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What Happened to Transitional Justice in Croatia after the EU Accession?

Kas nutiko pereinamojo laikotarpio teisingumui, kai Kroatija įstojo į ES?

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Abstract: This paper proposes to see Croatia's becoming a member state of the European Union in 2013 as a particular critical juncture that created uncertainty over the type of decisions the government would take in the field of transitional justice once international pressure had stopped. It compares the period before and after the accession by looking into the three elements of transitional justice policy that were given priority by the EU conditionality framework – fighting impunity for war crimes, fostering reconciliation and respect for and protection of minority rights. It finds that all three have deteriorated in the post-accession period. On the one hand, the findings illustrate the power of international pressure, but on the other hand, they question the overall effectiveness of the conditionality policy, as it seems to not have affected deeper societal issues at stake and has not resulted in true transformation.

Keywords: Croatia, Transitional Justice, Human Rights, European Union.

Summary: Šiame straipsnyje siūloma į Kroatijos įstojimą į Europos Sąjungą žvelgti kaip į kritinį momentą, kuris sukėlė tam tikrą netikrumą dėl to, kokių veiksmų imsis Kroatija pereinamuoju laikotarpiu teisingumo srityje dingus išorės spaudimui. Straipsnyje lyginami du laikotarpiai – iki ir po įstojimo į ES, analizuojant tris pereinamojo laikotarpio teisingumo politikos elementus, įtrauktus į sąlygiškumo politiką – karo nusikaltimų teismus, susitaikymo skatinimą ir mažumų teisių apsaugą. Priinama prie išvados, kad visi trys pereinamojo laikotarpio teisingumo aspektai įstojus į ES ėmė regresuoti. Viena vertus, tai rodo išorės spaudimo darytą įtaką, tačiau, kita vertus, tai leidžia kvestionuoti ES sąlygiškumo politikos efektyvumą, nes panašu, kad ji nepaveikė aštresnių socialinių problemų ir nepadėjo Kroatijai pasiekti tikros transformacijos.

Keywords: Kroatija, pereinamasis teisingumas, žmogaus teisės, Europos Sąjunga.

Introduction

Out of all the former Yugoslav states who have a shared history of prolonged violent ethnic conflict, Croatia seems to have advanced the fastest. It has experienced rapid developments and became a member of NATO in April 2009 as well as a full member of the European Union in July 2013. The prospect of membership in these two particular international organizations has shaped both Croatian domestic and foreign policy for over a decade. Many agree that the external pressure for change and reform has been crucial for Croatia's achievements. For example, one of the most extensive studies of international justice in the Balkans, conducted by Viktor Peskin and based on field research

that spans over a period of eight years and contains in-depth interviews with over 300 informants (government officials, diplomats, domestic and international legal professionals, journalists, and human rights activists at the ICTY, UN, EU, Serbia, Croatia and Bosnia), concludes that to a great extent, the ICTY's power laid in its ability to employ an adversarial approach to embarrass Croatia for its violations of its legal obligation to cooperate¹. He claims that the EU's imminent decision on opening the accession negotiations greatly strengthened the tribunal's hand, especially from 2004 onwards. Croatian officials feared that their dream of EU membership would be delayed by years if their country did not receive a positive assessment by proving cooperation with ICTY². Christopher Lamont, who explored Croatia's interactions with the ICTY from 1995 until 2005, similarly argued that because domestic incentive structures established a foreign policy preference for non-compliance, only significant external coercion that threatened the elite's preferences for integration into western security or economic structures served to bring about state compliance³. After analyzing the ICTY cooperation with Serbia and Croatia, Jelena Subotić agrees, claiming that under conditions of strong international pressures and low domestic demand for justice, domestic political elites used international tools and institutions designed to bring justice and provide reconciliation for very different local purposes, such as getting rid of domestic political opponents, obtaining international financial aid, or as a proxy for admission to such prestigious international organizations as the European Union⁴. A number of other studies conducted throughout the years came to similar conclusions⁵. Because of this, it seems that Croatia's becoming a member state of the European Union in 2013 was a particular critical juncture⁶ that created uncertainty over the type of decisions the government would take in the field of transitional justice once international pressure had stopped. In other words, dealing with the bad past had to be reconsidered once Croatia entered the EU. For this reason, it seems legitimate to wonder whether Croatia's accomplishments were sustained and improved upon when the external pressure for reforms was gone, especially in the sphere of transitional justice and reconciliation, so closely linked with both the official interpretation of national identity and with collective memories of the traumatic recent past.

The core hypothesis of this paper is that while under the pressure of conditionality, Croatia did better in coming to terms with its troubled past. Once the pressure was lifted, transitional justice deteriorated. Therefore, this article poses a question: what happened to the transitional justice process in Croatia since the EU accession in comparison to the period prior to the accession? This question has yet to be answered appropriately in the academic literature. The existing analyses mostly focus on (a) the general effectiveness of the EU conditionality, which among other things also includes issues related to transitional justice, or (b) investigate various measurable attributes of transitional justice, offering a snapshot assessment of a specific situation in time. The first

group of authors almost unanimously agrees that the EU conditionality policy was too focused on cooperation with the ICTY and, thus, ignored the wider process of transitional justice in the post-conflict societies of former Yugoslavi⁷. The EU lacked a coherent and comprehensive policy on transitional justice and largely neglected the local traditions, practices, and existing civil society organizations that operate on the ground to the detriment of its own purported goals: intensified regional cooperation, respect for the rule of law, and reconciliation⁸. Therefore, they call for a truly integrated transitional justice policy, one that incorporates previously marginalized actors⁹ and forgotten aspects of transitional justice (such as truth-telling and compensations for the victims)¹⁰. In addition, the logic of conditionality as such is also scrutinized, with numerous studies concluding that incentive-based instruments only trigger change if certain domestic preconditions are met, for example, if national identity does not run counter to democratic requirements (see T. Freyburg and S. Richter, who after examining the media reform and prosecution of war crimes in Croatia, conclude that Croatia's national identity, forged in a context of ethnic conflict, often played a salient role in determining governmental decisions resisting externally demanded requirements)¹¹. EU conditionality is also being criticized for lack of credibility, clarity of intentions, and inconsistency¹².

Alternatively, the second group of scholars investigate various measurable attributes of transitional justice, offering a snapshot assessment of a specific situation in time (e.g., the public perception of the ICTY¹³, the return of the refugees¹⁴, the narrative of the Homeland war¹⁵, etc.), demonstrating that progress was rather limited and that compliance with EU regulations in general was pragmatic and artificial¹⁶. However, there's a lack of comparative empirical analyses about what happened to the transitional justice initiatives after Croatia became a full member of the EU in comparison to achievements made right before the accession. Therefore, this paper would add to the existing academic literature by trying to empirically test whether once the conditionality pressure was lifted, transitional justice initiatives in Croatia indeed deteriorated. It starts with a theoretical-methodological part that explains the understanding of transitional justice and reconciliation and delineates the main axis of analysis. Three major elements of transitional justice, embedded in the EU conditionality policy, are chosen for investigation: ensuring respect for and the protection of minority rights, fighting against impunity for war crimes, and fostering reconciliation. The paper then proceeds to the empirical part, which is divided into two: the first part provides a brief overview of the transitional justice and reconciliation efforts in Croatia before acceding to the EU (during the official negotiations period, from 2005 until 2013), and the second part provides a more detailed analysis of the post-accession period, from 2013 until 2020. Finally, conclusions and recommendations for future research are drawn.

1. What is transitional justice and how to measure its progress/regress?

Informed by the worldwide wave of democratization, the field of transitional justice emerged in the late 1980s and early 1990s to address the challenges of democratization, particularly those related to dealing with past atrocities and mass violations of human rights. It came to represent a set of measures and processes adopted to deal with the consequences of mass human rights violations in the aftermath of regime changes, violent conflicts, wars, and other historical injustices that were derivatives of undemocratic regimes, colonization, occupation, and so on¹⁷. Those measures were mainly designed to restore the dignity of victims, acknowledge and redress the violations and prevent them from happening again¹⁸. Since then, in one form or another, transitional justice has occurred virtually after every period of violence. It has become a constant in the world¹⁹. Existing evidence points to the fact that transitional justice measures can both foster or hamper a successful transition or reconciliation process, and there are no guarantees for a certain outcome. Transitional justice can be politically instrumentalized, used or abused, and the process outcome depends on a variety of different actors involved²⁰. Precisely for this reason, this article chooses to rely on an instrumental, rather than normative, definition of transitional justice, seeing it as a range of measures implemented in a country related to dealing with past atrocities and mass violations of human rights.

Croatia was the first European Union (EU) member state with such a recent history of intense and prolonged conflict. Therefore, both the EU Regional Approach (1997) and the Stabilization and Association Process (SAP) (1999) from the very beginning were geared towards reconciliation, reconstruction and reform²¹. Croatia, as a candidate country, was exposed to a threefold post-conflict conditioning related to transitional justice. The first part of conditionality entailed the Copenhagen criterion requiring respect for and protection of minority rights. The second part aimed at the systematic elimination of impunity for war crimes and human rights abuses, asking to commit to a judicial prosecution of war crimes in domestic criminal courts and cooperate with the International Criminal Tribunal for Former Yugoslavia (ICTY). Finally, the third part of conditionality required Croatia to foster reconciliation through the return of and compensations for refugees, settling disputes over property rights, developing good neighborly relations (in particular with Serbia), regional cooperation, establishing truth and reconciliation commissions, and public apologies by political leaders. By insisting on reforming and building these societal structures, the EU aimed to foster the values upon which it has been built on: peace, reconciliation, democracy, rule of law, and respect for human rights, including the rights of national minorities²².

This paper suggests that transitional justice might have suffered a degradation after Croatia joined the EU, and that this is due to the

distinction between the presence and absence of external pressure. Up until 2013, the conditionality policy was firmly in place, and it 'forced' authorities to take positive steps in implementing mechanisms and measures of transitional justice, regardless of their first-order preferences. By comparing the progress in the three components of transitional justice promoted via the conditionality policy (the respect and protection of minority rights, elimination of impunity for war crimes, and fostering reconciliation) in the period before and after the EU accession, this paper tries to explore whether the event of the accession had any causal impact, whether the causality had stopped working once Croatia became an EU member, and whether the character of transitional justice consequently changed. Three working hypotheses are raised: 1) Pre-2013 achievements were not sustained; 2) Pre-2013 achievements were sustained, and 3) External conditionality policy works only as long as it is applied, which ultimately makes it inefficient.

As mentioned before, this article will focus on the three elements of transitional justice that the EU itself was giving priority to, namely:

- a) Efforts to ensure respect for and protection of minority rights (understood as: proper legislation adopted, effective investigation of hate crimes, tolerant and cooperative inter-ethnic relations);
- b) Elimination of impunity for war crimes (understood as an active prosecution of war crimes in domestic courts and effective cooperation with the ICTY);
- c) Efforts to foster reconciliation (understood as the treatment of returnees, active truth-seeking efforts, public apologies by political leaders and good neighborly relations with Serbia).

We've looked for evidence of successful transitional justice initiatives with regards to the respect for and protection of minority rights, the elimination of impunity for war crimes, and reconciliation in various assessment reports from the international organizations that constantly monitor the situation on the ground: European Commission (EC), UN International Criminal Tribunal for Former Yugoslavia (ICTY), UN International Residual Mechanism for Criminal Tribunals (IRMCT), UN Human Rights Council (UNHRC), Advisory Committee on the framework convention for the protection of national minorities, European Commission against Racism and Intolerance (ECRI) and other nongovernmental organizations (Human Rights Watch (HRW), International Crisis Group (ICG), Amnesty International, European Stability Initiative, Freedom House, Impunity Watch). The reports were complemented by data provided by the Croatian state (e.g., the Prosecutor General's office, police reports), secondary sources (academic books and articles) as well as media reports²³ from Croatia, which provided useful information about relevant political and societal developments.

In addition, while looking for evidence of political leaders expressing remorse and apologizing and accepting responsibility for the past, we analyzed their public speeches delivered during most important

commemorative events in Croatia. A content analysis of all the speeches was conducted by looking at several things: the interpretation of the war (what was it about, who was the aggressor and who was the victim, was it a defensive or offensive war), the public acknowledgement of the civilian victims, specifically the Serb victims, and explicit apology for their suffering. The data gathered covers the period from 2005 onwards, as the year 2005 marks the start of the official EU entry negotiations.

2. Croatia On Its Way to the EU: “Balancing”

2.1. *Ensuring respect for and protection of minority rights*

Throughout the 2005–2013 period, significant improvement was observed in the legal protection of ethnic minorities²⁴. There was progress in the implementation of the Anti-discrimination law as well as in the prevention of hate crimes. Numerous reports at the time concluded that the investigation and prosecution processes of nationally motivated hate crimes against Serbs have improved²⁵. In addition, incidents of ethnic tensions during the most important national commemorations were minor, while the use of fascist symbols was particularly rare²⁶. However, the EC progress reports continued to assess inter-ethnic relations in Croatia as problematic. In comparison to other minority groups, Serbs were more often exposed to violence, verbal assaults and discrimination (especially in the public sector)²⁷.

In addition, since it was unlikely that a large number of refugees would return to the country more than 10 years after the war, it is very important to understand the human rights situation of those Serb returnees who did come back and attempted to settle in Croatia. Throughout the analyzed period, Human Rights Watch reports repeatedly expressed concern over the high number of incidents of ethnically motivated violence and harassment against Croatian Serb returnees. Other often-mentioned concerns were: discrimination in the supply of electricity to Serb returnee communities, slow progress in repair and reconstruction of Serb houses damaged or destroyed in the war, implementation of property law in practice favoring ethnic Croats over ethnic Serbs²⁸. The Croatian Ombudsman’s 2013 report further indicated that Serb returnees frequently coped with insufficient social inclusion, particularly in regard to employment. The unemployment rate for minority returnees was 68 percent, which is almost 4 times higher than the national average²⁹.

2.2. *Elimination of impunity for war crimes*

Back in 2000, the Croatian parliament adopted a resolution on cooperation with the ICTY, reaffirming its willingness to prosecute international crimes, including those committed by the Croatian side.

When in February 2004 the ICTY indicted Croatian generals Ivan Čermak and Mladen Markač for crimes committed during Operation Storm, both of them immediately surrendered to the tribunal. Six other ICTY indictees were transferred on 5 April 2004, two weeks before the European Commission was to issue an opinion on Croatia's bid for EU membership³⁰. Up until the beginning of the analyzed period, in 2005, Croatia's cooperation with the tribunal has been good, the ICTY had access to important documentation, potential witnesses, and enjoyed constructive cooperation with the relevant Croatian authorities on ongoing cases³¹. However, such cooperation proved to be difficult to sustain. Most likely because the government was struggling to find a way to address the issue of cooperation without at the same time allowing for the official interpretation of the war to be called into question.

Cooperation proved to be more complicated when it came to the case against the beloved Croatian general Ante Gotovina. After experiencing severe pressure to assist in the arrest of the general, the Croatian government gave in, but has indicated its willingness to support his defense, while various local authorities have also contributed financially to a fund established for the same purpose³². Public dissatisfaction regarding Croatia's cooperation with ICTY grew and in 2011, when generals Ante Gotovina and Mladen Markač were pronounced guilty, massive public protests broke out³³. The opinion polls at the time showed that over 90 percent of Croatians did not accept the ICTY ruling. The fact that the war was recognized as a joint criminal enterprise involving the first Croatian president Franjo Tuđman and other Croatian political leaders was denied. Both President Ivo Josipović and Prime Minister Jadranka Kosor strongly disagreed with the verdict, calling it unfair and unacceptable. Prime minister Kosor emphasized that the conviction of Gotovina "turned the victim into aggressor"³⁴. After the decision was reversed and generals Gotovina and Markač acquitted in 2012, patriotic and prideful celebrations erupted in Croatia. The majority of the population joyfully welcomed the new verdict, expressed gratitude for the generals and called them national heroes. Gotovina and Markač were greeted in Zagreb by an enthusiastic crowd and political leaders. Croatian president Josipović declared that "Operation Storm was not a joint criminal enterprise. There were crimes, but Gotovina and Markač were not guilty of them"³⁵. The story of Gotovina and Markač provides the most illustrative example of glorification of the war. However, problems were visible throughout the whole period from 2005 till 2013. The ICTY had trouble accessing important documents in Croatia³⁶, and political leaders kept on calling into question the importance of the need to serve justice through the prosecution of war crimes³⁷.

In contrast, the period was marked by intensified efforts to deal with impunity for war crimes in national courts. Domestic prosecutions were considered as successful and constantly improving: "Political influence on legal proceedings has diminished, the process was in general was fair and transparent"³⁸, "prosecution of war crimes became professionalized"

³⁹ . One of the most significant measures undertaken was the adoption by the Chief of State Prosecutor's Office of instructions for the country's prosecutors, which aimed at addressing the apparent bias against Croatian Serbs in 2008, followed by an action plan that intended to provide for the review of all cases and the elimination of those in which no "quality" evidence was available, as well as for the review of cases in which judgements have been adopted in absentia. Most of the cases that were reviewed were those initiated during or immediately after the war and in which the majority of the alleged perpetrators were Croatian Serbs. In 2009, the review considered 1242 individuals; out of these, the charges against 254 were either reduced or reclassified, or the proceedings annulled. A reopening of the proceedings was requested for 93 out of 464 individuals convicted in absentia ⁴⁰ .

The main organization monitoring war crimes trials in Croatia, "Documenta", has reported that despite the high level of public tolerance towards "one's own" criminals, investigation and prosecution of crimes committed by Croatian forces were indeed improving in national courts ⁴¹ . Compared to only 55 cases finalized during the period from 1995 till 2000, 143 final judgements were reached during the period of 2000–2014 ⁴² . Among the well-known Croats sentenced during this period were Tihomir Orešković, Mirko Norac, Rahim Ademi, Branimir Glavaš, Fred Marguš, Željko Gojak, as well as eight former Croatian military policemen in the *Lora* case ⁴³ . The cases of Norac, Glavaš and Ademi are particularly important for the process of dealing with the past in Croatia. These defendants were mostly tried for command responsibility, the evidence gathered by the ICTY were used that demonstrated that immediately after the commitment of crimes the political and military leadership was informed ⁴⁴ .

2.3. Fostering Reconciliation

2.3.1. Returnees

Between 300 000 and 350 000 ethnic Serbs left their homes in Croatia during the 1991–1995 war in the former Yugoslavia ⁴⁵ . As a signatory of the Dayton Peace Accords, Croatia committed itself to promoting return throughout the region ⁴⁶ . However, while most ethnic Croats displaced by the conflict in Croatia have returned rather quickly after the war, only about one-third of the Croatian Serbs displaced during the conflict have returned. Government figures suggest that at the start of our analysis period, 120 549 Serb refugees have registered their return to Croatia. ⁴⁷ The actual number is believed to be much lower – many of those who are registered as returnees make only occasional visits to Croatia while continuing to live in Serbia or in Bosnia and Herzegovina, and only 60–65 percent of the registered returnees are believed to remain permanently in Croatia. In addition, as the years went by, the rate of

return has slowed down significantly⁴⁸. Part of the reason is that the 1998 government's "Return Program" failed to establish adequate conditions. The effects of discriminatory laws and practices put in place during and after the war continued to prevent returnees from exercising their rights in key areas. Despite attempts to improve the situation in 2001 and 2002⁴⁹, some key steps demanded by the international community, e.g., ending discriminatory practices in property repossession, ensuring the protection of occupancy rights and equal access to reconstruction assistance for war time damage, were not thoroughly implemented⁵⁰.

Throughout the analyzed period, ethnic Serbs have faced discrimination as regards to citizenship and residency rights, property and occupancy rights, and reconstruction assistance for wartime damage. For example, the rights of temporary occupants still took precedence over the rights of owners, contrary to the Croatian constitution and international standards⁵¹. In addition, more than 30 000 families (an overwhelming majority of which are non-Croats) who had lived in communal apartments prior to the war lost the possibility of returning to these homes indefinitely, as their occupancy rights were cancelled⁵². Towards the end of the analyzed period (2010), a program permitting Serbs stripped of tenancy rights to buy apartments at discounts of up to 70 percent was initiated; however, by 2013, only 2 out of a total 1 317 eligible households had completed a purchase. The return and reintegration of Serb returnees continued to be politically sensitive, as the parties of the nationalist right still enjoyed considerable support, especially in the war-affected areas to which many would return⁵³.

2.3.2. Truth-seeking

When it comes to efforts to arrive at a balanced understanding of the past war, commemorations of historical victories provide a clear litmus test for a country's ability to acknowledge its responsibility for past crimes. The Commemoration of "Operation Storm" is definitely the most important celebration in Croatia. It was the last major battle and the most important military offensive of the Homeland War (Croatia's 1991–1995 war for independence). It was a decisive victory of the Croatian side and since then has been celebrated and remembered as a heroic moment that ensured the establishment of the independent state of Croatia and marked the rebirth of the Croatian nation. However, at the same time, various international organizations have documented numerous violations of humanitarian law committed by the Croatian military during the campaign (e.g., the bombardment of a column of retreating Serb civilians and soldiers, abuses committed after the area had been captured, etc.). That is why the commemorative speeches of the highest officials (presidents, prime ministers, speakers of parliament, etc.) will be analyzed, because they provide an opportunity to address the matter of responsibility, apologize to, and demonstrate respect for the civilian victims, including the Serb victims of war.

The analysis of the proceedings of the official commemorations of Operation Storm during the accession period (2005–2013) demonstrates that the dominant narrative was the one of “Croatian innocence”. The attack was seen as a legitimate and purely defensive response to Serb aggression and the civilian victims were seen as unfortunate collateral damage. In fact, in 2006, the Croatian parliament even adopted a resolution “The Declaration on Operation Storm”, officially defining the Homeland War and Operation Storm as “defensive, just and liberating”. Therefore, it is not surprising that throughout the analyzed period, commemorations were organized in a way that failed to recognize the civilian victims of the war or admit that there were crimes committed against the Serbs. Prime minister Jadranka Kosor’s speech in 2010 is one such example: “Nobody will erase the historical truth that we were victims of aggression and that we were defending our homeland”⁵⁴. Serbian victims were commemorated exclusively by the Croatian Serb community, and even then attempts at commemoration were often met with hostility. One of many examples comes from the village of Golubić, where in 2010 a memorial plaque was set up that included names (among others) of the Serb victims. The plaque provoked a negative reaction among the local Croat community and was soon changed (the names of all victims were removed) at the request of the Minister of Interior⁵⁵.

Interestingly, right before Croatia’s accession to the EU, the official celebrations were held in a more moderate spirit. Although there still was no clear recognition of wrongs committed, for example, Prime Minister Zoran Milanović still claimed that “Croatia’s role was purely defensive”⁵⁶, but in 2011 President Ivo Josipović at least referenced the crimes committed against the Serbs⁵⁷. During next year’s commemorations (2012), president Josipović went even further, saying: “To win the peace, means to lend a hand to our fellow Serb countrymen, to recognize their victims and bow in front of them”⁵⁸. At the same event prime minister Zoran Milanović admitted that Croatia is not proud about the Serbian losses during Operation Storm. Thus, in the years right before the EU accession, we see some examples of honoring the Serb victims during the most important commemoration ceremonies of the Homeland War. This was a very important rhetorical shift; however, as later analysis will demonstrate, it was not sustained. No truth commissions or fact-finding initiatives were formed during that period⁵⁹. In 2005, a history curriculum reform had been initiated upon Croatia’s own accord, aiming to provide a more balanced understanding of the war. At the moment of the accession, Croatian schoolchildren could learn history from 4 different textbooks⁶⁰. Particularly notable was the new Contemporary History Textbook Supplement, written by a new generation of Croatian historians, that included a critical analysis of Croatian policy in the 1990s, as well as a statement that Croatian forces had committed war crimes against Serb civilians. However, the Croatian Education Ministry refused to approve this supplement, and many other Croatian academics,

including historians, wrote public letters accusing the authors of a lack of patriotism ⁶¹ .

2.3.3. Good neighborly relations with Serbia

During the analyzed period, cooperation with Serbia in the sphere of transitional justice was neither active nor effective. According to the yearly European Commission reports, the Bilateral Commission on the Missing Persons met irregularly ⁶² , while only a minor improvement in the statistics of missing persons was observed as the accession date approached. No significant progress was achieved in cooperation regarding the investigation and prosecution of war crimes ⁶³ . Cooperation between Croatian and Serbian judicial institutions lacked sufficient coordination, and legal basis for cooperation was often unprofessional and inapplicable. ⁶⁴

At the beginning of the period, border disputes were ignored, but during the final phase of accession negotiations, several attempts to peacefully settle the border dispute were made. For example, in 2012, the Inter-State Border Commission set up to delimit the border met for the first time in seven years ⁶⁵ . Unfortunately, no tangible results were achieved ⁶⁶ . EC progress reports at the time also noted improvements in bilateral political relations. Since Ivo Josipović became the president of Croatia, the rhetoric of Croatian and Serbian leaders became more moderate and diplomatic. More bilateral meetings and several new cooperation agreements were initiated ⁶⁷ . However, after the 2012 elections in Serbia, bilateral relations started deteriorating. The new president-elect Tomislav Nikolić and prime minister Ivica Dačić (who previously had ties with the regime of Slobodan Milošević) were prone to nationalist rhetoric. Since then, both countries have ceased having regular bilateral meetings, hostile rhetoric become the norm ⁶⁸ .

To sum up, the period before Croatia's accession to the EU was marked by efforts to balance the respect for and protection of minority rights, eliminate impunity for war crimes and foster reconciliation with domestic pressure for retaining a nationalist understanding of the Homeland War, which had obstructed the recognition of wrongs committed and active coping with the past. A sufficient legal framework for the protection of minorities has been established, the implementation of it repeatedly assessed as improving; however, general attitudes towards the Serb minority remained problematic (verbal assaults were common and discrimination still prevalent, the Serb returnees being especially vulnerable). Cooperation with ICTY and domestic war crimes prosecutions has been relatively good, except for when it came to the beloved Croatian generals Gotovina and Markač. Operation Storm continued to be viewed as a defensive and legitimate operation; however, with the date of EU accession approaching, the commemorations of Storm were held in a more moderate fashion, with some examples of demonstrating respect to the Serb victims as well. General truth-seeking

efforts also intensified; there were attempts to provide a more balanced understanding of history at schools.

3. Croatia in the EU: “Giving in”

3.1. Ensuring respect for and protection of minority rights

After the EU accession, Croatia continued to improve its legal framework for the protection of ethnic minorities. Various non-governmental organizations reported the framework to be relatively sufficient for effective protection of minority rights. For example, in 2013 the Criminal Code was successfully amended, and a new provision introduced that criminalized hate crimes. The National Anti-Discrimination Plans for 2017–2019 and 2020–2022, which contained specific measures regarding prevention and fight against hate crime and hate speech, were successfully implemented. The Croatian government has also adopted several Operational Programs for National Minorities in 2017–2020⁶⁹.

However, despite proactive efforts to improve the legal framework for the protection of minorities, the actual implementation of such provisions remained problematic. Amnesty International assessed the investigation of hate crimes against Croatian Serbs as ineffective during the whole period⁷⁰. The majority of hate crimes were treated as simple misdemeanors, which made the official statistics of hate crimes look low, but human rights organizations kept on assessing the situation as simply an insufficient application of existing legal acts⁷¹. For example, during the period from 2013 till 2016, the Croatian Agency for Electronic Media Council has processed only 10 hate speech-related incidents, 7 of them resulted in warnings and only 3 in charges pressed before misdemeanor courts⁷². In 2018 European Commission Against Racism and Intolerance (ECRI) reported that the investigation and prosecution of hate crimes was rare and ineffective, therefore, failing to provide an effective deterrent against such crimes.⁷³ The same conclusion was reached by other international organizations who repeatedly urged Croatia to “ensure that all cases of hate crime and hate speech are effectively investigated and sanctioned”⁷⁴.

Throughout the whole post-EU accession period, general public attitudes towards the Serbian ethnic group in Croatia remained poor. Yearly Amnesty International reports indicated that discrimination against the Serbs continued to be widespread, especially in the workforce⁷⁵. According to ECRI, the rise of nationalism, hate speech and physical attacks against the Serbs was prevalent in Croatia and indicated low inter-ethnic tolerance⁷⁶. In fact, the actual number of reported attacks against Serbs has increased steadily since Croatia’s accession to the EU⁷⁷.

3.2. Elimination of impunity for war crimes

Since Croatia joined the EU, its efforts to deal with impunity for war crimes deteriorated. As the pressure for war crimes prosecutions disappeared, the number of war crime trials held in Croatia decreased⁷⁸. For example, the biggest of the 4 country courts holding exclusive jurisdiction over war crimes (Court in Zagreb), during the period of 2013–2017, has delivered only 9 judgements, with only 6 of them available for research. Out of those 6 cases, 4 involved ethnic Serbs⁷⁹. Throughout the analyzed period, the IRMCT has been constantly urging Croatian authorities to show more commitment to the impartial implementation of justice. However, the reaction of the Croatian government to such criticism was slow and insufficient. On the contrary, in 2015, the Croatian government adopted a decision not to assist regional judicial cooperation in certain cases involving Croatian nationals accused of war crimes and crimes against humanity⁸⁰. This signified an attempt to interfere with the judicial process and made the fight against impunity even more difficult, because many investigations against Croatian nationals could not be finalized without proper cooperation with the other Western Balkan states. Even though the prosecutor's offices in Bosnia and Herzegovina, Croatia and Serbia did sign cooperation agreements enabling the free exchange of cases of war crimes, their investigations and case documents, due to lack of political will, cooperation remained poor⁸¹. In addition, this prevented other states from seeking justice by trying Croats. This is especially problematic, having in mind that Croatian courts are usually more lenient in their verdicts on former members of Croatian armed forces⁸².

According to the reports of IRMCT, the denial of crimes and non-acceptance of facts established by the ICTY remained problematic in Croatia after the EU accession. One of the most illustrative examples was the public reaction towards the ICTY judgement in the case of Prlić et al. Bosnian Croat political and military leaders were found guilty of crimes against Bosniaks and president Franjo Tuđman, together with other officials and the leaders of Herzeg-Bosnia, were found to have been members of a joint criminal enterprise⁸³. The verdict caused a strong backlash among the Croatian society and high-ranking politicians. On the day the verdict was announced, the Croatian Parliament abruptly ended its session in protest. Its speaker Gordan Jandroković commented that “the verdict doesn't relate to the historical truth and the historical facts, it's unjust and it should be rejected”. Prime Minister Plenković and President Grabar-Kitarović also expressed strong disappointment about the injustice made⁸⁴.

The glorification of war criminals was widespread during the whole period of 2013–2020. Almost every IRMCT report mentioned it as one of the main challenges to reconciliation in Croatia. Events like celebratory welcoming ceremonies were rare, but persons accused of war crimes, like Dario Kordić, Mirko Norac, Ante Gotovina and Mladen

Markač, were publicly celebrated as heroes, and often invited to various commemorations and other events as guests of honor ⁸⁵. Moreover, in 2018, President Grabar Kitarović awarded generals Gotovina and Markač with official state medals honoring their contribution during the Operation Storm ⁸⁶. Seeing this, the chief prosecutor of the IRMCT Serge Brammertz often raised concerns about its negative impact for reconciliation in Croatia and the broader region ⁸⁷.

3.3. Fostering reconciliation

3.3.1. Returnees

After its accession to the EU, Croatia has taken several important legal steps to assist its returnees. For example, Croatia finally adopted the Plan for former Serbian tenancy rights holders who wished to return ⁸⁸. It introduced the Regional Housing Program (RHP), which was also supported by international donors (primarily EU and USA), in order to help the returnees acquire decent and affordable accommodation. The state was supposed to purchase flats using funds provided through the RHP and let them to former refugees at symbolic prices. Between 2014 and 2018, 253 families (601 people) received such assistance in Croatia. It is estimated that this number should double by the end of 2021 ⁸⁹. In April 2014, the UNHCR recommended the cessation of refugee status of refugees displaced during the 1991–1995 conflict as they were no longer in need of international protection. The overall conditions in Croatia were assessed as conducive to return, voluntary repatriations were taking place in safety and dignity, while the overall security situation was stable ⁹⁰. A similar assessment was made later in 2017 by ECRI ⁹¹.

However, both the UNHCR and ECRI together with other organizations stress that the returnees still continue to experience problems in accessing rights, particularly in the fields of housing and healthcare, as well as in issues relating to their legal status and access to legal aid. For example, local NGOs who functioned as intermediaries providing free legal aid for those most vulnerable have seen a drastic decrease in funding (a decrease of 50 percent in 2016 compared to 2015). In addition, they were not allowed to assist beneficiaries in covering the fees, but only in representation in administrative proceedings ⁹². In addition, many encountered problems accessing a government program that permits those stripped of their tenancy rights during the war to buy property below market prices. A UNHCR report on Croatia indicates that approximately 12 183 families (over 30 000 people) were “waiting on housing solutions” in 2015, three quarters of whom are Serb minority returnees ⁹³. Towards the end of the analysis period, Amnesty International concluded that discrimination against Serb minority returnees continued to be widespread ⁹⁴. Hate speech and intolerance toward minorities persisted in the public arena and the digital

environment⁹⁵. What is even more worrying is the rising number of the physical attacks against the Serb ethnic minority. The attack with the most shocking consequences targeted 63-year-old Radoje Petković, Vice-President of the Serbian National Minority Council, which represents the Croatian Serb minority for the town of Kastav, near Rijeka. Petković died on June 10, weeks after he was beaten unconscious by 48-year-old Ilija Glavić, a Croatian war veteran⁹⁶.

3.3.2. *Truth-seeking*

After the EU accession, previously identified narratives about “Croatian innocence” and “the war being a defensive, legitimate response to Serb aggression” remained popular among the political leaders. As previously mentioned, the 2013 commemoration of Operation Storm was moderate; however, the political rhetoric got much worse since the 20th anniversary of the military offensive in 2015. During the military parade and commemoration ceremony in Zagreb, President Kolinda Grabar-Kitarović asserted: “We didn’t want this war, but we were forced into it and that’s the only truth. We defended ourselves”⁹⁷. The following year, Grabar-Kitarović said that “Storm was a politically justified, ethically pure and brilliant military operation that completed the liberation of Croatian national territory. It was an honorable victory for a just cause”⁹⁸. Similarly, Prime Minister Andrej Plenković added that the operation “ended the aggression of Milošević’s ‘Greater Serbia’ project”⁹⁹. During the year 2017–2019, the rhetoric of politicians continued in a similar fashion. Both the prime minister and the president continued to emphasize the prideful victory and the necessary defense against Serb aggression¹⁰⁰.

The analysis also revealed a continued lack of willingness to honor the Serb victims. During the official commemorations from 2013 onwards political leaders focused exclusively on Croatian victims. For example, in 2015, President Grabar-Kitarović said: “We grieve for everyone who has been killed, disappeared or gave his health for his homeland”¹⁰¹, meaning she invites everyone to grieve for those who suffered for The Homeland – Croatia. In 2019, Andrej Plenković stated the following: “we respectfully and proudly recall all the fallen Croatian heroes”¹⁰². Throughout the whole period, Serb victims were mentioned only once, in 2017, when Grabar-Kitarović said: “We are sorry for every life, both Serbian and Croatian, and for all who died during Operation Storm and the Homeland War”.¹⁰³ Serbian victims were still commemorated exclusively by the Croatian Serb community, while, Croatian leaders, armed forces and victims were honored by erecting monuments and establishments (e.g., in 2015, a new statue of Franjo Tuđman and a museum commemorating Operation Storm were opened)¹⁰⁴. Moreover, almost every Operation Storm commemoration since 2013 included performances, organized by the local authorities, by the

controversial Croatian nationalist singer Marko Perković-Thompson. His shows are known for their strong nationalist rhetoric, attempts at historical revisionism, and the glorification of Croatian WWII Ustaša movement. Anti-Serb, nationalist songs and slogans, such as “Za dom spremni” (“Ready for the Homeland”), were repeatedly sung during these commemorations. Commemorative events in 2015, 2016 and 2019 had plenty of instances of hate speech and exhibited negative attitudes towards Serbs¹⁰⁵.

After the EU accession, no official truth-seeking efforts occurred: no national truth commissions or other fact-finding initiatives were established, while truth-seeking was mostly left to the Croatian civil society. However, non-governmental projects did not receive proper attention from politicians. For example, one of the most prominent regional truth-seeking initiatives, the RECOM (a regional intergovernmental commission aimed at finding facts about war crimes and other war-related issues), has not received any official support from the Croatian government under the presidency of Kolinda Grabar-Kitarović¹⁰⁶. President Grabar-Kitarović refused to meet with the head of the Coalition for RECOM, Nataša Kandić, explaining that the determination of historical facts is not under the authority of the President¹⁰⁷. Moreover, Croatian history education reforms after EU accession were openly supporting a nationalist interpretation of history. In 2019, a working group was formed to finalize the education reform started in 2015. The majority of group members came from right-wing nationalistic parties and backgrounds¹⁰⁸. This resulted in the creation of a politically biased curriculum based on the parliamentary Homeland War Declaration of 2000, portraying the war and Croatia’s role in it as just, legitimate, defensive and liberating¹⁰⁹. Despite the fact that Croatia had several different history textbooks offering more diversity in history education, the books supporting nationalist narratives were almost always preferred¹¹⁰. According to a Zagreb NGO “Human Rights House”, the history curriculum for Croatian schools in 2019 still did not support a critical understanding of historical events and multi-perspectivity, but promoted nationalist discourse¹¹¹.

3.3.3. *Good neighborly relations with Serbia*

Cooperation in the field of transitional justice during the analyzed period became more problematic. Both Serbia and Croatia were unable to overcome past grievances and actively work on the legacy of the conflict. For example, in 2013, the countries re-established a bilateral working group for this issue of missing persons and agreed to meet four times a year¹¹²; however, formal meetings were irregular and were only held in 2015 and 2018. According to the EC progress reports, the actual progress in the statistics of the missing persons during the period of analysis remained

limited¹¹³. Approximate estimates of the numbers of unresolved cases in Croatia in 2013 and 2019 are both placed around 1900¹¹⁴.

At the beginning of the period, high-level bilateral meetings between Serb and Croatian politicians were regular, and several minor cooperation agreements were signed; however, significant deterioration followed in 2015–2016. Verbal insults and threats between the political leaders are exchanged almost every year around the commemoration of Operation Storm. For example, in 2015, Serbian Prime Minister Aleksandar Vučić described the operation as “the biggest ethnic cleansing since World War II”, whereas the Serbian nationalist leader and war crimes defendant Vojislav Šešelj openly burned the Croatian flag in Belgrade. This caused countries to exchange diplomatic protest notes, accusing each other of hate speech and ethnic intolerance¹¹⁵. After the commemoration of Operation Storm in 2018, Vučić again made similar statements¹¹⁶. In 2016, presidents Vučić and Grabar-Kitarović signed an agreement to improve bilateral relations¹¹⁷, but it had limited impact – when Plenković’s government took over after the 2016 Croatian parliamentary elections, a government which had prominent tolerance to historical revisionism, nationalistic rhetoric and the glorification of war criminals, relations with Serbia have continued to be adversary¹¹⁸. Since then, Croatia has repeatedly tried to block Serbia’s EU membership talks.¹¹⁹ Relations with Croatia continued to be mixed throughout the whole period of analysis – short instances of cooperation were often disrupted by incidents by either the Croatian or Serbian side. For example, in 2018, the speaker of the Croatian parliament visited Serbia, but the visit was interrupted due to an incident instigated by the far-right in the Serbian parliament¹²⁰.

Table No. 1.
Comparative analysis of the pre- and post-EU accession period

	Pre-accession	Post-accession
1. Ensuring respect for and protection of minority rights		
Existing legislation	sufficient	sufficient
Implementation of legislation	improved (minor deficiencies)	problematic (deteriorated)
Attitudes towards Serbs	problematic (verbal assaults, discrimination)	problematic (attack numbers increased, tolerance levels dropped)
2. Fighting impunity for war crimes		
Cooperation with ICTY	good (except beloved generals)	problematic (deteriorated)
Domestic prosecutions	intensified	slowed down
Glorification of war criminals	moderate	widespread
3. Fostering reconciliation		
Returnee situation	discrimination widespread, especially vulnerable	improved (but discrimination persists)
Truth-seeking efforts	moderate efforts (history reform, some recognition of Serb victims, sporadic expressions of remorse)	problematic (history curriculum nationalistic, commemorations of Operation storm increasingly radical)
Good relations with Serbia	not active, not effective	not active, not effective

To sum up, if the period before the EU accession was best described as “balancing” (trying to balance the efforts to do transitional justice with the nationalistic understanding of the Homeland War and the general negative public attitudes towards the Serb minority), the period after the EU accession was marked by significantly less political will, and thus could be described as “giving in” to domestic pressures (see table No. 1). Although both periods of analysis suggest a mixed picture when it comes to transitional justice, in terms of the post-accession period, the general situation took a turn for the worse. When it came to ensuring respect for and protection of minority rights, the existing legislation was still being assessed as sufficient, even further improved upon; however, its implementation has gotten worse, and the same was true for the general attitudes towards the Serb minority (the numbers of attacks have increased, while public opinion polls indicate decreased levels of tolerance). It is important to note that the returnee situation has gotten better; however, by that time many have already left Croatia for Serbia or the West. Both domestic and international prosecutions of war crimes have deteriorated and slowed down; the glorification of the war criminals became more widespread. Truth-seeking efforts were unofficial, left to the non-governmental sector, with little to no political support. History teaching reforms initiated in the pre-accession period were “undone” and

history teaching remained biased and nationalistic. In addition, relations with Serbia remained inactive and ineffective.

Conclusions

The findings of this assessment of transitional justice and human rights situation in Croatia before and after the EU accession demonstrate that after accession to the EU, transitional justice and the human rights situation in Croatia began to deteriorate. Firstly, ensuring respect for and protection of minority rights (especially of ethnic Serbs) has become more problematic. Despite significant improvements in the legal protection framework, the actual implementation of various regulations was poor, discrimination and violent attacks against the minorities became even more common. Secondly, elimination of impunity for war crimes also deteriorated. The cooperation with ICTY remained mixed throughout both periods of analysis; however, domestic prosecutions slowed down after the accession and politicians became more outspoken in their criticism towards the tribunal, actively undermining its legitimacy (e.g., by openly glorifying war criminals). Finally, efforts to foster reconciliation remained insufficient. Despite some of the most pressing concerns of the returnee community were eventually resolved, discrimination remained widespread (e.g., especially in the job market). No active efforts to engage in truth-seeking were found in either of the periods, but since the EU accession, the commemorations of military victories have become more nationalistic, with more instances of hate speech and, in comparison to the pre-accession period, almost completely ignorant of the civilian victims of war, especially those of Croatian Serbs. Cooperation with Serbia remained mixed, swinging between short instances of productive cooperation and open hostility. The first and the third hypotheses were confirmed, meaning that a) after the conditionality pressure seized existing, the achievements in transitional justice were not sustained and b) the conditionality policy was only effective as it was being applied, which ultimately meant it was ineffective, as the fragile progress was not sustained. A comparison of the two periods that exhibit only a single major difference (EU pressure to comply with the conditionality policy) while being placed in different states of transitional justice could be understood only as preliminary evidence of important causal forces at play. Having in mind the complex nature of the causality of social phenomena, it is especially difficult to isolate and test the impact that EU pressure alone had on Croatia, and additional research into the subject is needed. Other important factors, e.g., the general democratic backsliding in the region, growing nationalism in Serbia, internal political dynamic, etc. could be just as important.

This analysis is one of the first attempts to provide an overview of the empirical reality of transitional justice in Croatia after the EU accession. Naturally, a further, more detailed investigation into these issues is necessary. If we are to fully understand the dynamics of transitional justice and reconciliation over time, longer periods (e.g., since the end of the

war in 1995) have to be observed, analyzed and compared in order to better understand the reasons behind change and the general dynamics of transitional justice and reconciliation (which is rarely ever linear). In addition, the scope of transitional justice policies analyzed could also be expanded, focusing not solely on the initiatives promoted by the EU. On the one hand, the findings of this article illustrate the power of international pressure (namely, the EU conditionality policy), because with it gone, the situation in Croatia began to visibly deteriorate. On the other hand, the findings also question the effectiveness of such pressure and add to the rising wave of criticism expressed by other authors who claim that the EU conditionality policy was somewhat superficial and failed to address deeper societal issues at stake, since once the pressure stopped, the progress discontinued. In the words of Olivera Simić, “with the Ratko Mladić arrest, cooperation with the ICTY and conditionality strategy has ceased, and unfortunately, the EU does not have a strategy, or an answer to, for example, the demonstrations in Croatia after the verdict for general Gotovina was pronounced and how to come to reconciliation and stable peace”¹²¹.

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