

War Crimes Case Processing in Bosnia and Herzegovina (2004 – 2022)

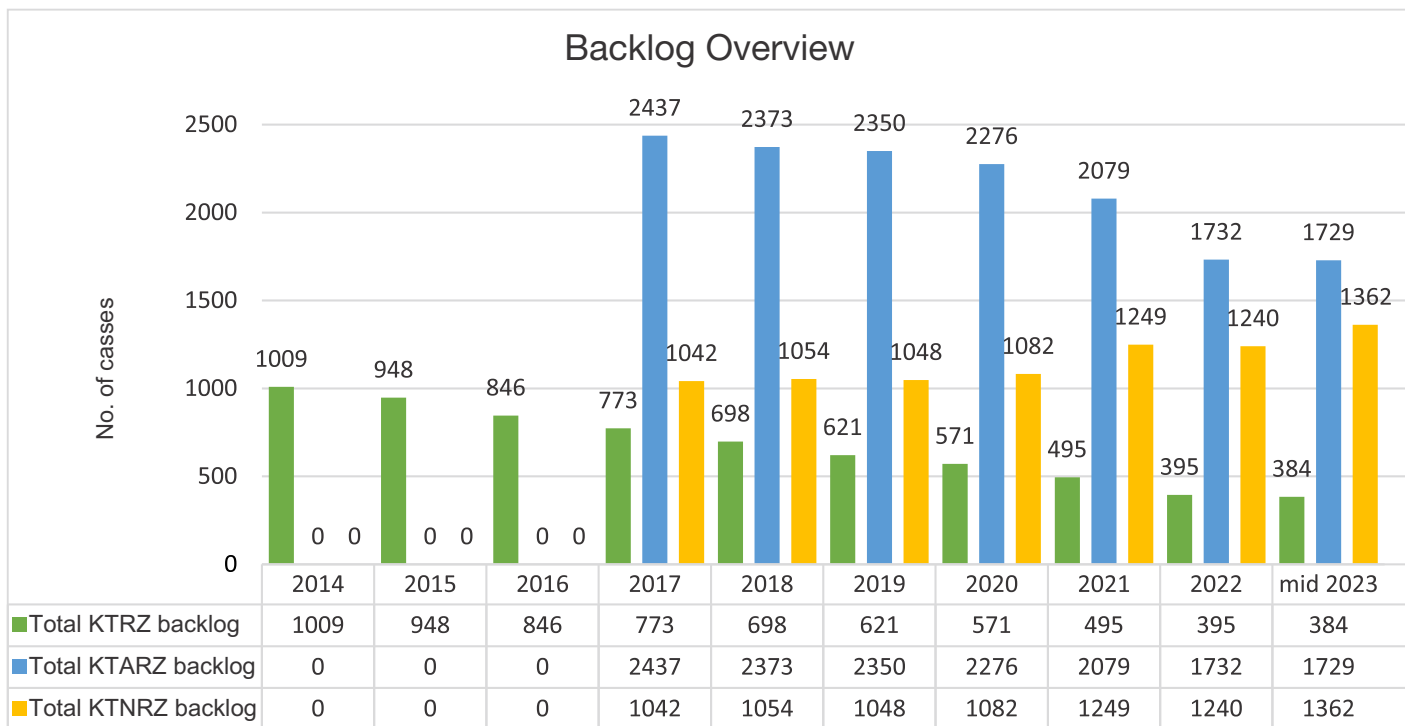
Since 2004, the OSCE Mission to Bosnia and Herzegovina (Mission) has conducted comprehensive trial monitoring of war crimes cases in Bosnia and Herzegovina (BiH).¹ Complementing this trial monitoring, in 2014, the Mission's War Crimes Monitoring Project (WCMP), funded by the European Union (EU), began collecting and analysing data regarding the pre-indictment backlog of all reported potential war crimes.² Drawing on these

data sources, this factsheet provides a statistical overview of completed and ongoing war crimes cases before all courts (post-indictment) and prosecutor's offices (pre-indictment) in BiH.³ This factsheet also highlights key trends in the processing of conflict-related sexual violence (CRSV) cases and the practice of awarding compensation to victims in war crimes trials.

War Crimes Case Backlog Among All BiH Jurisdictions

Prosecutor's offices (PO) across BiH carry a substantial backlog of war crimes cases, with the backlog defined as the number of war crimes cases reported to but not yet processed by POs in all BiH jurisdictions. In addition to 384 war crimes cases with an identified suspect (KTRZ), this backlog also consists of over 3,000

reported war crimes that lack an identified suspect (KTN) or where the commission of a crime has not yet been established (KTA). With little progress in addressing these KTN and KTA cases, it is increasingly unlikely that these cases will ever progress to an indictment and prosecution.



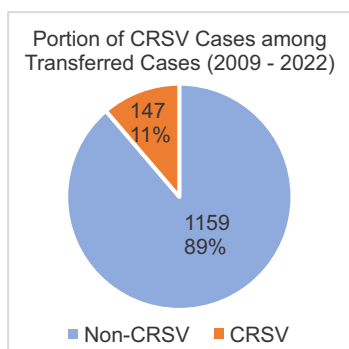
¹ This factsheet predominantly presents information available to and verified by the Mission as of 31 December 2022 with the exception of the case backlog, which represents information available as of 1 September 2023. Because the Mission has tracked different data over different periods of time, date ranges for provided data may vary. In addition, in conducting its analyses, the Mission has accounted for the inevitable impact of the COVID-19 pandemic on the work and efficiency of the domestic judiciary.

² The term "war crimes" is used to denote cases involving allegations of the crime of genocide, crimes against humanity, and war crimes arising from violations of international humanitarian law.

³ To preserve the objectivity of the Mission's trial monitoring program, discussion of ongoing cases has been limited to quantitative data.

Transferred Cases (2009 - 2022)⁴

Jurisdiction transferred to	Category of case	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	Total
Federation of BiH (FBiH)	KTA	0	3	1	11	6	2	1	2	2	5	0	0	2	5	40
	KTN	0	0	0	0	0	0	0	0	1	83	34	118	93	40	369
	KT-RZ	3	31	15	134	37	32	20	25	13	38	16	38	16	10	428
Republika Srpska (RS)	KTA	0	0	0	1	2	0	0	0	2	6	1	0	0	7	19
	KTN	0	1	0	0	0	0	0	0	0	9	13	69	71	36	199
	KT-RZ	3	9	8	70	13	9	11	4	5	24	10	24	8	7	205
Brčko District of BiH (BDBiH)	KTA	0	1	0	0	0	0	0	0	0	0	0	0	0	3	4
	KTN	0	0	0	0	0	0	0	0	0	1	0	11	18	5	35
	KT-RZ	0	0	1	1	0	0	0	0	1	1	1	0	1	1	7
TOTAL		6	45	25	217	58	43	32	31	24	167	75	260	209	114	1306



To promote the effective and efficient processing of the case backlog, the National War Crimes Processing Strategy (Strategy) – adopted in 2008 and revised in 2020 (Revised Strategy)⁵ – requires that the Prosecutor's Office of BiH (PO BiH) prioritize the most complex cases, based on criteria related to the gravity of the offense and the capacity and role of the

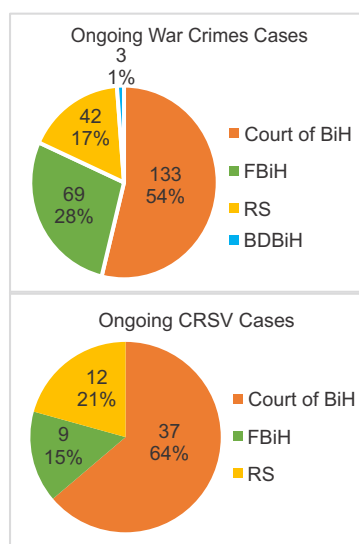
Revised Strategy's Annex A. The Mission is currently analysing recent indictments filed by PO BiH to determine whether this is borne out in practice. **Notably, out of 1,306 cases transferred, the PO BiH has only transferred 147 cases involving CRSV, which may indicate that CRSV cases are generally categorized as complex.**

The Mission remains concerned with the transfer of large numbers of KTN and KTA cases, including 96 such cases in 2022. Without identification of the suspect or having established that a criminal act occurred, neither the role of the suspect in the commission of the alleged crime nor an accurate analysis of the connection and context of the events in relation to pending or completed cases before the PO BiH can be assessed.⁷ This further hinders an accurate assessment of the relevant factors of the Annex A criteria to determine whether the case is appropriate for transfer. While the entity and BDBiH judiciaries generally have the capacity to investigate and prosecute war crimes, they have significantly limited human resources as compared to the PO BiH and lack access to the State Investigation and Protection Agency's (SIPA) specialized war crimes investigative units.⁸

suspect, and transfer, in conjunction with the Court of BiH,⁶ less complex cases to entity and Brčko District of BiH (BDBiH) courts. Following the initial slow pace of transfers, between 2018 and 2022, a series of discussions facilitated by the Mission resulted in the PO BiH assessing its KTRZ backlog and transferring 195 less complex cases to the entities and BDBiH. All cases remaining with PO BiH should thus qualify as complex cases under the

Ongoing Cases (post-indictment)

As of the end of 2022, there were 247 ongoing cases across all BiH jurisdictions. Of these, six were awaiting confirmation of the indictment; 92 were at the pre-plea stage; 28 were awaiting the start of the main trial; and 121 were in main trial, retrial, or appeal proceedings. **58 cases involving 124 defendants – comprising nearly a quarter of all war crimes cases pending before courts across all jurisdictions in BiH – involve CRSV. The substantial majority of CRSV cases, 37 out of these 58, are being processed at the State-level.**



Even as the number of indictments confirmed on an annual basis across all BiH jurisdictions has declined significantly since 2014, **CRSV cases, as a portion of these total indictments, consistently comprise more than one-fifth of newly confirmed indictments.**

With 384 cases remaining and time literally running out to process them, the judiciary – prosecutor's offices, courts, and law enforcement – must continue to focus on the completion of war crimes cases and the resolution of the backlog.

⁴ "Transferred cases" refers to those cases transferred from the Court of BiH to be processed by entity-level and Brčko District of BiH courts, pursuant to Article 27/27a of the Criminal Procedure Code of BiH. This chart includes data from 2009, following the adoption of National War Crimes Processing Strategy, through the end of 2022, which is the most recent complete data available to the Mission.

⁵ The (Revised) Strategy provides criteria for assessing the factual and legal complexity of cases. See, Annex A of the (Revised) Strategy. While significant amendments were made to the Strategy during the revision process, the substance of the main Strategic Objectives remained largely unaltered, thus ensuring continuity and consistency in the implementation of the Strategy following its revision. Unless otherwise indicated, all references herein to the Strategic Objectives can be read as being to both the original and the Revised Strategy.

⁶ See Art. 7(1) of the Law on Court of BiH – Consolidated Version, *Official Gazette of BiH* nos. 49/09, 74/09, 97/09.

⁷ *A Race against Time - Successes and Challenges in the Implementation of the National War Crimes Processing Strategy of Bosnia and Herzegovina* (2022) pp. 23-25, *War Crimes Case Management at the Prosecutor's Office of Bosnia and Herzegovina* (2019), p. 16.

⁸ *A Race against Time - Successes and Challenges in the Implementation of the National War Crimes Processing Strategy of Bosnia and Herzegovina* (2022) p. 25.

Indictments Confirmed (2014 - 2022)⁹

(number of defendants shown in parentheses)

Level of jurisdiction	2014	2015	2016	2017	2018	2019	2020	2021	2022
	Cases	Cases	Cases	Cases	Cases	Cases	Cases	Cases	Cases
State level	57 (116)	49 (131)	36 (90)	30 (67)	34 (96)	17 (40)	12 (32)	16 (43)	22 (69)
FBiH	21 (26)	20 (22)	21 (34)	12 (17)	10 (16)	13 (14)	3 (3)	11 (12)	10 (12)
RS	16 (25)	15 (18)	12 (18)	7 (15)	10 (13)	5 (5)	3 (4)	3 (3)	9 (16)
BDBiH	3 (4)	1 (1)	0	0	2 (2)	1 (2)	1 (1)	0	0
Total: 482	97 (171)	85 (172)	69 (142)	49 (99)	56 (127)	36 (61)	19 (40)	30 (58)	41 (97)

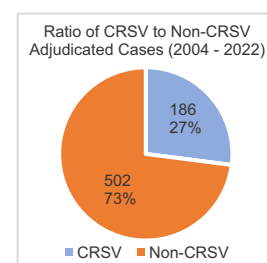
The unavailability of defendants to the courts presents a major obstacle to the completion of approximately one-third of ongoing cases across all jurisdictions in BiH. Of the 247 cases in the post-indictment phase at the end of 2022, 87 defendants in a total of 80 cases were unavailable to the relevant domestic court, primarily because they are located abroad and cannot be extradited. Out of these 87 defendants, 81 have citizenship of another country where they are suspected to be residing. Namely,

41 of these individuals are reported to be citizens of Serbia, 37 are reported to be citizens of Croatia, and three defendants are reported to be, respectively, citizens of Canada, Montenegro and Switzerland. Only six of these defendants are reported to solely have BiH citizenship. The unavailability of defendants is especially prevalent among the PO BiH's pre-indictment cases, of which nearly one-half involve one or more defendants believed to be located abroad.

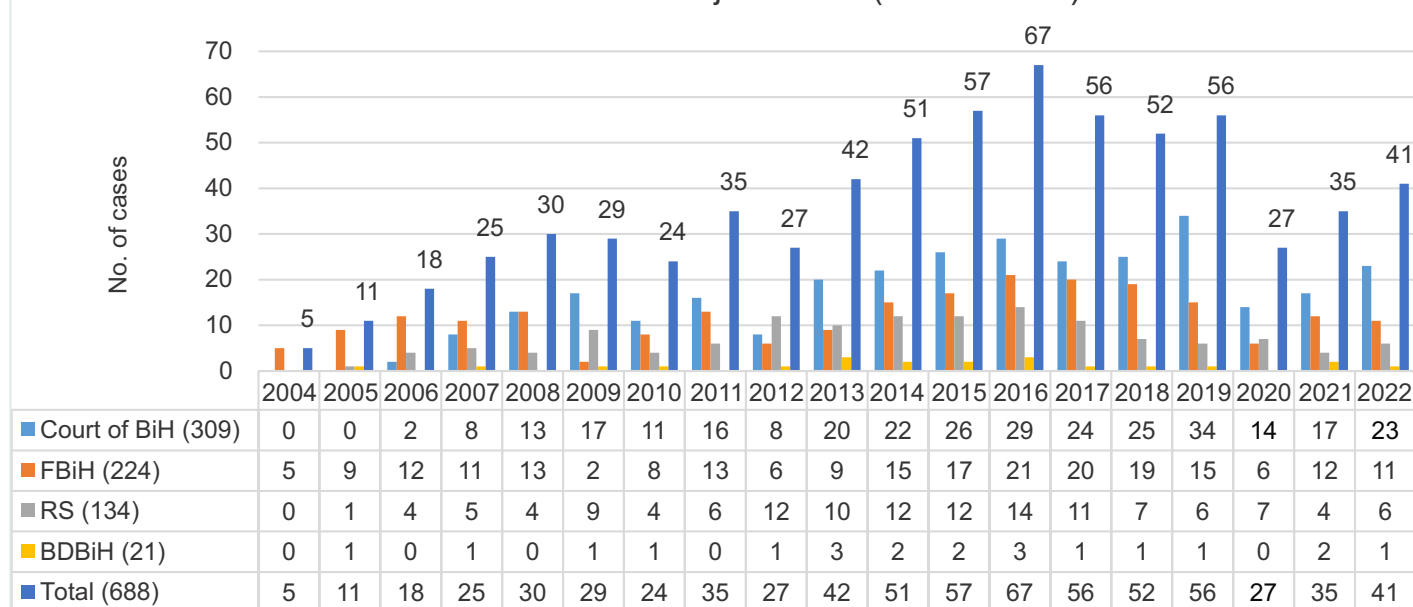
Completed Cases

By the end of 2022, the domestic judiciary had adjudicated a total of 688 war crimes cases involving 1,050 defendants. Despite this, and despite the passage of 28 years since the end of the war in 1995, 384 KTRZ cases involving 3,342 known suspects remain to be processed as of mid-2023. Notwithstanding this number of outstanding cases, the annual rate of case completion declined precipitously following the outbreak of Covid-19 and remains below a pre-pandemic high of 67 cases against 96 defendants.

More than one-quarter of adjudicated war crimes cases involved CRSV, amounting to 186 cases involving a combined 262 defendants.¹⁰ It is notable that the percentage of war crimes prosecutions involving CRSV has remained consistent over time.



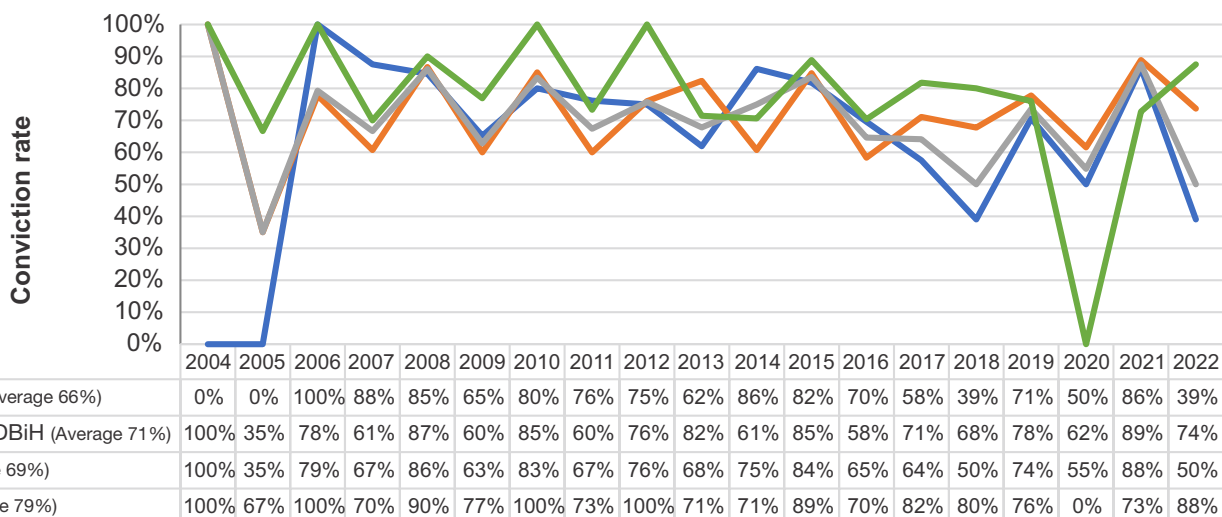
War Crimes Cases Adjudicated (2004 - 2022)



⁹ The data draws on monitoring conducted by the Mission under the auspices of the EU-funded WCMP, which began in 2014.

¹⁰ In its public reports, the Mission has analysed various aspects of the investigation and prosecution of CRSV cases before the domestic judiciary. See, *Towards Justice for Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress before Courts in BiH 2014–2016* (2017), *Combating Impunity for Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress and Challenges – Vol. I: An analysis of criminal proceedings before the Court of Bosnia and Herzegovina between 2005 and 2013* (2014), and Vol. II: *An analysis of criminal proceedings before the courts of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District BiH between 2004 and 2014* (2015).

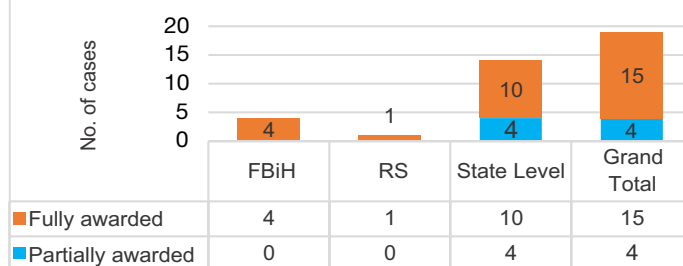
Conviction rate in Final Verdicts (2004 - 2022)



Among cases reaching a final and binding verdict, the Mission notes with concern an overall decline in cases ending in convictions since 2016. In 2022, the average conviction rate per defendant before all courts had dropped to 50 per cent, which constitutes the lowest result registered since the Mission began monitoring war crimes proceedings. Moreover, since 2017, the State-level conviction rate has been consistently below that of the average entity-level rate. While acquittals necessarily form part of a functioning judicial system, this concerning trend could indicate a deterioration in the quality of investigations, indictments, and trial advocacy and management, especially at the State-level.¹¹ **In CRSV cases, both the average (79 per cent) and, with rare exception, the annual conviction rates have been higher than those of non-CRSV cases.**

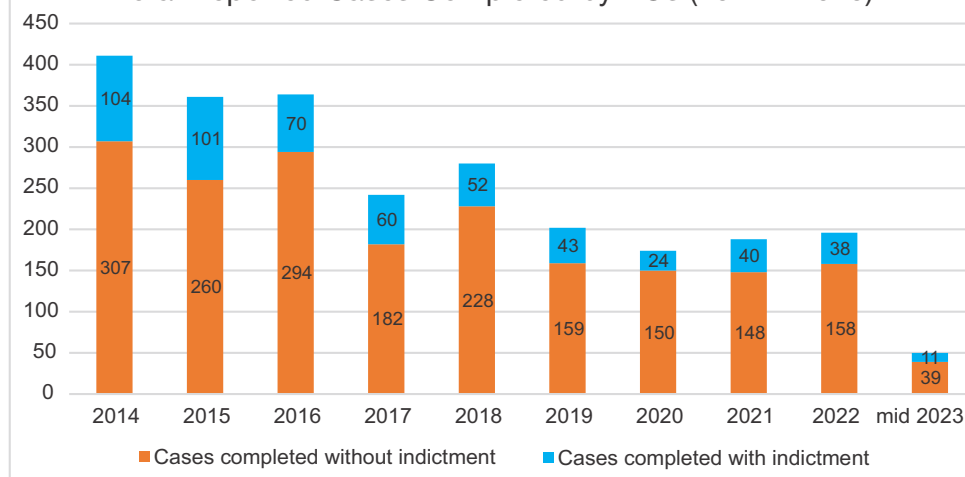
Another concerning trend among adjudicated cases is the widespread failure of courts to award victim compensation during criminal proceedings despite the legal authority and, per the respective CPCs, the legal obligation, to do so. **Of the mere 19 cases where compensation was awarded, 16 involved CRSV.**

Awarded Compensation Claims in Completed Cases (2004 - 2022)



Moreover, the Mission's identification of only 38 cases in which the relevant compensation claims procedures were completed among the 688 adjudicated war crimes cases demonstrates a serious gap between the availability of legal mechanisms for obtaining compensation and the ability of victims to use those mechanisms effectively during criminal proceedings.

Total Reported Cases Completed by POs (2014 - 2023)



Not all reported war crimes cases that are investigated by prosecutors result in a trial. Many are closed during the investigation phase for legitimate reasons such as lack of evidence or the death of a suspect or a key witness. Of the 2,468 reported cases completed since 2014, prosecutors have completed 1,925 without filing an indictment, including by means such as filing an order to suspend or not to conduct an investigation, transferring the case to another jurisdiction, or case merger. While these methods of completion often receive less attention than adjudicated cases, they nonetheless constitute a substantial portion of POs workloads.

Conclusion

While the Revised Strategy is currently set to expire at the end of 2023, its expiration will not absolve BiH of its obligation under international law to investigate and, if provided for by the evidence, prosecute all war crimes cases. The Mission will

continue to monitor and analyse the work of judicial institutions across BiH as they endeavour to resolve the remaining cases and deliver justice to the victims who continue to await it.

¹¹ See, amongst others, *A Race against Time - Successes and Challenges in the Implementation of the National War Crimes Processing Strategy of Bosnia and Herzegovina* (2022), and *War Crimes Case Management at the Prosecutor's Office of Bosnia and Herzegovina* (2019), as well as reports prepared by Judge Joanna Korner, *Processing of War Crimes at the State Level in Bosnia and Herzegovina* (2016) and *Improving War Crimes Processing At The State Level In Bosnia and Herzegovina - A Follow-Up Report By Her Honour Judge Joanna Korner CMG QC* (2020).