

# RIGHT TO JUSTICE

BIRN BiH Policy Paper



Author: Prof. Goran Šimić, Ph. D.

## Executive Summary

Bosnia and Herzegovina (BiH) has long had the capacity to prosecute war crimes, but this has not always been a top priority for Bosnian society and its leaders. It was not until years after the formal conclusion of the war in 1995 that trials for war crimes were well underway, but the results of these trials remained far from the public eye. Nevertheless, results have been achieved. Hundreds of judgements have been delivered and over one thousand people have been convicted or acquitted of these crimes. More importantly, the courts have established an immense body of factual knowledge about the events that took place between 1992 and 1995, which could serve as a basis for a definitive historical narrative and common history curriculum, ultimately facilitating understanding and acceptance of the truth about past events. Unfortunately, that has yet to materialize in Bosnia and Herzegovina—quite the opposite.

There are several reasons for this. Notably, many of the country's most prominent figures are the very people supporting the policies that formed an ideological backbone of the committed crimes. In peacetime, they have not relinquished these policies of their own volition but rather because they were forced to do so. In fact, these policies have not been abandoned in BiH so much as they have taken on a different form. The country's officials include those who support and glorify the perpetrators of the genocide (while denying that genocide ever took place) and those who consider themselves the political and social representatives of the genocide's victims. Figures like Milorad Dodik, the current president of the Republika Srpska (RS) entity and a former member of the Presidency of BiH, stand out prominently for their divisive narratives. According to BIRN reports, in 2022 alone, Dodik made more than 120 recorded public statements with the potential to incite or spread hatred. However, not a single indictment has been filed against him for this conduct, even after he publicly denied the verdicts on the Srebrenica genocide in open violation of the Criminal Code of BiH.<sup>1</sup>

Where Bosnia and Herzegovina will go next is not a rhetorical question. It is a question of vital importance for every citizen residing on every inch of the country's territory. The answers that have been offered so far are dubious, best illustrated by the statement of a foreign diplomat who, during a recent press conference with senior BiH officials, said that Bosnian citizens need not worry because there would be no war in their country. If never before and for no other reason, this was the precise moment when the citizens of BiH should have started to worry, as such statements are scarcely heard in the peaceful democracies of the West.

A great deal of time has been wasted in Bosnia and Herzegovina, and while the armed conflict may have ended, true peace has yet to appear. The time has come for a new beginning, and if

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<sup>1</sup> Srebrenica Genocide Denial Report, 2023. Srebrenica Memorial Center (2023). Available at: [https://srebrenicamemorial.org/assets/photos/editor/\\_MCS\\_izvjestaj\\_2023\\_ENG%20-%20Copy%201.pdf](https://srebrenicamemorial.org/assets/photos/editor/_MCS_izvjestaj_2023_ENG%20-%20Copy%201.pdf).

the citizens of this country are not able or ready to undertake this on their own, let's hope that in the process of joining the European Union, they will also come to embrace its values of the rule of law, human rights, and historical reckoning, or be forced to do so, at least at the start.

## **Background**

The state of Bosnia and Herzegovina has a duty to uphold the right to justice for victims of war crimes and their families. This is not merely an international obligation incumbent upon the state as a member of the international community and a candidate for accession to the European Union; above all, it is the state's obligation towards its citizens. At the end of the day, it is also a mutual responsibility which all members of society owe to one another as an expression of their solidarity and compassion for the victims of these crimes.

War crimes trials, as an essential component of post-conflict justice, demonstrate a society's contempt for the injustice that has been inflicted and its determination to clearly designate these acts and their perpetrators as in violation of the core values of the community. Rather than consigning these people and events to oblivion, trials seek to establish the relevant facts "beyond reasonable doubt." Although a dominant form of reckoning in the aftermath of conflict, criminal justice only constitutes a legitimate societal effort to attain justice for victims when combined with other complimentary mechanisms. Implemented in isolation, it represents a significant but fundamentally inadequate attempt by society to redress victims and, more importantly, to give them an opportunity to rebuild their shattered lives and move forward. At their best, criminal courts can make only a limited contribution to this process. If society remains committed to achieving justice for victims solely or predominantly through war crimes trials, victims are likely to feel, as they do in most of BiH, betrayed and let down at not having received the form and extent of justice that they both expected and deserved. This does not necessarily mean that prosecutors and courts did a poor job. Rather, it likely indicates that the victims' expectations, often encouraged by imprudent statements from judicial functionaries about courts "achieving justice for the victims," differed from what courts could offer them in reality.

Achieving complete justice, not only within the confines of criminal law, represents an honorable but harrowing task for any post-conflict society. Although BiH has made enormous strides in prosecuting perpetrators of war crimes, the sense that justice has been achieved, both subjective and objective, is still absent in society. The main reasons for this lie in the society itself, which has either failed to pursue avenues outside the purview of the courts for achieving justice for war crime victims or, under pressure from the international community, has done so only to check the necessary boxes. What is more, even the efforts of the judiciary are reluctantly accepted unless they align with the interests of the country's still-divided factions.

Nevertheless, this does not diminish the advances that Bosnia and Herzegovina has made in prosecuting war crimes. From 1992 to 2023, more than 1,100 individuals were sentenced before domestic, foreign, and international courts for all categories of war crimes committed in BiH. Notably, in addition to those of domestic courts, a significant number of verdicts have also been rendered by the International Criminal Tribunal for the former Yugoslavia (ICTY) in the Hague as well as by foreign courts, particularly in Serbia and Croatia. Some of the most interesting foreign judgements were delivered by German courts, which ruled that genocide was committed in other locations in BiH besides Srebrenica and its surroundings.

Collectively, these trials have unequivocally established a substantial body of facts about the crimes committed and the general context of the armed conflict in BiH and the former Yugoslavia. The fact that these truths have not been fully accepted in Bosnian society by no means lessens their importance but rather underscores society's unwillingness to face the established reality. This remains a key challenge for the future, especially considering that throughout the post-war period, the highest positions of political power and social influence have been occupied by those who deny war crimes and glorify their perpetrators.

In the coming years, war crimes trials in BiH will draw to a close and the prosecution of war crimes will no longer be among the country's challenges. The greatest challenges ahead will continue to include integrating the verdicts of these trials into social life and fostering an objective appraisal of the past, so that at long last, this ceases to be the main point of contention between yesterday's enemies and today's coalition partners governing the country. However, this does not apply only to them but also to the general populace, which, regrettably, tends to base perceptions of past events not on established facts but on the interpretations of these facts by "their" political representatives and the media. In order to change this, Bosnia and Herzegovina must take decisive steps to thwart revisionism, including through the consistent enforcement of legal provisions banning the denial of war crimes, when necessary. Acceptance of the established facts is the essential starting point for any constructive discussion of the events that took place in BiH from 1992 to 1995 period.

### **Overview of War Crimes Prosecution in BiH**

During the conflict in Bosnia and Herzegovina from 1992 to 1995, the possibility of prosecuting war crimes existed. Applicable legislation was in force recognizing certain criminal offenses as genocide and war crimes (albeit not crimes against humanity), and there were competent judicial bodies to deal with the prosecution of these crimes. Additionally, it is worth noting that all sides in the conflict had their own "institutes" or "commissions"

engaged in collecting data on the war crimes committed.<sup>2</sup> However, only a small portion of potential cases were prosecuted in that period due to various operational deficiencies, such as personnel turnover, inadequate conditions, a lack of qualified staff, and selective work. These trends largely persisted after the conclusion of the war in 1995. Despite interventions by the international community, by 2005, the number of convictions only reached 50, across 41 definitively closed cases.

The obvious need to improve the processing of war crimes cases led to changes at the legislative and practical levels. At the legislative level, the High Representative in BiH imposed the law on the Court of Bosnia and Herzegovina in 2000, along with a completely new Criminal Code and Code of Criminal Procedure in 2003. This contributed not only to the establishment of a new court and prosecutor's office to handle war crimes cases but also an entirely different legislative framework with new criminal offences and forms of responsibility.

Prior to these measures, war crimes cases were prosecuted at the entity and Brčko District levels, with relatively low efficiency. According to an OSCE report from 2005,<sup>3</sup> there had been 114 cases pending across all courts up to that point, involving 184 individuals. The legislative changes not only initiated new courts and prosecutor's offices but also energized the operations of other judicial bodies in BiH, including supreme, cantonal, district, and Brčko courts.<sup>4</sup> Unfortunately, some of the measures were challenged before the European Court of Human Rights in Strasbourg, resulting in rulings that put BiH in the unenviable position of having to apply multiple criminal codes to the same crimes, sometimes even before the same courts and prosecutor's offices. No post-conflict state seeking to maintain the legitimacy and legality of its own procedures should allow itself to be put in such a situation.

In 2008, the National War Crimes Processing Strategy was adopted, marking the beginning of a new phase of war crimes prosecution in BiH. The Strategy set out a series of clear but demanding tasks for institutions dealing with war crimes cases in order to address existing issues, such as considerable case backlog, inconsistent judicial practices, the absence of a single case database, an almost total lack of regional cooperation, and wholly inadequate support and protection mechanisms for witnesses and victims. Notably, the Strategy stipulated that all cases were to be resolved by 2023 at the latest, and the most complex and priority cases by 2015. Furthermore, the Strategy mandated that records be kept of all war

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<sup>2</sup> The Institute for Research of Crimes against Humanity and International Law (established by the Government of the Republic of BiH in 1992), the Commission for the Determination of War Crimes in the Territory of HR H-B (established by the Government of the Croatian Republic of Herzeg-Bosna in 1993), and the Commission for War Crimes and Other Crimes (established by the RS Government in 1993).

<sup>3</sup> OSCE Mission to BiH, "War Crimes Trials Before the Domestic Courts of BiH: Progress and Obstacles" (2005).

<sup>4</sup> Ibid.

crimes cases before the BiH Court and Prosecutor's Office, as well as the establishment of a functional case management system and the distribution of cases among all competent judicial and prosecutorial bodies with the aim of enhancing efficiency. Other tasks included priority processing of the most culpable defendants before the Court of BiH, the harmonization of court practices, capacity building, establishing effective regional cooperation, and ensuring protection and support for victims and witnesses.<sup>5</sup>

Although not all the goals outlined in the Strategy were achieved, it should be noted that the majority were and the number of completed cases increased significantly, reaching 473 cases by 2017. However, the Strategy's most important objective of resolving all priority cases by 2015 was not fulfilled. To address this issue, in 2018, the BiH Council of Ministers formed a working group tasked with reviewing the Strategy's implementation and, if necessary, proposing a revised strategy.

In September 2020, after two years of work, the Revised National War Crimes Processing Strategy was adopted, amending some of the goals set out in the original strategy and situating others within a new framework. The Revised Strategy pushed back the deadline for completing the most complex cases to 2023, while other objectives were reiterated or marked as areas for continuation or improvement.

By the end of 2023, it had become clear that the objectives outlined in the Revised Strategy would not be fully achieved. In 2021, the BiH Prosecutor's Office transferred 322 pending cases to other domestic prosecutor's offices in order to expediate the process of clearing up the backlog. According to the Revised Strategy, uneven case distribution and processing of less complex cases at the national judicial and prosecutorial level are factors inhibiting efficient war crimes prosecution and contributed to the breach of the original timelines envisioned in the National War Crimes Processing Strategy. Objective and concerted complexity criteria for the categorization of war crimes cases and their transfer to entity and Brčko District judiciaries is listed as an additional precondition for enhancing the efficiency of the mechanism for referring and distributing of cases.

Given that the Supervisory Body for monitoring the implementation of the Revised National War Crimes Processing Strategy, including the transfer of cases from the state-level to entity and Brčko District jurisdictions and the harmonization of case law, was formed three years after Revised Strategy was adopted, the implementation process proved slow and challenging. This is evident from the November 2023 decision by the BiH Council of Ministers to extend the deadline for processing the most complex cases by two years, to 2025.

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<sup>5</sup> National War Crimes Processing Strategy (2008).

Despite the setbacks, it would be inaccurate to say that the courts and prosecutor's offices in BiH have been inefficient in processing war crimes cases. The assessment of their performance should take into account the national environment in which they operate, the circumstances of which are consistently unfavorable. Facing obvious capacity deficiencies and, as time passes, inevitable preoccupation with other criminal offences of societal importance, the judicial and prosecutorial bodies dealing with war crimes cases in BiH must also contend with relentless social and political pressures, which are invariably unsanctioned. This is compounded by the influence of certain domestic and regional media outlets, which report on court proceedings neither objectively nor with the intention of offering constructive criticism. Instead, their coverage is propelled by ethnic, political, or personal resentment over the fact that the courts dare to sentence "our heroes." Unfortunately, these pressures are often also exacerbated by the country's associations of war crime victims.

Taking all of this into consideration, it can justly be said that there is no real, comprehensive support for war crimes trials in Bosnian society. Rather, this support is contingent on collective loyalties, only surfacing when "their criminals" stand trial—and even then, only if the judgement aligns with the "expected outcome." In this context, the malicious activities of other societal actors, such as intelligence services, academia, and public figures, further complicate the work of prosecutors and courts in various ways. In the light of these factors, it would be unjust and inaccurate to condemn courts and prosecutors alone for poor performance. Casting blame should start with Bosnian society as a whole, and few would evade guilt in that assessment. Meanwhile, courts and prosecutor's offices have delivered concrete results, prosecuting more than 1,000 individuals for war crimes thus far, with a number of cases still ongoing.

Nonetheless, the processing of war crimes cases in BiH has regrettably been marred by serious judicial and prosecutorial oversights. Amendments made in 2004 to the Criminal Code imposed by the High Representative the previous year enabled its retroactive application in trials for war crimes committed in BiH between 1992 and 1995. In 2013, these legal measures were contested by the European Court of Human Rights in Strasbourg, which ruled that BiH had violated provisions of the European Convention on Human Rights and Freedoms. As a result of this judgement, an entire series of decisions had to be revised by the BiH Constitutional Court, which had failed to act when the issue was first raised in 2007, and the Court of BiH, which had issued judgements under the "new" criminal code. All of this would result in a paradoxical situation in the country where someone who had been convicted for genocide could receive a maximum sentence of 20 years in prison, while a person convicted of crimes against humanity, a lesser offence, could be sentenced to prison for up to 45 years. Such interference is unacceptable, as post-conflict societies have every legitimate right to conduct war crimes trials in accordance with the highest standards of criminal law without

resorting to dubious legal measures that undermine their legitimate efforts to bring perpetrators to justice through fair and lawful proceedings.

At present, war crimes are mainly prosecuted on the basis of two codes in BiH, the Criminal Code of BiH and the Criminal Code of the Socialist Federal Republic of Yugoslavia, while in some cases, they have also been subject to entity laws. It is not uncommon for war crimes committed in the same area to be tried under different laws with different criminal definitions and sentences, and before different domestic courts. This ultimately creates significant inequality among citizens—even those who were tried before the ICTY, for whom domestic courts could have offered a more favorable outcome due to differences in sentencing practices and models of individual criminal responsibility. Domestic courts also had insufficient or no access to qualified experts from BiH and abroad who were able and willing to assist with their proceedings.



## The Results of War Crimes Trials

Bosnia and Herzegovina has neither official, publicly available statistics encompassing all final war crimes verdicts nor a registry of persons who have been convicted or acquitted in these cases. Furthermore, those convicted before the ICTY or foreign courts are not listed in the BiH criminal records. Although changing this practice has been discussed for years, it remains in place, even prompting the High Representative to raise the subject of a possible intervention in the matter if domestic authorities, after decades of inactivity, fail to finally resolve the issue. As a result of these circumstances, it is common in BiH to see convicted war criminals actively participating in public life, often holding municipal or other public offices in the very places where they committed war crimes.

To date, final verdicts have been rendered in nearly 700 war crimes cases in BiH, involving around 1,000 defendants. To this number should be added around 100 more persons who have been convicted before the ICTY and foreign courts in countries like Croatia, Serbia, Montenegro, and Germany, among others.

Although the state of Bosnia and Herzegovina has not created an official database of adjudicated war crimes, there are three databases containing these judgements:

1. BIRN Database of Judicially Established Facts about the War in BiH

The goal of this project is to establish fact-based resources that can be used for educational and information purposes, in order to contribute to the fight against disinformation and improve media literacy. This multimedia database will be useful for future researchers, students, and journalists as well as teachers and education ministries, providing them with educational tools for developing curriculum materials and methodologies to teach about the 1992-1995 war. The database also contains search and judgement download options, enabling users to verify the data. The main shortcoming of the database is that it does not contain all judgements issued for war crimes committed in BiH, which limits its usability.<sup>6</sup>

2. The BiH War Crimes Case Map of the High Judicial and Prosecutorial Council (HJPC) of Bosnia and Herzegovina

This database was designed by the OSCE Mission to BiH to provide access to information on adjudicated war crimes cases. The database's map contains a visual representation of judgements based on the places where the war crimes were committed, accompanied by a search option and extracts from judicial verdicts. The chief limitations of the database are that it does not represent all war crimes verdicts and does not allow users to view or download the judgements themselves, precluding

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<sup>6</sup> BIRN Database of War Crimes Judgements in BiH is available at: <https://ratnizlocin.detektor.ba/>.

them from verifying the data or gaining a full understanding of the judicially determined facts.<sup>7</sup>

### 3. War Crimes Trials Database Project

This is the only database containing all available final judgements for war crimes in BiH, including those rendered by the ICTY and foreign courts, some of which are accessible exclusively through this database. The database is easily searchable by several dozen different criteria and frequently updated with new judgements and functions. The basic concept behind the database is not to offer interpretations but to provide users with the raw data from the judgements, which they can download and read carefully in order to familiarize themselves with the facts established and interpreted by the courts. As such, this database represents a unique resource for information on war crimes in BiH.<sup>8</sup> The sole drawback of the database is that it can only be accessed upon payment of a certain fee.

Looking at the total number of war crimes convictions and cases across all courts in BiH as well as the ICTY and foreign courts, it cannot be said that nothing, or even little, has been done in this field. Available data suggests that to date, more than 1,100 people have been conclusively convicted for war crimes committed in BiH, while proceedings against hundreds of individuals are still ongoing. For a country that entered the war with just over 4 million inhabitants, this is a significant number. Leading in the total number of final verdicts is the Court of BiH, with 457 convictions, followed by the Supreme Courts of the Federation of BiH (232) and the RS (167). The Brčko District Basic Court and the cantonal courts in Livno, Novi Travnik, and Odzak (1) have issued the fewest final verdicts, which is understandable given that the majority of first-instance judgements from cantonal courts in the Federation of BiH and district courts in the RS have been definitively adjudicated in the entity supreme courts.

Virtually every criminal offence classified as a war crime<sup>9</sup> was committed during the war in Bosnia and Herzegovina. In terms of quantity, the most numerous were those characterized as “various war crimes” (mostly war crimes against civilians) and crimes against humanity, whereas crimes falling under the purview of genocide hold sway in terms of severity. A feature common to all of these crimes is that the vast majority of victims, approximately 90%, were civilians, which alone testifies to the nature of the 1992-1995 conflict.

The perpetrators of war crimes in BiH came from all ethnic communities and conflicting parties. Although they did not follow the same patterns, commit the same number of atrocities, or use the same methods, this is important to bear in mind in order to understand the nuances

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<sup>7</sup> The War Crimes Case Map of HJPC BiH is available at: <https://maparz.pravosudje.ba/bhs>.

<sup>8</sup> The War Crimes Trials Database (author Prof. Goran Simic, Ph.D.) is available at: [www.warcrimestrialsdatabase.com](http://www.warcrimestrialsdatabase.com).

<sup>9</sup> The term “war crime” is generally understood to include genocide and crimes against humanity.

of the contemporary context. The attitudes in Bosnian society towards the crimes committed, as well as towards their perpetrators, victims, and consequences, cannot be viewed in black and white and do not follow a simple pattern. On the contrary, they are complex and multidimensional, particularly considering the differing circumstances across the various parts of BiH where crimes were committed. The perpetrators included adults of all ages, with some instances of juvenile perpetrators, as well as members of both genders, albeit female perpetrators were very rare. They came from all socio-economic backgrounds, although most had low levels of education and social status, attributable to the fact that the majority were relatively young and served as “common” foot soldiers. However, it should be noted that some perpetrators were highly educated and held prominent positions in society.

Despite existing legal provisions, Bosnian society is divided as to whether perpetrators of war crimes should be rehabilitated. The BiH Criminal Code clearly stipulates that after serving their prison sentences, former convicts are able to attain full constitutional and other legal rights, except those restricted by security measures or as a legal consequence of their conviction, as outlined in Article 117.<sup>10</sup> This law does not distinguish between perpetrators of different criminal offences nor does it offer any specific provisions for those convicted of genocide, crimes against humanity, or war crimes, implicitly including the perpetrators of these crimes under the stated provisions. Still, the question of rehabilitation has been the subject of public debate in BiH on multiple occasions, usually with unconcealed emotion. Almost without exception, these discussions have been held without input from criminal law or transitional justice experts and have devolved into ethnic-political wrangling through the media.

Another issue deserving of special attention is that of regional cooperation on war crimes trials among former Yugoslav countries. Although they are now independent, these states were deeply intertwined in the events that took place in the region between 1991 and 1999, whether as active or passive participants. During this period, war crimes were committed within the territory of each country, with their citizens appearing both as perpetrators and victims (with the limited exception of Slovenia, where the war, although not inconsequential, lasted only about ten days). Likewise, the military formations involved in the conflict were present, legally or illegally, on the territories of other countries, where their soldiers committed war crimes.

In the post-war period, all former Yugoslav countries have conducted war crimes proceedings against both their own citizens and foreign nationals, with BiH, Croatia, and Serbia in the lead. However, this has entailed a variety of problems at both the individual and state levels. Many BiH citizens have relocated and acquired dual citizenship in neighboring countries,

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<sup>10</sup> Criminal Code of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina no. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07 8/10, 47/14, 22/15, 40/15, 35/18, 46/21)

particularly Croatia and Serbia. Those prosecuted in other states were tried under different (usually more favorable) circumstances than they would have encountered in BiH. Furthermore, some cases have been transferred to neighboring countries, where they were discontinued, never concluded, or concluded questionably. Meanwhile some fugitives have fled BiH, sheltering in neighboring countries as well as those further abroad, such as Turkey, for instance.<sup>11</sup>

While at first glance, it may seem logical for the former Yugoslav countries to collaborate on war crimes trials, their reasons for not doing so becomes apparent upon closer inspection. Each country—particularly Serbia, Montenegro, and Croatia vis-à-vis BiH, as well as Serbia and Montenegro vis-à-vis Croatia, BiH, and Kosovo—seeks, above all, to safeguard their national interests by minimizing its role, and that of its citizens, in the committed war crimes, at the expense of universal justice. A prime example of this can be found in the 2015 decision by the Croatian government on (non)cooperation with BiH regarding legal assistance in war crimes cases.

Should these challenges ever prove surmountable, full regional cooperation would surely yield substantial benefits, not only in terms of prosecuting war crimes but, more importantly, for victims and these societies as a whole. This cooperation could certainly be emboldened by the European Union and the Chief Prosecutor of the ICTY's residual mechanism, who could leverage the European accession processes in the Western Balkans to "encourage" these countries to stop obstructing war crimes trials or hiding suspects convicted by competent courts. This would constitute a significant contribution to democratic development and overcoming past conflicts in the region, which cannot be achieved solely through economic development.

Another potential solution would be to try inaccessible suspects in absentia. This practice is not unknown in the region, with a number of war crimes judgements in Croatia issued in absence of the accused due to "a justified public interest." Although this is not an ideal solution, it appears to be the only practical one under the present circumstances, where there is serious doubt as to whether many of the suspects who have fled BiH will ever stand trial.

Finally, it would be desirable for the former Yugoslav countries to create a common factual narrative of wartime events in order to counteract historical revisionism and manipulation. This would also help to rebuild good neighborly relations among these nations that, side by side, must inevitably coexist.

### **Unprocessed Cases**

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<sup>11</sup> Some of the best known such cases are those against Novak Djukic, Dusko Kornjaca, Zlatan Jelic, and Sakib Mahmuljin.

Not all perpetrators of war crimes in Bosnia and Herzegovina have yet been prosecuted and some most likely never will be. This is certainly not the fault of prosecutors and courts alone but rather a consequence of broader societal factors, the passage of time, and other circumstances affecting trials. Despite nominal interest, Bosnian society has never collectively supported war crimes trials. On the contrary, its various segments, fragmented along ethnic and other lines from the past conflict, have long supported only the verdicts that they deem favorable. Consequently, nearly 30 years after the war, not all judgements have been rendered or, more importantly, accepted. In order to change this, it is necessary to address the current division in Bosnian society. However, nearly three decades since the formal cessation of armed conflict in BiH, unity is nowhere in sight.

According to available data from the HJPC on the implementation of the Revised Strategy between 2021 and 2023, the BiH Prosecutor's Office has 271 pending war crimes cases, involving 3,008 defendants. Meanwhile, cantonal, district, and Brčko District prosecutors have 113 pending cases, involving 334 defendants. Indicatively, prosecutors have resolved 145 war crimes cases, involving 623 persons, by suspending investigations. In the same period, domestic courts delivered 77 final judgements in war crimes cases, while 218 cases remained pending and 39 were transferred to neighboring countries for jurisdictional processing. Additionally, suspects in 162 cases were unavailable to prosecution authorities, while the courts registered 88 war crimes cases involving unavailable defendants. Compared with data from previous years, these figures indicate a slowdown in the processing of war crimes cases, which seem to be gradually fading from public attention. The growing time gap since the perpetration of the crimes also hinders investigations, the filing of indictments, and the concluding of trials, an impact that will become even more pronounced over time.

In most cases, trials have not been held for those at the highest echelons of responsibility. Whether political leaders, military commanders, or law enforcement officials, the majority have avoided standing trial. This results in ironic situations where detention camp guards have been tried and convicted while the people who ran the camps and devised the policies that led to their establishment have not. In fact, as they were never banned from public office, many have continued on with their political and social lives in BiH as dignitaries, leaders, and public figures, often able to exert direct influence over the efficiency of trials. Some even returned to public life after being convicted, achieving "notable success" in the societal sphere. These circumstances, coupled with the lack of concrete efforts to establish objective facts about past events, create enormous room for manipulation. Verdicts, commemorations, and monuments are thus stripped of their instructional and reconciliatory potential, further dividing a society which certain actors would all too gladly see completely torn apart.

There has been no clear condemnation of the ideology that formed the basis for the perpetration of war crimes in BiH during the most recent conflict, with courts failing to issue so much as a single judgement pertaining to this matter. Interestingly, although the international tribunal that adjudicated war crimes committed during the Rwandan genocide did address ideological factors, the ICTY also failed to confront this issue in the Bosnian context. In BiH, the main political drivers of this criminal ideology remain in power, as they did throughout the war. Although the High Representative imposed amendments to the country's Criminal Code aiming to combat the denial of genocide and other war crimes, these practices persist, emanating not only from "ordinary" citizens but from the society's most prominent leaders. With unabated ferocity, they continue to undermine the judicial process and dispute established facts under the slogan "I have to accept court decisions, but I don't respect them." All of this goes on without an adequate response from judicial authorities or society at large. In this environment, it is unrealistic to expect "ordinary citizens" to accept the facts when their country's presidents and government officials deny them.

The media has also evaded accountability, despite their role in creating the atmosphere of violence that precipitated the war crimes and maintaining it throughout the conflict. Their selective, false, or tendentious reporting on war crimes in the aftermath of the conflict has likewise had enduring effects, especially given the media's preponderant influence on public opinion in a society where scarcely anyone reads court verdicts. This consideration has been neglected, overlooking the resonance of denial, false reporting, and the distortion of legal qualifications by the media concerning war crimes. In post-conflict societies like Bosnia and Herzegovina, these media outlets are powerful tools, weaponized by those who continue to wage war by other means.

There are certain illogicalities in prosecution's practices. In some cases, there are judgements by the international court or domestic courts against the individuals who ordered the execution of crimes, but those who executed the crimes were never indicted. An example can be found in Sarajevo, where those who ordered the four-year siege of the city have been tried and convicted yet hardly any indictments have been filed against direct perpetrators. A similar remark can be made with regard to the crimes committed in Srebrenica and its surroundings, where several dozen individuals have been accused and convicted, although, according to an official report of the RS Government, among others, at least 25,000 people took part in these events. This is not merely a matter of criminal judgements but also of redress for the victims of these crimes. The punishment of a handful of individuals cannot compensate for the damage to hundreds of thousands of injured parties. When we add to this the inhumane legal framework for compensating victims of war crimes in BiH, especially those whose identity was protected during proceedings trials, it is clear that the state of BiH, at all levels, must do much more to treat the victims of war crimes from the most recent conflict with humanity.

## **The Path Forward**

Why try war crimes at all? Wouldn't it be nicer to just forget it all? Not to look at the dark past and look at the bright future, as is often suggested by those whose surnames were not erased from the directory by war criminals? Why remember those terrible events, why keep going back, when nothing can change anyway?

Justice for war crimes remains an essential pursuit for Bosnia and Herzegovina and its citizens. It is crucial that these trials be seen through to the end and that all cases are duly concluded by the judicial system. The first of many important reasons for this is that the definitive resolution of war crimes cases represents an end to the culture of impunity that sustains the denial of atrocities and glorification of their perpetrators. Additionally, in establishing a firm factual basis for determining the truth about past events, there is hope that one day, Bosnian society will begin the process of historical reckoning on which long-term peace and stability in the country depend. War crimes trials are not only a mode of partial redress for the survivors of war crimes and families of victims but they are also a means of enabling society at large to restore the shattered values of justice, human dignity, and respect for human rights. In order to achieve this goal, the state of Bosnia and Herzegovina, at all administrative levels, must provide the necessary resources to conclude war crimes cases. This refers to both material means and public commitment, which must be cultivated at levels of society and its current leadership.

At the same time, judicial and prosecutorial bodies must optimize their procedures. This entails the efficient distribution of cases among all competent courts and prosecutor's offices, accompanied by transparent oversight of the processing of these cases. At present, these provisions are lacking, resulting in long drawn-out proceedings. Furthermore, these institutions should prioritize the most significant cases with the greatest social value, which has not been the general practice in recent years. This is not to say that lesser cases should be neglected but that societal impact must take precedence over the prosecutorial quotas in the prioritization of cases. In this process, the counsel of scholars and other experts, up to now underutilized, could prove particularly helpful. Prosecutors and judges do not appear to fully grasp the impact of their work. While to them, these cases may be only a number, they certainly are not just a number to society and war crime victims. Additional training from qualified experts beyond formal education would also surely contribute to the quality of professional performance.

Additionally, more efficient oversight of judicial and prosecutorial operations would undoubtedly yield positive results. Such oversight should not aim to interfere in the work of these institutions or undermine their independence but should instead seek to address certain negligent professional practices. For instance, the fact that there are war crimes prosecutors

in BiH earning above-average salaries who go a year without setting foot in a courtroom is unacceptable. Too much time has already been wasted, as demonstrated by the extension of the deadline for resolving priority cases from 2023 to 2025 in the Revised Strategy. The sole objective of this extension, which was instituted without any serious analysis or consultations, appears to be concealing the inaction of the institutions responsible for implementing the Strategy and the operational deficiencies of courts and prosecutor's offices. The deadline extension itself, unless accompanied by systemic reforms in the modus operandi of these institutions, will have little impact apart from reducing the number of pending cases to a limited extent.

It is up to prosecutions and courts to complete their part of the work, and the rest is up to other social institutions, including society as a whole. At present, however, those "other" social institutions, which are often staffed with individuals who glorify war criminals and their bloody deeds, show no desire, for obvious reasons, to intensify and finally conclude these processes. This is further complicated by BiH citizens who place their trust in these people and political entities, giving them the political power to manage these processes. Continuing with these practices, these people cannot reasonably expect criminal courts to act as a panacea for all post-conflict societal problems.

While criminal courts are not without flaws, entrusting them to decide what constitutes a war crime is certainly more prudent than leaving this task to politicians, journalists, or corrupt pseudo-academic experts. However, the judicial system is not a magic wand, and it is unrealistic to expect court verdicts to solve all the problems in a post-conflict society. Reducing mass atrocities to individual criminal responsibility is neither possible nor rational, as criminal justice is just one part of achieving post-war justice and must be harmonized with other initiatives to address the consequences of war crimes for victims and communities. Since mass atrocities not only damage the relations between perpetrator and victim groups but have a profound and far-reaching impact on the entire society, dealing with these consequences goes beyond the individual criminal responsibility of a few perpetrators. Instead, a series of complementary measures grounded in the principles of truth and justice must be adopted to enable the rebuilding of shattered lives. Courts and criminal trials alone are incapable of doing this, nor is it ultimately their social responsibility.

Educating the public about the workings of the judicial system should be a priority in any post-conflict society. Without basic legal knowledge, people cannot be expected to understand court decisions, just as they cannot be expected to understand the complexities of epidural anesthesia, the Fibonacci sequence, or Hawking radiation without a requisite of grasp those respective fields. However, unlike in medicine, mathematics, and physics, where experts are fortunate to rarely be contradicted by laymen, when it comes to matters of law, there is a common tendency for the general public to consider themselves qualified to interpret



legal norms and their applications by judicial institutions. While critical evaluation of judicial and prosecutorial operations is an important mechanism for ensuring the transparency of these institutions and their accountability to the citizenry, the legitimacy of such evaluations depends on prior professional knowledge. Only through education is it possible for individuals to formulate objective and well-informed opinions, and thus to offer criticism that is appropriate and constructive. This also applies to the limited range of criminal justice in a post-conflict society. Certainly, to be added to this are individuals who promise victims that courts will guarantee them justice.

Furthermore, all judgements should be publicly accessible without restrictions in order to allow citizens to familiarize themselves with their legal content. In Bosnia and Herzegovina, however, the reality is that the vast majority of the population has never read a single judgement, instead basing their views on secondary media sources and the interpretations of politicians. The fact that BiH has not created a public database of judicial verdicts 30 years after the war creates ample room for the distortion of facts about past events. To counteract this, court judgements must be made accessible to the public. If the state of Bosnia and Herzegovina fails to establish factual historical resources, as it has so far, judgements, along with some additional efforts such as documenting the search for the missing, will remain the most crucial and credible source of information about these events.

However, even when a population is equipped with the basic legal knowledge to understand judicial verdicts and has unrestricted access to the verdicts themselves, achieving widespread societal acceptance of war crimes rulings in the aftermath of conflict is no easy task. This is especially true for the generation that experienced the war first-hand, whether on the side of perpetrators or victims, given the profound impact of the bloodshed, pain, and suffering. For many, the truth may be too painful to come to terms with, the underlying realities too complex and sinister to fully grasp. Nevertheless, establishing the factual narrative of these events is the first step on the road to societal acceptance. Judicial verdicts represent the cornerstone of this endeavor, as the most objective and definitive body of established facts. However, other memorialization and civil society initiatives, such as eye-witness testimonies and commemorative activities, can serve as useful supplementary resources. While lacking the objectivity and authority of court rulings and thus unsuitable for determining facts in isolation, these initiatives add a valuable human dimension to the discussion of historical realities, making an important contribution to the culture of remembrance and societal healing.

The media can play a vital role in post-conflict societies, capitalizing on its broad reach to disseminate objective, judicially established facts among a wide audience. However, this would require media outlets to be impartial, independent, and committed to contributing to reconciliation within society, which is generally not the case within the Bosnian media landscape. Beholden to various political, ethnic, religious, or other groups, media outlets in

BiH tend to report on judicial matters selectively, framing them within the matrix of “our heroes and victims” versus “their criminals.” Thus, depending on the affiliations of a given outlet, content is deliberately curated and arranged in order to emphasize news about “their crimes and criminals,” while coverage of “our” war crimes is either omitted or strategically relegated to where it will attract the least attention. When necessary, judicial findings and criminal qualifications are distorted in order to align with a particular agenda, or else discredited on the basis of courts’ “hatred” and bias against “our community.” These strategies, pursued under the aegis of freedom of press, are especially effective in light of the fact that few BiH citizens read the actual court verdicts.

Within this dismal media environment, BIRN stands out as not only a rare exception to the dominate trends but also a media agency actively contributing to the societal acceptance of judicially established facts about war crimes in BiH. BIRN’s Database of Judicially Established Facts about the War in BiH, along with the War Crimes Trials Database and BiH War Crimes Map, constitutes a solid foundation for education about wartime events and a vital resource for both academic institutions and the general public. While many citizens may be ill-disposed to engage with the objective facts on war crimes trials, such resources are crucial and will hopefully be utilized within domestic institutions and the education system to educate new generations.

Indeed, the best hope for positive change ultimately lies in educating new champions of justice, teaching them to eschew hatred and embrace the values of truth, social responsibility, and moral courage. This education should foster compassion for all suffering, both “ours” and “theirs,” and foster the courage to confront the actions of their own community. It should teach young people to view forgiveness and reconciliation as attainable goals that they should relentlessly pursue in order to avoid new wars, suffering, and atrocities. In this way, new generations can unshoulder the burdens of their ancestors and build a society that does not merely exist in the absence of armed conflict, but where they can live in peace, with room for everyone.

The prospect of Bosnia and Herzegovina’s accession to the European Union offers a chance for a new beginning. In light of the country’s failure to take the necessary measures over the years to address the events of the past war, these measures should be included among the conditions for EU membership. This would not be an exception or hinderance for BiH, but simply a demonstration of its commitment to the rule of law and human rights standards as fundamental values of the EU. In addition to economic development, the EU should insist on the social and political reforms that would finally allow BiH to join the ranks of Western European democracies, upholding the principles of lawful governance and the highest European democratic standards.

In Bosnia and Herzegovina, this necessitates shifting the focus away from war crimes trial strategies and their revisions. Instead, what is needed now is a concerted effort to see the facts established in these trials accepted at all levels of Bosnian society. Such efforts have been almost entirely neglected by the authorities in BiH, giving rise to endless manipulation of the past, irrespective of the nearly 1,000 war crimes verdicts that have been issued. A peaceful future for Bosnia and Herzegovina can only be built on the foundations of truth and justice, and no elaborate strategy is needed for that purpose. What is needed is courage and determination on the part of the country's leaders and citizens, which have not materialized nearly three decades since the formal end of the conflict.