

War Crimes Between Politics, the Judiciary, and Justice

Milan Vuković, President of the Supreme Court of the Republic of Croatia (from 1992 to 1995 and from 1997 to 1999), said what has since become a well-known phrase, one that largely explains the state's policy towards war crimes in the 1990s, specifically those committed by members of the Croatian Army (just as earlier by the units of the Croatian National Guard (ZNG) and the Croatian Defence Forces (HOS)). This, let's say, highest legal authority in the country — the President of the Supreme Court — is remembered for publicly declaring that Croats could not have committed war crimes because they fought a defensive war. Vuković never elaborated on this highly problematic thesis, at least not publicly, which left a wide space for its interpretation and manipulation, ranging from the idea that everything is permitted in a defensive war to the claim that a distinction must be made between “crimes committed in war” and “war crimes”. “Crimes committed in war,” of course, referred to killings committed by Croats, while “war crimes” referred to those involving Serbs.

This thesis — crimes committed in war — was particularly insisted upon by certain individuals from the leadership of the Croatian Party of Rights (HSP), during a time when said party was in parliament, fairly influential, present in the media, and overall, very vocal. Unlike Vuković, who exonerated any responsibility of Croatian Army members for war crimes, the HSP's notion of “crimes committed in war” was much more sophisticated but equally dangerous. There is no statute of limitations for war crimes, of course, whereas crimes committed in war can be and usually are treated more leniently. The HSP were well aware of the fact (as surely were those in the “central Croatian party,” the Croatian Democratic Union (HDZ), and throughout Croatian politics in general) that crimes had indeed occurred, so it was better to acknowledge them now that they had happened and once some media outlets began digging into them, and to classify them as “crimes committed in war”. These nuances and insidious word games later continued to reappear and were applied to other situations involving “crimes committed in war” and “war crimes” alike. When, in the context of “crimes committed in war”, a grave containing multiple dead Serbs was found, the media would refer to it as a group grave. But when a grave containing multiple dead Croats was discovered, it would be referred to as a war crime and a mass grave. One needn't be a skilled linguist to understand the difference between the words “group” and “mass”. They are not synonyms;

when referring to graves, “mass” sounds far more horrific and brutal than the rather tame “group”.

Thus, an atmosphere was created in which a clear framework was established: writing about war crimes committed against Croats was allowed, indeed desirable, but writing about war crimes committed by Croats against Serbs was not only undesirable, but it was considered an unacceptable deviation from the proclaimed state policy as expressed in the famous sentence of the highest judicial authority in Croatia, the President of the Supreme Court. A well-known journalist from the public broadcaster HRT, very influential at the time, took these “legal standards” a step further, saying publicly that she was willing to lie for Croatia. Lies, then, in the defence of Croatian interests, including denial of the possibility that any war crimes had been committed by the Croatian side, were acceptable and even desirable. This brought us to the sentence President Tuđman would often paraphrase and use: “Everything for Croatia, Croatia for nothing,” somewhat akin to the frequently quoted Kennedy line: “Ask not what your country can do for you, ask what you can do for your country.”

Among parts of the Croatian media that dubbed themselves patriotic, there emerged, on one hand, a sort of competition as to who could be the loudest defender of national interests (with lying, of course, being permitted), and on the other, a real witch-hunt against media — “foreign mercenaries” and “domestic traitors” — human rights NGOs, and the rare independently minded individuals, typically referred to as “Soros’ agents,” who dared to oppose the views of the President of the Supreme Court or the popular and extremely influential TV journalist.

But Vuković’s sentence, let us return to it, because it is of immense importance to everything we are discussing here, was far more dangerous than the voluntary embrace of “lying for Croatia”. Vuković’s sentence effectively established a “judicial practice” which, for lower courts, functioned as law above all other laws. Given that Croats, while waging a defensive war, could not have committed war crimes, it was clear that they had to win lawsuits filed against media figures who linked them to war crimes. And they did win them. Journalists and media outlets felt the brunt of this, losing libel cases for damaging the honour and reputation of people connected with war crimes. At that time, the term SLAPP lawsuit was not yet in common use: lawsuits by serial plaintiffs designed to intimidate and deter journalists and entire newsrooms from dealing with topics related to war crimes committed by Croats. Courts were simply flooded with lawsuits demanding enormous compensation, and in general, plaintiffs succeeded.

One well-known case is that of Tomislav Merčep, who stated in the late 1990s that he had built a holiday home in Gorski Kotar with the damages awarded to him and that he proudly displayed on its façade a plaque listing the names of the “treacherous” media outlets that had — so the courts had definitively ruled — defamed him and caused him severe emotional distress. In 2016, the Zagreb County Court found Merčep guilty of war crimes in Pakračka Poljana and sentenced him to five and a half years in prison, a sentence the Supreme Court later deemed too lenient and increased to seven years in a final ruling. It had taken about twenty years for the atmosphere in society to shift somewhat, and for that same Supreme Court, once presided over by Milan Vuković, to overturn his thesis that there could be no war crimes in a defensive war.

However, the verdicts against journalists who had written the truth about Merčep's actual role in Pakračka Poljana, truths that were later confirmed by the courts but published much (much) earlier, still stand. No one has revisited those verdicts, and the newspapers that paid out substantial sums for alleged emotional distress have not had that money returned. The words of then-judge Zdravko Majerović of the Zagreb County Court, who sentenced Tomislav Merčep to prison, were of no use in that regard. He said that Merčep had “ended up on the completely wrong side of Croatian history,” and that had he prevented war crimes, “Croatia's past would look somewhat different.”

Merčep was held accountable only for war crimes committed in Pakračka Poljana. When, in 2006 (ten full years before Merčep was provisionally convicted for those crimes) I was working with Serbian director Janko Baljak on the documentary produced by the independent Belgrade-based broadcaster B92, we thoroughly examined Merčep's role during the time he served in Vukovar as Secretary of the Secretariat for National Defence (the same position Branimir Glavaš held at the start of the war in Osijek, and not without reason did the tabloid refer to them in a headline as the “father and mother of Slavonia”). While filming the documentary in Vukovar, we had firsthand testimonies about the disappearances of Serbian civilians in the spring and summer of 1991, and about bodies floating down the Danube. Due to these events, Merčep was forcibly removed from Vukovar and transferred to the Ministry of the Interior (MUP), which was then headed by Ivan Vekić, one of the founders of the HDZ.

The government commissioner for Vukovar, Marin Vidić Bili, spoke about Merčep's role in the period before the town was encircled and fell, while Croatian state authority still functioned there. However, the then-head of Vukovar's Internal Security Service (szup), the now-deceased Ferdinand Jukić, openly stated in the film that they had infor-

mation about the disappearance of more than a hundred Serbs from Vukovar who had “floated down the Danube” and that there was firm evidence of this. The estimate of the number of “disappeared” Serbs from Vukovar given by intelligence officer Ferdinand Jukić in the aforementioned film almost exactly matches the figure cited in this report (113).

The editorial team of the Split-based weekly for which I worked for many years, was at the forefront of exposing Croatian war crimes. Only later did other media outlets begin to report on these issues, and it was not until the commencement of war crimes trials, which Croatia either took over from the Hague Tribunal or reluctantly initiated under international pressure and subsequently as part of the EU accession negotiations, that the topic entered the media mainstream. Writing in the mid-1990s, shortly after the end of the war, about Croatia's role in war crimes committed against Serbs did not merely mean opposing the prevailing public sentiment (which largely subscribed to Milan Vuković's thesis and generally responded to any reporting on Croatian-perpetrated war crimes with: “Why don't you write about the crimes the Serbs committed against Croats?”). It also meant exposing oneself not only to verbal abuse and death threats, but also to physical assaults against journalists. It is worth recalling that, because of reporting on war crimes, the far-right would ritualistically burn copies of the weekly in the streets, in much the same way as the Inquisition once burned heretics and witches at the stake. The journalists of that paper were branded as “haters of everything Croatian” and even high-ranking political figures claimed they had sold themselves for “thirty pieces of silver”, calling them “traitors,” “degenerates,” and saying such people must be “dealt with.” Without exaggeration, this was a public incitement to lynching, and these journalists were labelled as legitimate targets.

Despite such atmosphere, thanks to the media that kept the topic of war crimes afloat for years — uncovering horrific and chilling details — as well as to the efforts of the international community, the Hague Tribunal, and Croatia's aforementioned desire to join the European Union (Brussels particularly insisted in negotiations on Chapter 23, covering judiciary reform and fundamental rights, including the prosecution of war crimes), attitudes among the broader public towards war crimes committed by Croats began to gradually shift.

I would say that four cases, especially due to their brutality and scale, were pivotal: the murder of the Zec family in Zagreb, the crime on the Korana Bridge, the war crimes in Osijek, and the massacre of Serbian civilians in Paulin Dvor. The trials for the Osijek war crimes, referred to in the media as the “Garage” and “Sellotape” cases, and the trial for

the mass killing of Serbian civilians in Paulin Dvor near Osijek, along with the harrowing details confirmed during those protracted court proceedings, which corroborated earlier journalistic revelations, in my view slowly began to alter the public discourse and shift public opinion towards acknowledging that the Homeland War was not “as pure as the driven snow,” as those in power had metaphorically described it.

The two Osijek cases, both of which were linked to the name of a Croatian Army general, one of the most powerful figures in the HDZ, a founder of said party, a Member of Parliament, and for a time Prefect of Osijek-Baranja County, Branimir Glavaš, were particularly brutal. In the “Garage” case, at least two Serbian civilians were severely tortured and forced to drink sulphuric acid in a garage near the headquarters of the Secretariat for National Defence, which at the time was headed by Glavaš. This revealed the sheer cruelty, savagery, and depravity exhibited by some Croatian soldiers during the defensive war. The crime was documented in medical reports showing that one of the two detainees in the garage, Čedomir Vučković, a Serbian civilian living in Osijek, died from poisoning caused by battery acid he had been forced to drink, clearly established in a post-mortem conducted at Osijek Hospital a few days after his death. The body of Đorđe Petković, the other detainee in the garage near the Secretariat building — literally beneath Branimir Glavaš's office window — was never found.

This horrific, barbaric crime, along with the series of killings in the “Sellotape” case, when members of Croatian military units interrogated Serbian civilians in the basement of a building in Dubrovnik Street in Osijek, beat and tortured them, then taped their hands and feet with adhesive tape and led them to the banks of the Drava River where they were cold-bloodedly executed with shots to the back of the head, gradually began to shift the public discourse towards the fact that Croats had also committed war crimes. Still, the prevailing attitude could perhaps best be summed up by an old remark of American President Franklin Roosevelt, who, speaking about Dominican dictator Rafael Trujillo, said: “He may be a bastard, but he is our bastard.”

The war crime in Paulin Dvor, a village near Osijek, which took place in December 1991 and in which 19 people were killed (all but one were of Serbian nationality), was horrific not only for the manner in which the victims were executed, but also because their bodies were moved twice. First, they were taken to a former JNA military depot in Lug near Čepin and hidden beneath various types of military waste. However, since European observers and international forces, who had come to eastern Croatia to monitor the Sarajevo ceasefire, allegedly had information about the crime, and fearing the bodies might be discovered,

the remains of the murdered Serbian civilians were moved in January 1992 from Lug near Osijek to Rizvanuša in the Lika region. The bodies were transferred in white plastic barrels from the Osijek-based company Analit and, under strict surveillance by Croatian intelligence services, secretly buried in Lika. Hague investigators later discovered them while investigating other war crimes.

This was a major scandal not only because of the killing of so many Serbian civilians, but also because, like Serbia under Slobodan Milošević, Croatia had relocated the victims of war crimes in an attempt to cover its tracks and protect both the perpetrators and those who knew about the crimes, silently condoned them, and did nothing to ensure justice, even though the perpetrators were known.

In November 2010, during his visit to Croatia, the then-Serbian President Boris Tadić and his host, Croatian President at the time, Ivo Josipović, visited the mass grave in Ovčara near Vukovar to pay their respects to the victims, and then went to Paulin Dvor, the site of the massacre of Serbian civilians. Both expressed regret and offered apologies for what had happened during the war, in which, without a doubt, both sides committed crimes. This was, to date, the only attempt at the highest political level to normalise relations between the two neighbouring countries by acknowledging the war crimes committed. Sadly, that is where it ended. It seems that both Serbia and Croatia will still have to wait a long time for their own Willy Brandt, the German chancellor who, 75 years ago in Warsaw, knelt before a monument to Nazi victims, an act which paved the way for reconciliation between Poles and Germans.

Even today, the topic of war crimes committed by individuals within the Croatian Army is rarely discussed, and when it is, it is always emphasised that Croatia was the victim of aggression and that the number of Serbian crimes against Croats far exceeded those committed by Croats against Serbs. Admittedly, almost no one today upholds the thesis of former Supreme Court President Milan Vuković that Croats could not have committed war crimes during a defensive war, and fewer and fewer people are willing to lie on Croatia's behalf in that regard. After all, Croatian courts, and not only the Hague Tribunal, have unquestionably confirmed that such crimes did occur. Unfortunately, some of the perpetrators are still seen by sections of the public as "heroes, and not criminals", they appear at public events, and some even remain active participants of Croatia's political life. Some war crimes trials (such as the trial of Branimir Glavaš) drag on indefinitely, and some verdicts raise suspicions that guilt or innocence was decided not in courtrooms, but in political cabinets.

Croatian society, undoubtedly, and Serbian society too, would benefit from a cathartic reckoning if we stopped keeping tallies of who committed more war crimes, whose were more brutal, and who caused more pain and suffering, and instead accepted that even one death, that of a single innocent person, is one death too many.

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