

# Responding to Crimes Against Humanity committed in Slovenia after the Second World War

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## Abstract

This article explores responses to crimes against humanity committed on the Slovenian territory in the months following the end of the Second World War. As many as one hundred thirty thousands person are estimated to have been extra-judicially killed in the months following the end of the Second World War by Secret Police controlled by Yugoslav Communist Party. Almost six hundred mass grave sites have been so far found on the Slovenian territory. In August 2006, the Slovenian courts refused to open an investigation and start criminal proceedings against Mitja Ribičič on charges of crimes against humanity. This article presents the decision of the Slovenian courts and attempts to analyse its reasoning. A commentary and an analysis of *Prosecutor v. Ribičič* constitutes the centrepiece of this article. Based on these findings this paper argues that there strong legal and moral grounds for prosecuting crimes against humanity committed in Slovenia after the Second World War. It argues that there are several obstacles against domestic prosecution in Slovenia. In this way, it explores alternative responses to crimes against humanity committed in the Slovenian territory in the months following the end of the Second World War.

**Keywords:** crimes against humanity, domestic prosecutions, Slovenia, truth and reconciliation commissions, totalitarian crimes

## I. Introduction

As many as one hundred thirty thousands persons are estimated to have been summarily executed in the Slovenian territory in the months following the end of the Second War World on 9 May 1945.<sup>2</sup> It is estimated that around fifteen thousands of those executed were of Slovenian nationality, whereas the others were Croats, Serbs and Germans. They were mostly civilians but they also included members of the Slovenian Home Guards and other political opponents of the resistance movement led by the Slovenian Communist Party. These crimes were committed mostly in the form of systematic summary executions at hidden locations all across Slovenia, predominantly in the unpopulated rural areas and in the forests, and were carried out by members of the Slovenian section of the Yugoslav Secret Police.

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<sup>2</sup> Pavel Jamnik's statement in Polemika programme, RTV Slovenia, 9 March 2009. The exact number of executed persons is unknown. The estimates vary between 100.000 and 130.000 executed persons. See for example: Peter Vodopivec *Od Pohlinove slovnice do samostojne države : slovenska zgodovina od konca 18. stoletja do konca 20. stoletja*. The author gives the number of 100.000 do 130.000 people killed on the Slovenian territory. This opinion is shared by the Slovenian historians, dr. Tone Ferenc and Jože Dežman. See also Jerca Vodušek Starič, *Kako se čistila Jugoslavija?* Gordogan, 2004, pp. 36-50.

They were part of retaliation after the Second World War but are alleged to be also part of a plan to eliminate part of the civilian population in Slovenia.

The Commission for Settlement of Hidden Mass Graveyards of the Government of the Republic of Slovenia has indicated in its current findings that almost six hundred hidden mass grave sites have so far been found on the territory of Slovenia.<sup>3</sup> The Commission has as its long-term goal the exhumation and re-burial of all Slovenian victims killed on Slovenian territory. It is still unclear whether the order for the liquidation of alleged political opponents and civilian population originated from the head of the former Yugoslav Security Police in Belgrade or the order came from the Slovenian branch in Ljubljana.

This article explores responses to crimes against humanity committed in the Slovenian territory in the months following the end of the Second World War. It also examines the recent decisions by the Slovenian Courts in the case of *Prosecutor v. Mitja Ribičič*.<sup>4</sup> Therefore, the present case concerns crimes committed after the Second World War – in the time of peace. Mitja Ribičič was a former official of the Slovenian Communist Party in Slovenia and former deputy head of the Slovenian section of the Yugoslav Security Police or *Department for Protection of the People (OZNA)* as was its official title. He allegedly orchestrated killings in the Slovenian territory and in the beginning of 2006 the Prosecutor brought a case before the District Court in Ljubljana requesting the opening of an investigation against him alleging that he facilitated the commission of crimes against humanity on Slovenian territory. This case was the first be brought against any of the officials of the Communist party in Slovenia since hitherto the understanding has prevailed that because of the missing evidence it would be very hard to build a case against any former Communists suspected of committing crimes against humanity in Slovenian territory.

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<sup>3</sup> For a detailed historical account see Dr. Mitja Ferenc, *Topografija evidentiranih grobišč, POROČILO KOMISIJE VLADE REPUBLIKE SLOVENIJE ZA REŠEVANJE VPRAŠANJ PRIKRITIH GROBIŠČ 2005-2008*, Ljubljana 2008, Družina d.o.o, Tamara Griesser-Pečar, : *Razdvojeni narod*, Mladinska knjiga, Ljubljana 2004, *Das Zerrissene Volk: Slowenien 1941-1945, Okkupation, Kollaboration, Bürgerkrieg, Revolution*, <<http://www.ukom.gov.si/eng/slovenia/publications/slovenia-news/3646/3688/>> , last visited 25 March 2009. See also Public Exhibition *Prikrito in očem zakrito*, Museum of Contemporary History, 2005 Ljubljana, Slovenia, last visited 25 March 2009. See also Lovro Šturm, Blaž Ivanc, *Brez milosti: ranjeni, invalidni in bolni povojni ujetniki na Slovenskem*, urednik in soavtor, 2000.

<sup>4</sup> *Prosecutor of Republic of Slovenia v. Mitja Ribičič*, Original case numbers: Ks 962/2002, Kpr 122/06.

This article takes the following outline: firstly, section II briefly outlines the factual background of the crimes committed in the Slovenian territory after Second World War. Then it goes on to discuss decisions of the Slovenian District and High Courts in the case of *Prosecutor v. Mitja Ribičič* in section III. In Section IV, this article analyzes the decisions from the perspective of international criminal law and transitional justice whereby examining some lessons for the understanding of current political divisions in Slovenia. Equipped with this knowledge this section further argues that there strong legal and moral grounds for prosecuting crimes against humanity committed in Slovenia after the Second World War. In this light, it examines alternative responses to post-war crimes and the prospects for any future criminal cases against any former high officials of the Slovenian Communist Party or anyone else for that matter, who may have been involved in the massacres in the Slovenian territory after the Second World War.

## **II. Factual Background**

The Second World War reached Yugoslavia when German Luftwaffe commenced to bombard Belgrade on 6 April 1941 and Yugoslav royal authorities surrendered quickly on 17 April 1941.<sup>5</sup> In this light, the Resistance Movement in Slovenia was led during the Second World War by the Slovenian Liberation Front which was established on 27 April 1941 in Ljubljana.<sup>6</sup> Božo Repe notes that ‘during the war, the Communist Party in Slovenia, which organized and operationally controlled the resistance against occupiers, began articulating revolutionary goals’<sup>7</sup> and ‘in March 1943, the Slovenian Communist Party persuaded a number of non-Communists groups in the Slovenian Liberation Front to unify under Communist leadership.’<sup>8</sup> A part of population organized and formed so called Village guards and later (after Italian capitulation in September 1943) the Home Guard, which resisted against the monopolization of the Resistance movement by the Communist Party.<sup>9</sup> This resulted in a civil war between the members of Slovenian Liberation Front and members of the Village

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<sup>5</sup> Božo Repe, Slovenia During the Second World War, < <http://www.theslovenian.com/articles/2008/repe1.pdf>>. Last visited 10 November 2009. At page 1.

<sup>6</sup> *Ibid.* At 2.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

and Home guards<sup>10</sup>, particularly during the massacres of non-Communist member of Slovenian National Front in 1943. The political opponents of the Slovenian Communist party were mostly Christian Democrats, who refused to join the National Liberation movement.

The Slovenian Liberation Front won the armed conflict with German and Italian forces and liberated Slovenia. In this way, the Slovenian Communist Party seized the opportunity to turn a national liberation movement against the Axis forces from a resistance struggle to a civil war, and prohibited from fighting against the occupiers by those who did not accept leadership of the Communist party. In other words, the partisan movement led by the Slovenian Communist party won in the civil war.

At the end of the Second World War in the light of Partisan guerrilla advancement and after unsuccessful attempt to establish their own parliament and government in May 1945, the political opponents of Communist party (Slovenian national army) fled to the British Occupation Zone in Carinthia and were placed in a camp at Vetrinj.<sup>11</sup> At the end of May 1945 the British troops handed over 30.000 men to Tito's communist forces.<sup>12</sup> Most of them were then subsequently executed in forests and caves all across Slovenia. In this way, Map 1 illustrates the identified mass grave sites have so far been found on the territory of Slovenia.

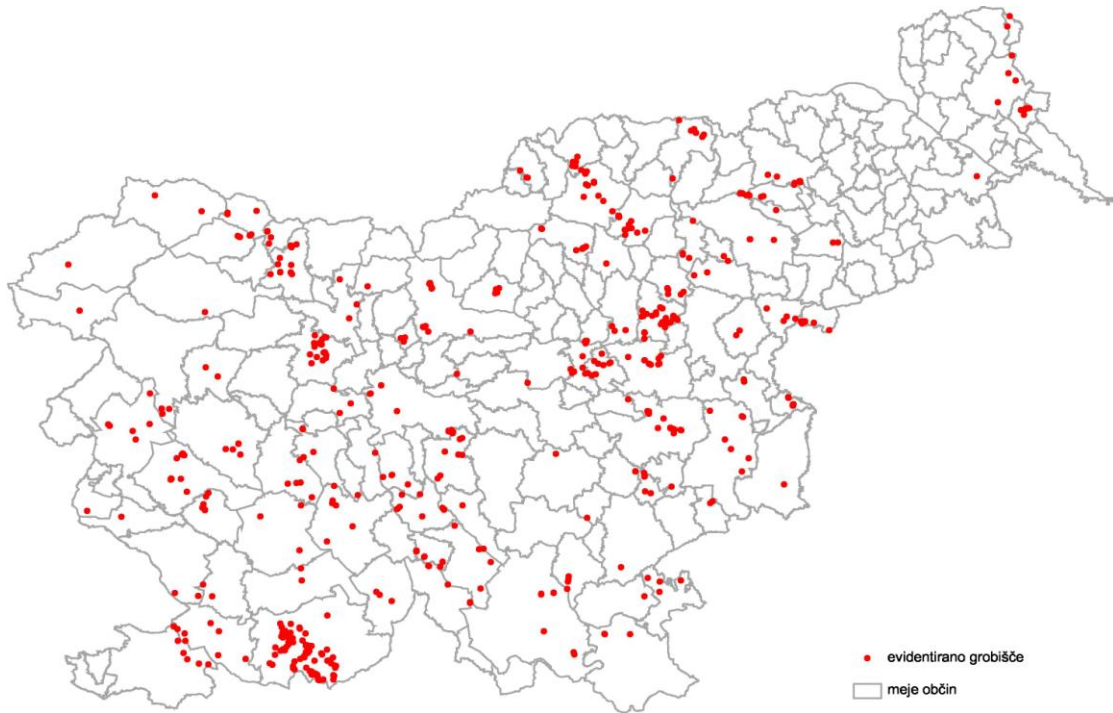
### **Map 1 – Identified mass grave sites on the territory of Slovenia**

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<sup>10</sup> *Ibid.*

<sup>11</sup> See T. Giesser Pečar, at p. 529.

<sup>12</sup> *Ibid.* At 457. See also Anthony Cogwill, Thomas Brimelow and Christopher, *The Repatriation from Austria in 1945. The Report of an Inquiry*, London 1990 (Cogwill Inquiry, Reparations); Cogwill Inquiry. *The Documentary Evidence Reproduced in Full from British, American, German and Yugoslav Sources*, London 1990; and Ian Mitchell, *The Cost of Reputation*, Glasgow 1997, Nigel Nicholson, Long Live, New York 1998. See also John Corsellus, Marcus Ferrar, *Slovenia 1945: Memories of Death and Survival After World War II*, I B. Tauris & Co Ltd, 2005.



Source: Dr. Mitja Ferenc, Topografija evidentiranih grobišč, POROČILO KOMISIJE VLADE REPUBLIKE SLOVENIJE ZA REŠEVANJE VPRAŠANJ PRIKRITIH GROBIŠČ 2005-2008, Ljubljana 2008, Družina d.o.o., at page 25.

Having briefly examined factual background, the next section now turns to the analysis of the decisions of Slovenian courts in *Prosecutor v. Ribičič*.

### **III. *Prosecutor v Mitja Ribičič***

#### **A. Factual Background of the *Prosecutor v. Mitja Ribičič* case**

Mitja Ribičič was the first former official of Slovenian Communist Party to be charged in Slovenia for crimes against humanity since the end of the totalitarian regime in 1990. Documents found in the Slovene National Archive reportedly alleged that in 1945 Mitja Ribičič helped draft a list of 217 people for execution. Mitja Ribičič, was a deputy head in the Slovenian branch of Yugoslav secret police (OZNA) under Yugoslavia's post-war Communist leader, Josip Broz Tito. The OZNA was responsible for eliminating political opponents under totalitarian regime. Mitja Ribičič worked as a delegate until 1983 in the Slovenian Socialist parliament, in the Yugoslav federal parliament, and president of the Yugoslav Communist Party.

The Slovenian Interior Ministry official investigated post-Second World War killings and had investigated Mitja Ribičič's involvement since 1994. However, 'only in 2005 he had "chanced upon new documents in the state archives" that helped to make the case against the former security official.'<sup>13</sup> According to the new documents, the Slovenian authorities claimed that 'Ribičič's 'armed group' not only targeted soldiers, but also murdered civilians viewed as collaborators and disposed of their bodies in mines and ditches.'<sup>14</sup> As many as 15,000 Slovenes may have been executed without trials after the war by the Partisans in Slovenia. The order for the liquidation of those civilians may have derived from the head of the provincial OZNA branches, but the orders would have had approval from Ljubljana and possibly Belgrade branch of the Communist Party.

On 13 May 2005, the Slovenian police filed a criminal complaint for genocide against Mitja Ribičič for his role in the massacres which took place in the aftermath of World War II on the territory of Slovenia. The 86-year-old Ribičič was suspected of having ordered the murder of 217 people without trial while he was deputy head of the Slovenian branch of the Yugoslav communist secret service 'OZNA'. This was the first time that the police had made genocide charges in relation to reprisal killings of the Yugoslav communist regime. In April 2006, the prosecution amended the qualification of the criminal act and eventually filed a request for judicial investigation for acts of 'crimes against civilian population' pursuant to Article 374, Paragraph 1 of the Slovenian Criminal Code.<sup>15</sup>

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<sup>13</sup> Reuters, 25 May 2005, quoted in Prevent Genocide International, <[www.preventgenocide.org/news-monitor/2005may2.htm](http://www.preventgenocide.org/news-monitor/2005may2.htm)>, last visited 10 November 2008.

<sup>14</sup> International Relations and Security Network, <[www.isn.ethz.ch](http://www.isn.ethz.ch)>, 27 May 2005, Prevent Genocide International, <[www.preventgenocide.org/news-monitor/2005may2.htm](http://www.preventgenocide.org/news-monitor/2005may2.htm)>, last visited 10 November 2008.

<sup>15</sup> Official Gazette of the Republic of Slovenia, št 63/1994, (Slovenia) ('Criminal Code').

## **B. The District Court Decision**

### **1. Decision of the Investigation Court**

On 21 April 2006, the Supreme State Prosecutor's Office of Slovenia presented the investigating judge of the District Court of Ljubljana with a request to open a judicial criminal investigation against Ribičič for his alleged involvement in these crimes. The prosecutor based his request upon an annotation next to some of the names on the list of detainees who had been executed, which read: 'in line with the approval of comrade Major Mitja'.

In Slovenia, a judicial criminal investigation was the first phase of a formal criminal procedure. To open the judicial investigation, the prosecution needed to show probable cause that the suspect had committed a particular criminal act. Judicial investigation was led by the investigating judge and its outcome was either the filing of the charging document and thus the commencement of a trial, or the procedure was to be terminated. If the investigating judge considered the prosecution's request for opening a judicial criminal investigation unfounded, he or she needed, pursuant to Article 169(VII) of the Criminal Procedure Act, (Slovenia), to submit the matter to the respective district court for decision.

After examining the written documents and questioning the suspect, the investigating judge held that there was no basis for instituting criminal proceedings against Ribičič. First, the investigating judge argued that Ribičič could not be tried for crimes against humanity since Article 3 of the Criminal Code provided that the perpetrator of a criminal offence was subject to the statutory provisions applicable at the time the offence was committed. The investigating judge held that crimes against humanity committed on Slovenian territory in the months following the end of World War II were, at that time, not proscribed and criminalized in domestic criminal law or at the international level. Additionally, the investigating judge justified her opinion on the basis of Article 28 of the Constitution of Slovenia<sup>16</sup>, prohibiting retroactivity in criminal law. The investigating judge strictly applied the principle of legality and the prohibition of retroactivity of criminal law, and ruled that

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<sup>16</sup> Official Gazette of the Republic of Slovenia Nos 33/91-I, 42/97; 66/00,

since the crimes had been committed before the Criminal Code entered into force, its provisions could not be applied.

Alternatively, the investigating judge held that the prosecutor failed to present evidence amounting to probable cause that Mitja Ribičič had played a significant role in issuing the orders for the commission of mass killings. The investigating judge opined that no strong evidence had been submitted indicating Ribičič's influence on deciding whether a certain group of people should be killed. The annotation 'with approval of Major Mitja' could have been interpreted in different ways; it probably meant that Ribičič had reviewed a particular case and ordered it to be entered into the register of detainees. The register itself was only a transcript of data and there was no information in the evidence submitted as to who initially kept it, nor did it contain any signature of the suspect. Further, none of the documented testimonies indicated that Ribičič played a crucial role in the extra-judicial killings. The investigating judge also criticized the prosecutor for requesting the appointment of expert witnesses—historians—who would have determined whether there were sufficient grounds for opening the investigation against the suspect.

## **2. The Chamber Decision of the District Court in Ljubljana**

The Chamber of the District Court of Republic Slovenia in Ljubljana examined the appeal filed by the Supreme State Prosecutor and analysed the decision of the investigating judge of the District Court.<sup>17</sup> It dismissed the reasoning of the investigating judge that the provisions of the Slovenian criminal code concerning crimes against civilian population could not apply retroactively since those acts were not proscribed and criminalized at the time they were committed. By allowing exceptions to the principle of legality the international community recognized that protecting the rights of victims of crimes against humanity and international law was even more important than the principle of legality. This also indicated the existence of general principles of law recognized by civilized nations that allowed exceptions to the principle of legality.<sup>18</sup> Article 15(2) of the International Covenant on Civil and Political Rights and the general principles it referred to were binding upon Slovenia but prohibited

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<sup>17</sup> See Chamber Decision of District Court, Ks 962/2006, 27 June 2006.

<sup>18</sup> *Ibid.* Para. 25.



retroactive incrimination for all other acts. Accordingly, the exceptions to the prohibition of retroactivity in criminal law were allowed in certain instances. In the case at hand there existed a formal legal basis for instituting criminal proceedings for the alleged acts.<sup>19</sup> It also noted that Article 24 of the Rome Statute of the International Criminal Court does not apply in this case.<sup>20</sup>

In the request for the opening of an investigation, the Prosecutor submitted that Registry of Detainees Nr. 7 detailed 11,966 persons between 1945 and 1946. Out of the 11,966 names and cases, a substantial number of cases were dealt with by 'comrade Mitja'. More specifically, the document entails annotations 'in line with file comrade Mitja' next to the names of 5,830 persons.<sup>21</sup> The Registry of Detainees document included next to each person's name a short description of the status of that person such as whether individual belonged to the Home Guards, the Wermacht, was a partisan deserter or a person forcibly enlisted in the German army. This document enabled categorization in three documents: execution, release, adjudication. This description allowed the individuals to be allocated to three different categories: those who were to be executed, those who were to be released, and those who were to be put on trial. On the basis of this information, the Supreme State Prosecution constructed the case that the suspect was responsible for that kind of categorization of people. This categorization influenced what happened to persons following the distribution of Registration of Detainees document. Additionally several witnesses confirmed Ivan Maček, as head of the Slovenian Section of the Security Police, and Mitja Ribičič, as assistant of head of the Slovenian Section of the Security were the persons mainly responsible for allocating the final destination of arrested persons.

The Prosecution described the alleged execution of 217 people as part of a policy of a widespread attack on that part of the civilian population which refused to join the Communist led National Liberation Movement. Victims of extrajudicial execution after II World War were defined as such by the victorious Partisan National Liberation Movement. The Prosecutor also submitted that while the decision concerning extrajudicial killings at the Federal Yugoslav Level, but it was carried out by local forces of the Slovenian Component of the Yugoslav Secret Police. It must be noted that

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<sup>19</sup> *Ibid.* Para. 33.

<sup>20</sup> Rome Statute of the International Criminal Court,, 2187 U.N.T.S. 90, *entered into force* 1 July 2002. Article 24.

<sup>21</sup> *See* Chamber Decision of District Court, Ks 962/2006, 27 June 2006, at para. 24.

on 25 June 1946, Edvard Kardelj, the high Slovenian official in the Yugoslav Communist Party in Belgrade, informed the president of the Slovenian regional government, Boris Kidrič, that ‘there is no reason to be as slow as until now in cleansing in the future’.<sup>22</sup> It is disputed what ‘cleansing’ meant, but it most likely refers to extra-judicial killings carried out by the Yugoslav Communist Party.

The Court has confirmed that historical overview of international treaties to support the textual interpretation of Article 374 (crimes against civilian population) drawing the conclusion that crimes against humanity are incriminated not only in times of war but also in times of peace crimes.<sup>23</sup> International treaties adopted in the 19th and 20th century showed that crimes against the civilian population were at first criminalized only during wartime but gradually became proscribed also when committed in time of peace.<sup>24</sup> The first codifications of international humanitarian law were the Hague Convention (II) Respecting the Laws and Customs of War on Land (29 July 1899),<sup>25</sup> and Hague Convention (IV) Respecting the Laws and Customs of War on Land and its annex<sup>26</sup>. The Preamble of the Second Hague Convention and the Preamble of the Fourth Hague Convention also included the so-called Martens clause, which indicated that where no specific provisions existed, the principles of international law as they resulted from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience must be used. This clause indicated the beginning of what was in recent times often referred to as the general principles of law recognized by civilized nations, a wording used, *inter alia*, in Article 7(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>27</sup> The Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Establishing the Charter of the International Military Tribunal (‘London Charter’) proscribed crimes against humanity also during

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<sup>22</sup> *Ibid.* At para. 25.

<sup>23</sup> Chamber Decision of District Court, Ks 962/2006, 27 June 2006, 15.

<sup>24</sup> *Ibid.* para 14.

<sup>25</sup> Hague Convention (II) Respecting the Laws and Customs of War on Land (29 July 1899), entered into force 4 September 1900 (‘Second Hague Convention’).

<sup>26</sup> Hague Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land (18 October 1907) 36 Stat 2277; 1 Bevens 631; 205 Consol TS 2773; Martens Nouveau Recueil (3d) 461, entered into force 26 January 1910 (‘Fourth Hague Convention’).

<sup>27</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950) 213 UNTS 222; 312 ETS 5, entered into force 3 September 1953 (‘ECHR’ Para. 15-16).

peacetime.<sup>28</sup> Moreover, they placed themselves above the domestic laws as they criminalized acts even when those were not considered criminal acts pursuant to domestic law. This constituted an important exception from the principle of legality as known in various legal systems. The principle of legality was codified in Slovenia in Article 28 of the Constitution, and Article 3 of the Criminal Code.<sup>29</sup> It also noted that the general principles by civilized nations can also be a legal source<sup>30</sup> and that the decision also makes the conclusion that provisions of international treaties allowing for exceptions from the principle of legality on the basis of general principles of law are legal.<sup>31</sup>

The Court did pinpoint to the widespread or systematic attacks against the civilian population when discussing the crime against humanity, although it indirectly referred to this requirement by ascertaining that there had been a plan, in which the accused participated, of eliminating the political opponents. The Court also confirmed that the victims had been civilians.

As to the issue of whether probable cause had been established, the standard had not been met by the prosecution. Thus the request for judicial investigation was rejected. The evidence submitted did not demonstrate that Ribičič had participated in issuing orders of execution against the opponents of the regime.<sup>32</sup> As correctly noted by the investigating judge, the prosecutor had requested the appointment of expert witnesses to provide evidence which should already have been presented to the court in order to justify the opening of a judicial investigation in the first place.<sup>33</sup> It could thus be inferred that the prosecutor himself implicitly recognized that he did not have sufficient evidence to show probable cause that Mitja Ribičič had committed the alleged crimes.

Further, the High Court examined the District Court's conclusion and held that the evidence for opening the investigation should have included an answer to the question of who or which organ has accepted a decision on massacring the opponents of the Resistance movement controlled by the Slovenian Communist Party. It should have addressed question concerning which decision have been

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<sup>28</sup> The Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Establishing the Charter of the International Military Tribunal (8 August 1945) 82 UNTS 279, entered into force 8 August 1945 ('London Charter').

<sup>29</sup> Chamber Decision of District Court, Ks 962/2006, 27 June 2006, at para. 22.

<sup>30</sup> *Ibid.* Para. 20.

<sup>31</sup> *Ibid.* Para. 19.

<sup>32</sup> *Ibid.* Para. 36-54.

<sup>33</sup> *Ibid.*

made by Yugoslav leadership of Communist Party and OZNA and which decision have gone through hierarchically lower organs of Slovenian Communist Party. Since those arguments and evidence were missing from the decision, the Court concluded that investigation could not be opened. However, the court failed to provide exact reasoning for its decision. However, the High Court agreed with the Chamber decision of the District Court and denied a request to open an investigation in the conduct of Mitja Ribičič. The High Court confirmed that it could have been legally feasible to prosecute the defendant for crimes against humanity even though they were not criminalized at the time they had committed. It held that the District Court rightly established that those alleged crimes went against the basic principles of humanity.

#### **IV. Analysis of the Court's reasoning and Prospects for the future Prosecutions**

Having briefly described how judicial decision in *Prosecutor v. Ribičič*, attention will now be turned to an analysis of Court's reasoning and discussion of prospect for the future prosecutions. As to the issue of whether probable cause had been established, the standard had not been met by the prosecution. Thus the request for judicial investigation was rejected. The evidence submitted did not demonstrate that Ribičič had participated in issuing orders of execution against the opponents of the regime. As correctly noted by the investigating judge, the prosecutor had requested the appointment of expert witnesses to provide evidence which should already have been presented to the court in order to justify the opening of a judicial investigation in the first place. It could thus be inferred that the prosecutor himself implicitly recognized that he did not have sufficient evidence to show probable cause that Mitja Ribičič had committed the alleged crimes.<sup>34</sup>

That the decision in *Prosecutor v. Ribičič* has not sparked any legal commentary or even discussion from members of the academic legal community in Slovenia may be *prima facie* surprising. In this way, a number of Slovenian intellectuals and politicians share the fear that opening the investigation for crimes committed so many decades ago would deepen disagreement between different parts of Slovenian society and would hinder the path towards reconciliation between

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<sup>34</sup> Chamber Decision of District Court, Ks 962/2006, 27 June 2006, para. 36-45.

members of the former Communist Party and the rest of Slovenian Society. However, examples from other countries show that there cannot be catharsis of the respective nations without historically and legally addressing atrocities committed.

It is highly unlikely if a single judicial decision can address 'collective trauma' of the past in which Slovenian nation was split. However, it may be argued this is necessary as 'a kind of catharsis' to set the new century on a course based on principles of non-discrimination, tolerance, and diversity in the Slovenian society. The handful of reactions came merely from members of the media and individual journalists. Most of them agreed that prosecuting persons for crimes which were not criminalized at the time of commission does not violate the prohibition of retroactivity since those crimes were already at the time of commission contrary to fundamental principles of humanity. However, some authors also disagreed with that opinion.

#### **A. The Nulla crimen principle v. prosecution of crimes against humanity**

The *nullum crimen, nulla poena sine praevia lege* principle, or the *ex post facto* prohibition, means that a statute criminalizing an act or creating a new offence or imposing a stricter punishment for an existing crime cannot be applied retroactively to acts committed prior to its enactment. In other words, a statute criminalizing an act or creating a new offence or imposing a harsher punishment for an existing crime cannot be applied retroactively to acts committed prior to its enactment. According to the Investigating Judge of the District Court in Ljubljana, crimes against humanity after the Second World War in 1945 were not yet proscribed and criminalized; therefore Mitja Ribičič cannot be prosecuted. The District Court of Ljubljana rejected the reasoning of the investigating judge that crimes against humanity were not criminalized in Slovenia in the aftermath of World War II, noting that the prohibition of retroactivity did not apply to the most horrendous crimes.

The court, however, overlooked that crimes against humanity had already been prohibited in Slovenian legislation at the time the alleged acts in this case were committed<sup>35</sup>, certain provisions, including those on war crimes and genocide, met the criteria set by international and domestic criminal

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<sup>35</sup> The Constitutional Court of Republic of Slovenia, U-I-6/93, 1 April 1994.

law and could be applied by the courts in Slovenia. It followed that this possibility of criminal prosecution had not expired due to statutory limitations and in proceedings based on extraordinary legal remedies. As was concluded in the Constitutional Court's *Decision on the Decree on Military Courts*, The Constitutional Court of the Republic of Slovenia in its decision *on the Decree on Military Courts* recognized that already provisions of the Decree on Military Courts of 24 May 1944 ('Decree'), criminalized war crimes and crimes against humanity irrespective of whom they were committed by and it was not meant by the victor used for trying the vanquished.<sup>36</sup> Furthermore, *Decision on the Decree on Military Courts*, demonstrated that the constitutional practice of Slovenia enabled the use of general principles recognized by civilized nations. This decision dealt with the application of the Decree on Military Courts, and the Law on Establishment and Jurisdiction of Military Courts in the Yugoslav Army<sup>37</sup>, and stipulated that the provisions of the Decree which violated general principles of law recognized by civilized nations could not be applied. It is important to underline that the Decree applied during the first months after the War, when most massacres were committed. Hence, the Constitutional Court held that this Degree of Military Courts provides a sufficient legal basis for prosecuting crimes against humanity after the Second World War on Slovenian territory and it is not necessary to rely on prohibitions set in customary international law.

#### **B. Legal qualification of massacres in the Slovenian territory as crimes against humanity or crime of genocide**

This section argues that massacres in the Slovenian territory can be qualified as crimes against humanity. The question as to whether the Slovenian criminal law from the period after the independence, in its relations to crimes against international law, has adapted to or is more in line with international criminal law standards, can be answered in the sense that Slovenian Criminal Law adopts an approach enshrined in the Statute of the International Criminal Court and even extends the definition of some crimes beyond the definition enshrined in the ICC Statute.

This section argues that there are strong moral grounds and possibly legal grounds for prosecuting crimes against humanity committed in Slovenia after the Second World War. As noted,

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<sup>36</sup> *Ibid.*

<sup>37</sup> Official Gazette DFY, No 65/45 ('Military Courts Law').

the governmental commission for Settlement of Hidden Mass Graveyards has so far found between 500 and 600 hidden mass grave sites on the territory of Slovenia. In order to identify if the acts committed after the Second World War on Slovenian territory would qualify as crimes against humanity, it necessary to first identify the crimes against humanity. To be classified as a crime against humanity, all crimes must satisfy particular common criteria, referred to as the chapeau elements: firstly the conduct must be committed as part of a widespread or systematic attack directed against a civilian population and secondly, the perpetrator has to know that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

The first common element is the most important; that the conduct was committed as part of a widespread or systematic attack directed against a civilian population. Trial Chamber of International Criminal Court for former Yugoslavia held in *Tadić* that: 'It is now well established that the requirement that the acts be directed against a "civilian population" can be fulfilled if the acts occur on either a widespread basis or in a systematic manner. Either one of these is sufficient to exclude isolated or random acts'<sup>38</sup>. The term 'population' does not refer to the entire population. Rather, 'the "population" element is intended to imply crimes of a collective nature and thus exclude single or isolated acts which, although possibly constituting war crimes or crimes against national penal legislation, do not rise to the level of crimes against humanity'.<sup>39</sup> For crimes to be considered crimes against humanity, there must be an association with a widespread or systematic attack. According to the ICC Elements of Crimes, the widespread or systematic attack must be carried out 'pursuant to or in furtherance of a State or organizational policy to commit such attack. The acts need not constitute a military attack. It is understood that "policy to commit such attack" requires that the State or organization actively promote or encourage such an attack against a civilian population.'<sup>40</sup> Crimes committed on Slovenian territory may fulfil this criteria since they were directed at part of the civilian population and they have been committed on a widespread basis or in a systemic manner. More specifically, the massacres have been committed throughout territory of Slovenia in a systematic

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<sup>38</sup> ICTY, *Prosecutor v. Tadić*, IT-94-1 "*Prijedor*" (Trial Chamber), 7 May 1997, Sect.VI.D.2.(b).ii.a <http://www.un.org/icty/tadic/trialc2/judgement/index.htm>, last visited 5 April 2007

<sup>39</sup> ICTY, *Prosecutor v. Tadić*, Sect.VI.D.2.(b).ii.

<sup>40</sup> Elements of Crimes, Article 7, Introduction para. 3, p. 116. *Rome Statute of the International Criminal Court*, (2002) 2187 UNTS 90.

manner in three months following the end of the Second World War. They can be described as a widespread and systematic in the light of the fact that they were committed throughout Slovenian territory and over a longer period of time. As it has been noted earlier, almost six hundred hidden mass graves have been so far found. These are widely documented historical facts, which as such do not appear controversial or disputed. In other words, it may be argued that described attacks formed part of official state policy against the political opponents.

Secondly, the perpetrator of crimes against humanity merely has to have knowledge of the existence of a wider attack, of the broader context in which his crime occurs.<sup>41</sup> There is no requirement of a specific intent for their actions to form part of that widespread or systematic attack or to contribute to the attack's objectives, nor is there a requirement of knowledge of the policy behind the attack. It would be very difficult to argue that high Communist officials as *de facto* government at the time at territory of Slovenia had no knowledge of any crimes committed in the territory of Slovenia. Despite this, it is equally difficult to identify or prove that a particular person gave instructions or had knowledge of existence of attacks.

Yet even if the Prosecution recognized the killings after the Second World War as crimes against humanity, it had to prove the elements of the crimes against civilian population under Slovenian criminal law and not under international criminal law. It appears that would be possible. It is highly unlikely that a former high Communist official will ever be prosecuted for a crime against humanity, given the high requirement in the chapeau elements of the crime being a part of a widespread or systematic attack, which is hard to prove in the absence of documented evidence even though the remains of killed person are still found every week in the remote Slovenian forests.

Alternatively, it is submitted that it would be difficult to argue that persons massacred after the Second World War constituted one of the protected groups (national, ethnical, racial or religious group) within the meaning of Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>42</sup> For example, the Prosecution Office first decided to charge Mitja Ribičič with

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<sup>41</sup> ICTY, *Prosecutor v. Tadić*, para. 656.

<sup>42</sup> Convention on the Prevention and Punishment of the Crime of Genocide Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 *entry into force* 12 January 1951, in accordance with article XIII.



the crime of genocide under article 373 of the Criminal Code of Republic of the Slovenia. At the later stage, it legally modified the request for investigation into alleged crimes against the civilian population under article 374 of the Slovenian Criminal Code.<sup>43</sup>

However, under the Criminal Code of Slovenia crimes of genocide committed with intention to destroy, in whole or in part, a national, ethnical, racial, religious group, and also if those acts are committed against a social or political group. Article 373 of the Criminal Code of Slovenia defines crime of genocide under the chapter on criminal offences against humanity and international law. Paragraph 2 of Article 373 the Criminal Code of Slovenia states that an individual can also be punished for crimes committed against a social or political group, which is wider definition than the one found in the Genocide Convention.<sup>44</sup> The Prosecutor decided not to bring charges for genocide since it would be more difficult to prove direct intent of the allegations and alleged perpetrator, especially due to the lack of any documents or witnesses. However, it appears that charges against Mitja Ribičič could have been brought also for crime of genocide since specific intent to systematically destroy a particular political group might have been present. The next section discusses some challenges of bringing crimes against humanity after so many years after events.

### **C. Challenges of bringing a crimes against humanity cases so many years after events**

Following the decision of the Superior Court of Slovenia in Ljubljana, the Head of the Slovenian Supreme State Prosecutors noted that the Courts might have employed a higher burden of proof than usually required in similar criminal cases. The Prosecutor hence was unsuccessful in showing a probable cause that Mitja Ribičič orchestrated the commission of heinous crimes after the Second World War. The Prevent Genocide International notes that ‘the order for the liquidation of alleged

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<sup>43</sup> See Article 374 of the Slovenian Criminal Code.

<sup>44</sup> Paragraph II of Article 373 of the Criminal Code of Republic of Slovenia reads as follows: ‘The same punishment shall be imposed on whoever commits any of the acts under the previous paragraph against a social or political group’.

collaborators might have originated from the head of the provincial OZNA branches, the authorities said, but the orders would have had approval from Ljubljana.<sup>45</sup>

The reality is that there may not be many more cases brought to the court: elderly witnesses are dying off and records of crimes have been erased, hidden or lost in some cases. It is disputed if the Courts reached the correct conclusion when they refused to open judicial criminal investigation into alleged acts of Mitja Ribičič. Some commentators argued that from historical evidence it seems that a probable cause has been presented by the Office of the Prosecutor. It appears arguable whether the decision of summary killings was indeed reached at the federal level of the Yugoslav secret police or Yugoslav Communist Party. Ribičič used to be the deputy security chief for Slovenia in the OZNA security and intelligence agency of the then Yugoslavia. Holding this high official position by itself may appear that he knew or must have known what was going on the Slovenian territory in the months following the Second World War. Further, another issue is whether Ribičič or other responsible persons would even be medically fit to stand trial.<sup>46</sup>

While the Prosecution's reasons for modifying charges against Ribičič from the crime of genocide to crimes against humanity may have been justified, there appear to be a number of weaknesses in the Court's reasoning. It may appear the Court could have interpreted evidence differently as various direct and indirect evidence suggested that he might have been decisively involved in the killings of 217 people based on an annotation which was added to some of the detainees from a list of detainees. This annotation found in the document read: 'in line with the file of comrade Major Mitja'. As such annotation was unclear the Prosecution therefore requested that a special team of historians be set up to investigate the matter, but the investigating judge rejected the motion to appoint a special team of historians to be set up to answer whether 'Ribičič's name on the list actually means that he had a say in the killings'. It may appear that Court's decision would have been much more convincing if it would have employed group of experts, which could then produce an

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<sup>45</sup> International Relations and Security Network, <[www.isn.ethz.ch](http://www.isn.ethz.ch)>, 27 May 2005, Prevent Genocide International, <[www.preventgenocide.org/news-monitor/2005may2.htm](http://www.preventgenocide.org/news-monitor/2005may2.htm)>, last visited 10 November 2008.

<sup>46</sup> See German case against Heinrich Boere for alleged reprisal killings of three Dutch civilians, where the Court declared Boere medically unfit to stand trial. <<http://www.haaretz.com/hasen/spages/1053581.html>>. accessed 9 February 2009. See Nicholas Kulish, In Germany, Whispers of 'Enough' at a War-Crimes Trial, New York Times, <<http://www.nytimes.com/2009/02/08/weekinreview/08kulish.html?ref=weekinreview>>. accessed 9 February 2009.

authoritative statement on the Court's conclusion. The High Court held, however, that probable cause was not proven in relation to whether there was any intention on part of accused to destroy part of civilian population. The first case more than sixty years after the atrocities were committed, against former senior Communist official who was suspected of having played a major role in the summary killings of civilians after the Second World War, has therefore stumbled at the first obstacle.

Criminal justice may play an important role for achieving a kind of catharsis of a particular nation. In this way, it may contribute to transition from totalitarian regime to the democracy based on the rule of law. Domestic prosecution of crimes against humanity in Slovenia face, however, many difficult challenges. First, it may appear the Slovenian Courts may apply higher standards as it known in similar criminal cases. Second, it appears that much rests – despite the crucial recognition in the international community that there can be no lasting peace without justice – on political will of power players. There will always be those who argue that prosecution are a hindrance to rather than a foundation for reconciliation between different groups in society. However, the right answer might be that both peace and justice are possible and necessary and the question is not *if*, but *when* justice should be pursued. Many witnesses and indeed perpetrators of these events have already died due to remoteness of the events, which took place in the months following the end of the Second World War.

Also, it can be noted that there are several obstacles against domestic prosecution in Slovenia relating to factors beyond formal and substantive dimension of concept of law. In other words, the problem in Slovenia is not that it does not have constitutionally (formally) independent judiciary and normative safe-guards protecting right to a fair trial. The real and far deeper, structural problem is that it does not have people and individuals who could avail themselves normative safeguards rights and ideals mainly due continuing influence of invisible forces of former totalitarian regime.

It seems that there lessons useful for other countries facing transitional justice issues to be drawn from the failure of the prosecution to present a sufficient case. Prosecution of crimes against humanity require appropriate resources, including an investigatory structure, and security infrastructure for judges, courtrooms, lawyers (prosecutors, defence and other lawyers), investigators, and detention facilities. It is arguable whether the Prosecution was up to the task of prosecuting Mitja

Ribičič for those crimes and the question remains if those Prosecutors were qualified enough to work on this case.

#### **D. How to deal with post-Second World War crimes in Slovenia?**

This section argues that there must be some response to the crimes committed after the Second World War. In this way, perpetrators should be subjected to some mechanism, which would at least emphasize apologies and compensation given that punishment of unknown perpetrators is hardly feasible at this stage.<sup>47</sup> In this way, Judges Fura-Sandström, David Thór Björgvinsson and Ziemele noted in their joint dissenting opinion in *Kononov v Latvia*: “Why should criminal responsibility depend on which side those guilty of war crimes were fighting on?”<sup>48</sup> Further, Judge Myer opined in its concurring opinion in *Kononov v Latvia* that:

Understandable as it may seem that the Partisans wanted to take revenge for the betrayal and subsequent massacre of their fellow Partisans – or even wanted to set an example to other Latvian villages who might otherwise be willing to collaborate with the occupying German forces – they should not have resorted to an “eye for an eye” approach and should have chosen other means. Even in a situation of war, and even allowing for the difficulties facing a Partisan group having to take collaborators prisoner and transport them to a safe place to stand trial, they ought not to have killed these people on the spot. Besides, some of the killings were particularly gruesome.<sup>49</sup>

Along the same lines, *Prosecutor v. Ribičič* reflects difficulties, challenges, and importance of bringing crimes against humanity cases before courts so many years after the events. It may appear irrelevant whether there was in fact sufficient evidence to proceed with criminal investigation in

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<sup>47</sup> It must be noted that 'there are several examples of cases where impunity has not upset the social order, however. 'Post-Franco Spain is the best illustration of the assertion that forced amnesia, whether through a formal amnesty or an informal system of impunity, provides a stable peace. Spain responded to the end of the Franco regime not by engaging in inquiries and prosecutions for clear violations that occurred under the dictator but by refusing to even acknowledge that violations occurred. Spain did not descend into civil conflict, but instead developed into a relatively stable and peaceful democracy. Post-Vichy France, post-Civil War United States, and even post-Khmer Rouge Cambodia also provide examples of impunity coupled with relative peace and security.' *Ronald C. Slye*, *The Cambodian Amnesties: Beneficiaries and the Temporal Reach of Amnesties for Gross Violation of Human Rights*, 22 *Wisconsin International Law Journal* 99, 107 (2004).

<sup>48</sup> *Kononov v. Latvia*, ECHR, Application no. 36376/04, Joint dissenting opinion of judges Fura-Sandström, David Thór Björgvinsson and Ziemele, Para. 3.

<sup>49</sup> *Ibid.* Concurring opinion of Judge Myjer, Para. 12.

*Prosecutor v Ribičič*. Adding to the difficulty is the fact that there is no clear national consensus on the ways to tackle crimes against humanity after the Second World War.

What is more worrying, that this was only the first case ever to be brought before Slovenian or any other courts for crimes against humanity after the Second World? What role should judiciary play in addressing dark chapters of Slovenian contemporary history? Should prosecutor refrain from criminal proceedings and should alternatives to criminal justice be employed? If the answer to this questions is yes, and if one wants to avoid impunity, than the only plausible alternative would be to established special department within criminal courts dealing only with the cases arising from post-Second World massacres. If the answer to this question is no, it appears that some other non-judicial mechanisms could be employed. What is clear, that not doing anything appears a wrong answer? That goal will remain unrealized so long as the Slovenian society remains unwilling or unable to effectively tackle dark chapter from its past.

Prosecutions of international crimes, whether in national legal orders or international level are easier to accomplish if they do occur close in time to the conflict, because evidence and memories are fresher, but each war to peace transition is different. *Prosecutor v. Ribičič* was the first occasion, where the case was brought against the former official of the Communist part for atrocities committed at the end of the Second World War in Slovenia. It was impossible to go through with those prosecutions during the totalitarian regime since the Slovenian judiciary was far from being independent, which is even truer for the cases against former members of the highest circles of the Communist Party. Nothing occurred in the first ten years after Slovenia gained independence. However, whether national and/or international criminal justice could be the right answer for addressing those issues, remains to be seen. Even if a country implements prosecutions after some time has passed, those involved in criminal justice will need to consider the issue at the same time as considering alternative approaches, such as truth-seeking, vetting, institutional reform or reparations, in order to determine the appropriate sequencing. None of those mechanisms have so far been used in Slovenia.

It may appear telling that until 2005 no individual was indicted for these heinous crimes committed after the Second World War against political opponents of the Communist party. Even

more so, no charges have been brought. As many as one hundred and thirty thousands persons are estimated to have been summary executed after the Second World War in Slovenia by the National Liberation Movement led by the Communist Party. In this way, almost six hundred hidden mass grave sites have been so far found in the Slovenian territory. Systematic identification of mass grave site has begun in 2002 under the aegis of the Ministry of Justice. Even though the project has stalled at some point, it is now again in full operation. System registration of the mass grave may be completed in the next years. The Slovene government has recently drawn up enacted law giving equal status to all those civilians killed during and after the war, whether by communists or fascists. This case was the first to appear before the courts in Slovenia to deal with difficult issues of the past. The prosecution of the former Communist officials did give the Court an opportunity to clarify the alleged crimes, however it appears the court did not seized opportunity to proceed with the case, which could have clarify who in fact gave orders for these killings.

Thus, despite many suggestions the Slovenian judicial system may not be looked at as the only possible solution for the prosecution of individuals for heinous crimes against humanity. Instead, Slovenian society has to reach agreement on how to tackle those crimes and possibly to reach reconciliation between different parts of the Slovenian society. It appears that if not addressed accordingly, crimes against humanity committed by Slovenians against Slovenians after the Second World War are going to stay at the dark side of the collective memory of the Slovenian nation. However, *Prosecutor v. Ribičič* brings lessons to the Slovenian judiciary and prosecution not to shy away from taking action in these situations and where Prosecution has substantial evidence to proceed on with the case. Even if a country implements prosecutions after some time has passed, those involved in criminal justice will need to consider the issue at the same time as considering alternative approaches, in order to determine the appropriate sequencing. None of those mechanisms have so far been used in Slovenia. A number of non-judicial alternative responses such institutional reform or reparations, truth and reconciliation commissions or truth-seeking, pardons, lustration processes, civil proceedings and declaratory statements of apology or the construction of official memorial can be identified. The next section respectfully submits that truth-seeking can be recognized as one of the possible solutions beyond legal sphere.

## 1. Truth and Reconciliation Commission for Slovenia?

This section argues that one of the alternatives is to establish truth and reconciliation commission for Slovenia. To remedy shortcomings of judicial system another proposal would be to create an independent commission, which would investigate human rights violations in the Slovenian territory after Second World War. However, Slovenian society needs to decide whether it desires to pursue peace and truth rather than justice concerning unaccounted massacres after the Second World War. It is questionable whether such substitute can provide some degree of accountability. What would be the purpose of the Truth and Reconciliation Commission in Slovenia? It is submitted that Slovenian society needs to pose itself a question what is the purpose of creation such a commission. Generally, such commission are established to secure peaceful transition from a military and totalitarian regime to a new, more democratic and accountable governance. It appears that violations committed in Slovenia after the Second World War must be addressed if reconciliation of parts Slovenian population is ever to be achieved. Alternatively, the truth and reconciliation in Slovenia may offer alternative to prosecution of crimes at national level. In this way, alternative mechanisms would emphasises apologies and compensation rather than punishment. Such system may contribute to the identification of perpetrators, but in the same vein to the peace and stability in society. Truth and reconciliation contribute to solving conflict peacefully. In this light, W. Schabas notes that 'Peace and reconciliation are both legitimate values that should have their place in human rights law. They need to be balanced against the importance of prosecution rather than simply discarded.'<sup>50</sup> The work of the South-African Truth and Reconciliation Commission illustrates that truth commissions can be valuable mechanisms

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<sup>50</sup> W. Schabas also noted that the UN Secretary-General's statement to the Security Council that they should reject any amnesty for genocide, war crimes, or crimes against humanity was unfortunate, because amnesty can be very useful in promoting peace and that its significance in this respect is even reflected in Article 6(5) of Additional Protocol II. William A. Schabas, *Amnesty, The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone*, 11 *University of California Davis Journal of International Law & Policy*, 145, 165-68 (2004)

for victims, provided that they adopt and implement the ‘victim-centred’ ideals.<sup>51</sup> In this way, the South African Truth and Reconciliation process did allow for prosecutions; essentially people who committed crimes witness before the Commission by a certain date or afterwards face prosecution. If they did not come forward themselves by confessing, they would be facing a prosecutor flush with evidence.

For these reasons, it appears doubtful is such Commission can be created also in Slovenia since many decades have passed since the crimes occurred. Potential Truth and Reconciliation Commission would have strength in that it would offer victims of human rights violations a state created forum in which to be publicly acknowledged, and fixes in historical memory the social context in which these violations occurred. But in so doing, it would be difficult to avoid the intrinsic tension between the Commission's objective to achieve national unity and reconciliation as well as the just resolution of individual human rights violations. In this regard, the Slovene government has recently drawn up enacted law giving equal status to all those civilians killed during and after the war, whether by communists or fascists.

Another alternative would be issuing a public apology and construction of public memorial sites dedicated to the victims of the crimes against humanity everywhere mass graves from months after Second World War have so far been found. Such memorials could include a list of the names of all victims killed on the particular site, the publication of these names acknowledging that they have fallen in the name and honour of Slovenia. What appears to be required are the simple and dignified memorials. They would be dedicated to the memory of the victims of post-war crimes in Slovenia. A number of such sites have been already constructed such as Memorial chapel at Kočevski rog grave site. It seems, however, that each individual grave site would require an individual chapel. Additionally, a specific aim-oriented Museum could be created honouring all victims killed after the Second World War by the totalitarian regime, which would include testimonies, documents, and photographs to illustrate what cannot be otherwise conveyed and could also serve as educational institution. This would help to ensure that to such acts do not repeat in the future.

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<sup>51</sup> See Sam Garkawe, The South African Truth and Reconciliation Commission: A Suitable Model to enhance the role and rights of victims of gross violations of human rights?, [2003] *Melbourne University Law Review* 14.



## V. Conclusion

Discussion on crimes committed on Slovenian territory after Second World War is often underpinned by deeply-rooted emotions that suppress the argumentative dialogue and reasoning and has led to long-term polarization of Slovenian society on left and right forces. There are no simple answers to the fundamental questions raised by cases such as *Prosecutor v. Ribičič*. The challenge posed by transition from oppression to democracy is to account for the totalitarian regime system and yet to build a new society. The Slovenian courts have allowed for possibility of exception to the prohibition of retroactivity, however they have not so far found any individual responsible for crimes committed after the Second World War. The Second World War in Slovenia was about social revolution and takeover of authority by force by then illegal Communist Party of Yugoslavia. In the end, legally, it seems difficult that any former high Communist official will be prosecuted in the future by the Slovenian Court for these crimes. *Prosecutor v. Mitja Ribičič* has shown that it is very difficult to show a probable cause for opening a criminal investigation into crimes against humanity committed on the Slovenian territory in the months following the Second World War. The issues concerning crimes against humanity after Second World War in Slovenia are rife with political issues, and none of the crimes themselves fall within the *rationae temporae* jurisdiction of the International Criminal Court or International Criminal Court for the Former Yugoslavia. Perhaps most importantly, it is unlikely that the Supreme Prosecution Office of Slovenia will take steps to prosecute further former high Communist officials due to the procedural obstacles.

It can perhaps be overly simplistic to suggest compromise for difficult legal and political questions. In the case of crimes against humanity in the Slovenian territory, the various constituent groups often do not listen to each other or allow for compromise. Until all politicians realize some form of justice is inevitable in the foreseeable future, and victims'-oriented political parties radically change they way in asking for nothing but justice, nothing will be done to effectively tackle these

crimes. Though the present situation may appear grim, consensus does appear to be growing for meaningful and continued reform. The efforts of the past decade are working. By showing the extent to which the judiciary and law in Slovenia has (not) responded to crimes against humanity in Slovenia, this work is a modest attempt to push for continued progress and possibly legislative reform in the hope that this dark chapter in the Slovenian history will be closed once and for all.