

**TRANSITIONAL JUSTICE MEASURES AND APPLICATION OF LAW FOR
ECONOMIC CRIMES IN CROATIA: WHAT CAN MACEDONIA AND BALKAN
COUNTRIES LEARN OUT OF THEM?**

1.02 Review Article

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Abstract

The article stresses the importance of addressing transitional justice measures and application of law on economic crimes in transitional countries. The article takes off from the example of Croatia. By giving case law of alleged transitional economic crimes occurred in Macedonia, the article deals with possible introduction of transitional justice measures throughout Balkan region.

Key words: Transitional Justice, Economic Crimes, Application of law

People, organizations, government or whole societies are presented within formation that is too disturbing, threatening or anomalous to be fully absorbed or openly acknowledged. The information is there of re some how repressed, disavowed, pushed aside or reinterpreted. Or else the information 'registers' well enough, but its implications – cognitive, emotional or moral – are evaded, neutralized or rationalized away.²

1. Introduction to the topic: Debate in Croatian scholarship over retroactive prosecution of transitional economic crimes

Transitional, transnational and international economic crimes that result in substantial loss of profit and violate human rights and are not prosecuted can have a major effect on overall economy, society and rule of law, the latter being particularly evident in transitional

¹Assistant Professor, University of Zagreb Faculty of Law, Department of Criminal law. This work was supported by the Croatian Science Foundation under project 1949, 'Multidisciplinary Research Cluster on Crime in Transition – Trafficking in Human Beings, Corruption and Economic Crime'. In writing this chapter, findings of the PhD study of Sunčana Roksandić Vidlička, 'Criminal Responsibility for Severe Economic Crimes Committed in a Transitional Period', defended as an international dual doctorate (University of Zagreb and University of Freiburg) in 2015, were used to describe the Sanader case and the context of transition. See already published findings of the author in the following research, primarily, Novoselec, Petar; Roksandić Vidlička, Sunčana; Maršavelski, Aleksandar, Retroactive prosecution of transitional economic crimes in Croatia – testing the legal principles and human rights // The Routledge Handbook of White-Collar and Corporate Crime in Europe / van Erp, Judith ; Huisman, Wim ; Walle, Gudrun Vande (ur.), Abingdon ; New York : Routledge, 2015. Str. 198-217.; Elizabeta Ivičević Karas and Sunčana Roksandić Vidlička, The Relevance of Asset Recovery Policies in Transitional Societies: The Croatian Perspective in Kalin Ligeti & Michele Simonato (eds.), Chasing Criminal Money Challenges and Perspectives On Asset Recovery in the EU, Hart Publishing, 2017. (forthcoming).

²Cohen, S., States of Denial: Knowing About Atrocities and Suffering, Cambridge, Polity Press, 2001., 11.

societies. Even more, impunity of businessman for economic crimes sometimes reinforces impunity for gross violation of human rights, especially in war-torn societies and in societies that are in transition. In this respect, Croatia belongs to a “club” of transitional countries where the debates on privatization and ownership transformation scandals flourishes. Croatia is still facing a particular legal situation regarding combating serious economic crimes committed in the period of privatization and ownership transformation and during the war period and peaceful reintegration (hereinafter referred to as transitional economic crimes).³

Since the economic offences committed in the transitional period during the Homeland War were not originally prosecuted in the period of their commission, Croatia amended its Constitution on June 16, 2010⁴ and abolished the statute of limitations with retroactive effect for specific catalogue of crimes listed in the Law on Exemption from Statute of Limitations for War Profiteering and Crimes Committed in the Process of Ownership Transformation and Privatization. This Law on Exemption was passed in May 2011.⁵

The explanation for the Constitutional amendment was that such crimes are considered extremely serious and continue to undermine Croatian society; they should therefore not be afforded privilege under the country’s statute of limitations.⁶ By that, Croatian society declared the enormous importance of addressing transitional economic crimes, practically equalizing core international crimes with transitional economic crimes if occurred during Homeland war and peaceful reintegration.⁷ In defending the proposal of Constitutional change and while participating in its proposal from 2007, former President of Croatia, prof.dr.sc. Ivo Josipović publicly stated that the amendments will contribute to the restoration of justice and the return of the moral principle in the economic development of Croatian society. In April 2011, Prime Minister of Croatia, Mrs Jadranka Kosor publicly stated that from this day it will not be the same for those who only thought about their benefit while young people were dying in the war. It must be underlined though, that the provision that there is no statute of limitation for such crimes, refers only to periods of Homeland war and peaceful reintegration. Privatization and ownership transformation crimes committed outside of the conflict context and imminent danger to the territory of Croatia, have limitation period.

Although it seemed that the path was clear to prosecute transitional economic crimes, on July 24, 2015, almost five years later, the Constitutional Court decided, according to some, contrary to the amended Constitutional provision (article 31 paragraph 4).⁸ According to this 2015 decision, the abolition of retroactivity cannot apply to offences for which the statute of limitations expired before June 16 2010., e.g., if the statute of limitations has already expired for a crime that would otherwise be affected by the 2010 amendment, then the crime cannot be prosecuted. Thus, the 2015 decision significantly limits the ability of the state to punish economic offences committed in the transitional period because, for the great majority of

³See also Elizabeta Ivičević Karas and Sunčana Roksandić Vidlička, *The Relevance of Asset Recovery Policies in Transitional Societies: The Croatian Perspective* in Katalin Ligeti & Michele Simonato (eds.), *Chasing Criminal Money Challenges and Perspectives On Asset Recovery in the EU*, Hart Publishing, 2017. (forthcoming)

⁴Official Gazette 76/10.

⁵Official Gazette 57/11.

⁶Decision Proposal to Amend the Constitution of Croatia 2009, 8.

⁷Art 31. para 4 of the Constitution reads: The statute of limitations shall not apply to the criminal offences of war profiteering, nor any criminal offences perpetrated in the course of economic transformation and privatization and perpetrated during the period of the Homeland War and peaceful reintegration, war time and during times of clear and present danger to the independence and territorial integrity of the state, as stipulated by law, or those not subject to the statute of limitations under international law. Any gains obtained by these actors in connection there with shall be confiscated.

⁸USRH U-III-4149/2014, 24 July 2015.

privatization and ownership transformation scandals committed during the Homeland War, the statute of limitations has already expired.⁹ Therefore, in spite of the Constitutional change, the Constitutional Court did not accept the possibility of the retroactive effect of the 2010 constitutional amendment. The Constitutional Court noted that this is to protect the principle of legality. Yet concerning the principle of social justice (that served as a leitmotiv for Constitutional change), unless the 2015 decision of the Constitutional Court would be altered *pro futuro*, Croatian society will apparently not have a serious confrontation, by the means of criminal law, with the transitional crimes committed by perpetrators who clearly took advantage of a situation of war and disorder during the time of privatization and ownership transformation.

It should be noted that with this law, Croatia did not create a new catalogue of offences and enable their retroactive application which would clearly be contrary to the rule of law and the principle of legality, but enabled retroactive prosecution of a group of very important offences that have always caused agitation in the public and “foresaw” that society would sooner or later need to address them.

It can be said, although it might sound harsh, that the proclamation of non-application of this constitutional provision by the Constitutional Court in the individual case (Sanader case as it will be explained below) actually contributed to legalization of wide spread political white-collar crime¹⁰ occurred during the privatization that occurred in part simultaneously with the Homeland War, even if it was not obviously the intention of the Constitutional Court. But, the Constitutional Court could have taken another path in its decision making and, based on the principle of proportionality and on transitional justice jurisprudence of the European Court of Human Rights (here and after: ECHR), and decide otherwise giving the priority to the principle of social justice.

These grave economic offences were committed in the transitional period in the time of conflict and peaceful reintegration when the rule of law did not function in its entirety. Therefore, unless the Constitutional Court does not change its practice and takes a different stand, the Constitutional changes could not be applied retroactively.

The key issues arising from the application of this Law and key areas of public debate for experts and practitioners in Croatia were: how to approach the principle of non-retroactivity, legal certainty and/or principle of justice and efficiently deal with serious economic crimes that occurred in the last two decades, particularly during the Homeland War and peaceful reintegration (1990-1998)¹¹. Moreover, in part of Croatian society and for some

⁹See also in Nezastarjevanje kaznenih djela vezanih uz ratno profiterstvo i proces pretvorbe i privatizacije, Osvrt na odluku Ustavnog suda u „slučaju Hypo“, Hrvatski ljetopis za kazneno pravo i praksu, Vol. 22, broj 2/2015, 437-451.

¹⁰For the definitions see e.g. Friedrichs, D.O., White-Collar Crime in Postmodern, Globalized World, in Pontell, H.N., Geis, G. (eds.), International Handbook of White-Collar and Corporate Crime, New York, Springer, 2007, 163-186.

¹¹Compare e.g. different opinions expressed by criminal law scholars on this Constitutional change, Derenčinović Davor, Doprinos Ustavnog suda Republike Hrvatske u definiranju okvira za tumačenje ustavne odredbe o nezastarjevanju ratnog profiterstva i kaznenih djela počinjenih u vrijeme pretvorbe i privatizacije (Contribution of the Constitutional Court of the Republic of Croatia to the interpretation of the provision on non-applicability of statutes of limitations to criminal offenses of war profiteering and those committed during the privatization process), Sveske za javno pravo (2233-0925) 21 (2015); 7-14 and Roksandić Vidlička, Sunčana, Possible Future Challenge for the ECtHR?: Importance of the Act on Exemption and the Sanader Case for Transitional Justice Jurisprudence and the Development of Transitional Justice Policies. // Zbornik Pravnog fakulteta u Zagrebu. 64 (2014) , 5/6; 1091-1119). Also see Novoselec, P., Nezastarjevanje kaznenih djela vezanih uz ratno profiterstvo i proces pretvorbe i privatizacije, Osvrt na odluku Ustavnog suda u „slučaju Hypo“, Hrvatski ljetopis za kazneno pravo i praksu, Vol. 22, broj 2/2015, 437-451; Novoselec, P., Novosel, D. (2011) Nezastarjevanje kaznenih djela ratnog profiterstva i kaznenih djela iz procesa pretvorbe i privatizacije. Hrvatski ljetopis za kazneno pravo i

legal scholars, Croatian approach to prosecute those economic crimes got special narrative¹² and became known as fighting transitional economic crimes.¹³

As stated, legal scholars who are dealing with this topic are mostly divided how Croatia should approach transitional justice crimes and individual liability of businessman for transitional economic crimes. On the other hand, general opinion from the public - what could be seen from numerous articles in newspapers, weekly magazines, books, articles, political parties statements etc. - is that those crimes should be prosecuted. Even some political parties call for implementation of lustration of those involved in such crimes.

In any case, the Croatian experience and its legal solutions could serve as a valuable contribution to worldwide jurisprudence in (re)building new transitional societies and its market economies, either by legally justifying Croatian solutions or by questioning reasoning for its rendering and avoiding the same solutions *de lege ferenda*¹⁴.

2. The main transitional justice case: Sanader case

The most renown case prosecuted that could symbolize the debate in Croatia is the case against former prime minister of Croatia, dr.sc. Ivo Sanader for corruption scandal and the abuse of authority (for one war profiteering case and for one privatization case). As bribe givers were accused the Austrian Bank and the Hungarian oil company). Unlike what was proclaimed as the reason to amend the Constitution in the Decision Proposal to Amend the

praksu, 18/2; *Amicus curiae*, *Nezastarjevanje – Ad versus hostema eterna auctoritas*, informator 6143, January 19, 2013.

For caution in implementation of retroactivity regarding politicaly sensitive crimes see: Munivrana Vajda, Maja; Roksandić Vidlička, Sunčana. *Novije promjene u uređenju zastare u Republici Hrvatskoj - na tragu političke instrumentalizacije ili težnje ka ostvarenju pravедnosti?*. (*Recent changes in the development of the statute of limitations in Croatia – in the wake of political instrumentalization or means for achieving justice?*) // *Žurnal za kriminalistiku i pravo*. XVIII (2013) , 2; 43-60.

¹²See.g. Novoselec, Roksandić Vidlička and Maršavelski Roksandić Vidlička, Sunčana., *Severe Economic Crimes Committed in Transitional Periods – Crimes under International Criminal Law?* in *Mapping the Criminological Landscape of the Balkans*, Getoš Kalac, Ana-Maria, Albrecht, Hans-Jörg. and Kilchling, Michael (eds), Berlin : Max-Planck-Institut ; Duncker and Humbolt, 2014. Str. 467-498.; Novoselec, Petar; Roksandić Vidlička, Sunčana; Maršavelski, Aleksandar, *Retroactive prosecution of transitional economic crimes in Croatia – testing the legal principles and human rights* // *The Routledge Handbook of White-Collar and Corporate Crime in Europe* / van Erp, Judith ; Huisman, Wim ; Walle, Gudrun Vande (ur.), Abingdon ; New York : Routledge, 2015. Str. 198-217.; Roksandić Vidlička, Sunčana; Maršavelski, Aleksandar, *Criminal responsibility of political parties for economic crime : Democracy on test* // *The 15th Cross-border Crime Colloquium of The Criminal Policy Research Centre "The Relativity of Wrongdoing : Corruption, organized crime, fraud and money laundering in perspective"* : proceedings / Van Duyne, Petrus C. ; Maljević, Almir ; Antonopoulos, Georgios A. ; Harvey, Jackie ; Von Lampe, Klaus (ur.), Oisterwijk : Wolf Legal Publishers, 2015., 329-346

¹³Also, the elective subjectis formed at the Faculty of law, University of Zagreb in the acc. year 2016/2017 under the name *Transitional justice, Corruption and Economic Crimes* (held only in English language). It is important to note that the students in the first generation belong to Western European Countries (Belgium and Germany).

¹⁴Two doctoral thesis in legal science where written partly using Croatian examples. For transitional economic crimes and transional and international policy towards economic crimes and business involvement see: Roksandić Vidlička S., *Prosecuting Serious Economic Crimes as Internatioanl Crimes, A New Mandate for the ICC?*, Duncker and Humbolt, 2017 (forthcomming). For responsibilities of political parties concerning some economic offences see the thesis of Maršavelski Aleksandar, *Responsibility of Political Parties for Criminal Offences*, University of Zagreb/Freiburg, 2015. For what could be done next in Croatia concerning asset recovery see: Elizabeta Ivičević Karas and Sunčana Roksandić Vidlička, *The Relevance of Asset Recovery Policies in Transitional Societies: The Croatian Perspective* in Kalin Ligeti & Michele Simonato (eds.), *Chasing Criminal Money Challenges and Perspectives On Asset Recovery in the EU*, Hart Publishing, 2017. (forthcoming).

Constitution of Croatia – to allow retroactive prosecution of transitional economic offences on the basis that the

statute of limitations is the guarantee of legal certainty to citizens, but it is certain that this institute should not be the benefit for the perpetrators enabling them to practically legalise the effects of such acts through the statute of limitations¹⁵

this is what may eventually occur after the Constitutional Court decision in the Sanader case¹⁶.

Therefore, the main „transitional justice“ case concerning economic crimes, as stated in previous section is the criminal case against Ivo Sanader where on the CEOs of Austrian and Hungarian companies were allegedly involved. If one considers grand corruption to be international crime, especially if committed in transitional period and during the war, and since this case is „the“ case present in public debate concerning the role of politicians and businessman in transitional economic crimes, this case must be taken into account when dealing with Croatian transitional economic justice narratives.

Although, one must be aware of the fact that Sanader is definitely only one to blame for transitional economic crimes, especially since some major and biggest privatizations were long finished before he became prime minister.

In August 2011, prosecution indicted Ivo Sanader due to the fact that during negotiations regarding the terms of a loan to be granted by Austrian bank, Hypo-Alpe-Adria International AG, to the Government of the Republic of Croatia he, as Croatian Deputy Minister of Foreign Affairs, made a deal that the bank pay him, in return for that bank's entry into the Croatian market, a commission in the cash amount of seven million Austrian schillings which the bank indeed paid, over the course of 1995. The crime was classified as a war profiteering crime and an abuse of office and authority. The contextual link necessary for the application of the Law on Exemption from the Statute of Limitations existed since he abused his office to “obtain for himself an unlawful property gain in the amount of HRK 3,610,528.18 [approx. €500,000] in a difficult situation the country was going through ... during the Homeland War due to a high inflation and extremely high interest rates on loans which made it difficult to find banks ready to grant favorable loans.”

In addition to these charges, in September 2011 prosecution charged Sanader for receiving a €10 million bribe, while serving as Prime Minister of Croatia, from Zolt Hernadi, the chairman of the management board of the Hungarian oil company MOL, in return for transferring the controlling rights from the Croatian oil company INA to MOL. The indictment¹⁷ charged Sanader, who made a deal at the beginning of 2008 with a representative from MOL, to receive €10,000,000 to take action for amending the Shareholders Agreement, whereby Croatia would hand over control from INA to MOL. According to the indictment, they also agreed that the said amount would include arranging the conclusion to an agreement on the spin-off of the gas business (which generated losses) from INA and its takeover by Croatia: ‘With the aim to realize the deal Ivo Sanader, by using his authority as prime minister of the Government of the Republic of Croatia, knowing that the conclusion of such agreements was not in the interest of the Republic of Croatia communicated and imposed his

¹⁵ Decision Proposal to Amend the Constitution of Croatia 2009, 8.

¹⁶ Also cited with further analysis of asset recovery in Elizabeta Ivičević Karas and Sunčana Roksandić Vidlička, *The Relevance of Asset Recovery Policies in Transitional Societies: The Croatian Perspective* in Kalin Ligeti & Michele Simonato (eds.), *Chasing Criminal Money Challenges and Perspectives On Asset Recovery in the EU*, Hart Publishing, 2017. (forthcoming).

¹⁷ Indictment No. K-US-48/11, IS-US-6/11, August 31, 2011. See details on official web page: www.dorh.hr/PodignutaOptuznicaProtivIveSanadera01 [02.11.2014.].

conclusions, prepared in advance, regarding essential elements of the agreements so that the agreements indeed were concluded on January, 30th 2009 and all requests MOL fully accepted, whereupon Ivo Sanader was fully paid the agreed amount in several instalments.’ These two indictments merged into one trial and the trial judgment was rendered on November 20th, 2012. As the judges pointed out in the first judgment against Sanader,¹⁸ he, as the former Prime Minister of the country abused his position for his own enrichment and was not acting for the common good. According to the first instance judgement,

... [T]his judgment sends a message to people in power, current and future, that holding a public office must be performed for the common good and in the interest of society!” Furthermore, according to the judges, Sanader’s behaviour harmed “not only vital strategic interests but also damaged the reputation of Croatia in the world... contributed to apathy and disillusionment of people in the system, created a belief among young people that honest labor does not pay, but the violation of the law and the morality of the society does.

The judgment emphasized that Sanader was “the architect of the system...that was an illusion of democracy.” Sanader was sentenced to eight and a half years imprisonment.¹⁹

But, as stated, major profiteers, either from the Homeland War or through the privatization process itself are still not prosecuted and it does not serve historic truth to claim that Sanader is the main culprit in the privatization processes that slowly started in 1988.²⁰

The Supreme Court in Sander case defined what was considered to be war profiteering in specific Croatian transitional period, especially relating to the behaviour of public officials.²¹

A large part of the occupied territory, great destruction, hundreds of thousands exiled and displaced Croatian citizens, extremely difficult economic situation, the use of most of the budget for defence of the state and at the same time the necessity of purchasing the building of the Croatian Embassy in order to spread the truth in the World of aggression which is committed [upon Croatia] and the liberation character of the Homeland War. Although the basic content of the war includes armed struggle, the war, however, is not just about conflict. War is a broader, more complex phenomenon because it involves other forms of struggle (political, economic, information) which have great importance for the preparation and conduct of war. In this connection, a notorious fact is that war preparation and other forms of struggle, which do not involve the use of weapons, are carried on in an area that is not directly affected by the war. This is especially important because of the fact that Croatia, at an international level, was a young state that, except for military battles, led political ones for the recognition of its political status, credibility and political positioning in the international, primarily in the European, community. The efforts of all citizens of Croatia, including government officials, at that time were, or should have been, directed toward the same goal, the establishment of a sovereign, independent and democratic state based on generally accepted social values. The fact that the war should have been won on a political level, on which Croatia should have proven its integrity, maturity, democracy

¹⁸ Zagreb County Court Judgment 2012.

¹⁹ Zagreb Supreme Court Judgment 2014.

²⁰ See more about the period when the privatization started and for literature review in Novoselec, Petar; Roksandić Vidlička, Sunčana; Maršavelski, Aleksandar, *Retroactive prosecution of transitional economic crimes in Croatia – testing the legal principles and human rights // The Routledge Handbook of White-Collar and Corporate Crime in Europe / van Erp, Judith ; Huisman, Wim ; Walle, Gudrun Vande (ur.), Abingdon ; New York : Routledge, 2015. Str. 198-217.*

²¹ VSRH I Kž-Us 94/13-10, 3 April 2014. Cited already in articles mentioned in the footnote 1.

and reliability, makes the context in which criminalized behavior has the characteristics of war profiteering. Specifically since, in this atmosphere the defendant used his official powers for illicit purposes, as it was rightly concluded by the trial court. At that time, Croatia, and its diplomacy, were not known at an international level...The defendant was entrusted with particular tasks, which at that time were extremely important for Croatia, and he abused that fact...by putting his personal interests above those of Croatian citizens. In this way, the defendant, as the Deputy Minister in Government., in Croatia's darkest hour, undermined [Croatian] reputation, degraded the sacrifice of soldiers in the war and threatened the core values of Croatian society. The proper conclusion of the trial court is that [by doing so] this defendant violated the public order. Given that, it is justifiably established by the trial court, that war profiteering does not only make only previously known forms of this phenomena, such as raising the price of goods due to shortages, selling weapons to defend the country with disproportionately high prices, but also the behaviour of which the defendant is guilty of... Taking the provision from the agreement [Loan agreement between K.L. & H. b. with the political support of Austria] by the person to whom the primary duty was to represent and defend the interests of Croatia and not to worry about his own illegal profit... and bearing in mind all aforementioned circumstances which marked the incriminated period, [that action] cannot be described in any other way other than war profiteering.

As stated before, the Constitutional Court decision from July 2015, brought the whole proceedings back to its start and now the case is expected start all over again. But, this year some other major proceedings against businessman for alleged war profiteering and privatization misuse were initiated based on the Law on Exemption.

After the Constitutional Court decision, only those proceedings that were not statute barred could be prosecuted. It remains to be seen what will the court do in Sander case - if the first and second instance courts would find that the statute of limitation did not expire in Sanader case (Hypo case) and the case finds itself again in front of the Constitutional Court.

3. Some basic critique of the Constitutional court's decision

The main critique from my point of view²² is that the Constitutional Court did not take into account the specific qualities of transitional societies when deciding what the rule of law in Croatia really means in the context of the Croatian transition. Accordingly, what does it mean to breach the principle of legality and interpret the Constitution in its "entirety"; that is, it did not take into account the realization of the principle of social justice when balancing and "looking at the constitution as a whole."²³ Declaring the retroactive application of the exemption from the statute of limitations actually legalized legal enrichment which is, in principle, contrary to the judgments of the European Court of Human Rights and the Croatian

²²See also the comment Roksandić Vidlička S., Hrvatska tranzicija bez pravde. Što sad? in the one of the leading Croatian daily newspaper Jutarnji list (August 2, 2015).<http://www.jutarnji.hr/vijesti/slucaj-sanader-hrvatska-tranzicija-prosla-je-bez-pravde.-sto-sad/286741/>. For different opinion see in the same newspaper the intervju given by Derenčinović D., available here: <http://www.jutarnji.hr/vijesti/strucnjaci-o-rusenju-presude-sanaderu-novoselec-ratni-profiteri-su-se-izvukli-derencinovic-ne-samo-se-prostor-za-progon-tih-djela-suzava/286744/>.

²³See the Constitutional Courts decision para 79., 121. For additional critique of the Constitutional Courts decisions, especially those paragraphs see Novoselec P., Nezastarjevanje, 2015, . 450.

legal system, as well as the very explanation enacted in Constitutional amendments²⁴. But, not everything is as grim as it may seem at first glance. The Constitutional Court however, as emphasized by Derenčinović, stressed the importance of exemption and the weight of impediment that those economic transitional crimes had on social development; but only those offenses which were not statute-barred at the time of constitutional change. This is certainly one of the safest interpretations of the application of the principle of legality.

The European Court of Human Rights has an enormous number of cases regarding the assessment of legislative solutions of transitional countries and balances principles and respect for human rights in transitioning countries²⁵. Why didn't the Constitutional Court take these concerns into account? Although some of the judgments are being called for in the Constitutional decision, how is it that the Constitutional Court failed to analyze them the way the ECHR would (for example when citing *Holy Synod of the Bulgarian Orthodox Church v. Bulgaria* from January 22nd, 2009). In fact, it is a pity that the questions surrounding the application of the Law of exemption did not end up before the ECHR who perhaps would have looked at that law as a component of transitional criminal law policy and perhaps would have provided a detailed analysis that Croatia deserved.

There are still a lot of debatable questions that the ECHR deals with which were ignored by the Constitutional Court in this clearly "transitional justice" case, what is unacceptable in a country whose rule of law has, rightly so, been clearly proclaimed as a central position by the very same Court. Perhaps the outcome would have been the same had the Law of exemption come before the ECHR, but at least the Law of exemption would have received its chance to be studied in detail, led by the decision making principles of the ECHR and cases this court addresses concerning transitional justice. In addition to this, perhaps the ECHR would have chosen differently and highlighted that transitional justice applies to not only respecting civil and political rights, but those both economic and social which are in line with many recent resolutions, recommendations and global trends. A point of principle for transitional justice cases can be extracted from the judgment in *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*.²⁶ "[T]ransitional societies" common need to remedy unlawful acts of the past cannot, in a democratic society, justify disproportionate state action and further unlawful acts. Likewise, in relation to restitution, the Court has stressed that although such policies may be legitimate, states should ensure that they do not create "disproportionate new wrongs."²⁷ Therefore, the width of the margin in particular cases will be tied to some combination of various factors, including the right at stake, the way that it is invoked, and the legitimate aim the restriction pursues.²⁸ This means that Croatia could have proven that the Law on exemption did not create "disproportionate new wrongs", and that the Constitutional amendments (art. 31. para 4) were not "unconstitutional" but that the principle

²⁴See the Chapter 1 here.

²⁵See for transitional jurisprudence of the ECHR, see particularly A Buyse and M Hamilton (eds), *Transitional Jurisprudence and the ECHR: Justice, Politics and Rights* (Cambridge, Cambridge University Press, 2011). See more in Roksandić Vidlička, Sunčana, Possible Future Challenge for the ECtHR?: Importance of the Act on Exemption and the Sanader Case for Transitional Justice Jurisprudence and the Development of Transitional Justice Policies. // *Zbornik Pravnog fakulteta u Zagrebu*. 64 (2014) , 5/6; 1091-1119).

²⁶*Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, January 22nd, 2009. Application no. 412/03 and 35677/04, Par. 142.

²⁷*Velikovi and Others v. Bulgaria*, op. cit. in fn. 69.

²⁸J Sweeney 'Freedom of Religion and Democratic Transition' in A Buyse and M Hamilton (eds), *Transitional Jurisprudence and the ECHR: Justice, Politics and Rights* (Cambridge, Cambridge University Press, 2011), p 119.

of social justice and the principle that no one has the right to keep what is illegally acquired got precedence. If we were to calculate the monetary amount Croatia could have received through privatization, and the context of privatization (especially during Homeland War and Privatization) but didn't, the situation would not have been as simple as the Constitutional Court made it in its decision when deciding upon the application of the amendment and the Law of Exemption.

Therefore, with this Constitutional decision, in my opinion, Croatia failed to capitalize on its historical opportunity to become a transitional country that had enough courage to harden a path and solve the question of effective problem solving in (not)processing and of (not)punishing serious and systematic economic crimes that all transitional countries have, unfortunately, experienced. On the other hand, maybe Croatia did not fail, since it had implemented mechanism by amending the Constitution and passing the Law on Exemption. Its application was a problem. Maybe this "saga" is not over yet. After this constitutional decision, it is necessary to find new ways, particularly in the international criminal-legal arena; effective problem solving of (not)processing and in (not)punishing serious and systematic economic criminal offenses. It is finally clear that these offences, at an international level, cry out for the same protection civil and political rights have, so as not to depend on the (in)effectiveness of prosecution on a national level especially when that prosecution should be done retroactively.

4. Implication for Arbitration in INA - MOL case

As Croatian belongs to civil law system it does not have a mechanism similar to the US Alien Tort Claims Act²⁹ (hereinafter: ATS)³⁰ for addressing human rights violations. ATS litigation in the United States began "as a cottage industry, where it inspires plaintiffs, dissidents, circuit splits, concerns and truculence. This litigation opens a fecund vein that germinates a host of other legal questions – ranging from the status of corporations as defendants to the scope of customary international crimes to the redress ability of grievous harms through symbolic civil damage awards."³¹ In any case, the ATS allows district courts to have jurisdiction over any civil action by an alien for a tort if committed in violation of the "law of nations" or a treaty of the United States. Since the decision in *Filártiga v. Pena Irala*³² in 1980, American courts have placed a very expansive interpretation on the ATS, provided that American "district courts shall have original jurisdiction of any civil action by an alien for tort only, committed in violation of the law of nations or a treaty of the United States."³³ it lasted at least until *Kiobel* decision in 2013. In *Kiobel v. Royal Dutch Petroleum Co.*,³⁴ the United States Supreme Court made a decision in which it found that the ATS presumptively did not apply extraterritorially. Croatia is indirectly linked to one of ATS cases (important to this topic, *Kadic v. Karadzic*³⁵ (occurred during armed conflict in the former Yugoslavia) where it

²⁹ Alien Tort Claims Act 1789.

³⁰With its well known cases connected to business and transitional interantional justice: *Doe v. Unocal*, *Wiwa v. Royal Dutch Shell*, *Khulumani* case etc.

³¹*Drumbl, M, The Future of International Criminal Law and Transitional justice in McDermott, Y, Schabas, WE, Hayes, N &Varaki, M (eds) 2013, The Ashgate Research Companion to International Criminal Law: Critical Perspectives. 2013 edn, Ashgate, 538. 532-545.*

³² 630 F.2d 876 (C.A.2, 1980).

³³ 28 U.S.C, 3 1350.

³⁴ 133S.Ct. 1659 (2013).

³⁵70 F.3d 232 (2nd Cir, 1995), cert. denied, 64 U.S.L.W. 3832 (June 18th,1996)

was maintained that non-state actors can be held liable for the commission of genocide, the most serious form of crimes against humanity.³⁶

On the other hand, as stated by Sandoval, Fillippini and Vidal, when using transitional justice mechanism to hold corporations to account, considerations must be given to the role of other mechanisms that deal with corporate accountability such as arbitration tribunal, the regulations of corporations and economic agreements³⁷.

Therefore, except some international arbitration decisions, linked to the privatization, civil law mechanisms are not used to address transitional economic crimes – e.g. for violations of human rights as the case is in the USA.

It must be mentioned that UNICTIRAL Tribunal in the INA MOL dispute³⁸ in December 2016³⁹ found that Croatia's claims based on bribery, corporate governance and MOL's alleged breaches of the 2003 Shareholders Agreement are all dismissed, due to the fact that “having considered most carefully all of Croatia's evidence and submissions on the bribery issue, which has been presented in a most painstaking and comprehensive way, the tribunal has come to the confident conclusion that Croatia has failed to establish that MOL did in fact bribe [Mr.] Sanader.” Croatia claimed that the judgment in the Sanader case renders MOL-INA deal null and void. As mentioned in previous section, the Constitutional court reversed the final decision in July 2015 and Croatian side was not able to present evidence that the bribery case got its final epilogue. By this, one could see how important transitional economic crimes could be in the long run for the investment climate in the society.

On the other hand, due to increase of regulations on human rights & business by international financial institutions and UN, OECD, EU regulations etc, businesses and businessman in Croatia are getting more aware of their role as potential violator of human rights, but not “with retroactive effect”.

5. What about privatization affairs in Macedonia?

Since this article was considering one landmark decision in Croatia, one Macedonian case could help to make a comparison. As underlined by *Pohlmann, Bitsch and Klinkhammer in 2016*,

The corruption case of Magyar Telekom, the leading Hungarian telecommunications company and an almost sixty percent-owned subsidiary of Deutsche Telekom comprises two complex cases of bribery stretching over two countries (Macedonia and Montenegro, 2005–2006). Internal investigations as well as the investigations of the DOJ⁴⁰ and the SEC⁴¹ revealed that besides Magyar Telekom

³⁶Dixon, R. revised by Hall, C.K. (2008): Article 7, para 28a, in Triffterer O. (ed.), Commentary on the Rome Statute of the International Criminal Court, 2ed., Hart, Nomos, CK Beck, pp. 234-236, p. 237. This paragraph was taken from the PhD research of the author and the findings of this chapter will be presented in the joint report and research: Munivrana Vajda, M. & Roksandić Vidlička S., Individual Liability for Business Involvement in International Crimes: National Report Croatia, prepared for the XX AIDP International Congress of Penal Law, Criminal Justice and Corporate business (Section 1). The Report was submitted in January 2017.

³⁷Sandoval S. with Fillippini L and Vidal R., Linking Transitional Justice and Corporate Accountability in Michalowski S. (ed.), Corporate Accountability in the context of Transitional Justice, Ashgate, 2013, 9.

³⁸According to data, MOL owns a 49% stake in INA, holds management rights in the oil and gas producer which have been challenged by the Croatian government, owning a 44.8% stake. MOL initially bought a 25% stake in INA from the Croatian government in 2003.

³⁹December 24, 2016.

⁴⁰United States Department of Justice

⁴¹United States Securities and Exchange Commission. For the discussions in general over corporate punishment see: Henning P.J., Should the Perception of Corporate Punishment Matter?, Journal of Law and Policy, Brooklyn Law School 2010, pg. 83-93.

executives, government officials, consultants, intermediaries, and a family member of a government official were engaged in the bribery schemes... The purpose of the corruption scheme in Macedonia was to resolve concerns about legal changes that jeopardized the market leadership of the company's subsidiary Makedonski Telekomunikacii AD Skopje (MakTel). Hungary, Montenegro, and Macedonia have been in the past and still are today Magyar Telekom's core business regions...⁴² The Macedonian part of the corruption scheme began its course in early 2005 when the Macedonian parliament enacted an "Electronic Communication Law" to liberalize the Macedonian telecommunications market. This was going to be disadvantageous for the formerly sole supplier, Magyar Telekom and its Macedonian subsidiary MakTel. Alarmed at the new resolution, Elek S., Magyar Telekom's Chairman and Chief Executive Officer (CEO), Andras B., Director of Central Strategic Organization, Tamas M., Director of Business Development and Acquisitions, and Greek intermediaries in their function as "lobbying consultants" arranged a meeting with senior officials from both of the coalition parties of the Macedonian government at the end of January 2005 in Skopje. The executives "informed" the officials "that a third mobile license was not acceptable." On 25 May 2005, after some negotiations, executives resolved their concerns with two secret agreements, entitled "Protocol of Cooperation," between the executives and the senior government officials....⁴³

As stated by *Pohlmann, Bitsch and Klinkhammer*, DOJ charged Magyar Telekom with one count of violating the anti-bribery provisions of the FCPA⁴⁴ and two counts of violating the books and records provisions of the FCPA.⁴⁵ As they continue: On 29 December 2011, the board of Magyar Telekom and the DOJ entered into a two-year deferred prosecution agreement. The company agreed to pay a combined \$63.9 million penalty to resolve the FCPA investigation and settle the SEC charges, which additionally made up more than \$31.2 million in disgorgement and prejudgment interest.

On the other hand, no final judgment has yet been made in the civil lawsuits against Elek S., Andras B., and Tamas M.⁴⁶ According to SEC, plaintiffs in the case against Elek S., Andras B., and Tamas M. (November 29, 2011), "respectfully requested" that the Court (United States District Court Southern District Of New York): Enter a final judgment permanently enjoining Straub, Balogh, and Morvai from violating, or aiding and abetting violations of, Sections 30A [15 U.S.C. § 78dd-1], 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)], 13(b)(2)(B) [15 U.S.C. §

⁴²Magyar Telekom, Annual Report (2007) – emphasized by Pohlmann, M., Bitsch K., & Klinkhammer J. 8 see the next footnote).

⁴³Pohlmann, M., Bitsch K., & Klinkhammer J., Personal Gain or Organizational Benefits? How to Explain Active Corruption, *German Law Journal*, Vol 17, No.1, 74-100, February 1, 2016., pg. 88.- 89. Also see Financial Supervisory Authority of Hungary, National Bureau of Investigation of Hungary, Public Prosecutor's Office of Macedonia, Supreme State Prosecutor of Montenegro, Central Investigative Chief Prosecutor's Office of Hungary, Bonn Public Prosecutor's Office of Germany. See Trace International, *Trace Compendium Magyar Telekom* (2015). Also, as emphasized by authors (footnote 91, pg. 91: The aspect of absolute secrecy is particularly evident in the following quotes: "At a meeting at the Holiday Inn in Skopje, Magyar Telekom Executive 2 [Andras B.], Magyar Telekom Executive 3 [Tamas M.], Greek Intermediary 2, Greek Intermediary 3, and various Macedonian officials discussed the Protocol of Cooperation and agreed to keep the existence and purpose of the agreement from others, including Magyar Telekom's auditors and the public."

⁴⁴Referring to the USA Foreign Corrupt Practices Act of 1977; 15 U.S.C. § 78dd-1; Deferred Prosecution Agreement (DPA) at para. A-4, 13-14, *U.S. v. Magyar Telekom, Plc.*, No. 11 Cr. 597 (E.D. Va. Dec. 29, 2011), at 1 (as emphasized by authors).

⁴⁵15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5) & 78ff (as emphasized by authors).

⁴⁶Pohlmann, M., Bitsch K., & Klinkhammer J., 2016., pg. 89. The full text of SEC claims could be found here: <https://www.sec.gov/litigation/complaints/2011/comp22213-ex.pdf> (accessed January 19, 2016).

78m(b)(2)(B)] and 13(b)(5) [15 U.S.C. § 78m(b)(5)] of the Exchange Act and Rules 13b2-1 [17 C.F.R. § 240.13b2-1] and 13b2-2 [17 C.F.R. § 240.13b2-2]; Enter a final judgment ordering Straub, Balogh, and Morvai to disgorge all ill-gotten gains wrongfully obtained as a result of their illegal conduct, plus prejudgment interest; Enter a final judgment ordering Straub, Balogh, and Morvai to pay civil penalties pursuant to Sections 21(d) [15 U.S.C. § 78u(d)] and 32 [15 V.S.C. § 78ft] of the Exchange Act; and Grant the Commission such other relief as is just and appropriate.

This case represents a typical case of transitional economic crime, e.g. it occurred during privatization period of the country in transition and it involved a foreign, multinational corporation doing business in the environment of the “transitional country.” Such practice (not this case particular) also led to development of the soft law instruments. As proscribed in the UN Guiding Principles Principles on Business and Human Rights, and as underlined by Zerk⁴⁷:

While “all business enterprises have the same responsibility to respect human rights wherever they operate”, some operating environment (such as conflict-affected areas) carry greater risks of being involved with gross human rights abuses than others. According to the UN Guiding Principles, “Business enterprises should treat this risk as a legal compliance issue, given the expanding web of potential corporate legal liability arising from extraterritorial civil claims, and from the incorporation of provisions of the Rome Statute of the International Criminal Court in jurisdictions that provide for corporate criminal liability⁴⁸”.

According to the UN Guiding Principles, business have to properly analyse and understand their human rights impacts through due diligence and should take necessary steps to prevent and minimize them.⁴⁹ If other countries (e.g. the US, EU) and their companies are more and more aware that such practice not only violates commercial and company law regulations, but also violates human rights, discussing such cases, especially in the countries where violations are occurring is equally important. In the long run, such corrupt practice that leads to violations of human rights is contrary to the development of the rule of law and enhancing trade agreements between transitional and developed countries.

6. Transitional white collar crimes cases as potential for development of criminal law doctrine of “the organized structure of power”

Unlike what was stated in the previous paragraph that typical case of transitional economic crime is a case that includes the behaviour occurred during privatization period of the country in transition and it involves a foreign, multinational corporation doing business in the environment of the “transitional country.” Of course, politicians must be present, either in power or in opposition, to have the complete political-white collar case occurring in transitional context.

The following case, still being discussed in the Croatia media, involves again the former prime minister but this time no foreign company is present. Judgment in this case is not yet final. It must be noted that almost all major political parties in Croatia had at least

⁴⁷Zerk J., Corporate liability for gross human rights abuses, Towards a fairer and more effective system of domestic law remedies, A Report prepared for the Office for the UN High Commissioner for Human Rights, 2013 56.

⁴⁸The Guiding Principle 23.

⁴⁹ UN Guiding Principles, principle 18, principle 13.

accused member for some of economic crimes (including corruption), but for the purpose of this article, concertation was given to cases that got the most media attraction.

Therefore, the most notable case of high profile corruption involving political-white collar actors is so called "Fimi media case." The case involves Ivo Sanader (the former Prime Minister of the Republic of Croatia), Croatian Democratic Union (at the time ruling party in Croatia),⁵⁰ corporation Fimi Media, and several high-ranking public officials. All were indicted of and convicted by a trial court (the County Court in Zagreb) for associating for the purpose of committing criminal offences (Art. 333 of the Croatian Criminal Law 1997⁵¹; count 1 of the verdict) and abuse of office and official authority (Art. 337 of the Croatian Criminal Code 1997; count 2 of the verdict)⁵². The incriminated acts were related to public procurement. The Supreme Court struck down the judgment and remanded the case for retrial on procedural grounds,⁵³ and the case is currently being heard by a court of first instance. It was established in the judgment before it was stoke down that the defendants belonged to the criminal group and that each of the munder took acts in order to achieve the criminal It was established that Ivo Sanader was the organizer of the group who acted on two levels – one as the president of the Croatian democratic union and second as the prime minister of Republic of Croatia, which functions are in extricably linked. It was also established the way through which the contracts were given to company Fimimedia d.o.o., including that the company issued invoices for services they didn't provide. From the conducted financial investigation it was established and proven before the trial court through material and personal evidence before the court just how much money was illegally gained, by who and how it was spent.⁵⁴

As further described by Vuletić: 55

Their modus operandi was the following: in closed meetings, Prime Minister IvoSanader, personally or through his closest associate, the State Secretary ... , periodically gave orders to the directors of state companies to draw up abusiness contract with a company called FIMI-media. This was a small private marketing company. Some ministers in the government and other heads of state institutions acted likewise. These contracts were made without public contest and by breaching provisions of the Act of Public Bargaining. FIMI media provided services at prices that were higher than regular prices and gave fictive bills for services they didnot actually deliver and the directors and leaders approved the payments. After that,the owner of the company would give the money in cash to State Secretary ... and he would bring it to Prime Minister Ivo Sanader who accordingly kept

⁵⁰See more in the doctoral reserch of Maršavelski, A., as described above. Also this case served as an example for joint research on transitional economic crimes: Rokсандić Vidlička S., Maršavelski, A: Criminal Responsibility of Political Parties for Economic Crime: Democracy on test, in "The Relativity of Wrong doing : Corruption, organized crime, fraud and money laundering in perspective" : proceedings / Van Duyne, Petrus C. ; Maljević, Almir ; Antonopoulos, Georgios A. ; Harvey, Jackie ; Von Lampe, Klaus (eds), Oisterwijk : Wolf Legal Publishers, 2015., 329-346.

⁵¹Now the „new“ Criminal Code is in force from January 1, 2013 (Official Gazette 125/11, 144/12, 56/15, 61/15). According to art. 3, the act in force at the time a criminal offence is committed shall be applied to the person who committed the criminal offence. If the act is altered one or more times after the criminal offence is committed but before a judgment having the force of res judicata is passed, the act which is the least severe in relation to the perpetrator shall be applied. Where in cases referred to above the name or description of a criminal offence is modified, the court shall examine whether there is legal continuity by subsuming the factual situation in question under the statutory definition of the corresponding criminal offence from the new act. Where it establishes that legal continuity exists, it shall apply the act that is less severe with respect to the perpetrator. There shall be no criminal offence where there is no legal continuity.

⁵²No: K-Us-8/12, 11 March 2014.

⁵³No: II Kž 343/15-4, 30 September 2015.

⁵⁴As described by the author in the Warning on crime project: Report Croatia http://www.warningoncrime.eu/wp-content/uploads/2016/04/Country_profile_Croatia.pdf

⁵⁵Vuletić I., „The Organized Structure of Power“ and the Economic Crime „FIMi-meida“ Case and a View from an Croatian Perspective, in Journal of law and Criminal justice, December 2014, Vol. 2, No. 2, 133-149.

the money for himself and for his political party Croatian Democratic Community (Hrvatska demokratska zajednica)... These funds were never recorded in the administrative records of HDZ. Convicted persons have acquired around 31 million HRK (about 4 million EUR) of taxpayers' money. County court in Zagreb found them guilty as co-perpetrators (Sanader and ... [two others] and as abettors [two others] for joining to commit the crimes and misuse of their position. Ivo Sanader is sentenced to nine years in prison)⁵⁶.

Vuletić takes this case in order to conclude that that co-perpetration is not an adequate model in this situation. He is on the opinion that the relationship between Sanader and others involved requires different approach and model of participation that will adequately express the contribution of each of them. In his opinion, the most adequate model in this situation is the notion of indirect perpetration through organized structure of power. He further continues, "we think of this case as of typical example in which a person from behind knows that his subordinates will do almost anything he orders. We dare to say that all direct perpetrators are very easily replaceable. Namely, the directors and leaders of state institutions in Croatia are very compliant and dependent of politics."

As in Germany, in Croatia it is possible that besides applying the duty to act, criminal liability of corporate officials (managers) could be based on the rules of participation in crimes for indirect perpetrators.⁵⁷ Therefore, the concept of indirect perpetration is not only restricted to international crimes, but could be potentially applicable to economic crimes as well⁵⁸. That means that corporate officials could be held responsible when they willingly and knowingly used companies' structures to make employees commit the crimes. This approach holds managers liable for abuses of their management powers, they cannot hide behind the veil of the direct perpetrators.⁵⁹ As Engelhart noted, many legal scholars in Germany "view the extension to the economic sphere critically, as companies structures normally do not have the same influence on employees as abusive state structures like Third Reich or the former German Democratic Republic did on their personnel."⁶⁰ But, Engelhart also notes, based on discussion present in German literature, that companies have often developed a certain corporate spirit and the influence of the workplace on the individual is quite substantial, the court is justified to hold managers accountable if they abuse these corporate mechanisms and prosecute them according to what they are: key figures⁶¹.

Economic crimes are the most common type of crimes committed by political parties and among these the most important is political corruption. There is hardly any country in the world that has been immune to corruption scandals involving ruling political parties⁶². In transitional countries in particular, "their collective will to power and lack of fear of possible consequences of their acts, makes it difficult to discipline them."⁶³

⁵⁶As continued by Vuletić: The rest of sentences were as follows: MB – three years in prison; BP – one year and six months in prison; NJ – two years in prison and RM – sentenced for parole. FIMI-media was banned from further existence and HDZ was convicted to pay a fine of 5 million HRK (about 650.000 EUR).

⁵⁷See more in Engelhart M., Economic Criminal Law in Germany, German law Journal, 2014, 705 referring to the Roxin's concept of indirect perpetration by the use of organizational powers.

⁵⁸Bundesgerichtshof, Case No. 5 St 98/94, 40 BGHSt 218, 237 8 July 26, 1994).

⁵⁹Ibid, 706. This part was further elaborated in the joint study by Munivrana Vajda, M. & Roksandić Vidlička S., not in the context of specific case but in general: Individual Liability for Business Involvement in International Crimes: National Report Croatia, 2017 (forthcoming).

⁶⁰Engelhart, 706.

⁶¹Ibid.

⁶²Roksandić Vidlička S., Maršavelski, A., 2015, 344.

⁶³Ibid.

In any case, this discussion and research of the topic of doctrine of “the organized structure of power” in Croatia will continue,⁶⁴ and maybe, this altered doctrine could find its application in the Balkan countries and by that, serve as contribution to the world wide potential development (or rejection) of the doctrine of “the organized structure of power” as a form of indirect perpetration applicable in “transitional justice” political white-collar crime cases. Again, jurisprudence from other transitional countries applying this altered so called “Roxin’s” doctrine could help in shaping the potential development of this doctrine in the Balkan region (see Mensalão case).⁶⁵

7. Transitional justice mechanisms that could be applied to transitional economic violations

No trust fund for victims of “transitional economic crimes” or for business involvement in international crimes has been established in Croatia so far, like in some other transitional countries (e.g. South Africa)⁶⁶. Therefore, Croatia is still waiting for transitional justice measures to be implemented concerning transitional economic crimes. Additionally, even a special Truth Commission could be formed, while one could not put all hopes in the possibility that the Croatian Constitutional court could change its opinion in forthcoming period and apply as intended the amendments of the Constitution from 2010 and start prosecuting transitional economic crimes that occurred during Homeland war and peaceful reintegration (1990-1998).

On the other hand, that is why there exist four transitional justice mechanism and one could not put all the burden to criminal and civil courts to resolved affaires that came as result of some privatization and ownership transformation cases. As emphasised by the International Center for Transitional Justice⁶⁷: Traditionally a great deal of emphasis has been put on four types of “approaches”:

- Criminal prosecutions for at least the most responsible for the most serious crimes
- “Truth-seeking” (or fact-finding) processes into human rights violations by non-judicial bodies. These can be varied but often look notonly at events, but their causes and impacts.
- Reparations for human rights violationstaking a varietyofforms: individual, collective, materialandsymbolic
- Reform of laws and institutions including the police, judiciary, military and military intelligence

For comprehensive approach to deal with actual or alleged misuse of privatization, one needs strategy and holistic approach⁶⁸. In any case, the Secretary General of the United Nations in 2010 published the Guidance Note, United Nations Approach to Transitional Justice,⁶⁹ which calls upon the United Nations to continue to ensure that the processes and mechanisms of transitional justice take into account the roots of conflict and repressive governments and

⁶⁴See the reseach of Muinivrana Vajda & Roksandić Vidlička (forthcoming). See also Vuletić, I. Dometi koncepta "organiziranog aparata moći", *Hrvatski ljetopis za kazneno pravo i praksu*. 21 (2014) , 1; 23-38.

⁶⁵See some Latin America cases as Mensalão case (Brazilian case), Ambos, K., Introduction to the special issue on the Brazilian Mensalão case, *Zeit schriftfür Internationale Straf rechts dogmatik*, 6/2014, str. 259 – 260.

⁶⁶Abrahams Ch., P., *Lessons from the South African Experience in Michalowski S., (ed.), Corporate accountability in the context of tnsitional justice*, Routledge, Taylor 6 Francis Group, 2013., 153-173.

⁶⁷What is Transitional Justice? available at: <https://www.ictj.org/about/transitional-justice>. Also, see R Teitel, ‘Transitional Justice Genealogy’ (2003) 16 *Harvard Human Rights Journal* 69.

⁶⁸ For the term see particularly, AL Borraine, ‘Transitional Justice: A Holistic Interpretation’ (2006) 60(1) *Journal of International Affairs* 17.

⁶⁹United Nations Guidance Note on the United Nations Approach to Transitional Justice, 2008.

begin solving violations of all laws, including economic, social and cultural. The same was reiterated and further highlighted in the recent publication of the Office of the UN High Commissioner for Human Rights, Transitional Justice and Economic, Social and Cultural Rights, published in 2014.⁷⁰ According to scientific and professional literature⁷¹, and according to truth commission's findings in determining the truth that are recently been created around the world and which is increasingly involved in researching economic crimes (the most recent example is the Commission established in Tunisia in 2014), maybe establishing the special Truth Commission in Croatia could be the right path to take. Unfortunately, the history has taught us that the goals of transitional justice cannot be achieved in its entirety if difficult and massive economic crimes committed that systematically violated human rights during transition are not researched and analyzed.

⁷⁰Office of the UN High Commissioner for Human Rights, Transitional Justice and Economic, Social and Cultural Rights, 2014.

⁷¹See e.g. Drumbl M., A., Accountability for Property Crimes and Environmental War Crimes: Prosecution, Litigation and Development, International Center for Transitional Justice, November 2009, Michalowski S., (ed.), Corporate accountability in the context of transitional justice, Routledge, Taylor & Francis Group, 2013, DN Sharp (ed.), *Justice and Economic Violence in Transition* (New York, Springer Science+Business Media, 2014), Schmid E., Taking Economic, Social and Cultural Rights Seriously in International Criminal Law, Cambridge, 2015, Kelly M.J., Prosecuting Corporations for Genocide, Oxford University Press, 2016.

Д-р Сунчана Роксандиќ Видличка, доцент⁷²

**ТРАНЗИЦИОНИ ПРАВНИ МЕРКИ И ПРИМЕНА НА ПРАВОТО ЗА
ЕКОНОМСКИ КРИМИНАЛИТЕТ ВО ХРВАТСКА: ШТО МОЖЕ
МАКЕДОНИЈА И БАЛКАНСКИТЕ ЗЕМЈИ ДА НАУЧАТ ОД НИВ?**

**1.02 Прегледна научна статија
УДК**

Апстракт

Во статијата се нагласува важноста на транзиционите правни мерки и примената на правото за економскиот криминалитет во земјите во транзиција. Во трудот се анализира примерот на Хрватска. Со давање на судската пракса за наводниот транзиционен економскиот криминал што се случи во Македонија, трудот се занимава со можното воведување на транзициони правни мерки за целиот балканскиот регион.

Клучни зборови: транзициска правда, економски криминал, примена на законот.

⁷²Доцент на Универзитетот во Загреб, на Правниот факултет, на Катедрата за кривично право.