

# SÜDOSTEUROPA

## Mitteilungen

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**Main Focus:**  
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in Former Yugoslavia**

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War Crimes and Organized Crime  
in Former Yugoslavia

*Fergal Gaynor*

ICTY: Achievements and Challenges

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War Crime Trials and Society  
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## Sehr geehrte Leserin, sehr geehrter Leser,

die Festnahme der letzten, vom Internationalen Strafgerichtshof für das ehemalige Jugoslawien (ICTY) angeklagten, mutmaßlichen Kriegsverbrecher im Sommer 2011 war ein bedeutender Teilerfolg bei dem Versuch, den Opfern der Kriegsverbrechen in den Kriegen im ehemaligen Jugoslawien Gerechtigkeit widerfahren zu lassen. Ende 2014 soll der ICTY geschlossen werden. Der Themenschwerpunkt in diesem Heft der Südosteuropa Mitteilungen bilanziert die Erfahrungen, Erfolge und Rückschläge von anderthalb Jahrzehnten Implementierung eines „Übergangsrechts“ in den Nachfolgestaaten des ehemaligen Jugoslawiens. Die hier – in englischer Sprache – veröffentlichten Beiträge sind Ergebnisse einer internationalen Konferenz zum Thema „War Crimes and Transitional Justice in the Former Yugoslavia: 15 Years of Experience“, welche die Südosteuropa-Gesellschaft vom 22. bis 24. März 2012 in Kooperation mit der Universität Leipzig im Neuen Senatssaal der dortigen Universität veranstaltete. Die Konferenz, wie auch die Publikation der Beiträge in diesem Heft, wurden ermöglicht durch die Unterstützung des Auswärtigen Amts aus Mitteln des Stabilitätspakts für Südosteuropa. Die Auswahl der Beiträge versucht, möglichst vielfältige Facetten des Themas zu erfassen. Dazu gehören eine kritische Bilanz des ICTY, der Umgang mit Kriegsschuld und Kriegsverbrechen in Bosnien-Herzegowina, Kroatien und Serbien sowie auch die diffusen Übergänge zwischen Kriegsverbrechen und organisiertem Verbrechen als schwere Belastung für die Rechtsstaatlichkeit in den jugoslawischen Nachfolgestaaten. Einen Überblick über die Themen und Diskussionen der Leipziger Konferenz gibt ein ausführlicher Tagungsbericht in diesem Heft (eine englische Version finden Sie unter [www.sogde.org](http://www.sogde.org)).

Unser Schwerpunkt wird ergänzt von weiteren deutschsprachigen Beiträgen zu höchst aktuellen Fragen der politischen und gesellschaftlichen Entwicklung in Südosteuropa. Themen sind hier die Radikalisierung der Parteienlandschaft in Griechenland, das – viel kritisierte – neue ungarische Grundgesetz von 2011 sowie die „Schwarz-Rote Allianz“, eine junge politische Bewegung in Albanien.

Eine erkenntnisreiche Lektüre wünscht

Ihr Redaktionsteam

*Hansjörg Brey*

*Claudia Hopf*

# Editorial

## Dear Reader,

the arrest of the last alleged war criminals in the summer of 2011 who were accused by the International Criminal Tribunal for the Former Yugoslavia (ICTY) was a major success in the attempt to provide justice for the victims of the war crimes committed during the wars in former Yugoslavia. The ICTY is supposed to be closed down at the end of 2014. The main focus covered in this issue of the "Südosteuropa Mitteilungen" sums up the experiences, successes and setbacks of one and a half decades with reference to the implementation of "transitional justice" in the successor states of former Yugoslavia. The articles that are published in English are the results of an international conference on „War Crimes and Transitional Justice in the Former Yugoslavia: 15 Years of Experience“, which had been organized by the Southeast Europe Association on 22-24 March 2012 in cooperation with the Leipzig University in the Senate hall of the university. The conference, as well as the publication of the articles released in this volume, was rendered possible with the support of the German Federal Foreign Office using funds of the Stability Pact for South Eastern Europe. The selection of the contributions tries to cover a multitude of aspects concerning the topic. This includes a critical analysis of the ICTY, the reflection of war guilt and war crimes in Bosnia-Herzegovina, Croatia and Serbia, as well as the ambivalent transition between war crimes and organized crime constituting a heavy burden for the rule of law in the Yugoslavian successor states. An outline of the topics and discussions covered during the conference in Leipzig is provided by a detailed conference report in this volume (for an English version see [www.sogde.org](http://www.sogde.org)).

The main focus of this volume is supplemented by further articles in German language covering highly topical questions referring to the political and social developments in Southeast Europe. The articles highlight the radicalization of the political parties in Greece, the – much criticized – new Hungarian Constitution of 2011 as well as the "Black-Red Alliance", a newly developed political movement in Albania.

With the best wishes for a valuable reading,

Your editorial team

*Hansjörg Brey*

*Claudia Hopf*

**SÜDOSTEUROPA**

Mitteilungen

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**Main Focus: War Crimes and Transitional Justice in Former Yugoslavia**

**Christian Axboe Nielsen**

**The Symbiosis of War Crimes and Organized Crime in the Former Yugoslavia**

Although the focus in both academic research and international criminal prosecutions related to the recent wars in the former Yugoslavia has been on war crimes, these cannot be fully understood without studying their relationship to organized criminal conduct.

By considering the history of the security services in Yugoslavia's last decades, it is possible to detect troubling antecedents for the engagement of criminal elements by the state concerning the destruction of the country. Opportunistic and nationalist elites devised a strategy of using paramilitary organizations to ethnically cleanse opponents in order to establish homogenous nation-states. In the short term, this strategy proved catastrophically effective, but it carried with it a large number of negative externalities that undermined democracy, the rule of law and market economics in the newly independent states.

**Fergal Gaynor**

**Prosecution at the ICTY: Achievements and Challenges**

The article examines some of the principal achievements of, and challenges faced by, the Office of the Prosecutor ("OTP") of the International Criminal Tribunal for the Former Yugoslavia ("ICTY" or "Tribunal") in The Hague.

As achievements, it mentions the impressive body of jurisprudence generated in a relatively short period, as well as innovative procedural solutions developed to address unique situations. It also cites the opportunities given to thousands of victims to testify about the facts of their ordeals in a dignified environment.

It argues that the greatest success of the OTP is perhaps that it did not fail. Some of the greatest challenges faced by the OTP have been: having accused persons arrested; getting access to documentary evidence held by recalcitrant states; ensuring that the pre-trial and trial periods are expeditious; self-representation; explaining the benefits of witness proofing and plea agreements to sometimes sceptical observers.

**Katarina Ristić**

## **Silencing Justice: War Crime Trials and the Society in Former Yugoslavia**

The article examines political and media discourses on war crime trials in former Yugoslavia and their relation to transitional justice norms. The main aim is to explain the modest results of the ICTY in triggering the process of dealing with the past in the region.

Discourse analysis has been utilized to analyze about 5000 articles published in Croatia, Bosnia and Herzegovina as well as Serbia in the period 2001-2011. The study shows that the three countries constructed a significantly different memory of war crime trials, mainly in accordance with the claims of dominant ethno-nationalist discourses. In Serbia, the trials are seen as yet another tool used by the international community to victimize and humiliate Serbia. In Bosnia, war crime trials are a confirmation of the genocide narrative and the status of the war's greatest victims. Finally, in Croatia, the war crime trials are accepted only to the extent they confirm the "Homeland War" narrative.

Interpreted solely in an ethno-nationalist frame, war crime trials could so far not contribute significantly to reconciliation and dealing with the past, but they did provoke debates and provided a challenge for dominant war narratives throughout the region.

**Anisa Sućeska-Vekić**

## **War Crime Trials in Bosnia and Herzegovina: Achievements and Challenges**

More than a decade after the end of the war, Bosnia and Herzegovina (BiH) is still struggling to overcome the ensuing injustice and setbacks. Fears among the three ethnicities are rooted in the communities while the culture of collective blame prevails in the country.

BiH has perhaps the most layered and complex arrangement for prosecuting perpetrators of grave violations of international humanitarian law, having established a great range of institutions. There is a strong public debate going on among relevant stakeholders whether the different courts demonstrate ample capacity, willingness and professionalism to fairly and efficiently examine war crime cases, free of any indication of ethnic bias.

Public confidence in war crime proceedings is fragile and widespread distrust in the institutions is still a feature in the BiH society. Misunderstandings emanating from judicial proceedings can actually exacerbate societal tensions and contribute to escalation of political strife which has been happening in Bosnia and Herzegovina in the past decade, especially after the political crisis started in 2007. Local judiciary is facing strong political influence, not only directly but also through the corrupt media stakeholders.

Despite of the challenges, the justice – dealing with the past and paths to reconciliation – should be among the primary issues of concern for each citizen of Bosnia and Herzegovina, regardless of gender, age or ethnicity.

**Dejan Jović**

**The War That Is Not Allowed to Be Forgotten: Nationalist Discourse on the “Homeland War” (1991-1995) in Contemporary Croatia**

The article focuses on the analysis of the dominant discourse on the Croatian “Homeland War” (1991-1995) as developed within the contemporary doctrine of Croatian nationalism. The character of Croatian nationalism is predominantly conservative, and thus the official interpretation of previous wars is founded on conservative ideology. The essence of this interpretation is in celebrating, rather than commemorating the war that was rather successful for Croatian nationalism. Croatian nationalism has achieved three major objectives in this war: It succeeded in taking Croatia out of Yugoslavia, it secured territorial integrity for the newly independent Republic of Croatia, and it made Croatia more ethnically homogeneous than ever before.

Croatian nationalism had a good war. The author argues that this is the reason why conservative nationalists do not allow the “Homeland War” to be forgotten. In addition, they also keep official memories of the Second World War alive, and use these “memories” primarily to argue that Croatian history prior to the 1990s was tragic. The leading nationalist politicians reject any challenge of the official discourse as an attempt of historical revisionism. This narrative is still able to mobilise voters, albeit not to the extent as was the case in the 1990s. However, the anti-nationalists are trying to ignore it. They hope that the fate of the nationalist discourse will be the same as the fate of Marxist ideology.

**Elena Panagiotidis**

**The Radicalisation of the Greek Political Landscape  
Greece after the Parliamentary Election of 6 May 2012**

The Greek parliamentary elections of 6 May 2012 have marked the end of the traditional two-party-system dominating Greek politics since 1974. They proved that Greece’s political landscape has radicalized. Conservative Nea Dimokratia (ND) won the polls but marginally failed to achieve the number of votes needed to form an outright majority in parliament. Socialist PASOK – being considered the main culprit for Greece’s financial situation – placed a distant third. The radical leftist party Syriza that renounces the Troika’s bailout memorandum is now a major player on the scene and might become something like the “new PASOK”.

One of the topics dominating the electoral campaign prior to 6 May 2012 was (irregular) migration to Greece. The fascist party Chryssi Avgi (Golden Dawn) made it its priority, but PASOK and ND were also fishing in the far right vote, thus contributing to poisoning the climate in Greek society. While in the electoral period before May 6<sup>th</sup> parties were divided between those in favor of the bailout-program and those renouncing it, in the period before the next elections on 17 June 2012 all parties have been distancing themselves from the memorandum and its harsh austerity measures.



**Herbert Küpper**

## **Hungary's New Constitutional Law of 2011**

**No Reason for Exaltation, But Not the End of Democracy, Either**

Hungary's Constitution of 25 April 2011 has given rise to many debates both within Hungary and its European partner countries. These debates are fuelled by political emotions and, in the media outside Hungary, quite often by misunderstandings or one-sided information. Reliable and fact-based knowledge, however, is rare.

The article describes the new Constitution, discusses the items that were criticised in the Western media in a comparative perspective, and problematizes the debatable aspects of the Constitution that were not a topic of Western criticism. It shows that the text of the Constitution abolishes neither democracy nor the rule of law, but contains – apart from "fashionable" developments such as a "sustainable development" – some potentially illiberal parts and certain rules that, due to their vagueness, may open ways for abuse.

**Lindita Arapi**

## **A Black-Red-Alliance for a New Albania or a Greater Albania?**

A new political party in Albania is presently attracting the attention in Albania, Kosovo and Macedonia. The Black-Red-Alliance (AK), named after the colours of the national Albanian flag, brings turmoil to the Albanian political landscape.

The AK started its political life as a regular Albanian party in March 2012 by attacking all major politicians, as they failed in advancing Albania's EU-integration process. AK presents itself as the new hope for all Albanians wherever they may live and meets a positive reaction. Moreover, it is especially the nationalistic demand for the unification of Albania and Kosovo that causes further major discussions in the Albanian public opinion.

Is AK a real nationalistic danger in the southern Balkans or simply a new Albanian party looking for its electorate?