

The Effects of War Crime Processing before Domestic Courts on the Reconciliation Process in Bosnia and Herzegovina

Efekti procesuiranja ratnih zločina pred domaćim sudovima na procese pomirenja u Bosni i Hercegovini

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Abstract: During the war in Bosnia and Herzegovina (1992-1995), severe war crimes were committed, including even genocide. The war crimes, committed during the war in Bosnia and Herzegovina (BiH), have been processed at several different levels (from international to local). The paper focuses on the processing of war crimes committed in BiH before domestic, Bosnian courts and the contribution of these processes to the reconciliation process in BiH. We made an empirical research and collected data on the attitude of victims and, for the first time, of perpetrators of war crimes about three research domains: purpose and expectations from war crime processing, subjects' perception of the judicial system in BiH that processes war crimes, and perception of the past results of war crime processing in BiH.

Keywords: war crimes, processing of war crimes, reconciliation

JEL Classification: K14

Article History

Submitted: 18.09.2013.

Resubmitted: 26.11.2013.

Accepted: 26.12.2013.

The following conclusions were made: the subjects express their negative opinion about the proceedings; most subjects expect processing to reveal the truth and contribute to their prevention in the future; all the subjects have a negative opinion about judicial institutions that process war crimes in BiH; subjects believe that the punishments for the crimes do not achieve the purpose of punishing; processing contributed to easing victims' suffering but also helped convicts reject their psychological burden.

Sažetak: Tokom rata u BiH (1992-1995), počinjeni su teški zločini, pa čak i genocid.

Njihovo procesuiranje odvija se na više različitih nivoa. U ovom se radu analizira procesuiranje ratnih zločina pred domaćim, bosanskohercegovačkim sudovima i doprinos ovih suđenja pomirenju u BiH.

Provedeno je empirijsko istraživanje i prikupljeni su podaci o stavovima žrtava i, po prvi put, osuđenika za ratne zločine o tri grupe pitanja: svrha i očekivanja od procesuiranja ratnih zločina, percepcija ispitanika o pravosudnom sistemu u Bosni i Hercegovini koji sudi za ratne zločine i percepcija dosadašnjih rezultata rada na procesuiranju ratnih zločina u Bosni i Hercegovini.

Zaključeno je sljedeće: ispitanici izražavaju svoje negativno mišljenje o procesuiranju; većina ispitanika očekuje da će procesuiranje otkriti istinu, i doprinijeti njihovoj prevenciji u budućnosti; svi ispitanici imaju negativno mišljenje o pravosudnim institucijama koje procesuiraju ratne zločine u BiH; ispitanici smatraju da se kaznama za zločine ne postiže svrha kažnjavanja; procesuiranje doprinosi ublažavanju patnji žrtava, ali, također, pomaže osuđenima da se oslobode psihološkog tereta.

Ključne riječi: ratni zločini, procesuiranje ratnih zločina, pomirenje

Historija članka

Dostavljen: 18.09.2013.

Revidiran: 26.11.2013.

Prihvaćen: 26.12.2013.

INTRODUCTION

In the 1990s, in the former Yugoslavia, armed conflicts happened which were marked by the eruptions of violence, crimes, and violations of international norms related to human rights, including even genocide. The war crimes which were committed in Bosnia and Herzegovina (BiH) were especially severe.¹

We noticed that there is not an equivalent agreement of the research results in terms of the killed, exiled, wounded and raped persons, destroyed property etc.

On the basis of a rough estimate, we can conclude that, during the war in Bosnia and Herzegovina, one to two hundred thousand persons were killed and 1.5 to 2 million people was exiled. The territories were ethnically cleansed, the material damage is incalculable.² The facts about incidents which happened during the war can be established in several ways. One of them is the processing of war crimes.³ However, besides establishing the truth, that is the formal (process) truth about the nature and character of same war invents, by processing war crimes we also intend to realise (classic) criminal law goals related to the prevention of new crimes by means

¹ A specific confirmation of this claim is the fact that some crimes which happened in BiH were legally qualified as the genocide by various court forums and valid court decisions. Genocide is often marked as "crime over crimes". Compare: Verdict of International court of Justice in case BiH against Serbia and Montenegro on February 26, 2007 (*Verdict of International court of Justice in case BiH against Serbia and Montenegro*, Institute for Research of Crimes against Humanity and International Law, Sarajevo, 2008); Verdict of International Criminal Tribunal for the Former Yugoslavia against Radoslav Krstic in 2004 (Case No. IT-98-33), and Verdicts of Court of BiH against Petar Mitrovic in 2009 (Case No. X-KRŽ-05/24-1), against Milenko Trifunovic, Branko Dzinic, Aleksandar Radovanovic, Slobodan Jakovljevic and Branislav Medan in 2009 (Case No. X-KR-05/24), against Milorad Trbic in 2011 (Case No. X-KR-07/386), and against Radomir Vukovic in 2012 (Case No. X-KRZ-06/180-2).

² Dz. Mahmutovic, "War Crimes in BiH – Punishment and Reparation", L.L.D. thesis on file at the Faculty of Law, University of Tuzla, 2012, 13 – 20.

³ The term "war crimes" shall be used in this paper to denote all criminal acts committed during the war in BiH (1992-1995) defined in Chapter XVII of the Criminal Law of BiH, named "Criminal Acts against Humanity and Values Protected by International Law". See more in: Državna strategija za rad na predmetima ratnih zločina, http://www.mpr.gov.ba/web_dokumenti/Drzavna%20strategije%20za%20rad%20na%20predmetima%20RZ.pdf, 05 July, 2013.

of punishing committers, promotion the rule of law, providing satisfaction for victims and encouraging reconciliation between committers and victims. Processing supports separations of individual from collective responsibility, which is also very important to reconciliation process on the territory where crimes were committed. In terms of the importance of war crime processing in building confidence between people and preventing new conflicts, it is evident that criminal processing subjects, working in war crime processing, bear burden of responsibility.⁴

The definition of the effects of court procedures, meaning processing war crimes which happened in BiH on the processes of reconciliation between committers and victims will be analysed in this paper. However, it needs to be pointed out that this research did not include all court procedures lead so far but only those started and completed before domestic (BiH) judicature. This is important since a certain number of these crimes has been processed before the International Criminal Tribunal for the Former Yugoslavia (hereinafter called ICTY), but also before the courts of other countries in accordance to the principle of universal jurisdiction.⁵

⁴ O. N. T. Thoms, J. Ron, R. Paris, "State-Level Effects of Transitional Justice", *International Journal of Transitional Justice*, 2010, 329–354.

⁵ Here we primarily think of the processes which have been led before the Council for War Crimes of District Court in Belgrade. However, based on the principal of universal jurisdiction, a certain number of cases was processed before German courts (Cases: Jorgic, Sokolovic, Kuslic and Dzajic), Austrian courts (Cvjetkovic case), and Dutch courts (Saric Case). On these cases see more in: Dz. Mahmutović, M. Muharemović, "Prva presuda za genocid u Evropi poslije Drugog svjetskog rata", In: Dozić, A. (ed.): *Monumenta Srebrenica: Knjiga 2. - Srebrenica kroz minula stoljeća*, JU Zavod za zaštitu i korištenje kulturno-historijskog i prirodnog naslijeđa Tuzlanskog kantona, Tuzla-Srebrenica, 2013, 129; B. Pavišić, T. Bubalović, *Međunarodno kazneno pravo*, Pravni fakultet Sveučilišta u Rijeci, Rijeka, 2013, 78; Š. Haračić, "Tretman kulturnog genocida u međunarodnom krivičnom pravu", *Anali Pravnog fakulteta u Zenici*, 6, 2010, 132.

When it comes to the processing of war crimes before domestic courts, it can be observed in two phases:

Phase 1 This phase covers the period from the moment when war crimes were committed until the moment when the Court of Bosnia and Herzegovina started working. During this period war crimes were processed at entity level courts in the Federation of Bosnia and Herzegovina and in the Republic of Srpska.

Phase 2 This phase started in 2003 when the Court of Bosnia and Herzegovina was established, meaning its Section I for War Crimes. This section has jurisdiction over war crime cases received after March 1, 2003, when it regards that such cases, due to their delicacy, should be processed at the state level. If these cases are not delicate, they will be processed at Entity levels. This Court also has jurisdiction over the processing of cases received from the prosecutor's office of the ICTY, in which charges are still not brought. It also has jurisdiction over the cases received from the ICTY, pursuant to rule 11*bis* of the Rules of Procedure and Evidence, with charges brought before this Court.⁶

⁶ M. Škorić, "Mješoviti međunarodni kazneni sudovi", Zbornik Pravnog fakulteta sveučilišta u Rijeci, 2005, 933-970.

The results of domestic courts and cases of war crimes are summarised and presented in the following tables and charts:

Table 1 – Decisions of courts in BiH related to war crimes

	Local Courts in BiH 1992-2006 ⁷	Court of BiH ⁸		Total
		11bis cases	Normal cases	
Convictions	38	7	46	91
Stopped proceedings	1	0	1	2
Acquittals	12	0	1	13
TOTAL	51	7	48	106

⁷ The table brings the summarized results of the work of local courts by the types of judicial decisions for the period 1992 – 2006. They are based on the data presented in the monograph *Ratni zločini u BiH – pravomoćno završeni kazneni postupci u Bosni i Hercegovini 1992-2006*, ABA/CEELI, Sarajevo, 2006, 19 – 471. In the period 2007-2010, the local courts in Bosnia and Herzegovina pronounced additional 85 legally valid sentences (28 – 2007, 31 – 2008, 20 – 2009 and 6 – 2010). See more in: *Postizanje pravde u Bosni i Hercegovini: procesuiranje ratnih zločina od 2005. do 2010. godine*, OSCE Misija u Bosni i Hercegovini, Sarajevo, 2011, 98 – 102. However, the data is not included in the given tables due to the fact that the information were not available regarding the types of court decisions and phenomenology of processed war crimes in the given period (2007 – 2010).

⁸ The data on the decisions of the Court of Bosnia and Herzegovina are for the period from the year 2005 (when the Court and the Prosecution Office of Bosnia and Herzegovina started their work in full capacity) until February 2012. The data for the period 2005 – 2010 were taken from the paper A. Alić, *Doba istine: presjek rada Odjela za ratne zločine pri Sudu BiH u periodu 2005-2010*, Balkanska istraživačka mreža BiH, Sarajevo, 2010., while the data for the remaining period was obtained by searching the data base of the Court of Bosnia and Herzegovina on validly completed cases, available at www.sudbih.gov.ba (14 April, 2012).

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Table 1 shows that until February 2012, a total of 106 cases for war crimes committed in Bosnia in Herzegovina were completed in domestic courts. Out of all cases completed, 91 cases were completed by final conviction. Processes were stopped in two cases while 13 cases ended in acquittals.

Chart 1 shows cases completed in domestic courts.

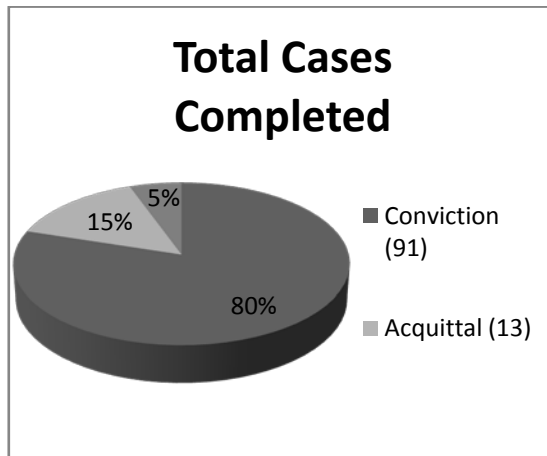


Chart 1 Total Cases Completed

In terms of final convictions, we have to point out that 19 of them were completed by a settlement on confession between defendants and prosecutors, three of which were completed in local courts and 16 in the Court of Bosnia and Herzegovina.

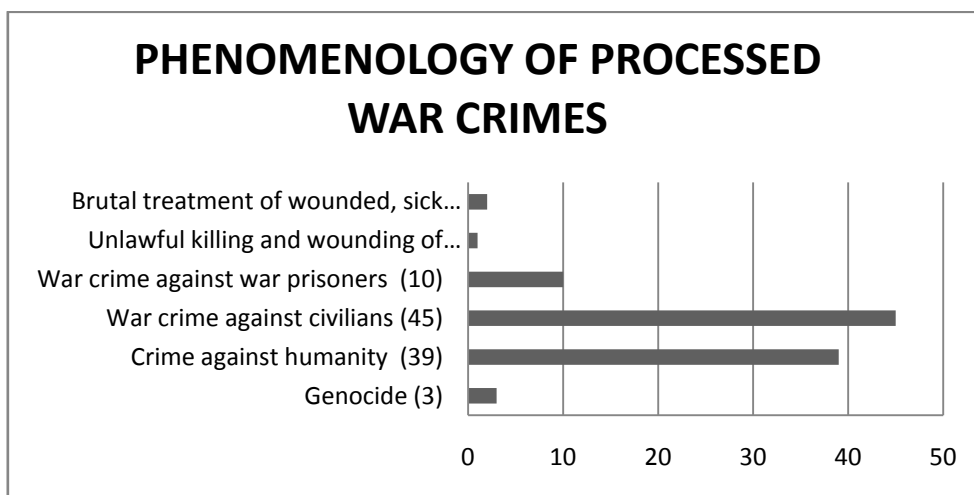


Chart 2 Phenomenology of war crimes processed in BiH

The analysis of phenomenology of war crimes which have been processed before the courts in BiH shows that the most frequent verdicts were for the crimes: *crime against humanity* pursuant to Article 172 of Criminal Law BiH (39%), and *war crime against civilians* pursuant to Article 173 of Criminal Law BiH (45%). The verdicts also included the following: *war crime against war prisoners* pursuant to Article 175 of Criminal Law BiH, *unlawful killing and wounding of enemies* pursuant to Article 177 of Criminal Law BiH, *brutal treatment of wounded, sick people and war prisoners* pursuant to Article 150 of Criminal Law of the Socialist Federal Republic of Yugoslavia, but *genocide* as well pursuant to Article 171 of Criminal Law BiH, as the most serious form of war crimes (3%).

Scope and aim of the paper

The scope and aim of this research is to establish the contribution of processing war crimes to reconciliation between committers and victims of war crimes in Bosnia and Herzegovina.

The following hypothesis was formulated: *War crime processing before Bosnia and Herzegovina courts supports reconciliation.*

Methodology

A. Subjects

This research is specific in terms of its subjects, made of victims and committers. The sample included 233 subjects. It was divided into two parts-one made of war crime convicts (n=72), and other made of war crime victims (n=161).

B. Measuring Instruments

The measuring instrument was made, which included n=13 variables-statements. The subjects expressed their attitude about them by Likert Scale at five levels (I completely agree-I completely disagree). Variables define three research domains: purpose and expectations from war crime processing, subjects' perception about judicial system in Bosnia and Herzegovina which processes war crimes, and perception about the past results of war crime processing in Bosnia and Herzegovina.

C. Conducting the Research

The research was conducted in the period December 2009-2010, in prisons of Bosnia and Herzegovina Federation and the Republic of Srpska, with war crime convicts and war crime victims who were questioned, with the support by the organization of war crime victims.

Research results and discussion

A. First Domain: Purpose and Expectations from War Crime Processing

Table 2 'People will not reconcile until they find out the truth about what happened during the war'

Variable	Convicts		Victims	
	f	%	f	%
I completely disagree	7	9.7	3	1.9
I mainly disagree	6	8.3	8	5.0
I cannot decide	4	5.6	8	5.0
I mainly agree	21	29.2	37	23.0
I totally agree	34	47.2	105	65.2
Total	72	100.0	161	100.0

War crime processing is the only mechanism used to establish the truth about the war which is marked by war crimes in BiH. The research subjects believe that establishing the truth is the foundation on which reconciliation process in BiH should be built. Over 76.4% of convicts and 88.2% of victims agreed to the following statement: *'People will not reconcile until they find out the truth about what happened during the war'*.

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Table 3 'War crime processing should prevent war crimes in the future'

Variable	Convicts		Victims	
	f	%	f	%
I completely disagree	8	11.1	5	3.1
I mainly disagree	4	5.6	2	1.2
I cannot decide	3	4.2	9	5.6
I mainly agree	10	13.9	20	12.4
I totally agree	47	65.3	125	77.6
Total	72	100.0	161	100.0

Both subsamples consider war crime processing very important for prevention of war crimes in the future. When we tested the statement: 'War crime processing should prevent war crimes in the future', we obtained the answers which showed that almost 80% of convicts and 90% of victims agree with it.

Table 4 'War crime trials will enable justice to be satisfied'

Variable	Convicts		Victims	
	f	%	f	%
I totally agree	16	22.2	28	17.4
I mainly agree	18	25.0	84	52.2
I cannot decide	5	6.9	15	9.3
I mainly disagree	11	15.3	27	16.8
I completely disagree	22	30.6	7	4.3
Total	72	100.0	161	100.0

Table 4 shows the variability of subjects' responses to the statement: '*War crime trials will enable justice to be satisfied*'. About 70% of victims consider this statement to be true. Half of convicts agree while the other half disagrees with this statement.

Table 5 'War crime trials shall contribute to building confidence and promoting reconciliation in Bosnia and Herzegovina'

Variable	Convicts		Victims	
	f	%	f	%
I completely disagree	23	31.9	13	8.1
I mainly disagree	14	19.4	24	14.9
I cannot decide	7	9.7	16	9.9
I mainly agree	19	26.4	77	47.8
I totally agree	9	12.5	31	19.3
Total	72	100.0	161	100.0

Most victims (around 70%) believe that war crime trials are very important for building confidence and promoting reconciliation. Convicts' answers are dispersed in such a way that around 50% of them agrees and around 39% disagree with this statement.

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Table 6 'War crime trials shall enable reconciliation between peoples and diffuse ethnic tensions'

Variable	Convicts		Victims	
	f	%	f	%
I totally agree	17	23.6	17	10.6
I mainly agree	16	22.2	77	47.8
I cannot decide	3	4.2	22	13.7
I mainly disagree	15	20.8	30	18.6
I completely disagree	21	29.2	15	9.3
Total	72	100.0	161	100.0

Convicts again show consistent answers to the formulated statement that war crime trials shall enable reconciliation between peoples and diffuse ethnic tensions, meaning that half of them agree while another half disagrees with it. Victims mainly agree with this statement, but there are certain subjects (14%) who are indecisive when evaluating trials as the reconciliation factor.

B. Second Domain: Subjects' Perception about the Judicial System in Bosnia and Herzegovina that Processes War Crimes

The goals which are set to processing war crimes can be achieved only if the judicial system that processes them is just, impartial, independent, equipped (in terms of material and staff), and that the public has trust in it. We tested how the direct participants in the trials see the system which processes war crimes in Bosnia and Herzegovina through several statements, and the results are given in the following part.

Table 7 'Courts that process war crimes in Bosnia and Herzegovina are neutral and just'

Variable	Convicts		Victims	
	f	%	f	%
I totally agree	6	8.3	11	6.8
I mainly agree	5	6.9	31	19.3
I cannot decide	9	12.5	44	27.3
I mainly disagree	8	11.1	46	28.6
I completely disagree	44	61.1	29	18.0
Total	72	100.0	161	100.0

The subject subsamples mainly express negative attitudes towards the statement that the courts that process war crimes in Bosnia and Herzegovina are neutral and just. Seventy-two percent of convicts and 45 percent of victims do not agree with this statement. Only around 26% of victims and around 15% of convicts think that the courts are neutral and just.

Table 8 'Courts in BiH that process war crimes should be trusted'

Variable	Convicts		Victims	
	f	%	f	%
I completely disagree	33	45.8	24	14.9
I mainly disagree	14	19.4	27	16.8
I cannot decide	6	8.3	46	28.6
I mainly agree	12	16.7	52	32.3
I totally agree	7	9.7	12	7.5
Total	72	100.0	161	100.0

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Over 65% of convicts think that this judicial system does not deserve trust, and over 30% of victims share this belief. Only 26% of convicts and somewhat less than 40% of victims trust the courts.

Table 9 'Courts in BiH that process war crimes are corrupt'

Variable	Convicts		Victims	
	F	%	f	%
I totally agree	37	51.4	33	20.5
I mainly agree	12	16.7	48	29.8
I cannot decide	13	18.1	55	34.2
I mainly disagree	5	6.9	18	11.2
I completely disagree	5	6.9	7	4.3
Total	72	100.0	161	100.0

Both subject subsamples believe that judiciary in BiH is corrupted, whereby 68% of convicts and 50% of victims agree with this statement. There is a large percentage of neutral responses, while a very small percentage of both convicts and victims think that judiciary is not corrupted.

Table 10 'Judges are biased in trials to the members of their ethnic group'

Variable	Convicts		Victims	
	f	%	f	%
I completely disagree	10	13.9	7	4.3
I mainly disagree	11	15.3	35	21.7
I cannot decide	14	19.4	54	33.5
I mainly agree	9	12.5	45	28.0
I totally agree	28	38.9	20	12.4
Total	72	100.0	161	100.0

Over 51% of convicts and 40% of victims agree with the statement that the judges are biased when it comes to the trials to the members of their own ethnic group. Both subsamples offered a large number of indecisive responses, while below one third of both subsamples disagree with this statement.

Table 11 'Judges are related to the authorities and they cannot or do not want to process the main persons in the social and political life, who committed war crimes'

Variable	Convicts		Victims	
	f	%	f	%
I completely disagree	4	5.6	7	4.3
I mainly disagree	3	4.2	24	14.9
I cannot decide	7	9.7	43	26.7
I mainly agree	12	16.7	45	28.0
I totally agree	46	63.9	42	26.1
Total	72	100.0	161	100.0

A large majority of convicts (around 80%) and victims (around 54%) agree with the statement that judges are related to the authorities and they cannot or do not want to process the main persons in the social and political life, who committed war crimes. Such attitudes show that the applied sample of subjects largely doubts the independence of the judiciary in BiH.

C. Third Domain: Perception of the Past Results of Work on Processing War Crimes in Bosnia and Herzegovina

It is very important for individual reconciliation, which we believe should be the basic model of reconciliation in Bosnia and Herzegovina, to ease the individuals' suffering which they experienced when the crimes were committed. Trials should contribute to lowering the suffering of both victims and committers, thus encouraging reconciliation between them.

Table 12 'War crime trials shall ease victims' suffering'

Variable	Convicts		Victims	
	f	%	f	%
I completely disagree	21	29.2	15	9.3
I mainly disagree	11	15.3	24	14.9
I cannot decide	9	12.5	20	12.4
I mainly agree	11	15.3	78	48.4
I totally agree	20	27.8	24	14.9
Total	72	100.0	161	100.0

The attitudes towards the statement that war crime trials shall ease victims' suffering are divided in such a way that 60% of victims expect their suffering to be reduced, after the trial is completed. Convicts mainly do not see a trial as a factor of easing victims' suffering, and 45% of them agree while the same percentage disagrees with this statement.

Table 13 'Since they were processed, war crime convicts felt that they were no longer psychologically burdened'

Variable	Convicts		Victims	
	f	%	f	%
I totally agree	9	12.5	9	5.6
I mainly agree	13	18.1	23	14.3
I cannot decide	14	19.4	68	42.2
I mainly disagree	12	16.7	37	23.0
I completely disagree	24	33.3	24	14.9
Total	72	100.0	161	100.0

When asked about processing, in terms of psychological relief, only 30% of convicts agreed to this statement, while around 50% disagree. Victims' answers are dispersed in such a way that the highest number of answers is indecisive (over 42%). This is rather understandable as they are not the ones involved. Almost 40% of victims disagree with this statement.

We also believe that the variable related to punishment is also important for evaluating the contribution of war crimes to reconciliation in Bosnia and Herzegovina. In the verdict in *Lelek* case, the Court of BiH emphasized: "The punishment that completely reflects the seriousness of the crime can contribute to reconciliation".⁹

⁹ First Instance Verdict, *Lelek* (X-KR-06-202), Court of Bosnia and Herzegovina, (First Instance Panel), 23 May, 2008.

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We asked convicts and victims to give their opinions about punishments pronounced for war crimes. The answers are given as follows:

Table 14 'Attitudes to punishments pronounced for war crimes'

Variable	Convicts		Victims	
	f	%	f	%
Too strict	49	68.1	4	2.5
Mild	4	5.6	48	29.8
I am not thinking about it	11	15.3	33	20.5
Too mild	1	1.4	62	38.5
Just	7	9.7	14	8.7
Total	72	100.0	161	100.0

About 68% of convicts think that the punishment for war crimes is too harsh. The same attitude is given by only 2.5% of victims. It is significant that below 10% of both subsamples think that the punishment is just.

Based on the results presented, we cannot accept the hypothesis that *war crime processing before Bosnia and Herzegovina courts supports reconciliation*.

CONCLUSION

Through an insight into all the research results we can conclude that subjects, by their attitudes about the contribution of domestic criminal proceedings to reconciliation between committers and victims of war crimes in BiH, express their negative opinion about the proceedings.

Most convicts and victims of war crimes expect processing to reveal the truth, and contribute to their prevention in the future.

These subsamples agree less when it comes to the contribution of processing to satisfying justice, building confidence, promoting reconciliation, reconciling between peoples and diffusing ethnic tensions. Victims' responses are mainly aimed at positive contribution, while convicts' responses are equally divided into positive, negative and indecisive.

In addition, almost an entire sample, regardless of their belonging to a certain category (victim-committer (convict)), have a negative opinion about judicial institutions that process war crimes in Bosnia and Herzegovina. Especially negative attitudes were given by convicts, who mainly think that these institutions are not neutral and just, that they cannot be trusted, that they are corrupted, and that they do not process the leading persons from the public and political life, believed to be the most responsible for war crimes. Over fifty percent of victims agree with such attitudes.

Besides this, subjects' perception of justness of the punishment show that the punishments for the crimes do not achieve the purpose of punishing, but that war crime processing is necessary for their prevention in the future.

However, along with negative attitudes regarding war crime processing, we also obtained the answers that processing significantly contributed to easing victims' suffering, but also helped convicts reject their psychological burden.

On the basis of the research results, it is possible to reject the formulated hypothesis that "War crime processing before Bosnia and Herzegovina courts supports reconciliation", which does not give enough optimism when it comes to the contribution of domestic criminal procedures for war crimes in reconciliation between committers and victims of war crimes in BiH.

However, regarding certain objective circumstances affecting processing war crimes in BiH, an important progress was made in its implementation. Better results and higher contribution can be achieved through additional establishment of the causes for such attitudes of the subjects, improvement of relations with the public, better information given to the public regarding the results of processing, and better treatment of the participants in the process, both committers and victims.

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