 1 of the Constitution, and ordered the second-instance verdict to be passed within a period of no longer than 6 months, counting from the first day following the publication of this decision in the Official Gazette. We have no information about the decision of the High Criminal Court, nor is this decision publicly available for now.

⁸ Decision of the Constitutional Court of the Republic of Croatia dated September 28, 2023, No.: U-III-A-4900/2022

⁹ These are the aforementioned criminal proceedings:

- Crime in Kuline, defendant Tvrtko Pašalić et al. County State Attorney's Office Split filed the indictment on March 4, 2011. The court hearing started in April 2015 and after that it started anew on several occasions due to the change of council members.
- Crime in Osijek, defendant Branimir Glavaš et al. The hearing in the repeated proceedings began on October 16, 2017. After that, due to procedural shenanigans, the appointment of the president of the council to a new position, and the illness of the defendants (two of them have since passed away), the trial started again in November 2021. The first-instance verdict was passed in October 2023. The initial proceedings began on October 15, 2007, while the indictments, which were later merged, were filed in April and May 2007.
- Crime in Serbian camps, defendant Aleksandar Vasiljević. The indictment was filed on April 11, 2011. The trial in absentia began in October 2018. The first-instance verdict was passed in March 2023.
- Crime on Prevršac hill near Volinja, defendant Dubravko Arambašić et al. The indictment against the two unreachable defendants was filed on September 18, 2017. The trial began in September 2020.
- Crime in the Glina area, defendant Dušan Jović et al. The indictment was filed on July 20, 2010. The trial in absentia (the trial started anew due to a change in the court council) began on March 16, 2021.

almost five years after the first-instance verdicts in which the defendants were found guilty/acquitted. For example, the criminal proceedings for the December crime in Joševica (defendant Dušan Žarković et al.) were terminated without finality at the County Court in Zagreb in September 2018. The verdict of the Supreme Court of the Republic of Croatia, which confirmed the verdict of the first degree, was passed on February 15, 2023.¹⁰

We also point out the impossibility of compensation for material damage caused by terrorist acts. Difficulties are still present in the initiated litigation proceedings for compensation for material damage caused by members of the Croatian armed and police forces during the Homeland War, due to a legal vacuum.¹¹

The unreasonable length of the criminal proceedings, uneven judicial practice (the highest courts take opposite positions on the same legal issue) and the impossibility of enforcing final verdicts against unreachable defendants in the countries where they reside, greatly undermine the principle of legal certainty and the rule of law.

In the Report of the State Attorney General of the Republic of Croatia for the year 2022, it is evident that there are 43 state attorney's offices in the Republic of Croatia: 26 municipal state attorney's offices; 15 county state attorney's offices, 1 Office for Suppression of Corruption and Organized Crime (USKOK) and the State Attorney's Office of the Republic of Croatia. The Municipal State Attorney's Office Zagreb is divided into the Municipal Criminal State Attorney's Office Zagreb and the Municipal Civil State Attorney's Office Zagreb.

During 2023, the Osijek, Rijeka, Split and Zagreb County State Attorney's Offices, which are responsible for dealing with war crimes cases, issued 4 decisions on conducting investigations against 7 defendants. 4 indictments for war crimes were brought against 8 defendants, and in one case an evidentiary action was taken against 3 suspects based on a police report.¹²

Judicial cooperation in the region is still the most significant open issue. Certain positive developments have been achieved in the cooperation between Croatia and Bosnia and Herzegovina, and criminal proceedings against defendants residing in Croatia for crimes committed on the territory of Bosnia and Herzegovina are being conducted before Croatian courts. There is no cooperation between Serbia and Croatia in this sense. For the sake of illustration, in Serbia, for the first time, criminal proceedings are being conducted for a crime committed in Croatia, against an unreachable defendant who resides in Croatia.¹³

¹⁰ The verdict of the appellate court in the criminal proceedings for the crime in the Bjelovar barracks, defendant Jure Šimić, was passed on June 14, 2023. This verdict confirmed the acquittal of the County Court in Rijeka from October 2019. The verdict of the appellate court in the case against the defendant Milan Martić et al. for the crime committed by shelling Zagreb, Karlovac and Jastrebarsko was passed on July 5, 2023. This verdict confirmed the conviction from March 2020.

¹¹ Ljubica Bačić v. Croatia - final decision on the admissibility of request no. 3742/02, dated December 11, 2023.

¹² Letter from the State Attorney's Office of the Republic of Croatia No. A-87/2023-2, dated March 28, 2023.

¹³ At the war crimes department of the High Court in Belgrade, the trial for the crimes in Rakitje against prisoners of war is ongoing. By the way, this is the first criminal proceeding for war crimes that is being conducted in absentia before this Court. The indictment was filed by the War Crimes Prosecution of the Republic of Serbia on March 3, 2022. The trial began on October 7, 2022. The defendant was arrested in EU territory on the warrant of the War Crimes Prosecution of Serbia, but was extradited to

Of the 18 defendants under investigation and indictment, 16 of them (88.88%) are unreachable for the Croatian judicial authorities, and the proceedings against them are conducted in absentia. Of this number, 17 defendants (94.44%) are members of the Serbian forces.

In 2023, the county state attorney's offices responsible for dealing with war crimes cases issued decisions on conducting investigations against 23 people, and 22 people were charged:

- The County State Attorney's Office in Zagreb issued decisions on the conduct of the investigation against four people for war crimes
- The County State Attorney's Office in Rijeka issued a decision on conducting an investigation against six people for war crimes
- The County State Attorney's Office in Split issued decisions on the conduct of the investigation against two people for war crimes
- The County State Attorney's Office in Osijek issued a decision on conducting an investigation against eleven persons for criminal acts of war crimes

The County State Attorney's Office in Zagreb filed indictments against 9 people for war crimes, the County State Attorney's Office in Rijeka filed indictments against six people for war crimes, the County State Attorney's Office in Split filed indictments against five people, and the County State Attorney's Office in Osijek filed indictments against two people.

In the introduction to this report, we also comment on the cumulative effectiveness of the prosecution of war crimes and the transparency of the publication of judicial decisions, ten years after Croatia's accession to the European Union. At the time of accession, we published a book

Croatia, where he allegedly resides. The defendant Branko Tunić, a former member of the Croatian National Guard, is charged with the murder of Yugoslav People's Army conscript Marko Utržan, as well as physical and psychological abuse of 14 other detained Yugoslav People's Army members in the Rakitje camp, from September 14 to October 1, 1991. in the Rakitje camp. This conflict, as stated in the indictment, did not have the character of an international conflict, but was fought between the forces of the Yugoslav People's Army, on the one side, and Croatian armed forces, which included units of the so-called Croatian National Guard and the Ministry of Internal Affairs of Croatia, on the other side. Defendant Tunić and other unidentified persons committed war crimes against prisoners of war, that is, against soldiers in regular military service in the Yugoslav People's Army, who had previously laid down their arms and surrendered. The captured soldiers were taken to the facility managed by Croatian National Guard and Ministry of Internal Affairs in the village of Rakitje, where Tunić intimidated, tortured and physically injured them, acting in a particularly insulting and humiliating manner, during which he killed one Yugoslav People's Army soldier with a pistol. According to the indictment, he repeatedly beat the prisoners M.U, Ž.L, T.N, R.D, D.D, Ž.J, B.B, M.P, S.A, D.S, P.S, G.M, G.S. i G.G. with the butt of the weapon, hit them on the head and body with his hands and feet, and beat them on their backs and soles with a rubber baton. He handcuffed them and forced them to lie on the ground, then stomped on them with his boots and jumped on them, threatened them with a knife telling them that he would gouge out their eyes and slaughter them, pointed weapons at them, put the barrel of the weapon in their mouths and on their temples, threatening to kill them, put out cigarettes on their bodies and urinated on them. "All this resulted in violations of bodily integrity, severe physical and psychological trauma, suffering and humiliation of the injured parties," the prosecutor's office stated. Then, on September 30, 1991, during the beating of soldier M.U., Tunić fired a shot into his head from a pistol, inflicting a gunshot wound to his head, from which the young man died on the spot. The disposition of the indictment is available at:

<https://tuzilastvorz.org.rs/public/indictments/2022-09/%D0%9A%D0%A2%D0%9E%203-22%20%20%D0%9E%D0%BF%D1%82%D1%83%D0%B6%D0%BD%D0%B8%D1%86%D0%B0%20%D0%B0%BD%D0%BE%D0%BD%D0%B8%D0%BC%D0%B8%D0%B7..pdf>

entitled *Guarantee of the Process of Dealing with the Past*¹⁴ with an overview of the basic trends in the sphere of legal practice related to the prosecution of war crimes from the time they were committed. Although ten years ago, the public began to understand the idea that the act of a war crime requires unequivocal condemnation, regardless of the identity of the victim and the perpetrator, this approach did not fully take root in society at that time. It remains an open question why it is so difficult to recognize and understand that a crime is a crime and a victim is a victim.

How much progress, if any, has been achieved since the accession of the Republic of Croatia to the European Union? More than thirty years after the beginning of the war, new investigations are being opened, the number of trials is large, but the problem is the dynamics and pace of the trials. Also, it is increasingly difficult to obtain information, not only about ongoing trials, but also about finally concluded trials.

In numerous proceedings, such as those for crimes committed against Croatian and other non-Serb civilians during October and November 1991 in Bogdanovci, the preliminary investigations have not yet been completed. Also, in the Lora 3 case (suffering of Montenegrin prisoners who were brought to the Lora Military Investigation Center in Split during the fall of 1991 and the first half of 1992), no decision has yet been issued on the conduct of the investigation, although the pre-investigation actions have been carried out since 2007. For the war crime committed against Croats and other non-Serbs in 1991 in Antin, the investigation is suspended due to the unavailability of the defendants. The surviving members of the victims' families, as well as the surviving victims, rightly expect the prosecution of the perpetrators.

For the crimes committed against the Serbs in Vukovar from the late spring and summer of 1991 until the fall of Vukovar, investigations are still being carried out within the so-called „preliminary ruling proceedings“. The reaction of the state attorney's office is also absent when it comes to the crimes of the Croatian army and police committed during the military-police operation Flash in May 1995, in the towns of western Slavonia, for example, in Medari and Rajići. Furthermore, in the twenty-six years since Operation Storm, the Croatian judiciary has brought three indictments for war crimes against Krajina Serbs, against a total of seven members of Croatian military and police units.

After Croatia's accession to the European Union, there was stagnation in the quality of criminal prosecution and trials. Competent county attorneys' offices lack the capacity to revise and investigate pending war crimes cases, and the effectiveness of investigations has decreased, especially against members of Croatian military units. Trials in absentia lead to a high possibility of reopening these cases, and very limited regional judicial cooperation in the prosecution of war crimes results in a lack of exchange of information and evidence. A book of missing persons has not been updated since 2015 and it is not transparent. The UN Special Rapporteur on the

¹⁴ The book is available on the following link: <https://documenta.hr/wp-content/uploads/2020/09/procesuiranje-ratnih-zlocina-FINAL.pdf>

promotion of truth, justice, reparation and guarantees of non-recurrence has noted an increase in political interference in the prosecution of war crimes and has indicated that progress in the investigation and prosecution of war crimes appears to have stalled over the past 7 years.

Access to information is very limited due to the delayed publication of verdicts and anonymization, which makes it difficult to follow the proceedings and, as a result, the media's interest in ongoing proceedings is decreasing. The position of victims and witnesses in criminal proceedings is gradually improving. But it is worrying that until now there has been no evaluation of laws that affect the position of civilian victims of war and victims of criminal acts.

The human rights organizations *Documenta* - Center for Dealing with the Past (Zagreb) and Center for Peace, Nonviolence and Human Rights (Osijek) have been monitoring criminal proceedings for war crimes in the courts of the Republic of Croatia since 2004. Since the beginning of trial monitoring, the project team notes trends and makes recommendations for improving the situation in the prosecution of war crimes in its annual reports, emphasizing the importance of achieving effective and fair judicial treatment which will respect both the rights of defendants and suspects, as well as the rights of victims and witnesses. Also, recommendations are given for the functioning of the judicial system in general in relation to the right to a fair trial.

We present selected recommendations:

1. It is necessary to increase the capacities of the competent county state attorney's offices, the State Attorney's Office of the Republic of Croatia and the police for revision and investigation of unsolved cases of war crimes;
2. It is necessary to provide regular professional training when it comes to the prosecution of war crimes, in cooperation with the Police and Judicial Academy and civil society organizations;
3. It is necessary to continue the development of the support network for witnesses and victims and improve the laws regulating the position of victims of criminal acts. It is also necessary to consider the possibilities of expanding the support system to individuals who are applicants for the status of civilian war victims, according to the laws regulating the status of civilian war victims;
4. It is necessary to enable the publication of indictments and court decisions on a publicly accessible website (not only for ongoing trials); it is especially important to enable the publication of final verdicts, along with indictments and first-instance verdicts, for proceedings completed in the period from the nineties until today. We propose to consider the option of amending the Law on Courts, which would regulate the creation of a new website on which indictments, first-instance and final verdicts, passed from the nineties to the present day, would be published, in order to make the work of the courts public and transparent;

5. It is necessary to end the anonymization of personal data (names) of those accused of war crimes, due to the importance of the prosecution of war crimes for societies in Croatia and other post-Yugoslav states. Priority must be given to the right of the public to be informed about the course of proceedings and the identity of those accused of war crimes;
6. In order to improve the position of civilian victims, it is necessary to evaluate the application of the Law on the Rights of Victims of Sexual Violence during Armed Aggression against the Republic of Croatia in the Homeland War (Official Gazette 64/15, 98/19) and the Law on the Civilian Homeland War victims (Official Gazette 84/21) in order to propose possible amendments;
7. The Government of the Republic of Croatia should as soon as possible appoint a Commission that will decide on the write-off of litigation costs and claims provided for in the Decision on Write-Off and Reimbursement of Litigation Costs adopted in December 2023.;
8. It is necessary to sign agreements among the states in the region with the aim of more efficient prosecution of the perpetrators of crimes while avoiding the politicization of trials for war crimes;
9. It is necessary to improve regional cooperation by enabling trials in the countries of the defendant's current residence and to consider the prerequisites for the formation of joint investigative teams in cases that require coordinated work and/or investigation in several countries;
10. It is necessary to make the judicial staff independent of any political influence and to enable the standardization of the principles of conduct between the judicial bodies of the states in the region, in order to bring as many perpetrators as possible to justice, but also in order to end the persecution of persons for whom there is no evidence that they are perpetrators of criminal offenses and to overturn the verdicts against those unjustly convicted.