

Transitional Justice in the Former Yugoslavia

For most of the 1990s, the states that broke away from the former Yugoslavia one by one were battlegrounds for the worst violence in Europe since the Second World War. The conflicts left the region deeply divided and economically weak. While Croatia now stands at the doorstep of the European Union, Kosovo, the latest self-proclaimed independent country to emerge in the region, suffers from the worst economy in Europe. None of the states of the former Yugoslavia has comprehensively addressed past conflicts and human rights abuses.

BACKGROUND

Slovenia's declaration of independence from the Republic of Yugoslavia in 1991 marked the start of the dismantling of the former Yugoslavia. Croatia and Bosnia and Herzegovina (BiH) followed suit. The fighting between Slovenia and the Yugoslav People's Army lasted only 10 days, but the brutal wars fought in Croatia and BiH (begun in 1991 and 1992 respectively) dragged on until 1995. Fighting in Kosovo lasted from 1998 to 1999.

The conflicts included widespread attacks against civilians, population expulsions, systematic rape and the use of concentration camps. Most of the massacres occurred in BiH, Croatia and Kosovo. About 140,000 people were killed in the region during the conflicts, and almost 4 million others were displaced.

Each country carved out of the former Yugoslavia presents its own challenges to accountability for human rights abuses, but the conflicts of the past decade also require regional responses.

TRANSITIONAL JUSTICE INITIATIVES

Criminal prosecutions: War crimes prosecution is the most-developed transitional justice mechanism in the region. Extensive prosecutions have taken place in BiH at the cantonal and district levels, as well as before the War Crimes Chamber of the Court of Bosnia and Herzegovina, inaugurated in 2005. Croatia established specialized chambers to deal with war crimes cases in 2003; Serbia set up the War Crimes Chamber in the District Court of Belgrade the same year; and international judges and prosecutors were deployed in Kosovo in 2000.

The quality of the prosecutions in these countries is uneven. Witnesses in the Serbian court have felt intimidated into silence when faced with testifying against police officers suspected of war crimes. In the court in BiH, closed sessions were too frequent in some early trials, and some confusion arose over the use of plea bargains.



At the regional level, the International Criminal Tribunal for the former Yugoslavia (ICTY), established in 1993 by the United Nations Security Council, has finished proceedings against 115 people, and proceedings continue against 46 others. Slobodan Milosevic was the highest-ranking person to appear before the tribunal; the former president of Serbia died in 2006 as his four-year trial neared its end. In 2008 former Bosnian Serb leader Radovan Karadzic was arrested and sent to face the ICTY. As part of the tribunal's "completion strategy" of finishing its work by 2010, the ICTY in 2008 transferred 13 cases to national courts in BiH, Croatia and Serbia.

Truth-seeking initiatives: None of the governments has made a comprehensive effort to investigate the causes of the war crimes committed against all ethnicities. Nor has any of the governments attempted to document all the events. National efforts at truth-seeking in the region have failed.

Serbian President Vojislav Kostunica established the Yugoslav Truth and Reconciliation Commission in 2001. However, the group lacked ethnic diversity and did not consult adequately with victims and NGOs. The commission ended its work without delivering a final report or making recommendations.

In BiH, the government's Commission for Establishing Truth on the Fates of Serbs, Croats, Bosniaks, Jews, and Others in Sarajevo in the Period between 1992 and 1995 failed to get off the ground. Commissions for missing persons in BiH, Croatia, Serbia and Kosovo are working to find and identify the remains of missing persons, but their work is uneven and affected by insufficient regional cooperation.

In 2004 the three main organizations that address legacies of the past in the former Yugoslavia formed a coalition that is in the process of creating a record of all victims of the Yugoslav wars. Those organizations are the Humanitarian Law Center (Serbia), the Research and Documentation Center (BiH) and Documenta (Croatia). Their Human Losses Project should serve to prevent historical revisionism and help victims and civil society at large to resist political manipulation of the past. The coalition also aims to build a regional civil society platform to motivate the public and the national governments to create a Regional Commission on Establishing the Facts in the Former Yugoslavia.

Institutional reforms: Various reforms took place throughout the region. The most comprehensive occurred in BiH's judicial sector. Between 2002 and 2004, all judges and prosecutors had to reapply for their positions, thus undergoing a vetting procedure that also reduced the size of the judiciary and ensured adequate ethnic representation. The High Judicial and Prosecutorial Councils reviewed 1,000 applications and rejected about 200 of them. In Serbia, the Law on Accountability for Violations of Human Rights, adopted in 2003, has not yet been implemented.

Reparations: Reparations to victims of the conflicts have taken several forms, including financial compensation, restitution of rights and the building of memorials. BiH successfully carried out property restitution, resolving about 95 percent of the 200,000 claims that local authorities received. Throughout the former Yugoslavia,

however, authorities have paid reparations primarily to members of the dominant ethnic group in the area and rarely to other victims. Similarly, memorials pay tribute only to victims of the majority group. Reparation laws also are significantly more favorable to former combatants than to civilian victims.

At the regional level, BiH filed a claim against the former Federal Republic of Yugoslavia before the International Court of Justice for violations of the 1948 Genocide Convention and asked for financial compensation. The court rejected that part of the claim.

ICTJ PUBLICATIONS

Bosnia and Herzegovina: Selected Developments in Transitional Justice, October 2004.

Serbia and Montenegro: Selected Developments in Transitional Justice, October 2004.

Lessons from the Deployment of International Judges and Prosecutors in Kosovo, April 2006.

Croatia: Selected Developments in Transitional Justice, December 2006.

Justice as Prevention: Vetting Public Employees in Transitional Societies, May 2007 (see Part I, chapter 5, "Vetting to Prevent Abuses: Reforming the Police, Courts, and Prosecutor's Offices in Bosnia and Herzegovina").

Against the Current—War Crimes Prosecutions in Serbia (2007), February 2008.

The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court, October 2008.

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