

**THE EXECUTIVE
SUMMARY OF
THE REPORT
ON THE PROJECT
"MONITORING
OF WAR CRIMES
TRIALS - REGIONAL
COOPERATION"**

15 December 2019 - 31 May 2020

**CENTER FOR PEACE, NONVIOLENCE
AND HUMAN RIGHTS - OSIJEK**

AND

**CENTER FOR DEMOCRATIC DEVELOPMENT
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*Empowered lives.
Resilient nations.*

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CHAPTER I

1. INTRODUCTION

The Center for Peace, Nonviolence and Human Rights Osijek (hereinafter: the Center for Peace Osijek) has been implementing monitoring of criminal proceedings under Chapter XV of the Basic Criminal Code of the Republic of Croatia since 2004: "The Crimes against Humanity and International Law."

Over a decade and a half of monitoring, extensive experience has been gained in working with victims of the most serious crimes, family members of detainees and missing persons, and victims, mostly women, of sexual violence and abuse committed during the war.

In its activities on monitoring, the Center for Peace - Osijek has established cooperation with colleagues from other civil society organizations and victims' associations.¹

In partnership with the colleagues from the Center for the Development of Democratic Society "Europolis" from Novi Sad, the Center for Peace - Osijek has been implementing the project named "Monitoring of War Crimes Trials - Regional Cooperation." Effective cooperation was achieved throughout project activities and new insights were gained into monitoring of war crimes trials.

Although the main focus of this project is the investigation and prosecution of war crimes at the County Court and the State Attorney's Office in Osijek, the War Crimes Department of the Higher Court in Belgrade and the War Crimes Prosecutor's Office of the Republic of Serbia, we consider it a good basis to analyse the work of the judiciary.

The monitoring focuses on the implementation of the international standards in the investigation and prosecution of war crimes and working with victims of war crimes.

In this report, we present the analysis of activities performed by prosecutors and courts concerning the investigation and prosecution of crimes against humanity and the international law and problems that victims of these crimes face while taking into account the fact that 20 years or more passed from the time when the crimes were committed.

By analysing the activities related to the investigation and prosecution of war crimes, the application of legal provisions relating to the rights of victims, in this case the most serious crimes, and especially in relation to working with the victims of sexual violence committed during the Homeland War, we want to encourage continuation of the work on these very important topics for the whole region.

Despite the fact the focus is not on exercising rights or achieving the status of a civilian victim in war, this is another big problem we have encountered. A sizeable group of Croatian citizens has not yet been able to resolve their status, nor have they exercised their rights to legal satisfaction and moral, material and financial compensation.

¹ Cooperation has also been established with the colleagues from the Humanitarian Law Center in Belgrade and the Research and Documentation Center in Sarajevo on the regional monitoring of war crimes trials; as well as with the colleagues from the Altruist Association from Split, the Civic Committee for Human Rights from Zagreb, the Croatian Helsinki Committee from Zagreb, Documenta - Center for Dealing with the Past from Zagreb on the implementation of monitoring of war crimes trials in the Republic of Croatia, victims' associations, and civic initiatives organising families of the missing,...

CHAPTER II

2. ACTIVITIES OF THE PROSECUTOR'S OFFICE CONCERNING WAR CRIMES CASES

Having analysed the activities related to investigating and prosecuting war crimes, the Project focused on the work of the State's Attorney's Office in Osijek and the War Crimes Prosecutor's Office of the Republic of Serbia in Belgrade in the period from December 15, 2019 to May 31, 2020.

However, in order to get a comprehensive overview all activities related to investigating and prosecuting war crimes, we analysed the work of the above-mentioned judicial bodies throughout 2019 using the data published on their websites.

Furthermore, in order to gain a better insight into the activities related to war crimes, we have also analysed the data published on the State Attorney's Offices in Rijeka, Split and Zagreb websites.

The fact that almost three decades have passed since the time when the crimes had been committed does not work in favour of investigating and prosecuting them. A declining number of witnesses, and even victims, who are willing and ready to testify before the judicial authorities, is an objective difficulty that prosecutors encounter in their work.

Unfortunately, after almost three decades since the war, political and social circumstances are not such to stimulate activities related to dealing with the past, supporting the victims, and solving the most serious crimes. The torment that victims suffered is still being used for the purpose of daily politics and election campaigns.

Although necessary, it appears that cooperation in the investigation and prosecution of war crimes in the region is currently faltering. Everything takes place only verbally; prosecutors hold meetings and make conclusions that war crimes cases have to be prosecuted.

According to data obtained from the websites of prosecutors' offices, there were no investigations and accusations of members of the Croatian army or the Croatian police in 2019 in Croatia.

The investigation and prosecution of crimes for which the highest officers of the former Yugoslav National Army should have been held accountable, especially for crimes committed in the Republic of Croatia, but also in other countries in the region, are still lacking.

Statistics on the State Attorney's Offices in Osijek, Split, Rijeka and Zagreb in 2019

Decisions on conducting investigations in 5 war crimes criminal cases:

- a) 3 for Article 120 paragraph 1 of the Basic Criminal Code of the Republic of Croatia
- b) 2 for Article 122 of the Basic Criminal Code of the Republic of Croatia

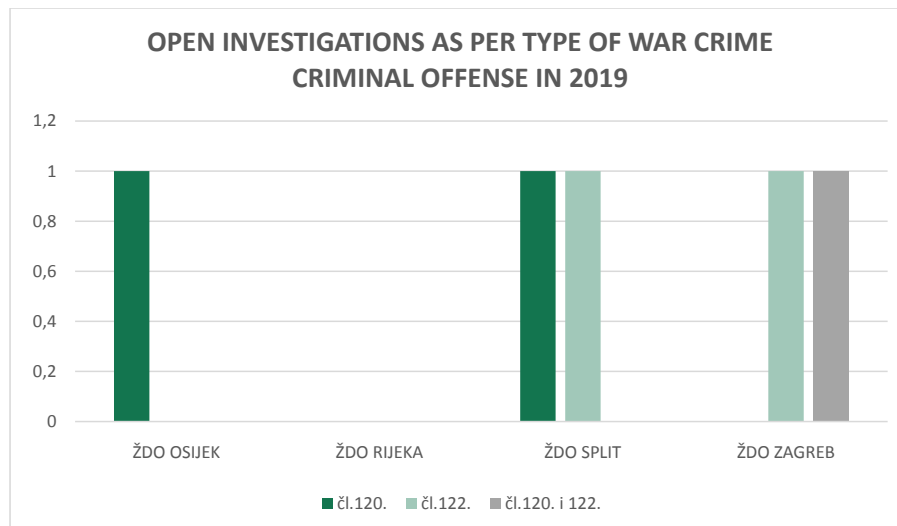
An investigation has been launched against 13 defendants, all members of the Serbian paramilitary and parapolice forces.

11 indictments were filed:

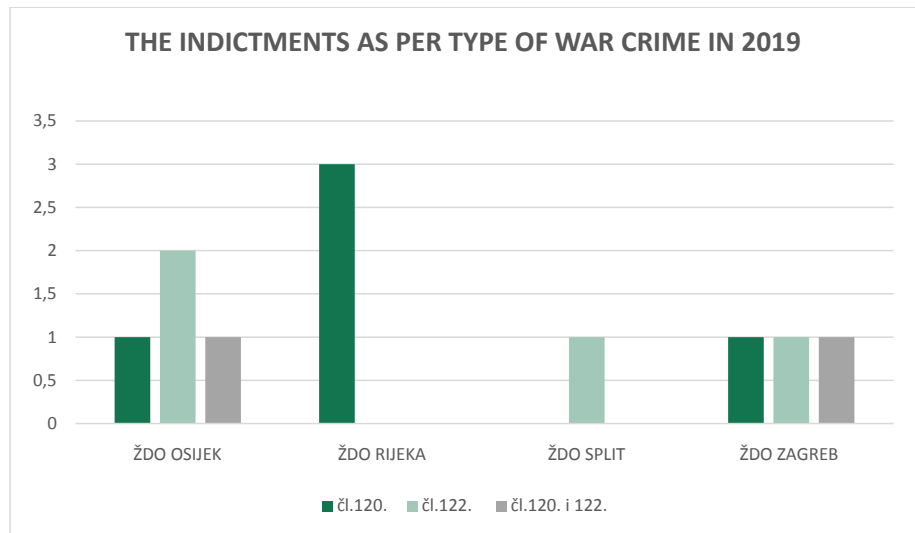
- a) 5 for Article 120, paragraph 1 of the Basic Criminal Code of the Republic of Croatia
- b) 4 for Article 122. of the Basic Criminal Code of the Republic of Croatia
- c) 2 for Article 120, paragraph 1 and Article 122 of the Basic Criminal Code of the Republic of Croatia

The indictments were filed against 50 defendants, all members of the Serbian paramilitary and parapolice forces.

An overview of open investigations and indictments filed during 2019 (war crimes), 4 State Attorney's Offices:



2. Activities of the prosecutor's office concerning war crimes cases



The State Attorney's Office in Osijek in 2019

In the course of 2019, in war crimes and crimes against humanity cases, the State's Attorney's Office²

- reached 1 decision on conducting an investigation
- filed 4 war crimes indictments

The decision on investigation was reached against 4 defendants, who were members of Serbian paramilitary units, for war crimes against civilians pursuant to Article 120, paragraph 1 of the Basic Criminal Code of the Republic of Croatia

The indictments were filed against 5 defendants who were members of Serbian paramilitary and parapolice units:

- 2 indictments for war crimes against civilians, Article 120, paragraph 1 of the Basic Criminal Code of the Republic of Croatia
- 1 indictment for war crimes against prisoners of war, Article 122 of the Basic Criminal Code of the Republic of Croatia
- 1 indictment for war crimes against civilians pursuant Article 120, paragraph 1 of the Croatian Criminal Code OKZ RH and for war crimes against prisoners of war pursuant to Article 122 of the Basic Criminal Code of the Republic of Croatia

² The data obtained from: www.dorh.hr, the State Attorney's Office in Osijek, press releases in 2019

The State Attorney's Office in Split in 2019

- reached 2 decisions on conducting investigations against 2 defendants
- issued 1 indictment against 1 defendant

The investigation was conducted for 1 criminal offense related to war crimes against prisoners of war pursuant to Article 122 of the Basic Criminal Code and 1 criminal offense for war crimes against civilians pursuant to Article 120, paragraph 1 of the Basic Criminal Code of the Republic of Croatia

An indictment was issued against 1 defendant for war crimes against prisoners of war.

All the defendants were members of the Serbian paramilitary and parapolic forces.

The State Attorney's Office in Rijeka in 2019

- issued 3 indictments against 10 defendants

All indictments have been issued for war crimes against civilians pursuant to Article 120, paragraph 1 of the Basic Criminal Code of the Republic of Croatia

All the defendants were members of the Serbian paramilitary and parapolic forces.

The State Attorney's Office in Zagreb in 2019

- issued 2 decisions on investigations against 7 defendants
- and 3 indictments against 34 defendants

The investigation was conducted for 1 criminal offense for war crimes against prisoners of war pursuant to Article 122 of the Basic Criminal Code, and 1 criminal offense for war crime against civilians pursuant to Article 120, paragraph 1 and war crimes against prisoners of war pursuant to Article 122 of the Basic Criminal Code of the Republic of Croatia

2. Activities of the prosecutor's office concerning war crimes cases

One indictment was issued for war crimes against civilians against 5 defendants, one indictment was issued for war crimes against civilians and war crimes against prisoners of war against 27 defendants, and one indictment was issued for war crimes against prisoners of war against 2 defendants.

All the defendants were members of the Serbian paramilitary and parapolice forces.

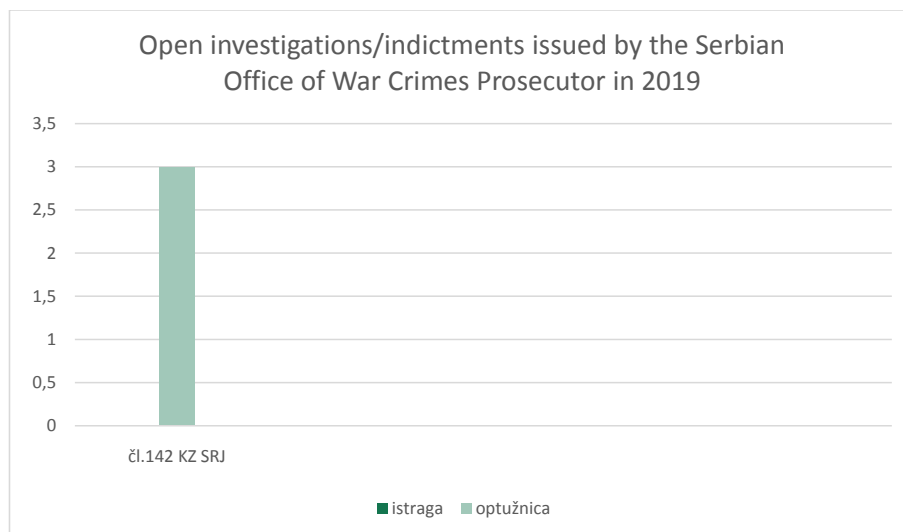
Statistics on the work of the Office of the War Crimes Prosecutor of the Republic of Serbia

The Office of the War Crimes Prosecutor of the Republic of Serbia³ issued 3 indictments for war crimes against civilians pursuant to Article 142, paragraph 1 of the Serbian Criminal Code.

Out of the total number of indictments issued, two indictments were taken over from the Prosecutor's Office of Bosnia and Herzegovina.

The Prosecutor's Office of Bosnia and Herzegovina has investigated two cases and issued indictments. The defendants are located on the territory of the Republic of Serbia. Due to their inaccessibility to the judicial authorities of Bosnia and Herzegovina, and based on the agreed cooperation in the prosecution of perpetrators of war crimes, the cases were transferred to the Office of War Crimes Prosecutor of the Republic of Serbia.

Out of a total of 3 indictments, the Office of War Crimes Prosecutor of the Republic of Serbia conducted an investigation and in 2019 issued one indictment in one criminal case.⁴



³ Data obtained from the Office of War Crimes Prosecutor of the Republic of Serbia website: www.tuzilastvor.org.rs

⁴ www.tuzilastvorz.org.rs

3. ACTIVITIES OF THE COURTS CONCERNING WAR CRIMES CASES DURING 2019

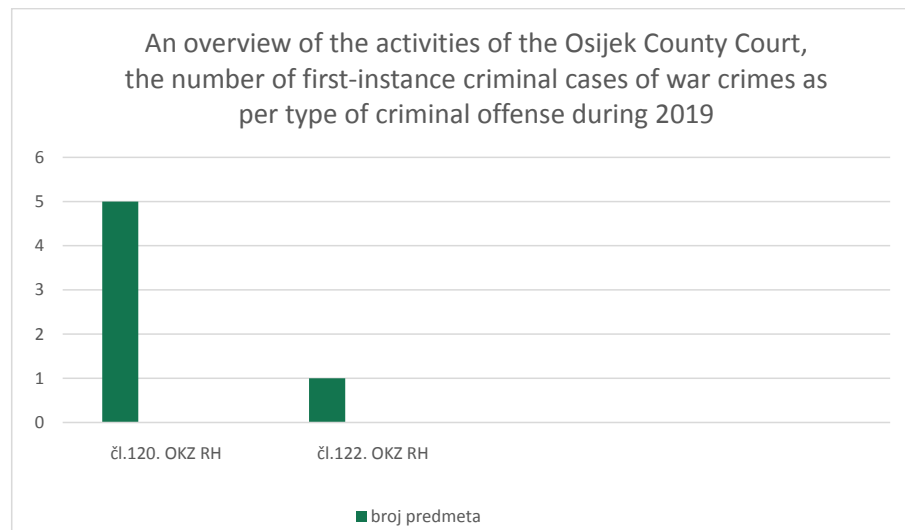
The County Court in Osijek in 2019

During 2019, 6 criminal cases were brought before the County Court in Osijek for crimes against humanity and the international law against 8 defendants.

22 hearings were held. All defendants were members of the former Yugoslav Army or Serb paramilitary and parapolice units.

Out of the total number of defendants, the proceedings were conducted in absentia against 4 defendants. In one case, the State Attorney's Office in Osijek opposed the proceedings in absentia, and the proceedings were suspended.

In 5 criminal cases the proceedings were conducted for the criminal offense of war crimes against civilians pursuant to Article 120, paragraph 1 of the Basic Criminal Code of the Republic of Croatia. In one criminal case, the proceedings were brought for the criminal offense of war crimes against prisoners of war pursuant to Article 122 of the Basic Criminal Code of the Republic of Croatia.

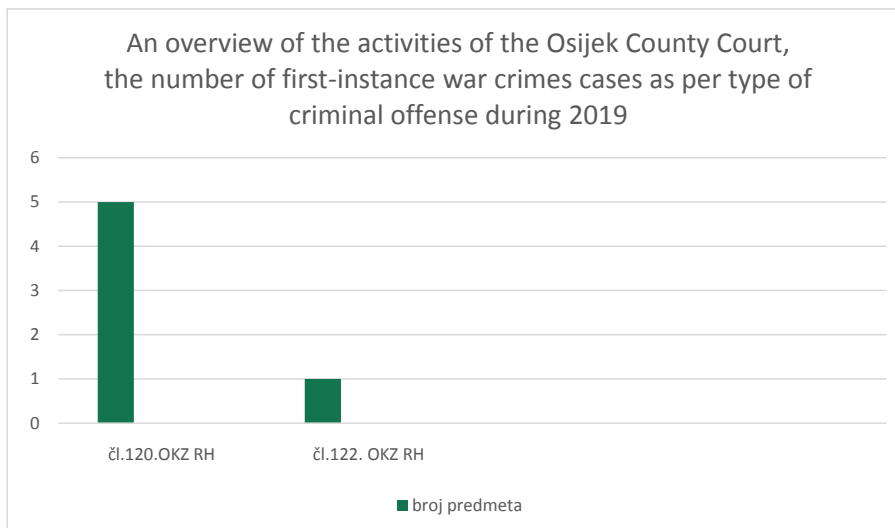


The County Court in Osijek, 1 January - 31 May 2020

During the first five months of 2020, the County Court in Osijek held 9 hearings in 6 criminal cases for war crimes, against 7 defendants. All the defendants were members of Serbian paramilitary units.

Out of the total number of proceedings, 5 are being brought about for war crimes against civilians pursuant to Article 120, paragraph 1 of the Croatian Criminal Code, proceedings were brought for war crimes against prisoners of war pursuant to Article 122 of the Basic Criminal Code of the Republic of Croatia

A total of 9 hearings were held, of which 8 for cases referred to in Article 120, paragraph 1 of the Basic Criminal Code, and 1 hearing of the case referred to in Article 122 of the Basic Criminal Code of the Republic of Croatia



3. Activities of the courts concerning war crimes cases during 2019

The War Crimes Department of the Higher Court in Belgrade

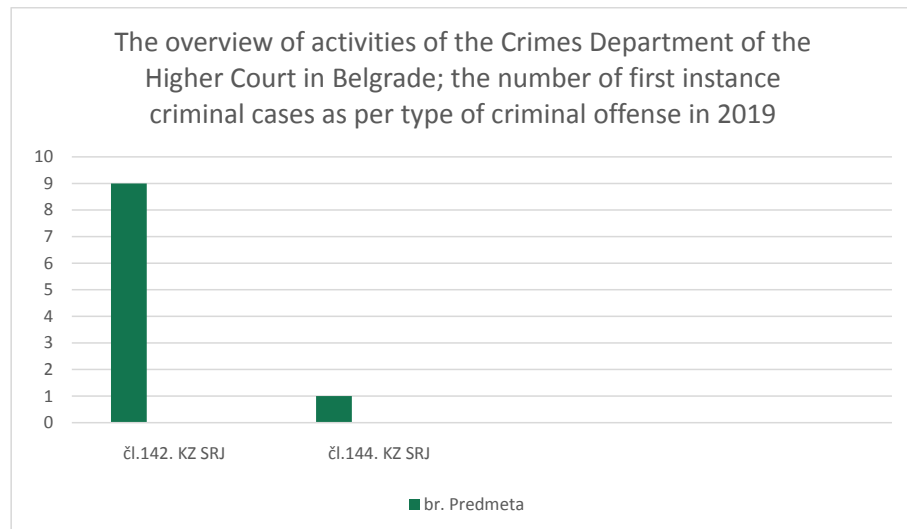
During 2019, 10 criminal proceedings were brought before the War Crimes Department of the Higher Court in Belgrade for war crimes against civilians and prisoners of war against 31 defendants.

Out of the total number of defendants: 19 members of the military and police forces of the Republika Srpska, 1 defendant is a member of the Army of BiH, 11 members of the 177th Military Territorial Squad - Peć.

60 hearings were held to discuss these criminal cases.

Out of the total number of criminal cases, 9 cases are brought for war crimes against civilians pursuant to Article 142 of the Serbian Criminal Code and 1 criminal offense against prisoners of war pursuant to Article 144 of the Serbian Criminal Code.

All defendants were present at the hearings.



CHAPTER III

4. ACTIVITIES WITH VICTIMS OF WAR CRIMES

During the monitoring of the war crimes trials the Center for Peace has been extensively working with the families of the victims. We worked to support family members who are searching for mass grave sites and hoping of finding the remains of the victims. We also provided legal assistance to victims of sexual abuse and rape that occurred during the Homeland War.

An overview of our activities with vulnerable groups during the implementation of this Project is presented hereby:

a. Working with the families of the missing

More than two decades have passed since the war and its severe and painful consequences. Unfortunately, there are families still looking for their loved ones who are missing.

There are 1,869 missing persons in the Republic of Croatia.

The Directorate for Detainees and Missing Persons of the Ministry of Croatian Veterans is the competent body for searching for persons who went missing during the Homeland War. The Directorate performs professional and administrative tasks: searching for detainees and missing persons, exhumation and identification of the mortal remains.

The so-called "Croatian model of searching for missing persons" was developed. This model has 5 disciplines: human sources, aerial surveys and terrain analysis using biodetectors, cadaver dogs, geo-radars, and mechanical excavation.

The Book of Missing Persons on the territory of the Republic of Croatia⁵ contains the names of missing persons registered in the Republic of Croatia.

The Directorate for Detainees and Missing Persons has opened an anonymous hotline for anyone who has some knowledge about the sites of mass or individual graves, or fate of the missing. People can anonymously provide information and thus help shed light on the fate of missing persons and also help family members in search for mortal remains and the truth about their missing family members.

During the implementation of the project, the Center for Peace- Osijek worked on the total of 58 victim cases. Out of that number, 37 victims are missing or dead. In addition to searching for grave sites, mass graves and mortal remains, family members of the missing usually encounter various problems, for which reason they have sought our help.

In most cases, we referred the family members to cooperate with the Directorate for Detainees and Missing Persons of the Ministry of Croatian Veterans. As

⁵ Publishers: Directorate for Detainees and Missing Persons of the Ministry of Croatian Veterans, Croatian Red Cross, International Committee of the Red Cross

we worked with the family members of victims from other countries (former Yugoslav republics and provinces), we instructed the parties to cooperate with our colleagues from civil society organizations in Bosnia and Herzegovina, Serbia, and Kosovo. We also wrote letters on behalf of the those persons to the Croatian Ministry of Justice, State Attorney's Office, State Prosecutor's Office of Bosnia and Herzegovina, Department of Pathology of the Military Medical Academy in Belgrade, Embassy of Germany in Zagreb, County State Attorney's Office in Osijek, etc.

The fact that a lot of time passed since those critical events had taken place makes it very difficult to work with the family members of the missing persons. We were asked for help by their parents many of whom have reached very old age.

In most cases, family members of the missing have donated blood and formally reported the disappearance of their family member. Unfortunately, we have also recorded cases where, due to old age, dementia and inability to communicate with family members of the missing persons we were unable to determine whether relatives gave blood for DNA analysis and comparison of samples.

A total of 29 victims, whose relatives contacted us, are registered in the Book of Missing Persons in the Republic of Croatia.

Victims gone missing or deceased in 1991

- 25 victims from Croatia disappeared or were killed in 1991
- 2 victims from Montenegro disappeared in 1991 near Dubrovnik
- 1 victim from Serbia disappeared on the territory of Croatia
- 1 victim from Vojvodina disappeared in the area of Slankamen in 1991
- 1 victim from Macedonia disappeared in 1991 on the territory of Croatia

Victims gone missing or deceased in 1992:

- 2 victims from Croatia died in 1992 as a result of abuse in Osijek
- 2 victims from Bosnia and Herzegovina disappeared in camps in Bosnia and Herzegovina in 1992

Victims of World War II:

During the period 1941-1945, 3 victims from Croatia were forced to work in labour camps in Germany

b) Activities with the war victims of rape and sexual abuse

During the implementation of the Project, inquiries and requests of 6 victims of sexual violence committed during the war in the Republic of Croatia, Bosnia and Herzegovina and Kosovo were recorded.

In the Republic of Croatia, the rights of victims of rape and sexual abuse are regulated by the Act on the Rights of Victims of Sexual Violence during the Armed Aggression against the Republic of Croatia in the Homeland War. Unfortunately, in other countries in the region there are no such laws, and together with the fact that many years have passed since the incriminating event, victims remain completely invisible, unacknowledged and lonely.

Working with victims of sexual violence is particularly sensitive and demanding. In addition to legal assistance to victims, it is necessary to provide psychological assistance, which exceeds the capacities and possibilities of such a project.

We have been consulting the victims from the Republic of Croatia to submit a request to the Commission for Victims of Sexual Violence, established on the basis of the above mentioned Act, given the fact that prior to the interview with the legal adviser they have never submitted a request in order to determine their status and exercise the rights under the Act in question.

Working with victims of sexual violence must ensure:

- protection against repeated traumatization,
- discretion and a sense of security,
- empathy towards the victim, and
- professionalism

It is difficult to work with victims who have testified before the institutions several times without any subsequent feedback on the possible prosecution of the crime or handling of their case because they expect to finally get satisfaction for the suffering and pain they suffered.

Also, it is not easy to work with victims who have not testified so far given the fact that in most cases they moved abroad, far from the place of abuse or crime. In addition to legal assistance, these victims also need psychological help.

Some victims find it very difficult and are very reluctant to talk about their most difficult experiences despite the fact that they contacted us and expressed their willingness to talk. Out of fear, embarrassment, and frustration, some victims deny that they were sexually abused. They talk about physical and psychological abuse but they do not want to talk about sexual violence.

The experience of working with victims during the implementation of this Project has shown how necessary and important it is to work with victims of sexual violence. In order to help a victim, it is necessary to involve not only a lawyer and

a psychologist but other experts as well. Unfortunately, many victims live without any help. Many victims have not yet spoken out about the violence perpetrated against them, have never received any compensation, nor have the perpetrators been prosecuted.

Rape and sexual abuse are, for the most part, crimes committed without any witnesses. In some cases, witnesses are even co-perpetrators of the crime. Therefore, the work on the investigation of these crimes is extremely complex and implies a lot of responsibility. In doing so, all stakeholders have to be aware of how important it is to work with victims and prevent them from re-traumatisation.

Over two decades passed since the time of the crimes. With the passage of time, the victims will become quieter, investigation and prosecution of crimes will become more difficult, and problems and unsolved crimes will remain. Unfortunately, this can leave very negative consequences on this region in the future. Unresolved and unprocessed crimes can cause great frustration for victims; they feel rejected because of injustice and the lack of empathy for the victim and his or her pain and suffering.

c) Working with the survivors of war crimes

We have observed a wide range of problems with war crimes survivors.

- a) Some of the young men who were the last generation recruited to serve the military service in the former Yugoslav Army, were detained, abused, or exchanged, but they never received any compensation for the abuse they suffered.
- b) To date, civilian victims of war have not exercised their rights and they have not been treated equally as military victims of war, their status has not been resolved, and a complete list of civilian victims of war has not been created.

Ad 1)

The problem with young soldiers of the former Yugoslav Army who were arrested and tried after trying to escape from the former Yugoslav Army and abused in prisons, has not been resolved to date.

They have problems with achieving status and getting their rights to compensation recognized. In Croatia, neither of the two ministries⁶ is competent to solve their problems. In the Republic of Serbia, where they were held in captivity and where, in this particular case, they suffered abuse, proceedings for damages should be brought, but these cases remain unresolved.

⁶ Ministry of Defence of the Republic of Croatia, Ministry of Croatian Veterans

4. Activities with victims of war crimes

Ad 2)

Almost 30 years have passed since the beginning of the war. One part of the population of the Republic of Croatia, who died as civilians, whether they were killed or died as a result of injuries, or were lightly or severely wounded, has not yet resolved their status. In that way, that category of citizens is in a completely unequal position in comparison to military victims.

According to data from various sources, there are 9,500 civilian victims of war in the Republic of Croatia who were wounded while about 6,605 were killed or died as a result of wounding civilian victims of war.

As there is no single list of civilian victims of war, the exact number is difficult to determine. This is a very difficult situation primarily for civilian victims of war because it induces frustrations and re-traumatisation.

In addition, it is a very negative outcome for the society as a whole, for the processes of dealing with the past and finally for closing the chapter in which victims were divided in "our" and "their" victims as a form of justification.

The situation with civilian victims of war in the surrounding countries is almost identical to the situation in the Republic of Croatia.

Although civilian victims of war are not directly targeted in this project, we could not ignore their problems due to the fact that they contacted us and that we were working with them.

We tried to submit requests for determining the status of a civilian victim of war to the competent state administration bodies on their behalf. We are well aware of the fact that victims will be rejected but this is the first precondition for a person to enter the legal procedure and exercise the rights of civilian war victim status, and possibly ultimately try to protect their rights before the European Court of Human Rights.

For some victims, who are listed in war crimes indictments but whose criminal proceedings against the defendants are pending, there is a possibility for compensation if the criminal proceedings end in convictions. However, that is a long and uncertain process.

In the absence of any legal resolution of the status of the civilian victims of war, a number of laws apply. As a result, the civilian victims are not on an equal footing with the military victims, which is a major problem in the long run. For decades, this problem has remained unresolved for the people who died and those who are still distressed because of the consequences of the suffering inflicted on them during the Homeland War.

CONCLUSIONS AND RECOMMENDATIONS

All activities to investigate and prosecute war crimes are important, primarily in the light of achieving justice for the victims of war crimes and their family members. In addition, it is important for the communities in which the crimes were committed, as well as for the society as a whole.

Therefore, we would like to emphasize the following conclusions and recommendations:

- Investigation of crimes and their processing is a strong message to survivors, family members of victims, perpetrators and the society as a whole.
- Crimes cannot and shall not remain uninvestigated, the number of victims must not be manipulated, nor can the crimes of one side in the war be justified by the crimes of the other.
- Regional co-operation between the prosecutors' offices in crime investigation and prosecution must continue and intensify.⁷
- The investigation and prosecution of all committed crimes must be a priority in the work of prosecutors' offices.
- In 2019 in Croatia, not a single investigation was opened, nor was an indictment issued for war crimes committed by members of the Croatian Army and the Ministry of the Interior of the Republic of Croatia.
- The War Crimes Prosecutor's Office of the Republic of Serbia still does not investigate or press charges against high-ranking members of the former Yugoslav Army for the crimes committed in the Republic of Croatia, Bosnia and Herzegovina, and Kosovo.⁸

⁷ Regional co-operation is important for several reasons: survivors expect crimes to be punished and their suffering to be acknowledged. The fact that a lot of time passed since the crimes were committed further complicates investigations but any delay in co-operation makes the problem even more difficult. The investigation and prosecution of the crimes them is an important step in the process of dealing with the past.

⁸ The number of indictments issued by the Prosecution speaks volumes about the deadlock in the investigation and prosecution of war crimes. The indictments taken from the Prosecutor's Office of Bosnia and Herzegovina make part of regional co-operation. However, in addition to working on the those cases, it is necessary to make an effort and investigate and prosecute the crimes committed by the members of the Serbian military and police forces and the Yugoslav Army.

