

THE FUTURE OF TRANSITIONAL JUSTICE

Bosnia and Herzegovina and Ukraine, the Western Balkans and Europe

IMPRESSUM

The Future of Transitional Justice: Bosnia and Herzegovina and Ukraine, the Western Balkans and Europe

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Web site: www.detektor.ba

Author: Enes Hodžić

Editor in chief: Semir Mujkić

Deputy editor: Džana Brkanić

Executive director: Denis Džidić

Project coordinator: Katarina Zrinjski

Proof reading: Amila Žunić

DTP: Zlatan Karadža

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Introduction: Key challenges for transitional justice

Thirty years after the conflicts in the Western Balkans, transitional justice continues to be the central topic of political, social and legal debates. Although there has been some progress in prosecuting war crimes and recognising the rights of victims, many challenges stand in the way of sustainable peace and reconciliation.

As the 30th anniversary of the end of the war in Bosnia and Herzegovina (BiH) approaches, the Balkan Investigative Reporting Network of Bosnia and Herzegovina (BIRN BiH) organised a conference that brought together experts from BiH and Ukraine to speak about the future of transitional justice in Europe.

The conference was divided into two panels and featured introductory speeches from a range of transitional justice experts who explained the current situation in Ukraine and in BiH in order to compare the experiences of these two countries – one where the war ended nearly three decades ago and the other where the war is ongoing. One particular emphasis was the need for Ukraine to establish a strategic and legal framework for transitional justice amidst the ravages of war as one of the key steps for the country's future and the end of the war.

The first panel with participants from BiH and Ukraine addressed the role of transitional justice processes in these two countries' negotiations with the European Union (EU). Experts from governmental and non-governmental sectors listed the key challenges they face within the field of transitional justice and offered solutions that should be implemented to overcome these problems.

The second panel discussed global trends in transitional justice and their regional implications. Panelists analysed problems such as malignant foreign influence and disinformation, which hinder transitional justice processes, as well as the need to react to institutional denial of war crimes and glorification of war criminals. As they noted, this process has been going on in BiH for 30 years and there is now an urgent need to join global trends. Ukraine, meanwhile, is at the beginning of the process and has an opportunity to learn from the mistakes and experiences of the Western Balkans.

This booklet summarises the main conclusions and recommendations from the conference on the future of transitional justice 30 years after the end of the war in Bosnia and Herzegovina, providing analysis of specific problems in BiH, the Western Balkan region, and Europe.

Politicisation of the process and lack of political will

Agnes Picod, Senior Human Rights Advisor at the Office of the UN Resident Coordinator in BiH

“At the heart of the transitional justice process are the perspectives of victims and survivors. I think we must start from there, and I think there are very few politicians who listen to victims or someone who can talk to them about [these issues].”

Thierry Cruvellier, Journalist at Justiceinfo.net

“There is a feeling that dialogue and debate about transitional justice are very similar to what I had heard years before. Everything is the same – there is resistance and we must fight it. Here the process is stuck politically, and politicians are instrumentalising how the justice process unfolds.”

- **Conclusion:** Transitional justice processes are often instrumentalised for political showdowns, which robs the processes of meaning. Without genuine involvement of survivors, transitional justice becomes a formality with no actual impact.
- **Recommendation:** Initiate a transparent dialogue between politicians, civil society organisations, and survivors so that the issue of transitional justice receives a central place in the democratisation process.

The role of the European Union and international community

Alena Lunova, Ukrainian Human Rights Centre 'Zmina'

"We must avoid discrimination, and that is why I believe that the European Union's recommendations for the accession process must include [...] recommendations in the field of transitional justice."

Denis Dzidic, Executive Director of BIRN BiH

"From the perspective of EU integration, now is the time when civil society organisations talk a lot with the European Union on how we can be partners and have our voice heard in all fields on the opening of negotiations, when that happens. Indeed, this is the moment when it would be good to talk also about the process of adopting a transitional justice strategy in view of the fact that this is one of the things where the EU can help us, to open the doors of institutions, so we are much better informed of the processes."

Fermin Cordoba, Political Advisor at the EU Delegation to BiH

"The past always waits for us somewhere, which is why it is important to face it. This leads to a conclusion that the country should have some kind of process. We know, and I will be very open, that the mode of operation of some decision-makers in this country is to spread the politics of fear and that their interest is not to make up the shortfall in the reconciliation process. But we are considering and talking with Brussels about which processes the EU should support."

- **Conclusion:** The EU's current approach to transitional justice in BiH is often rhetorical with no concrete steps or pressure on political elites.
- **Recommendation:** Integrate transitional justice into the EU accession negotiations with BiH and Ukraine. This should include mandatory steps related to prosecuting war crimes and implementing judicial reforms. All long-term actors who have participated in creating the transitional justice framework should be involved in the process in order to strengthen cooperation between institutions and the civil sector.

Activists' resilience and the role of victims

Sofija Todorovic, YIHR Serbia

"Transitional justice is not a special form of justice. It is a set of mechanisms that should enable you to move from autocracy and totalitarianism to democracy, that is, from war to peace. Victims are indeed in the center, and some standards are formed based on their needs. But that is only one part and they are not the only actors. We have multiple factors in building this new society. It is complex."

Adrijana Hanusic Becirovic, Transitional Justice Expert

"In Ukraine a somewhat large, perhaps even exaggerated focus on criminal justice can be seen emerging, as was the case in BiH. It is a priority for victims, especially if they are displaced, to receive housing and food for their children and their families and themselves. To have psychological help, which will bring them back to life, to have health care, legal aid, etc. Criminal justice is something that becomes a priority only later. Our victims say that for them, justice is much broader than criminal justice. For them, justice is the support they have received from society in various ways. In order for justice to be served, they must see that war criminals are not glorified in their community, that judicially established facts are not denied, that the places of their suffering are marked."

- **Conclusion:** Activists and victims continue to be the key driving force in the region. Their persistence and resilience ensure that transitional justice issues are not forgotten.
- **Recommendation:** Strengthen the capacities of civil society organisations as well as other actors throughout the process. Support activists through financial, legal, and security mechanisms. Involve victims in decision-making processes.

Global trends and the role of disinformation

Fikret Hodzic, Transitional Justice Expert

“The values of transitional justice are about what kind of country you want to preserve, how it should look in the future, and the role of the treatment of victims, dialogue and reconciliation, responsibility for crimes and the fight against the dehumanisation of other people, which is a weapon being used against you. The dehumanisation of Ukrainians is what Russia’s war effort entails – that Ukraine is not a state, that Ukrainians do not exist, that they are Nazis, that they should be denazified. Responding to dehumanisation in kind is the biggest trap.”

Agnes Picod, Senior Human Rights Advisor at the Office of the UN Resident Coordinator in BiH

“We are witnessing an erosion of social space, and I think that is the situation throughout the region. Discrimination is very prominent, and I believe that such issues must also be addressed. I think the environment is becoming increasingly difficult for activists, including those dealing with transitional justice, to do their job, especially to promote the truth.”

- **Conclusion:** Disinformation and malignant influences, especially by the Russian media, polarise society and hinder reconciliation processes.
- **Recommendation:** Develop strategies for countering disinformation in collaboration with international partners. Increase media literacy among young people and citizens so as to reduce the impact of propaganda.

National strategies and regional cooperation

Yaroslav Simonov, Chargé d’Affaires of the Embassy of Ukraine in BiH

“We are still on the verge of developing this strategy, but several by-laws and initiatives have already been adopted, some institutions have been established, and it is important that we study these experiences with our partners, such as BiH, so that we do not make the same mistakes that were made here, i.e. that we improve something. Unfortunately, we do not know what fate awaits Ukraine, we do not know what the political circumstances will be tomorrow, but for us, every experience is very important and we can [use such experiences] in our legal system.”

Denis Dzidic, Executive Director of BIRN BiH

“Without the involvement of all process participants, all stakeholders dealing with transitional justice, we think we will be in a process that stands very little chance of bringing anything good. Especially if the practice of working behind closed doors continues.”

- **Conclusion:** Regional cooperation and the involvement of local actors are key to the successful implementation of transitional justice strategies.
- **Recommendation:** Devise inclusive strategies that engage governments, non-governmental organisations, and international partners. In BiH, it is necessary to update the national strategy in accordance with current challenges and global trends. In Ukraine, this kind of strategy can be built on the basis of cooperation and learning from the experiences of BiH.

The perspective of victims and the future of justice

Munira Subasic, President of the Association 'Mothers of Srebrenica'

"Mothers in BiH are an example of everything. Already in 1998, we began to talk, we sat down at the same table, and there have been many results, and it would be good for mothers to start raising their voice in Ukraine now, because a mother's love for children is the greatest. Should politicians do what we have been doing, everything would be flowing with milk and honey."

Fikret Grabovica, President of the Association of Parents of Children Killed in the Siege of Sarajevo

"Victims are not present in the Justice Ministry. I will not say that you are not doing your job, but you must involve victims. You will find out a lot from them, as victims have a lot to say."

- **Conclusion:** Judicial institutions in the region have not fulfilled their role. This undermines the confidence of victims and the community in the overall transitional justice process.
- **Recommendation:** Pressure should be placed on judicial institutions through monitoring, advocacy, and international support in order to ensure accountability and efficiency. Victims should be involved in the process of adopting legal and strategic solutions.

Transitional justice – Comparing BiH and Ukraine

The conference provided an opportunity to compare transitional justice practices in Bosnia and Herzegovina and Ukraine, two countries facing challenges resulting from war. Despite similarities in terms of the scale of the trauma and the need for justice, their contexts and approaches differ considerably.

Key similarities and differences:

1. The need for a swift reaction in times of war, but also in the post-conflict period

Alena Lunova, Ukrainian Human Rights Center 'Zmina':

"One quarter of Ukraine is under occupation, and we do not know how many offences have been committed, but we are trying to document them. Naturally, we are facing challenges, but we must understand where we are now."

Ukraine focuses on documenting war crimes in real time, while in BiH the documentation efforts arose only years after the end of the war.

2. Internationalisation of justice

Ivana Ilchenko, Ukrainian legal expert:

"It is a good thing that civil society became involved as soon as the European Union's Advisory Mission commented that we were not part of the transitional justice decision-making process. It is true that the EU lacks *updated* documents on transitional justice, but from my point of view, I would not separate the EU accession process from transitional justice. All legal solutions exist in the European process, everything is there already, adapted to all the specifics of a particular country."

Ukraine has ensured international cooperation since the start of the war, while BiH did it at a slower pace due to institutional inefficiency.

3. Facing crimes from the past

Ukraine is facing huge challenges related to war crimes committed by the Russian aggressors. Since the onset of the conflict in 2014, Ukraine has worked intensively on documenting war crimes, not only those against the Ukrainian people, but also in the context of broader international law. This includes working with international organisations, such as the International Criminal Court (ICC) and trying to build its own capacities for prosecuting war crimes.

BiH, on the other hand, faces a lengthy transitional justice process that has lasted more than 30 years. While international courts and mechanisms for prosecuting crimes existed in BiH, the country has failed to build a comprehensive national system for prosecuting war crimes. The narratives of wars and crimes from the past continue to be politically instrumentalised, which slows down justice and reconciliation processes.

4. Building transitional justice institutions

Ukraine has created various state and independent organisations dealing with war crimes prosecutions and the restoration of justice. These institutions often cooperate with international organisations, but they face problems related to administrative capacity and political influence. Ukraine has succeeded in creating specific laws and a legal framework that allows crimes to be prosecuted and for victims to be recognised.

Although there are institutions in BiH that are in charge of prosecuting war crimes (such as the State Prosecutor's Office and the Court of BiH), these institutions are often criticised for a lack of capacity, political influence, and corruption. BiH has failed to implement effective mechanisms at the state level to recognise and compensate victims

5. Victims' right to justice

In Ukraine, victims have clear support for their demands for justice, although they face challenges seeking recognition of crimes committed by a foreign army. There is a focus on the right of victims to have full support in the prosecution of crimes, as well as a restoration of victim' safety.

In BiH, victims often have limited rights to justice. While there are organisations and groups fighting for victims' rights, political barriers and economic uncertainty make the fight even more difficult. Many victims, especially those facing oppositional political influences in their localities, are not recognised or are not provided with the right to compensation and satisfaction.

Expert commentary

Problems in BiH

Refik Hodzic, a longtime expert in transitional justice, made critical comments about the situation in BiH, pointing to systemic flaws and disharmony between international norms and local needs.

- *“If politicians do not lead the process [of transitional justice], you get a shell that does not produce anything, while sucking up a lot of money. That shell needs to be served, and the money usually comes from abroad. Then they say: ‘We are working, look at the indicators, so many workshops have been held’ and so on, while out here politicians lead all the processes that are directly opposite to that. This is the situation in BiH today.”*

This issue is particularly pronounced in regard to the lack of prosecution of many war crimes and the disregard for marginalised victims, as well as other crucial processes for developing strategic and legal solutions in BiH.

The role of narratives in reconciliation

- *“What BiH and Ukraine have in common is a danger threatening you beyond your borders, where you have no influence whatsoever. In our country, the discourse on the past is mostly created in Belgrade and Zagreb. We are fighting with every means against something that we cannot touch, because we have no mechanisms to deal with it, and this is the discourse with which we are living now.”*

Recommendations for the future

1. **Ukraine can learn from the mistakes of BiH in terms of local participation.**
 - Involvement of victims and civil society is key for building sustainable transitional justice.
2. **It is necessary to combine local and international approaches.**
 - Gaining global public attention about communities where crimes have been committed is not a sufficient instrument to achieve transitional justice; a greater involvement of local actors is needed.
3. **A change of narratives is imperative for reconciliation.**
 - Freeing the public space from politicised ideas of the past can create a chance for reconciliation and justice.

Conclusion

In Bosnia and Herzegovina and the region, transitional justice faces numerous challenges, including politicisation, a lack of political will, disinformation, and inadequate institutional capacity. Nevertheless, the resilience of victims and activists gives hope for a better future. Through the strengthening of dialogue, regional cooperation, and the involvement of the international community, the groundwork for sustainable peace and reconciliation can be laid.

Although Ukraine is facing war crimes in the ongoing conflict with Russia, its readiness to react promptly to crimes and its political will to fight for justice allows for faster progress in transitional justice processes than was the case in BiH. Given political fragmentation and deeply-rooted nationalist narratives, BiH must turn towards internal reconciliation and the building of mutual trust in order to achieve long-term results in transitional justice.

This will only be possible if an inclusive and strategic approach to transitional justice is pursued. This is a process in which the authorities, the academic community, representatives of associations of victims and survivors, the media, and the non-governmental sector will have a role to play. The current process is not encouraging, but seriously addressing the preconditions for reconciliation – as part of the European path – represents an opportunity for BiH, as well as for Ukraine, to systematically create a framework that offers solutions for the future.