

**Can Multiethnic Societies Work After Civil War? A View from “the inside”:
the Croat Case.**

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(with an input by Jan Kubik)¹

Abstract

In our examination of the question, “Can Multiethnic Societies Work After Civil Wars?” we looked at the interaction between courts and the grievances presented by the members of returning ethnic groups in Croatia. The main finding is that there is little incentive for citizens to return to their homes if they are not convinced that their civil and property rights are guaranteed. Furthermore, economic stability, crucial for return, is also vital in creating and maintaining political stability. Neither can be achieved if disputes between refugee and IDP over the rightful ownership of abandoned and occupied property erupt. The courts and the legal system play a prominent role in dealing with these issues.

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Data was gathered on the basis of field research conducted by Komarica from October 1998 - February 2000.² Investigation was conducted throughout the following cities of Croatia:

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|------------------------|-------------|
| 1. Vukovar | 9. Vinkovci |
| 2. Beli Manastir | 10. Osijek |
| 3. Glina | 11. Sisak |
| 4. Knin | 12. Gospic |
| 5. Gvozd | |
| 6. Ilok | |
| 7. Hrvatska Kostajnica | |
| 8. Petrinja | |

Eight of the twelve cities listed were occupied and held by Serb forces and the other four were on the front lines, but never completely conquered. We specifically focused

¹ We apologize for such a delay. Komarica has been very busy in Croatia, attending to various problems he writes about. He is flying in today (Wednesday). We seriously considered withdrawing from the conference, but decided that a “voice from the ground” may be of some interest to the participants. Kubik contributed some advice earlier and minor editorial revisions to this draft.

our attention on the Municipal³ courts, as the first institutions where people present their grievances.

The research methodology was based on intensive three to four week observations of the following processes in each of the courts in the twelve cities:

- Judicial proceedings;
- Internal meetings of Judges;
- Implementation of verdicts in the field;
- Examination of the deliberation process before the handing down of a verdict, opinion or ruling;
- The actual writing of verdicts;
- Analysis of selected court dockets;
- Interviews with members of ethnic minorities and majorities.

An analysis of problematic issues brought before the courts enabled us to gauge the success of multiethnic societies living together in the post war setting of Croatia. Furthermore, these observations offered direct access to all individuals with grievances, the target group. Hence, we were better able to identify factors that presented potential threats to the stability of multiethnic communities in Croatia that have begun to live together. We have defined those factors as follows:

- I. Timing of return;
- II. Laws and regulations;
- III. Specificity of the area;
- IV. The International Community.

FACTOR I. Timing and manner of return

Reintegration of ethnic populations has been a relative success in Croatia. People of different ethnic groups are managing to live together throughout the country even in areas that experienced a great deal of destruction. In fact, there are areas containing a Serbian majority⁴. This success seems to be determined to a significant degree by the

² The United States Fulbright Program and Rotary International Ambassadorial scholarship made this work possible.

³ The law governing the regular functioning of Courts (Zakon o redovnim sudovima Republika Hrvatske) prescribes Municipal courts as the first instance courts in Croatia. Accordingly, 75% of judicial cases are argued in front of Municipal courts..

⁴ In Vukovar for example the majority of the population is Serbian. In the winter of 1998, I interviewed the mayor of the town Mr. Vladimir Stengel, He informed me that the ration of Serbs to Croats was approximately 5:1. Furthermore, this ratio increases after business hours, when the majority of Croats return to neighboring towns.

timing and manner of return occurred: it was gradual. International observers have noted that the government of Croatia, while advocating fair and equal return, in reality was not implementing this policy. This inconsistency has had a positive impact on the reintegration of several cities. The intention of this policy was to slow and ultimately discourage the return of Serbs but instead it produced a more fertile ground for their arrival. Ethnic hostilities have taken a second place to economic sustainability of the returnees. This increased the chances of reintegrating the populations.

Returns into areas changed demographically and physically by fighting are challenging. Memories of atrocities and ethnic cleansing produce the first obstacle to having the groups live in the same city. In order to facilitate return to such areas, an appropriate infrastructure must be established. Returnees, wishing to go back usually find their homes destroyed or occupied by other refugees or IDP's.⁵ Homes that were destroyed can be rebuilt but what to do with homes occupied by others? How does one remove current occupants to make room for the returning population? The courts are expected to implement this process through the forceful eviction of families. This is not a pleasant process and if executed too often can result in civil unrest within the town. People, who have lost almost everything, without due process, are being asked to follow procedure and due process to regain what was once theirs and forcefully taken away. The courts are faced with this daunting task and an absurd condition in which to operate.

The city of Vukovar, the most devastated in the war, was occupied for over six years, 18 November 1991 to 15 January 1998. While speaking with 38 returning individuals I noticed that they all returned soon after the liberation. They wanted to witness what happened to their property and town. Secondly, the majority of them (32 out of the 38), did not want to stay in Vukovar. Upon arrival, they either found their homes devastated or partially rebuilt, but always with a new occupant living in them. To make matters worse, the inhabitants do not want to leave after living in a home for

⁵ Those that are in the apartment believe they have the right to be there in fact, the acting governments of the area usually gave them some sort of approval to be in the home in question and to buy it. As one Judge explained it to me in Osijek, "Grenades were falling on the streets, if you could find empty and livable apartments you forcefully moved in and then sought a letter from the town granting you temporary occupancy status." The city officially overtook abandoned property and required that in

over six years. They might not have the possibility or desire of going back to where they once lived. Furthermore, if they have invested in the rebuilding of the home they are occupying now, they have no intention of leaving before receiving compensation for their investment.

In contrast, the town of Beli Manastir saw limited fighting. The JNA forces easily overtook the town at the onset of the Croatian conflict. The limited destruction and the fact that the city fell quite easily produced massive reallocation of populations, but not ethnic cleansing. Furthermore, the city and region was not liberated by military force but rather peacefully integrated. Finally, most of the buildings and city infrastructure were left intact; as a result the return of pre-war populations was more orderly. Wartime atrocities were relatively insignificant and in this area. This is perhaps why the town of Beli Manastir was the first to be reintegrated into Republic of Croatia. It is also the only city I saw that has three flags flying over the courthouse (Croatian, Yugoslav, Hungarian) and the nameplate on the courthouse building is written in three different languages. Interestingly, the UNTAES requested that all cases taking place during the six year “Krajna period” (the Serb control) should be removed from the court and destroyed. Their intention was to remove all evidence of war time killings or reports of attacks and looting.⁶ These factors, in combination – it seems – have contributed to the relatively successful post-war stabilization and re-integration of Beli Manastir, which now begins to function as a multiethnic community.

Returning populations will always produce a tremendous burden on multiethnic communities that are developing within a post war setting. It is certainly the dominant perception among the “locals” and it definitely contributes to the severity of the problem, whether or not it is transformed into concrete acts of retaliation. Perceptions are clearly determined by timing. If a specific action takes place at the wrong time, it may be perceived as a threat. Thus, if the return takes place *before* people have a chance to “calm down,” before homes or infrastructure can be rebuilt, and before institutions begin to function normally, the strain produced by returnees is so much

order for occupants to be in the apartment legally, they need to get a special permit from the city housing committee. The same procedure took place in the krajna region.

⁶ Judge B., Chief Justice of the court during the Krajna region. He is still a judge today.

more severe. This strain can be expressed in a collective protest demanding the outright rejection of the “return policy” or it may a form of isolated acts of violence.

The task of assisting the return process -- by creating the necessary legal conditions -- has fallen upon the courts. The courts are understaffed, overloaded with cases and generally have young and inexperienced Judges.⁷ They are also slow, but – paradoxically -- this turns out to be a benefit to the stability of the region. If they were quick and efficient, too many cases would be resolved quickly and mass evictions would be taking place to make room for the returning populations. Handing down the verdict is hard enough but the real tasks lies in the implementation of the verdict. Again this is more difficult in areas that have experienced high levels of violence and destruction versus those that have been spared. If return occurs too soon after an ethnic conflict, it will lead to violence: because under such conditions, return inevitably results in eviction.

FACTOR II: Laws and regulations that produce uncertainty

A crucial problem in Croatia’s post-conflict setting is how to apply rules and legal norms, designed to deal with problems arising during the “regular,” peaceful periods, to problems that have arisen as a result of a war and civil unrest. For example, how is the return of property to be conducted? How to obtain legally valid proofs that the returnees had been the actual owners of the homes they claim to be theirs? Property rights in the former Yugoslavia did not really exist. In the state-socialist system, most people had tenant rights in apartments and homes. State run corporations and the government were the actual owners.

For many cases, though, the proof of tenant rights and ownership is located in the land registry books. In several cities, however, the land registry was either severally damaged or looted. For example, in the city of Hrvatska Kostajnica, the land registry has been stolen. The Chief Justice described to me how he received a phone call from some individual from Serbia, claiming to have all land registry books of the court (one

⁷ Most judges do not want to work in the conditions and areas of re-integration. Hence, it is usually young and inexperienced judges that are left to do the job.

full truck load). “He even mailed me one of the books as proof. He wanted, 500,000.00 DEM for the return of all the books.”⁸

In Vukovar, the books were saved but are in such a bad shape that they will completely deteriorate in two years. The books of Beli Manastir were well preserved due to the intervention of the Chief Justice during the Krajna (Serb control) period. I spoke to him and he explicitly depicted how he was almost killed, because of his insistence that the books stay in the town and not be relocated to Yugoslavia.

Should the courts implement specific laws that regulate property rights or the treaties the Croatian Government has signed regarding the refugee return (Croatian Refugee Return Plan)? Well, perhaps yes, but there is no agreement among the judges as to the uniform interpretation of specific procedures and articles of the law. To make re-integration more difficult, current laws strongly protect the rights of those who unlawfully (from the Croat point of view) occupy apartments and property. For instance, several conditions must be met in order for an eviction of a refugee or IDP to take place. A judicial proceeding to establish rightful ownership must be completed before a proceeding for eviction can even be initiated. Although many mechanisms of actual implementation of the verdict (even forceful eviction) exist and they may be seen as specific checks and balances, they are implemented in a very unsystematic fashion. For example, I have seen documentation and heard eyewitness accounts of the following:

Some displaced persons have decided to live for free and make a profit. Displaced persons who have had their homes rebuilt by the State of Croatia, are renting out their homes instead of returning to them. In the mean time, they are living in someone else’s home and not paying rent, utilities or any other expenses associated with the apartment. They are waiting to be forcefully evicted. The irony is that people whose homes are being illegally occupied by these displaced persons are paying rent somewhere else and are unable to return to their homes.

FACTOR III: Specificity of the area

Understanding a complex mosaic of peoples and cultures involved in Croatia’s reintegration process is important; but even more important seems to be the most

⁸ Chief Justice Hrvatska Kostajnica interview

recent history. The areas of Eastern and Western Slavonia, including Posavina, witnessed the most destruction and atrocities. These areas are very rural, the majority of the population works on the land in various capacities. The Chief Justice in Beli Manastir, a town in Eastern Slavonija, explained to me the mentality of the people in this region:

The people are of a conservative and thrifty nature. They work with the land, which means you sow once a year and then you reap the benefits of what was planted. You must learn to live off what you take in until the next season. In this war, a lot of these people lost everything they saved and invested. They have been morally and psychologically devastated. They can never return to the lifestyle they once lead.

In Vukovar, where the level of violence and destruction was greatest, several individuals told me that there can never be a normal life for anybody from this area again. "The only people that can come and live here are those that did not know the city before it was destroyed and that have no ties to this city."⁹ This in fact is true: most of the pre-war population is not returning to Vukovar. They instead take advantage of the return benefits and begin new lives somewhere else.¹⁰

When I lived in Vukovar, I was told by several citizens of the town: "you must choose a side here, either Croat or Serb." I asked frequently why such a drastic split has occurred in the population; most people agreed on the following:

It is the acts of violence after the military campaign that makes it impossible for us to live with them. They took over the town and began killing and torturing and raping, but not at random. These were mostly old women and children who could not leave the city.¹¹

These comments reveal a deep chasm: we and us versus. them mentality is evident and, thus, a possibility of reconciliation seems to be very remote, if not impossible.

In contrast to Vukovar, the town of Beli Manastir, Eastern Slavonia, fell easily and quickly to the oncoming Serb-led JNA armed forces. Most of the population was

⁹ Dinko K, a judge and IDP from Vukovar, interview

¹⁰ People are on the official town records as having returned but in reality live somewhere else and have mail forwarded. The GOC (Government of Croatia) has offered to rebuild their homes for free. Once the homes are rebuilt the IDPs sell them. They have also received monetary benefits due to their status as IDPs.

either expelled or fled to avoid the fighting. The majority of the town and its population were not subjected to the violence, destruction, and atrocities, experienced by Vukovar. This is evident in the interpersonal relationships and physical appearance of the court (insert picture). The Chief Justice of the court in the town of Beli Manastir during the “Krajna period,” to this day, is still a judge in that court. Another observation: during the initial fighting in Croatia and Bosnia and Herzegovina an interesting development took place. When Serb, Bosnian or Croat soldiers entered a village, they would round up all non-members of their ethnic group. These people were put in camps for exchanges, expelled from the village, or tortured and killed. However, a problem emerged: what to do with the “Yugoslavs,” that is people who did not declare themselves Serbian, Croatian or Bosnian, but rather Yugoslavian. They were killed without delay.¹² The existence of such people (without “traditional national identity”) was the strongest is provides a strong argument that a multiethnic society is feasible; they had to be eliminated.

In conclusion, 203 out of the 220 people I interviewed in Croatia shared or agreed with this view of power sharing with other ethnic groups: “Let’s give them a status in the state, but no possibility to do to us what they once did. No control or say in governing institutions.”¹³

Published Statistics Vs. Field Observations

I have problems with the return statistics; my 18-month observations in the field lead me to different conclusions than those based on official data. I have noticed that original inhabitants from cities such as Vukovar, Knin, Glina, Petrinja and Hrvatska Kostajnica have not returned to their towns. While living in each of these places for three to four weeks, I kept asking around people who were originally from Vukovar and who worked there this one question: How many people from Vukovar have returned? Invariably, the answer was: “Almost none, the numbers they quote on the news, are lies.” I also talked to IDPs from these areas living in Zagreb and asked them

¹¹ Sinisa, Judge in Vukovar, interview

¹² Pero K, journalist during the war

how come they have not yet returned? The overwhelming response was, “what would I do in my former town, I have begun a new life here as an IDP. I have no incentive for return.” The vast majority of people I contacted told me that they returned to their town as soon as it was possible. The majority essentially shared the same view, “this is not the town we grew up in, it has changed during the past four to seven years we have been living as IDPs.”

FACTOR IV: The International Community and Other Observers

That is why we like dealing with Americans -- said K., president of the housing committee and Deputy Mayor of the town -- you can always count on the same type of treatment from them, regardless of your nationality. The rules of the game apply equally to all participants; no exceptions are made. America’s inability or lack of understanding of this situation is actually a benefit as far as I can see. This makes you blind to the differences and you end up treating all the constituents the same regardless of ethnicity and or nationality.

This was a comment made to me by the Deputy Mayor of Beli Manastir. I was asking him about the International monitoring force and their role in the reintegration process.

At first glance, perhaps insignificant facts, the OSCE monitors throughout Croatia do not have equal representation of all ethnic groups among their translators. Translators are a crucial filter between members of the International community and the people with whom they come into contact. In areas where atrocities, ethnic cleansing and destruction took place, people are extremely sensitive, especially to the question of ethnicity. Since an overwhelming majority of translators are of Serbian ethnicity,¹⁴ the first filter between the International community and the population is not reliable for Croats: then can recognize, of course, the Serbian dialect. In addition I was told on four separate occasions by judges and individuals working in the county prefecture in

¹³ I would ask people I meet in court, on trains, bars and so on about the possibility of living with the Serbs. A few people made the same statement, so I proceeded in asking other people I interviewed if they agreed with this statement, the vast majority said unequivocally yes.

¹⁴ Chief of staff 1998-1999 OSCE Vukovar, Henrik Villadsen, informal talk during OSCE Christmas party.

the city of Osijek, that translators tend to bend and twist the words being translated so as to give a different meaning of what was being said.

They approach this very sensitive area with a lack of sensitivity to what happened. They form judgements about certain events and then lose a great deal of their objectivity. ¹⁵

OSCE mandate in Croatia is to monitor and report. However, the UNTAES mandate, from whom the OSCE took over, had a much more active role in solving problems. Most of the foreign observers that worked during the UNTAES mandate just switched over to the OSCE. They have the tendency to get too involved and forget that their new mandate is to monitor and report. This active role has caused confusion among the population. They are not sure to whom to turn for help: should it be OSCE, thus the same people they used to ask for help during the UNTAES mandate and the “Krajna period”, or as the law now prescribes, the courts? This confusion contributes to the overall sense of destabilization.

While observing OSCE involvement in the Courts of Vukovar, Vinkovci, and Osijek, I have been told the following story over and over again by the Chief Justices in each of the courts: If a Serb is being evicted, the OSCE representative wants to slow down the judicial process, in contrast when a Croat is being evicted, to make room for returning Serbs, they ask us to speed up the process.

I asked the Chief Justice in Vinkovci how exactly OSCE executes this unwritten policy:

Well in the first instance, they ask us to process evidence, testimony, rules and articles that have nothing to do with the meritum of the proceedings only to draw out the proceedings. In the implementation they usually show up at the eviction site to look for procedural informalities to possibly extend the process. In contrast, when Croats are being evicted they pressure us to conduct proceedings at a quicker pace. As far as I can remember, they have never showed up when a Croat IDP was evicting a Croat refugee or vice versa. Only when it is a Serb-Croat dispute. In fact, we are obliged by a contract, our government signed with the International community, to inform them of any judicial process that involves Serbs.

On 26 January 1999, I witness the first forceful eviction to take place in Vukovar after its reintegration. A Croat IDP was evicting a Serb family from a home they had occupied for over six years. Judicial proceedings were conducted and the family was informed of the verdict

handed down by the courts. Furthermore, two additional years of proceedings were conducted to reach the actual implementation of the verdict. On the day of the eviction, four policemen, a social worker, two local NGO members for human rights abuses, the OSCE, lawyers for both parties, court appointed implementers, translators and monitors from the EU arrived. I observed the whole proceedings and at the end asked the OSCE field operative, "How come she only spoke with one of the parties, that is the Serbian person being evicted?" My question was never answered. I was told to contact the OSCE office and that they would better answer my question. Whenever I called, the person I needed to speak with was not available or in the field. The OSCE field representative did not communicate with the returning individual, all attention was focused on the Serbian family being evicted. The fact that the Croat family had lived in exile for over six years and the hardships they had endured were not addressed nor did they interest the monitors (I have a video recording of this event).

CONCLUSION

The reliance on the rule of law, including the protection of minorities and their rights, constitutes the backbone of a civil society and a stable democracy. In each state several institutions are entrusted with designing and enforcing the rule of law, as well as with protecting the sphere of a civil society. None of them, however, wields more power than the justice system. Accordingly, in order to predict the chances of post conflict stability, democratization and the ability of ethnic groups to live together, one needs to understand the functioning and role of the justice system in practice.

The impact of war has created problems that are affecting the stability of most post-war communities. This stability is further threatened by the returning populations; to make room for them the authorities must evict the present occupants of their homes and apartments. The existing laws were not written to deal with problems that resulted from war. This has left a large gap in the existing corpus of law, its interpretation, and implementation of the actual verdicts, hence exacerbating the atmosphere of uncertainty and ultimately increasing instability.

¹⁵ Iva V. Chief Justice Vukovar, informal interview, 14 January 2000.

Present day Croatia is a multiethnic state, containing several cities and villages populated by majorities of ethnic Serbs and Hungarians. For now, the problem is not so much who is Croat and who Serb, but rather how to deal with overwhelming concerns of daily life, jobs etc. “You are missing the point,” said Chief Justice V, “our problems are not the Serbs, but rather the corrupt people running this state.” Nevertheless, if the Serb population became more noticeable, various security issues - - real or imagined -- could offer an excuse for aggression. People are living together for now. Yet, if the rate of returns increases -- as seems to be the trend at the moment -- we could see renewed hostilities.