



REPORT ON THE MONITORING OF WAR CRIMES TRIALS FOR 2022

Trials in absentia and lack of transparency

SUMMARY

Documenta - Center for Dealing with the Past

Center for Peace, Non-Violence and Human Rights Osijek

Documenta - Center for Dealing with the Past and Center for Peace, Non-Violence and Human Rights, human rights organizations from Zagreb and Osijek, have been monitoring war crimes trials before the courts in the Republic of Croatia since 2005.

Since the beginning of trial monitoring, the project team has been recording trends and making recommendations for improving the situation in the prosecution of war crimes in its annual reports, stressing the importance of achieving effective and fair judicial treatment in criminal cases, which will respect both the rights of defendants and suspects, as well as the rights of victims and witnesses, and the functioning of the judicial system in general in relation to the right to a fair trial.

In this year's report, we take a look at the trials held during 2022. We recorded a total of **61 criminal proceedings in the trial phase**, which are under the jurisdiction of the county courts in Zagreb, Rijeka, Osijek and Split. The fact that the trend of trials in absentia in war crimes cases is still dominant is worrying; 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, **41 out of 61 (67%) criminal proceedings were conducted against unavailable defendants** who mostly reside in the territory of the Republic of Serbia.

Of the total number of monitored trials, 57 (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 military units and members of the Croatian Defence Council (crime in Osijek, defendant Gordana Getoš Magdić et al., crime in Hrasnica, defendant Perica Kustura, crime in Kuline, defendant Tvrtko Pašalić et al., crime in Lora 1 and 2, defendant Tomislav Duić et al.).

Ten criminal proceedings are repeated before the first-instance councils after the annulment decision of The Supreme Court of the Republic of Croatia and The High Criminal Court. During 2022, competent courts passed 19 first-instance verdicts against 32 defendants, in which 24 persons were convicted, of which 22 members of Serbian paramilitary formations/Yugoslav People's Army and 2 members of Croatian military units (crime in Lora 1 and 2, defendant Tomislav Duić and defendant Emilio Bungur), while 6 persons were acquitted (all members of Serbian paramilitary units/Yugoslav People's Army). Three (3) criminal proceedings were suspended due to the death of the defendant.

We recorded **13 sessions of the Supreme Court of the Republic of Croatia and the High Criminal Court**, where **mostly first-instance verdicts were confirmed**. In three first-instance verdicts, the courts increased the prison sentences of the defendants after the appeal procedure. These are verdicts passed in the criminal proceedings for the crime in Sisak, defendant Mirko Šašo, the crime in the Silos, Dretelj and Gabela camps, defendant M. Marić et al., and the crime in Lora 1 and 2, defendant Tomislav Duić et al.¹

¹ See the list of monitored procedures

During 2022, the County State Attorneys' Offices responsible for dealing with war crimes cases, issued 18 decisions on conducting investigations against 39 persons. 17 indictments were brought against 22 people for war crimes. Judicial cooperation in the region is still the most important issue. Despite the positive developments, the countries in the region are "encountering great difficulties in securing cooperation from Croatia, which has turned a deaf ear to requests for assistance in over eighty cases, while the answer to some has been awaited for seven years."

Ensuring the presence of the defendant during the investigative procedure and at the indictment stage is still problematic. Of the 61 persons under investigation and indictment, 57 of them, or almost 95%, are members of the Serbian forces, and 49 of them, or 81%, are unavailable to the Croatian judiciary and criminal proceedings against them are carried out in absentia.

We also comment on the cumulative effectiveness of the prosecution of war crimes and the transparency of the announcements of the verdicts, ten years after Croatia's accession to the European Union. At the time of accession, we published a book *Prosecution of war crimes - a guarantee of the process of dealing with the past*² with a description of the basic trends in the sphere of legal practice related to the prosecution of war crimes. Although ten years ago the public began to understand that the act of a war crime requires unquestionable condemnation, regardless of the nationality 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 their dynamics and pace.** Also, it is increasingly difficult to obtain information, not only about ongoing trials, but also about trials that have ended with a final verdict.

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. 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 perpetrators to be prosecuted.

For the crimes committed against the Serbs in Vukovar, from the late spring and summer of 1991 until the fall of Vukovar, when people disappeared from their workplaces and from their homes, investigations are still being carried out within the so-called previous procedure under the authority of the State Attorney's Office. There is no reaction from the State Attorney's Office when it comes to the crimes of the Croatian army and police committed during the military-

² The book is available here: <https://documenta.hr/wp-content/uploads/2020/09/procesuiranje-ratnih-zlocina-FINAL.pdf>

police action "Flash" in May 1995, in the region of western Slavonia, for example in Medari and Rajići. We also warn about the absence of an investigation into the crimes against Montenegrin prisoners who were brought to the Military Investigation Center Lora in Split during the fall of 1991 and the first half of 1992, in the case of Lora 3.

Furthermore, in the twenty-eight years since Operation "Storm", the Croatian judiciary has filed 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, while the effectiveness of investigations has decreased, especially regarding members of Croatian military units. Trials in absentia lead to a high possibility of reopening the cases, and very limited regional judicial cooperation in the prosecution of war crimes results in a lack of exchange of information and evidence. The book of missing persons has not been updated since 2015 and is not transparent. The UN Special Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, has noted an increase in political interference in the prosecution of war crimes and indicated that progress in the investigation and prosecution of war crimes appears to have stalled in the last 7 years.

Access to information is very limited due to the late announcements of the 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 affecting the position of civilian victims of war and victims of criminal acts.

SELECTED RECOMMENDATIONS:

- It is necessary to increase the capacities of the competent County State Attorney's Offices, State Attorney's Office of the Republic of Croatia and the Police, for reviewing and investigation of unsolved cases of war crimes;
- It is necessary to provide regular professional training related to the prosecution of war crimes through the Police Academy and the Judicial Academy, in cooperation with civil society organizations;
- It is necessary to continue the development of the network for supporting witnesses and victims and improve the laws regulating the position of victims of criminal acts;

- It is necessary to enable the announcement of indictments and court decisions on a publicly accessible website;
- It is necessary to end the anonymization of personal data (names) of the war crimes defendants - due to the importance of processing 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 defendants;
- 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 Civilian Homeland War Victims (Official Gazette 84/ 21), in order to propose possible amendments and additions;
- The Government of the Republic of Croatia should pass a Decision that would unequivocally write off the costs of lost litigation to all plaintiffs/victims who failed to obtain compensation for non-material damages due to the death of a close person, and enable the return of funds to those who have already paid litigation costs or whose property has been confiscated;
- States in the region must necessarily sign agreements with the aim of more efficient prosecution of perpetrators of crimes and avoid the politicization of trials for war crimes;
- It is necessary to improve regional cooperation by enabling the trial of defendants in the countries of their current residence and to consider the prerequisites for the formation of joint investigation teams in cases that require coordinated work and/or research in several countries;
- It is necessary to free the judicial staff from the interference of any political influence and to enable the standardization of the standards of conduct between the judicial bodies of the states in the region, in order to increase the number of perpetrators and persons in command who are brought to justice, but also to end the persecution of persons for whom there is no evidence that they are perpetrators, and to annul the verdicts against the unjustly convicted.