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PROTECTION OF THE RIGHTS OF WRONGFULLY CONVICTED PERSONS IN CROATIA

ABSTRACT

The protection of the rights of wrongfully convicted individuals represents a critical concern within the Croatian justice system, demanding robust legal safeguards, effective remedies, and institutional accountability. Wrongful convictions not only undermine public trust in judicial institutions but also cause significant harm to the affected individuals, including psychological distress, societal stigma, and loss of freedoms. This paper explores the Croatian legal framework and practices concerning wrongful convictions, focusing on mechanisms for compensation, the reopening of procedures, and the protection of defense rights. The paper will review Croatia's approach to compensating wrongfully convicted persons, analyzing the adequacy of legal provisions under the Croatian Act on Compensation for Damage Caused by a Wrongful Conviction and assessing the procedural barriers to obtaining fair compensation. It will also examine the reopening of procedures as a remedy for wrongful convictions, with particular attention to the application of new evidence, developments in forensic methods, and compliance with European Court of Human Rights standards. Defense rights, including access to effective legal representation, equality of arms, and the presumption of innocence, will be evaluated as preventative measures against miscarriages of justice. In addition to reviewing existing practices, this paper will discuss modern methods for identifying and rectifying wrongful convictions, such as advanced forensic techniques, independent review mechanisms, and multidisciplinary cooperation between legal, forensic, and advocacy experts. The central hypothesis of the study is that while Croatia has made strides in addressing wrongful convictions, significant gaps remain in the implementation of international standards, accessibility of remedies, and systemic reforms to prevent future injustices. This paper seeks to contribute to the discourse on wrongful convictions in Croatia by proposing evidence-based recommendations for legislative and institutional improvements, ensuring a justice system that prioritizes the protection of individual rights and fosters public confidence in its integrity.

Keywords: *wrongful convictions, innocence project Croatia, defense rights, compensation.*

1. INTRODUCTION

We often hear about it in the news or see it dramatized in Netflix shows: a cold case is reopened, revealing that an innocent man has spent most of his adult life in prison. Now, thanks to newly discovered evidence often DNA he is finally

exonerated. This breakthrough is usually the result of a dedicated defense attorney, often working with an Innocence Project, who uncovers the new evidence and successfully petitions the court to reopen the case and overturn the original conviction. In 1990 DNA technology changed the discussion. People began to be released from prison based on scientific proof of innocence, which is more definitive. Simply put wrongful convictions or miscarriages of justice represent one of the most awful failures of any criminal justice system. This happens when an innocent person is convicted of a crime they did not commit, the consequences are devastating both for the individual and for society. These people are what Brooks called specialized types of victims endure the loss of liberty, reputational damage, psychological trauma, and disruption of family and social ties.¹ At the same time, the real perpetrators remain free, undermining public safety and eroding trust in judicial institutions. This phenomenon is not new. Kilias argues that even the Romans were aware of these risks to the criminal justice systems, as evident in the proverbial warning of an legal advisor to the emperor Traianus² that it is a preferable to wrongly acquit a guilty defendant than to convict an innocent man.³ Protecting the rights of wrongfully convicted individuals is a complex, multidisciplinary issue. It involves not only ensuring access to legal remedies and fair compensation, but also providing opportunities to reopen cases based on new evidence and offering long-term support for reintegration into society. Effective protection also requires the continuous strengthening of procedural safeguards such as the right to competent legal defense, equality of arms, access to exculpatory evidence, and the presumption of innocence to help prevent such miscarriages of justice from occurring in the first place. Croatia, like many other European countries, has made notable efforts to incorporate the rights of wrongfully convicted persons into its legal framework. Although still in its early stages, the Croatian Innocence Project has already identified several weaknesses particularly in the legal handling of DNA evidence, including how it is collected, stored, and used in court proceedings. Field research by the project also highlights that the criteria for reopening criminal cases remain especially strict. This is particularly evident in the assessment of *novum*, or new evidence, where Croatia aligns with the restrictive standards seen in many European jurisdictions. Despite these efforts, significant challenges persist. Obstacles to obtaining compensation, difficulties in identifying and acknowledging wrongful convictions, rigid legal and judicial approaches to reopening cases, and a lack of institutional support for reintegration all indicate that the current system does not fully meet the needs of those who have been unjustly punished.

¹ Brooks, J., *You might go to prison, even though you're innocent*, University of California Press, Berkeley 2023, pp. 24–25.

² The identity of the advisor is unknown. However, the Emperor's instruction to a local magistrate reads as follows *Sed nec de suspicionibus debere aliquem damnari* (None should be convicted based on a suspicion alone.... Because it is preferable leaving unpunished a guilty defendant over punishing an innocent man. Quotation taken from Nogrady, A., *Römisches Strafrecht nach Ulpian*, 2011, p. 75.

³ See Killias, M., *Wrongful convictions as a result of political pressure*, in: Luparia, L. (ed.), *Understanding Wrongful Conviction. The Protection of the Innocent across Europe and America*, Wolters Kluwer, Milan 2015, pp. 57–80.

This paper is a great opportunity to address the Croatian legal and institutional approach to wrongful convictions, with particular focus on the mechanisms available for compensation, reopening of criminal proceedings, and the prevention of miscarriages of justice through strong procedural protections, and present them to the academic public. Here we will examine Croatia's compliance with international human rights standards, especially those set by the European Court of Human Rights in regarding handling of DNA evidence, and further identify key areas where reform is both necessary and urgent. Ultimately, the protection of the rights of wrongfully convicted persons is not only a matter of justice for individualism, it is a measure of the integrity and credibility of the entire justice system. Concerning the methods, this paper employs combination of descriptive, normative, comparative, analytical, and statistical methods. The descriptive method outlines Croatia's legal and institutional framework. The normative method assesses this framework against international standards. The comparative method contrasts Croatian practices with those in Europe and the U.S. The analytical method examines legal provisions, case law, and practical challenges, while the statistical method supports the analysis with available data on wrongful convictions and compensation. The first part of the paper will introduce the issue of wrongful convictions what they are, how they happen, and how they compare between Europe and the United States. It will also look at the main causes of wrongful convictions and the role of Innocence Projects in identifying and correcting these mistakes. The second part will focus on the Croatian Innocence Project what it does and what types of in the justice system it has uncovered so far. The third part will explore the legal rights of wrongfully convicted people in Croatia. This includes their right to a fair defense, the possibility of reopening criminal cases, and the right to seek compensation. Special attention will be given to both the legal framework and how these rights work in practice. In the conclusion part of the this article, we will outline specific steps for improving Croatian legislation related to the identification of wrongful convictions, lowering the high threshold for the admissibility of new evidence, and introducing specialized training for lawyers on how to address these issues of miscarriages of justice, and overall emphasize the importance of supporting Innocence Projects in strengthening post-conviction review mechanisms.

2. WHAT ARE WRONGFUL CONVICTIONS?

We hear it in the news and see it in Netflix documentaries cold cases reopened, innocent men freed after decades in prison. Often, new evidence, usually DNA, emerges to exonerate them. We may use the term wrongful conviction or miscarriage of justice. Both terms are used to describe serious failures within the criminal justice system. While both refer to unjust outcomes, a wrongful conviction specifically means that an innocent person has been found guilty of a crime they did not commit. A miscarriage of justice is a broader concept that includes any major error in the legal process such as a wrongful acquittal, an unfair trial, or the use of unreliable evidence that results in an unjust verdict. Garrett argues that these cases highlight critical flaws in the justice system and raise serious ethical and legal concerns. They often involve mistaken eyewitness

identification, coerced confessions, flawed forensic techniques, or systemic issues such as inadequate defense and institutional bias. They ultimately undermine the public trust in the system.⁴ Brooks further argues the troublesome reality of wrongful convictions raises essential questions about the causes of these judicial failures, the quality of legal procedures, and the safeguards that could prevent them. He argues that the focus must shift from merely ensuring efficiency in criminal proceedings to emphasizing fairness, accuracy, and the protection of the innocent.⁵ Modern response to wrongful convictions can be traced to the 1980s and 1990s, when for the first time legal scholars and practitioners started investigating and challenging these errors. This period was marked, as growing awareness that led to systematic efforts to identify and overturn wrongful convictions, while also studying the systemic factors that contributed to them.⁶ However they did not do it on their own. The emergence of DNA as a powerful forensic tool marked a scientific revolution in the field of criminal justice. Initially developed for medical and genetic research, DNA profiling was first applied to a criminal investigation in 1986 by British geneticist Alec Jeffreys, leading to the exoneration of a suspect and the conviction of the actual perpetrator in a double murder case.⁷ Since then, DNA has become the most go-to tool in forensic science, providing accuracy and objectivity previously unattainable in criminal investigations. Lynch and McNally argue that its adoption transformed evidentiary standards in courts, enabling the identification of suspects with remarkable precision and, equally important, the exoneration of the innocent.⁸ This was later also argued by the founder of the innocence project - Scheck, Neufeld, and Dwyer which noted that the DNA revolution not only reshaped forensic practices but also fueled broader legal reforms and gave rise to the Innocence Movement, which uses DNA evidence to correct miscarriages of justice.⁹

The movement culminated with the establishment of the first Innocence Project in 1992 by Barry Scheck and Peter Neufeld at the Benjamin N. Cardozo School of Law. This initiative set the foundation for a nationwide legal effort to address wrongful convictions through casework, legal reform, and legal advocacy. Further Godsey notes, the Innocence Project represented a groundbreaking model that combined academic legal analysis with practical litigation.¹⁰ It focused on

⁴ See Garrett, B. L., *Convicting the innocent: Where criminal prosecutions go wrong*, Harvard University Press, Cambridge (MA) 2011, pp. 5–8.

⁵ See Brooks, J., *Miscarriages of justice in the United States*, in: Nobles, R.; Schiff, D. (eds.), *Murder, Wrongful Conviction and the Law*, Routledge, London 2023, pp. 136–150.

⁶ See Godsey, M., *Blind Injustice: A former prosecutor exposes the psychology and politics of wrongful convictions*, University of California Press, Berkeley 2019, pp. 12–13.

⁷ See Jeffreys, A. J.; Wilson, V.; Thein, S. L., *Hypervariable 'minisatellite' regions in human DNA*, *Nature*, Vol. 314, No. 6006, 1985, pp. 67–73.

⁸ See Lynch, M.; Cole, S. A.; McNally, R.; Jordan, K., *Truth Machine: The Contentious History of DNA Fingerprinting*, University of Chicago Press, Chicago 2010, pp. 23–25.

⁹ See Scheck, B. C., *Barry Scheck Lectures on Wrongful Convictions*, *Drake Law Review*, Vol. 54, 2005, pp. 597–599.

¹⁰ See Godsey, M. A.; Pulley, T., *The innocence revolution and our evolving standards of decency in death penalty jurisprudence*, *University of Dayton Law Review*, Vol. 29, 2003, pp. 264–265.

exposing cases where convictions were secured through flawed or untested forensic evidence, misinterpreted DNA results, mistaken eyewitness accounts, or other serious procedural errors. Furthermore, according to West and Meterko the one of the most influential aspects of the Innocence Movement has been the use of postconviction DNA testing to establish new evidence or *novum* criterion to reopen the criminal proceedings.¹¹ The introduction of modern DNA technology offered a scientifically reliable means to challenge and overturn unjust verdicts. DNA evidence soon became central, and only affirmed scientific tool which can be called science, to the movement's efforts, providing definitive proof of innocence in many cases and exposing the fallibility of traditional investigative and prosecutorial methods.¹² Unlike many traditional forensic methods, DNA analysis is grounded in rigorous scientific methodology, validated through peer-reviewed research, and supported by quantifiable error rates and clear statistical probabilities. According to the landmark 2009 report by the National Academy of Sciences (NAS) titled *Strengthening Forensic Science in the United States: A Path Forward*, DNA is the only forensic technique that consistently meets the highest standards of scientific reliability and reproducibility. In contrast, forensic practices like hair comparison, bite mark analysis, and serology (blood typing) often rely on subjective judgment, lack standardization, and have no consistent error rates that can be scientifically tested.¹³ Garrett and Neufeld further argue that the NAS report criticized these methods for lacking a solid scientific foundation, noting that in many cases, experts overstated the certainty of their findings without empirical validation. For example, microscopic hair comparison has been discredited in numerous wrongful conviction cases, where initial matches were later disproven by DNA testing.¹⁴

Through rigorous case work and litigation, Innocence Projects have helped exonerate hundreds of individuals, revealing deep flaws in criminal justice systems and advocating for meaningful reform. As Brooks further observes, the success of these projects has sparked broader conversations about the credibility of forensic science, the need for preserving biological evidence, and the importance of aligning legal systems with scientific advancements. The first organization of its kind, Centurion Ministries, focused exclusively on freeing innocent individuals and promoting legal and policy reforms to reduce the risk of future injustices. Inspired by its model, a wave of Innocence Projects emerged across the United States in Ohio, Chicago, San Diego, and elsewhere sharing the

¹¹ See West, E.; Meterko, V., *Innocence Project: DNA exonerations, 1989–2014: Review of data and findings from the first 25 years*, *Albany Law Review*, Vol. 79, 2015, pp. 721–723.

¹² See *Ibid*, pp. 725. As a result, DNA evidence has become the gold standard in forensic science, not only because of its accuracy but also because it is grounded in principles of molecular biology and subject to rigorous scientific scrutiny. This distinguishes it sharply from older, more subjective forensic practices that have contributed to many miscarriages of justice.

¹³ See National Research Council et al., *Strengthening Forensic Science in the United States: A Path Forward*, National Academies Press, Washington, D.C. 2009, pp. 7–9.

¹⁴ See Garrett, B. L.; Neufeld, P. J., *Invalid forensic science testimony and wrongful convictions*, *Virginia Law Review*, Vol. 95, 2009, pp. 20–22.

common goal of correcting wrongful convictions.¹⁵ Among them, the California Innocence Project (CIP), based at San Diego Law School, stands out for its dual commitment to legal reform and education. It not only handles wrongful conviction cases but also trains future lawyers through practical experience and collaborative programs aimed at improving trial advocacy. One of its most notable cases, the exoneration of Brian Banks, gained widespread attention and was later adapted into a Netflix documentary, symbolizing both the human cost of wrongful convictions and the power of legal advocacy to correct them.¹⁶ To understand wrongful convictions, it is important to examine their underlying causes, compare experiences from the United States and Europe, and analyze the legal thresholds for presenting new evidence in the reopening of criminal proceedings.

2.1. Causes of Wrongful Convictions

Causes for wrongful convictions are not uniformed and they are dependable on factors within the criminal justice system. Among the most common causes detected so far by the work of innocence projects in Europe and in the US are mistaken eyewitness identification, which is particularly unreliable under stress or suggestive police procedures, and false confessions, often obtained through coercive or prolonged interrogations. Inadequate legal defense, especially for indigent defendants, also plays a significant role, as does prosecutorial misconduct, such as withholding exculpatory evidence. Furthermore, flawed forensic techniques—including hair comparison, bite mark analysis, or outdated serology have been linked to numerous miscarriages of justice. Systemic biases, including racial or socio-economic prejudice, can further influence investigations and verdicts.¹⁷

False confessions are a well-documented contributor to wrongful convictions in the US and Europe. Data from exoneration registries in the United States (National Registry of Exonerations) and the United Kingdom (Exeter Miscarriage of Justice Registry) show that false confessions were present in approximately 13%¹⁸ and

¹⁵ See Brooks, J.; Brooks, Z., *Wrongfully convicted in California: Are there connections between exonerations, prosecutorial and police procedures, and justice reforms*, *Hofstra Law Review*, Vol. 45, 2016, pp. 380–382.

¹⁶ Brian Banks was a promising high school football, wrongfully convicted in 2002 at age 16 for a rape he did not commit. After a consultation from his defense counsel, he accepted a plea deal to avoid a possible life sentence. He was sentenced over five years in prison and was placed on the sex offender registry. In 2011, his accuser admitted she had fabricated the story, and with the help of the California Innocence Project, Banks obtained a recording of her confession. This evidence led to the overturning of his conviction in 2012 by the Los Angeles County Superior Court. Banks later briefly played in the NFL and became an advocate for criminal justice reform. His story was adapted into the 2019 film *Brian Banks*, underscoring the devastating impact of wrongful convictions and the importance of post-conviction advocacy.

¹⁷ See West and Materko *op.cit.* note. 10 at pp. 730-731

¹⁸ See Exoneration Register United States, *Data on Exonerations by False Confessions as a Contributing Factor*,

20%¹⁹ of exoneration cases, respectively highlighting the troubling frequency with which individuals admit to crimes they did not commit. Kasin categories false confessions into three types: voluntary, coerced-compliant, and coerced-internalized. Voluntary false confessions occur without external pressure, while the latter two commonly arise during police interrogations. The majority of false confession cases that lead to wrongful convictions fall into the coerced categories.²⁰ While anyone can be vulnerable to giving a false confession, research shows that certain groups are at higher risk. These include juveniles, people with cognitive or developmental impairments, and those experiencing mental health issues.²¹ According to Kukucuka, Kassins and Burke, Situational factors also play a critical role. Interrogation techniques employed by the police particularly minimization (downplaying the seriousness of the offense) and maximization (emphasizing the strength of evidence and severity of punishment) can pressure suspects into confessing falsely. Other contributing factors include sleep deprivation, lack of food, and lengthy or high-pressure interrogations.²² Once a confession is made, regardless of whether it is adversarial proceedings with few safeguards or mixed procedure it is often viewed as highly credible even when it contradicts the suspect's own interests. This can bias the interpretation of other evidence, such as lie detector results or alibi statements. Research from the Innocence Project has shown that in 65% of DNA exoneration cases involving false confessions, these admissions triggered additional investigative and evidentiary errors.²³

Further, *False eyewitness identification* occurs when a witness mistakenly identifies someone as the perpetrator. In the United States, it is the leading cause of wrongful convictions (Innocence Project, n.d.). According to Brooks, eyewitness accounts rely heavily on memory, which is vulnerable to distortion.²⁴ Factors affecting accuracy fall into two categories: estimator variables, which are beyond the control of the justice system (e.g., distance, lighting, stress, disguise, own-race bias, or weapon focus), and system variables, which are within police

https://exonerationregistry.org/cases?f%5B1%5D=false_confession%3A1&f%5B3%5D=date_of_exon%3A%28min%3A1672272000%2Cmax%3A%29, accessed 05.03.2025.

¹⁹ See Evidence Based Justice Lab, *Exeter Miscarriage of Justice Registry, False Confessions as a Contributing Factor Cases*, <https://evidencebasedjustice.exeter.ac.uk/miscarriages-of-justice-registry/the-issues/false-confession/>, accessed 05.03.2025

²⁰ See Kassins, S. M.; Wrightsman, L. S., *Confession evidence*, in: Kassins, S. M.; Wrightsman, L. S. (eds.), *The Psychology of Evidence and Trial Procedure*, Sage Publications, Inc., Beverly Hills 1985, pp. 67–94.

²¹ See Drizin, S. A.; Leo, R. A., *The problem of false confessions in the post-DNA world*, *North Carolina Law Review*, Vol. 82, No. 3, 2004, pp. 891–1004. Available at: <https://scholarship.law.unc.edu/nclr/>

²² See Marion, S. B.; Kukucka, J.; Collins, C.; Kassins, S. M.; Burke, T. M., *Lost proof of innocence: The impact of confessions on alibi witnesses*, *Law and Human Behavior*, Vol. 40, No. 1, 2016, pp. 65–71.

²³ See Gudjonsson, G. H.; Sigurdsson, J. F.; Sigfusdottir, I. D.; Asgeirsdottir, B. B., *False confessions and individual differences: The importance of victimization among youth, Personality and Individual Differences*, Vol. 45, No. 8, 2008, pp. 801–805.

²⁴ See Brooks, op. cit. note 5, pp. 141–143.

control (e.g., how line-ups are conducted and whether instructions are neutral).²⁵ Improperly designed line-ups in criminal proceedings, lack of clear instructions, or suggestive behavior by officers can pressure witnesses into making inaccurate identifications. Additionally, memory fades over time, so long delays between the crime and the identification further reduce reliability. To minimize these risks, line-ups must follow strict protocols, and witness interviews should occur as soon as possible after the event.²⁶

Inadequate legal defense is another cause of wrongful convictions. Defense lawyers are essential in protecting the rights of the accused and challenging unreliable evidence presented by the prosecution. When they fail in this role, it can lead to wrongful convictions. Data from U.S. exoneration databases show that inadequate legal defense played a role in 27% of cases in the National Registry of Exonerations and 7% in the Innocence Project records highlighting how often poor legal representation contributes to unjust outcomes.²⁷ Several factors explain these failures. Public defenders, who represent those unable to afford private attorneys, often face overwhelming caseloads and limited funding, making it difficult to devote adequate time and resources to each case. This resource strain has also been linked to the widespread use of plea bargains, where defendants plead guilty to avoid lengthy trials and harsher sentences. In some cases, defense lawyers regardless of resources may lack experience, motivation, or belief in the client's innocence, leading them to neglect basic duties like investigating evidence, consulting experts, or challenging questionable testimony. These shortcomings leave vulnerable defendants at greater risk of being wrongfully convicted.²⁸

Forensic evidence in the eyes of the court is always viewed as objective and reliable, helping to establish a suspect's connection to a crime through physical traces like DNA, fingerprints, or bloodstains. However, according to Godsey not all forensic methods are scientifically validated or free from error. He emphasizes that The National Registry of Exonerations in the U.S. has recorded over 730 wrongful convictions involving flawed or misused forensic science, underscoring its potential to contribute to miscarriages of justice.²⁹ One of the major issues consistently appearing is the subjectivity in interpretation of the forensic evidence in courts. Many forensic techniques, such as fingerprint analysis or tool mark comparisons, require expert judgment which can vary across analysts and be

²⁵ See Brooks, op. cit. note 1, pp. 23-25.

²⁶ See Semmler, C.; Dunn, J.; Mickes, L.; Wixted, J. T., *The role of estimator variables in eyewitness identification*, *Journal of Experimental Psychology: Applied*, Vol. 24, No. 3, 2018, pp. 400–415.

²⁷ See Gould, J. B.; Leo, R. A., *One hundred years later: Wrongful convictions after a century of research*, *The Journal of Criminal Law and Criminology*, Vol. 100, No. 3, 2010, pp. 825–830.

²⁸ See Berry, S. M., *Bad lawyering: How defense attorneys help convict the innocent*, *Northern Kentucky Law Review*, Vol. 30, No. 26, 2003, pp. 487–504.

²⁹ See Godsey, M. A., *False justice and the true prosecutor: A memoir, a tribute, and commentary*, *Ohio St. J. Crim. L.*, 9, 2011, pp. 790-791.

influenced by biases. Psychological factors like confirmation bias³⁰ and contextual bias³¹ can distort evaluations, especially if an expert is aware of other incriminating details, such as a confession. Furthermore, some forensic methods which were previously considered reliable are now discredited such as microscopic hair comparison, long used in courtrooms, have been labeled as “junk science” following DNA-based exonerations.³² Compounding the problem, forensic findings are sometimes miscommunicated in court. Legal professionals may struggle to interpret statistical evidence or may be misled by how conclusions are framed linguistically, affecting perceptions of guilt.³³

2.2. Wrongful Convictions and Innocence Projects Models in the United States and Europe

The Innocence Movement began in the United States in the 1980s and 1990s, as legal scholars and practitioners increasingly recognized that procedural safeguards were not enough to prevent innocent people from being convicted. The founding of the Innocence Project in 1992 by Barry Scheck and Peter Neufeld at the Benjamin N. Cardozo School of Law marked a turning point. Combining legal advocacy with scientific analysis, particularly DNA testing, the Project demonstrated how wrongful convictions could be reversed and prevented. DNA became a revolutionary tool for exoneration, offering objective proof in cases where traditional evidence had failed. According to the National Registry of Exonerations, over 730 cases involved flawed forensic science, underscoring the importance of validated scientific methods. The work of Innocence Projects in the U.S. extends beyond litigation. These organizations have influenced legislation such as the Innocence Protection Act of 2004³⁴, which guarantees postconviction DNA testing and sets standards for compensating the wrongfully convicted. U.S. projects often operate within law schools, merging academic instruction with real-life casework, creating a unique model of legal education.

The impact of these developments spread beyond the U.S., as wrongful conviction cases gained visibility, European scholars and institutions began reassessing their own legal systems.³⁵ Despite widespread belief in the safeguards of inquisitorial justice, countries like Italy, Germany, the Netherlands, and now Croatia eventually

³⁰ *Confirmation bias* refers to the tendency to interpret evidence in a way that supports one’s pre-existing beliefs or expectations.

³¹ See *Contextual bias* occurs when external information—such as knowledge of a confession or police suspicions—influences how forensic experts interpret evidence.

³² See Nance, D. A.; Morris, S. B., *An empirical assessment of presentation formats for trace evidence with a relatively large and quantifiable random match probability*, *Jurimetrics*, Vol. 42, No. 4, 2002, pp. 403–448.

³³ See Garrett *Supra* note. 12, at pp. 95.

³⁴ See Innocence Protection Act of 2004, part of the Justice for All Act, Pub. L. No. 108-405, 118 Stat. 2260 (codified in relevant parts at 18 U.S.C. §§ 3600–3606).

³⁵ See Lupària, L.; Greco, C., *Unveiling wrongful convictions between the US and Italy: Cross-learning from each other’s mistakes*, *The Wrongful Conviction Law Review*, Vol. 1, 2020, pp. 101–103.

acknowledged that miscarriages of justice were not unique to adversarial systems but also to mixed systems of criminal procedure as well.³⁶ This realization spurred the creation of European Innocence Projects and the European Innocence Network and prompted slow but steady legal reforms, including improved mechanisms for reopening cases and scrutinizing traditional evidence. However, challenges persist on both sides of the Atlantic. European courts, for example, still impose high thresholds for revisiting final convictions, particularly regarding the presentation of *novum* (new evidence).³⁷ According to Luparia In Italy, despite constitutional recognition of judicial error, revision requests remain rare, and many wrongfully detained individuals struggle to obtain compensation.³⁸ Killias argues further that while progress has been made, wrongful convictions remain a global issue, and institutional resistance continues to hinder full accountability.³⁹

2.3. Innocence Projects

Basically innocence projects (IP) are organizations operating as civil society organization, foundations or legal clinics within universities who offer post-conviction free legal aid to people who consider themselves wrongfully convicted. They are providing criminal defense and advice. They are specialized legal clinics with the aim of helping exonerate wrongfully convicted individuals and advocate for systemic reforms that would benefit wrongfully convicted people. The tools they are using are diverse, and some innocence projects are providing only legal advice without participation (no participation model), and other IP are providing case analysis and full representation of their client (Full participation models). Some of them are using supplementary DNA testing to find new evidence and to reopen the criminal procedure. As said many operate as legal clinics within universities, involving students with experienced professors and practitioners combining education with hands-on legal work—a model compared to medical training by Justin Brooks.⁴⁰

2.4. How do They work?

The intake process begins when an individual often someone in prison submits an application claiming they were wrongfully convicted. The application consists of

³⁶ See *Ibid*, p.105

³⁷ See Primorac, D.; Sokanovic, L.; Bozhinovski, A., *Correcting Miscarriages of Justice: Innocence Project Croatia*, in: *IntechOpen*, 2024, Chapter 2.3.0., pp. 12–13

³⁸ See Lupària, L.; Cagossi, M.; Pittiruti, M., *Miscarriages of justice in Italy*, in: Nobles, R.; Schiff, D. (eds.), *Murder, Wrongful Conviction and the Law*, Routledge, London 2023, pp. 103–121, 110–112.

³⁹ See Killias, M., *Errors occur everywhere—But not at the same frequency: The role of procedural systems in wrongful convictions*, in: Huff, C. R.; Killias, M. (eds.), *Wrongful Convictions and Miscarriages of Justice*, Routledge, London 2013, pp. 61–62.

⁴⁰ See Stiglitz, J.; Brooks, J.; Shulman, T., *The hurricane meets the paper chase: Innocence projects' new emerging role in clinical legal education*, *California Western Law Review*, Vol. 38, 2001, pp. 413–415.

generalized and specialized questions about his case.⁴¹ These applications can also come from family members, lawyers, or advocacy groups. The first stage involves an initial review to determine whether the case meets specific eligibility criteria. Most Innocence Projects focus strictly on claims of factual innocence, meaning the person did not commit the crime at all, not merely that a legal error occurred. Further, the screening process is handled by project staff or law students who evaluate whether new evidence such as DNA, a recantation, or misconduct could support reopening the case. If a case lacks any realistic legal route for exoneration, or if the claim is not one of actual innocence, it is typically declined. But when a case appears viable, it moves to the investigation phase, which is often thorough and resource demanding. Once accepted legal teams review court transcripts, police files, and forensic records, sometimes uncovering inconsistencies, flawed expert testimony, or evidence that was never presented in court. Witnesses may be re-interviewed, and forensic material may be retested using advanced scientific methods that were unavailable at the time of the original trial. In some cases, new experts are consulted to challenge outdated or unreliable forensic claims within the forensic report. If compelling new evidence is uncovered, the legal team prepares motions or petitions to reopen the case. Education and advocacy are central to the mission. Many Innocence Projects are based in law schools and operate as clinical programs, training future lawyers through real casework. This model, as described by Justin Brooks, mirrors medical education emphasizing hands-on learning alongside academic theory.

The success of the American model inspired similar initiatives in Europe. While wrongful convictions were once perceived as a predominantly American problem, the establishment of Innocence Projects in Germany, Italy, the Netherlands, Poland, and Croatia has revealed that European systems are not immune to such errors. Though as Knoop argues it, European countries often rely on inquisitorial or mixed criminal procedures where judges play an active role in investigating cases research shows these systems also suffer from confirmation bias, procedural shortcuts, flawed forensic practices, and difficulties in reopening cases.⁴² One of the central challenges for European Innocence Projects is the high threshold for revising final convictions. The legal concept of *novum* (new evidence)⁴³ is interpreted restrictively, and courts often require evidence that conclusively proves innocence rather than simply casts doubt. Basically the current rules stipulate

⁴¹ See Croatian Innocence Project, *Application for Intake of Cases*, <https://croinop.pravo.unizg.hr/wp-content/uploads/2022/09/CROINOP-Upitnik-za-provjeru-1.docx>

⁴² See Knoop, G. J., *Redressing miscarriages of justice: Practice and procedure in (international) criminal cases*, in: *Redressing Miscarriages of Justice: Practice and Procedure in (International) Criminal Cases*, Brill Nijhoff, Leiden 2013, pp. 34–36.

⁴³ The legal literature defines the *novum* criterion as introduction of new facts or evidence that were not known during the original trial and could potentially alter its outcome. While the European Court of Human Rights (ECtHR) does not directly adjudicate on the application of the *novum* criterion within national legal systems, it has addressed related issues concerning the right to a fair trial and the reopening of cases based on new evidence.

facts, and not indications of wrongful convictions.⁴⁴ The revision process varies by jurisdiction, with some countries allowing broader interpretations while others maintain strict criteria.⁴⁵ The European Court of Human Rights (ECtHR) has provided important guidance, applying a three-part test to determine when a retrial is warranted: the reliability of new evidence, the nature of the proceedings, and the interests of justice.

Another challenge relates to the treatment of DNA evidence. While DNA testing has been instrumental in securing exonérations, the laws governing its collection, storage, and use differ widely across Europe. The ECtHR's landmark judgment in *S. and Marper v. United Kingdom* condemned the indefinite retention of DNA profiles of unconvicted individuals as a violation of privacy under Article 8 of the European Convention on Human Rights.⁴⁶ Subsequent cases, including *Gaughran v. UK*⁴⁷ and *Trajkovski and Chipovski v. North Macedonia*⁴⁸, reaffirmed the need for clear legal standards and proportional data retention policies. All these cases and important from the perspective of the critical role of DNA treatment in protecting individual rights, especially in the context of wrongful convictions and post-conviction reviews. The retention, use and potential reanalysis of DNA evidence must be governed by strict legal standards to prevent misuse, privacy and factual innocence.

⁴⁴ See Bozhinovski, A., *Addressing wrongful convictions in Croatia through revision of the novum criterion: Identifying best practices and standards*, in: *Human Rights in Contemporary Society – Challenges From an International Perspective*, IntechOpen, 2023, pp. 5–8, accessible at: <https://www.intechopen.com/chapters/86866>.

⁴⁵ See Primorac, D.; Bozhinovski, A., *Addressing wrongful convictions in Croatia: A focus on genetic privacy in criminal proceedings*, *EU and Comparative Law Issues and Challenges Series (ECLIC)*, Vol. 8, 2024, pp. 11–15.

⁴⁶ See *S. and Marper v. the United Kingdom*, App. Nos. 30562/04 and 30566/04, European Court of Human Rights, Judgment of 4 December 2008. In this case the Court ruled that the indefinite retention of DNA profiles and fingerprints of individuals who were arrested but not convicted constituted a disproportionate interference with the right to respect for private life under Article 8 of the European Convention on Human Rights. The Court emphasized that such data, particularly genetic information, contains sensitive and deeply personal information, and that retaining it without time limits or individualized justification violated fundamental privacy rights.

⁴⁷ See *Gaughran v. the United Kingdom*, App. No. 45245/15, European Court of Human Rights, Judgment of 13 February 2020. Is another landmark case where, the Court clarified that automatic retention of personal data, including DNA profiles, photographs, and fingerprints of convicted individuals without a clear and proportionate justification also infringes Article 8. While recognizing that convicted persons can be treated differently from those acquitted, the Court reiterated the need for safeguards, oversight, and periodic review to ensure compliance with the principles of necessity and proportionality.

⁴⁸ See *Trajkovski and Chipovski v. North Macedonia*, App. Nos. 53205/13 and 63320/13, European Court of Human Rights, Judgment of 13 February 2020. The Court ruled that there is a violation of Article 8 due to the failure of national authorities to ensure effective access to and review of DNA data stored in state databases. The applicants had been acquitted, yet their DNA profiles remained in the system with no clear legal avenue for deletion, underscoring a systemic lack of procedural safeguards.

Additionally from the aspect of European legislation, including the Council of Europe's ETS No. 108⁴⁹ and EU data protection law, categorizes DNA as sensitive personal data requiring strict safeguards.⁵⁰ However regarding wrongful conviction cases in Europe, several high-profile European cases illustrate these issues. The Schiedammer Park murder case⁵¹ in the Netherlands, reopened after DNA testing identified the true perpetrator, led to the exoneration of a man convicted based on a false confession. Furthermore, the Phantom of Heilbronn case in Germany exposed contamination in DNA analysis, showing that even advanced forensic techniques are not infallible with 100% certainty.⁵² The De Putten Murder and Ina Post cases also exposed systemic weaknesses in forensic interpretation and the use of coerced confessions. These cases prompted legislative reforms, such as lowering the threshold for case review and expanding the grounds for retrials based on indications of wrongful conviction.⁵³

Despite differences in legal traditions, both U.S. and European Innocence Projects confront similar obstacles: securing access to evidence, overcoming procedural barriers, and shifting judicial attitudes toward acknowledging error. Yet their combined efforts highlight, as Brooks suggests a growing international consensus on the need for systemic reforms, stronger evidentiary standards, and more accessible mechanisms to correct miscarriages of justice.⁵⁴ As the movement continues to evolve, cross-border collaboration and shared best practices between Innocence Projects will be essential to strengthening the global response to wrongful convictions.

2.5. The Role of New Evidence as a Common Legal Standard

Luparia argues that the revision of criminal proceedings based on new evidence (*novum*) is central to the work of European and American Innocence Projects.⁵⁵ This criterium ensures that revisions of criminal cases are solely based on solid, objective grounds and not arbitrary. Both common denominator is that requests for revision of criminal proceedings are requested only final judgments concerning

⁴⁹ See Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), Council of Europe, Strassbourg, 1981, <https://www.coe.int/en/web/data-protection/convention108>,

⁵⁰ See Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), OJ L 119, 4 May 2016, pp. 1–88, <https://eur-lex.europa.eu/eli/reg/2016/679/oj>.

⁵¹ See Geven, L.; van den Doel, K., *Miscarriages of justice in the Netherlands*, in: Nobles, R.; Schiff, D. (eds.), *Murder, Wrongful Conviction and the Law*, Routledge, London 2023, pp. 53–64.

⁵² See Taupin, J. M., *Interpreting Complex Forensic DNA Evidence*, CRC Press, Boca Raton 2019, p. 15-16.

⁵³ Knoops' Innocence Project, *Case Overview*, <https://knoopsadvocaten.nl/en/innocence-project/zaken/>.

⁵⁴ See Brooks, *op. cit.* note 5., pp. 136-140.

⁵⁵ See Lupària, L.; Greco, C., *op. cit.* note 35, pp. 103–104.

factual errors (*error facti*), typically by the convicted person, their relatives, or the prosecution. The only condition is that the judgment must be final, and revision is not meant to act as a fourth level of appeal, nor should it conflict with the *non bis in idem* principle. Only new facts can justify reopening a final case. Classical legal theory recognizes three types of new evidence: *Noviter repertae* – evidence discovered after the trial that existed at the time but was previously unknown; *Noviter productae* – evidence that did not exist during the trial, such as new scientific methods (e.g., updated DNA testing); *Noviter cognitae* – evidence known during the trial but not presented, possibly due to being withheld or deemed irrelevant at the time. Regarding the Dutch experiences with innocence Holvast and Lestrade argue that while courts should consider all three categories in theory, in practice the application of the *novum* criterion varies, and courts often apply a very high threshold for reopening cases,⁵⁶ which is also a problem in Croatia as shall we see below.

The finality of judgment is a prerequisite for reopening criminal proceedings. In both adversarial and inquisitorial systems, this means the case must have been concluded with a valid and enforceable verdict. However, Killias and Huff argue that in adversarial systems, the concept of finality is more flexible compared to inquisitorial or mixed systems, where judgments are more definitively closed. For wrongfully convicted individuals, adversarial systems typically offer more avenues for legal remedies, such as petitions and appeals.⁵⁷ In contrast, mixed or inquisitorial systems often allow only a single extraordinary remedy: the reopening of proceedings based on new evidence (*novum*). In the United States, a regular appeal is typically filed by the defendant shortly after conviction, challenging legal errors that occurred during the trial. It must be submitted within a strict timeframe, usually 30 to 90 days, depending on the jurisdiction.⁵⁸ Beyond the direct appeal, two key postconviction remedies are available: habeas corpus⁵⁹ and coram nobis petitions.⁶⁰ In European jurisdictions however the understanding and application of the concept is different. Knoops distinguishes between revisions that benefit the convicted and those that are detrimental to the convicted person, with the latter being controversial due to potential conflicts with the *non bis in*

⁵⁶ See Holvast, N.; Nan, J.; Lestrade, S., *Between legal certainty and doubt: The developments in the procedure to overturn wrongful convictions in the Netherlands*, *Erasmus Law Review*, Vol. 13, 2020, p. 1, pp. 3–6.

⁵⁷ See Huff, C. R.; Killias, M. (eds.), *Wrongful Convictions and Miscarriages of Justice: Causes and Remedies in North American and European Criminal Justice Systems*, Routledge, London 2013, pp. 45–46.

⁵⁸ *Ibid*, pp. 47–49.

⁵⁹ A *habeas corpus* petition, filed by someone in custody, challenges the legality of their detention, often on constitutional grounds such as ineffective counsel or due process violations. It is usually filed after all direct appeals have been exhausted.

⁶⁰ *coram nobis* petition is available to those who are no longer in custody but seek to correct a fundamental error in their conviction, such as newly discovered evidence or prosecutorial misconduct. Both are extraordinary remedies and require strong justification to proceed.

idem (double jeopardy) principle.⁶¹ While countries like France, Belgium, and Spain prohibit detrimental revisions, others such as Germany, Croatia, and the Netherlands permit them under certain conditions, but mindful of *Reformatio in Peius* principle. Judicial discretion plays a key role in assessing *novum*, with Germany even allowing previously known but ignored evidence to qualify.⁶² The European Court of Human Rights applies a three-part test to determine whether excluding new evidence violates the right to a fair trial, considering its reliability, the scope of the proceedings, and the broader interests of justice. Should the new evidence, were not evaluated by a court, or a retrial is not allowed, the Court will generally find a violation of the right to a fair trial.⁶³

3. INNOCENCE PROJECT CROATIA AND SUBSEQUENT PROJECT' RESULTS

The Croatian Innocence Project began as an initiative proposed by Professors Davor Derenčinović, professor Dragan Primorac, Damir Primorac with the aim of exploring the issue of wrongful convictions in Croatia and determining whether such cases exist within the national legal system. The project was founded to investigate whether wrongful convictions exist in Croatia and to address systemic gaps in the justice system. Although so far Croatia has not been found in breach of Article 8 of the European Convention on Human Rights for DNA misuse, a thorough analysis of domestic DNA handling laws remains essential, especially to ensure conformity with ECtHR jurisprudence such as *Marper v. UK* and the *Gaughran v UK* cases. The Croatian Innocence Project focuses on raising public awareness, improving legal standards for the collection and use of DNA evidence, and simplifying access to retrials based on *novum* new evidence that may justify reopening closed cases. In its experimental phase, the project has received considerable media attention and has launched various educational, advocacy, and research initiatives. Operationally, the project has partnered with the Ministry of Justice and Public Administration, the Ivan Vučetić Center for Forensic Science, and the Directorate for the Prison System and Probation. Together, they implement a questionnaire system to identify inmates claiming wrongful conviction and potential new evidence.⁶⁴ The project also campaigns for reforms in DNA legislation and court practices, aiming to align Croatian standards with ECtHR principles. It evaluates cases based on factors such as untested or newly available DNA evidence, recanted testimonies, prosecutorial misconduct, ineffective legal defense, and coerced confessions. These criteria, adapted from the Italian Innocence Project and tailored to the Croatian context, continue to evolve through ongoing casework. Through its multidisciplinary efforts, the Croatian Innocence

⁶¹ See Knoops, G. J., *Causes and predisposing factors of miscarriages of justice: A legal overview*, in: *Redressing Miscarriages of Justice: Practice and Procedure in (International) Criminal Cases*, Brill Nijhoff, Leiden 2013, pp. 15–20.

⁶² See Nan, J.; Holvast, N.; Lestrade, S., *A European approach to revision in criminal matters?*, *Erasmus Law Review*, Vol. 13, 2020, p. 102.

⁶³ See Bozhinovski, *op. cit.* note 45, pp.12-14.

⁶⁴ *Ibid.*

Project aims to strengthen the justice system, prevent future miscarriages, and support individuals who may have been wrongfully convicted.

Concerning the results of the project, this paper will showcase only the conclusions reached from the field research into cases where a proper repletion of the criminal procedure has taken place, as well as the analysis of the standing provisions in Law on Criminal Procedure concerning collecting, storing and use of DNA data.⁶⁵ The full conclusions of the research are published in a separate paper.⁶⁶ Regarding DNA data and the collection, use, and retention of DNA evidence it is worth mentioning that Croatia has established the first internationally certified DNA database in the region with full compliance with international conventions. However, a closer analysis of domestic legislation reveals important gaps concerning the protection of individual privacy. While Croatia has not yet been found in violation of Article 8 of the European Convention on Human Rights, the project's legal analysis reveals that the current practice of retaining DNA data from crime victims and non-convicted individuals for up to 10 years raises serious ethical and legal concerns. This blanket retention policy contradicts principles laid out in the ECtHR's *S. and Marper v. the United Kingdom* judgment, which emphasizes the need for proportionality, especially regarding minors and individuals never convicted of a crime. Additionally, the Law on Criminal Procedure allows biological samples to be collected from victims and others with or without consent, based on prosecutorial request and court approval. The field results raised the critical question of whether such intrusions into personal privacy can be constitutionally justified, especially when applied to victims.⁶⁷ Furthermore, the project calls for a revision of Croatian Law on Criminal Procedure and the Guidebook for collection and retention of DNA samples to better reflect the ECtHR's jurisprudence, recommending clearer safeguards and stricter controls over DNA evidence handling.⁶⁸

3.1. Reopening of the Criminal Procedure in Croatian Legal and Practical Context

Here we shall focus exclusively on the proper reopening of criminal proceedings (*prava obnova*), as it is the only extraordinary legal remedy relevant to addressing wrongful convictions. In contrast, the improper repetition of criminal proceedings (Articles 498–500 ZKP) is termed *improper* because it refers solely to sentencing errors specifically, situations where the court failed to correctly apply sentencing rules without taking into consideration the previous judgements and convictions of the defendant. In the new verdict the court unifies the sentences and extract one

⁶⁵ See Arts. 321-323, Law on Criminal Procedure, Official Gazette, No. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 80/22, 36/24.

⁶⁶ See Primorac *et al.*, *op cit*, note 37., pp.15-19

⁶⁷ See Becker, S. W.; Derenčinović, D.; Primorac, D., *DNA as evidence in the courtroom*, in: Primorac, D.; Schanfield, M. S.; Bettinardi, O. (eds.), *Forensic DNA Applications*, CRC Press, Boca Raton 2023, pp. 433–435.

⁶⁸ *Ibid.* pp. 438.

joint sentence. It does not challenge the established facts of the case, nor does it address the grounds of the conviction or involve claims of innocence by the applicant. According to the results of the field research indicate that in 68% of reviewed cases, courts permitted improper repetition of criminal proceedings, primarily to unify multiple judgments and reduce sentences, without fully reopening the case. This practice often reflects misunderstandings by defendants about legal grounds for appeal and strategic attempts to obtain sentence mitigation when proper retrial is not possible. Courts generally respond with more lenient consolidated sentences, particularly when errors in concurrent sentencing are identified. However, only a small portion of requests (4%) were based on truly new evidence, highlighting the stringent threshold for proper retrials and the limited impact of material changes like health or family status unless clearly justified.⁶⁹

This extraordinary legal remedy is governed by Articles 501 to 508 from the Law on Criminal Procedure, which balance the need to uphold the finality of judgments with the imperative to correct wrongful convictions. Article 501 outlines the grounds for reopening a criminal trial. These include the discovery of new facts or evidence (*novum*) unknown during the original proceedings, which would likely have led to a more favorable verdict for the defendant. Reopening is also permitted where it is later proven that the judgment relied on forged documents, perjured testimony, or tampered evidence, or if a judge, prosecutor, or another legal actor committed a criminal offense that influenced the verdict. Additional grounds include situations involving contradictory final judgments for the same act, changes in legal interpretation that would result in a more lenient sentence, or a final decision by the Constitutional Court or the European Court of Human Rights confirming that a violation of fundamental rights occurred.

Such reopening may be granted in favor of the defendant under several specific grounds which are envisaged in the Law on Criminal Procedure: (a) *Proof of False Testimony or Documentation* indicates that revision may be sought if the original judgment relied on falsified documents, fraudulent audio-visual materials, or false testimonies by witnesses, experts, interpreters, or translators. The request must be supported by concrete evidence directly connected to the original judgment and must clearly argue that the fraudulent elements influenced the outcome. It is essential to establish a causal link between the falsification and the conviction and to demonstrate how the newly presented evidence undermines the previously established facts of the case. (b) *Judicial Misconduct* applies when the verdict was influenced by a criminal act committed by a judge, prosecutor, juror-judge, or other individuals involved in the investigation. The applicant must provide new evidence clearly linking the misconduct to the case outcome, proving that it directly impacted the judgment. (c) *New Exonerating Evidence or Laws which allow repetition upon the discovery of new facts or evidence that exonerate the defendant or support conviction under a more lenient legal provision than that applied in the initial trial.* This evidence must be genuinely new so that means unknown at the time of the original trial and not previously evaluated by the court.

⁶⁹ See Primorac *et.al*, *op.cit.* note 37, at 20-21.

This category includes both *noviter producta* (evidence newly presented to the court) and *noviter reperta* (evidence discovered post-judgment). Such evidence must be new in both essence and content, not merely a repetition of previously assessed materials. Additionally, repetition may be sought if new, more favorable legal provisions have retroactive effect. (d) *Violation of the non bis in idem*. This principle is sufficiently clear and this ground applies when conflicting judgments exist for the same act, potentially implicating different individuals. The request must present new evidence suggesting that the convicted individual did not commit the crime. It must also introduce new facts or evidence that refute the original conviction. (e) *Complex or Prolonged Cases* is applied in cases involving prolonged or complex criminal activity consisting of multiple identical or diverse acts, repetition may be allowed if new facts or evidence emerge that suggest the convicted person did not commit the acts as charged. Such evidence must be capable of substantially influencing the reassessment of guilt or the sentence. Repetition under this ground focuses on convictions involving criminal offenses that span over time or involve multiple acts, and the new evidence must highlight aspects not addressed in the original proceedings. (f) *Decisions from Higher Courts* implies reopening of the proceedings based on decision from the Constitutional Court of Croatia and the European Court of Human Rights. Several such cases were identified in this study, including *Lonić v. Croatia*,⁷⁰ *Lisica v. Croatia*⁷¹, *Maresti v. Croatia*⁷², and *Ajdarić v. Croatia*.⁷³ Furthermore, Article 502

⁷⁰ See *Lonić v. Croatia*, App. No. 8067/12, Judgment of 4 December 2014, European Court of Human Rights, accessible at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-148284%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-148284%22]}). In the *Lonić* case, the ECtHR found a violation of Article 6 § 1 (right to a fair trial) of the ECHR. The applicant was convicted based on the statements of witnesses whom she was not allowed to question during the proceedings. The ECtHR held that the inability to examine these key witnesses violated the principle of adversarial proceedings and the right to a fair trial. Following this judgment, domestic courts were obligated to reopen the case to ensure procedural fairness and the proper assessment of evidence.

⁷¹ See *Lisica v. Croatia*, App. No. 20100/06, Judgment of 25 February 2010, European Court of Human Rights, accessible at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-97213%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-97213%22]}). This case involved a violation of Article 6 § 1 as well, due to the domestic court's failure to provide adequate reasoning for its decisions and its disregard of the applicant's key arguments during the trial. The ECtHR emphasized the necessity for courts to address relevant points raised by defendants and to provide clear, reasoned judgments. The judgment prompted a retrial in order to address the procedural deficiencies identified by the ECtHR.

⁷² See *Maresti v. Croatia*, App. No. 55759/07, Judgment of 25 June 2009, European Court of Human Rights, accessible at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-93260%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-93260%22]}). In *Maresti v. Croatia*, the applicant argued that he had been convicted and punished twice for the same conduct (*Non bis in idem*), thus violating Article 7 of the European Convention on Human Rights. The ECtHR found that *Maresti* had been convicted under two separate legal provisions for what was essentially the same factual conduct. The Court ruled that this breached Article 7, particularly the principle of *lex certa* and *non bis in idem*, even though the Croatian Constitutional Court had upheld the dual conviction.

⁷³ See *Ajdarić v. Croatia*, App. No. 20883/09, Judgment of 13 December 2011, European Court of Human Rights, accessible at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-107989%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-107989%22]}). Most notable judgement, where the ECtHR held that the applicant's right to a fair trial under Article 6 § 1 had been violated due to the domestic court's reliance on highly questionable evidence

of the Law on Criminal Procedure, repetition may be granted when a violation of constitutional or international human rights has been established by the Constitutional Court. Similarly, under Article 44 of Protocol 11 to the ECHR, repetition based on an ECtHR judgment requires the submission of the final judgment confirming the violation. This aligns with the Council of Europe's Recommendation on reopening domestic proceedings in response to ECtHR findings, which encourages member states to ensure the possibility of *restitutio in integrum* where ECHR violations are found. The Law on Criminal Procedure furthermore, provides for repetition to the *detriment* of the defendant, but only in exceptional circumstances which is in line with the German and the French jurisprudence and legislation. However, in these cases the prohibition of *reformatio in peius* is applicable. Concerning the reopening of the criminal procedure based on a judgment of the European Court of Human Rights, Luparia refers to this mechanism as "European revision." Although it shares the nature of an extraordinary legal remedy, European revision is functionally distinct. It does not require the presentation of new exonerating evidence but rather serves as an indirect corrective measure for judicial error, allowing for an exceptional return to the merits phase of the criminal trial.⁷⁴

Article 502 specifies the parties authorized to initiate a request for repetition. These include the defendant or their legal representative, the public prosecutor, and, in certain cases, close relatives particularly where the defendant is deceased or incapacitated. Importantly, while repetition may be requested at any time in favor of the defendant, requests to their detriment are allowed only under narrowly defined circumstances and within strict time limits. Furthermore, Article 503 addresses time limits. While no statute of limitations applies to requests favoring the defendant, repetition to the defendant's detriment must be initiated within a specified period after the ground for repetition is discovered reflecting a cautious approach to legal certainty. Article 504, stipulates that a request for repetition must be clearly reasoned and substantiated. It must state the legal basis, include a factual explanation of the proposed ground, and attach supporting documents. The burden of proof lies with the applicant, who must convincingly demonstrate that the new material would have altered the original outcome. Article 505 defines the procedural steps following the submission of a request. The court that issued the final judgment is responsible for ruling on admissibility.

The court may summarily reject an evidently unfounded request or initiate preliminary proceedings to examine the credibility of the new claims. Where appropriate, a hearing may be held to assess the evidence and determine whether the case merits reopening. Once a request is accepted, Article 506 governs the legal

and the disregard of exculpatory material. The ECtHR found that the cumulative deficiencies in the domestic proceedings undermined the fairness of the trial. The ruling necessitated a reopening to ensure that the case would be retried in accordance with the Convention's standards of due process and evidentiary fairness. The ECtHR claimed that the judgment cannot be based on single piece of evidence, especially coming from unreliable source.

⁷⁴ See Donati, L. L.; Pittiruti, M., *Post-conviction remedies in the Italian criminal justice system*, Erasmus L. Rev., 13, 63, 2020, p. 66-69.

consequences. The judgment is revoked in whole or in part, and a retrial is ordered. The new trial is typically conducted before the same court, but not necessarily by the same panel of judges. This mechanism ensures that the case is re-examined thoroughly while preserving judicial impartiality. Additionally Article 507 is important as it then outlines the structure of the retrial. It must follow the general rules of criminal procedure, allowing for a full reassessment of the facts and legal conclusions. The new proceedings can result in acquittal, conviction, or termination of the case. Importantly, both previously admitted and newly submitted evidence can be re-evaluated, ensuring a comprehensive review of the merits. Time limits on repeated requests are stipulated in Article 508 which stipulates that a second motion for repetition based on the same facts or evidence is not permitted in order not to overburden the courts with the same request. However, a new request may be filed if it is based on entirely new grounds. This provision protects the court system from frivolous or abusive litigation while safeguarding the right to a fair trial. Evidently these articles represent a modern legal mechanism designed to correct judicial errors while preserving the integrity and finality of the criminal justice process. Their relevance is also noted in the context of wrongful convictions and miscarriages of justice, as they can serve as a legal avenues for wrongfully convicted people to correct their judgements.

3.2. Domestic Jurisprudence

Regarding the domestic practice of the Croatian courts in reopening criminal proceedings, it would be valuable to present the findings of field research carried out as part of the HRZZ and Faculty of Law project *Projekt nedužnosti u Hrvatskoj*.⁷⁵ These findings shed light on how Croatian courts handle requests for revision, particularly the standards applied when introducing new evidence and how the courts evaluate such evidence in practice. In the case from the jurisprudence of the County Court in Zagreb,⁷⁶ the defendant was ultimately acquitted in a retrial conducted in absentia, based on credible new witness testimony. The defendant, who is not a Croatian citizen and holds refugee status in the Republic of Serbia, was involved in a case dating back to 1995 during the Homeland War. The case concerned an aggravated murder allegedly committed out of base motives, as defined under Article 111, Paragraph 4, and Article 34, Paragraph 2, Point 4 of the Croatian Criminal Code.⁷⁷ He had initially been tried and sentenced in absentia to 15 years in prison by the County Court in Zadar a decision later upheld by the Supreme Court. Following that, both an arrest warrant and an Interpol Red Notice were issued for the enforcement of the sentence. Unaware that a trial had taken place or that a judgment had been issued against him, the defendant still living in Serbia was arrested 13 years later. Through his

⁷⁵ Croatian Innocence Project, *Project Overview and Research Results*, https://croinop.pravo.unizg.hr/?page_id=84.

⁷⁶ See County Court in Zagreb case number K-20/2017.

⁷⁷ See Art. 111, paragraph 4 and Art. 34, paragraph 2, Croatian Criminal Code, Official Gazette, No. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22, 114/23, 36/24.

legal counsel in Croatia, he submitted a request to reopen the criminal procedure, citing the fact that he had been tried in absentia and introducing new evidence in the form of witness statements from individuals who were with him at the time of the alleged crime. In 2017, Serbia denied Croatia's extradition request on the grounds of the defendant's constitutional protection as a refugee. Subsequently, the County Court approved the reopening of the procedure and authorized a retrial in absentia, in line with the legal conditions laid out in Article 497, Sections 1 and 3, in conjunction with Article 501, Section 1, Point 3 of the Croatian Criminal Procedure Code. As a result, enforcement of the original 15-year prison sentence was suspended. The retrial ended in an acquittal, with the court accepting the new witness testimony as credible and exonerating the defendant. While the court affirmed that the police had correctly identified the victim, it also highlighted major procedural shortcomings due to wartime conditions: no official crime scene report was prepared at the location where the body was found; the cause of death remained undetermined; and no autopsy had been performed. Photographs in the case file showed no visible gunshot wounds or traces of gunfire on the decomposed body.

Further, another case from the jurisprudence of Zadar County Court highlights how the Supreme Court can intervene by ordering a reevaluation of the evidence when it determines that the material law was misapplied or misunderstood—circumstances that may lead to judicial error. Here, the defendant had been sentenced to a cumulative 20 years in prison based on findings that he participated in and commanded actions violating the rights of civilians and prisoners during wartime. In his appeal, the defendant raised serious concerns about procedural irregularities and how the evidence had been handled during the trial. He specifically challenged the interpretation of his role, arguing that the evidence used to establish command responsibility was flawed. Among the issues raised were the reliance on uncorroborated witness statements and the court's failure to take into account new testimonies suggesting that the defendant did not occupy a commanding position. He also questioned procedural aspects of his trial in absentia, suggesting that due process may not have been fully respected. The Supreme Court found these objections credible enough to doubt the factual accuracy of the original judgment. It emphasized the importance of reassessing newly presented evidence in light of what had already been established—particularly when the defendant's role is central to the conviction. This comparative review led the Court to conclude that the trial court may have misunderstood or misapplied key evidence, resulting in a flawed judgment. Given these inconsistencies and procedural shortcomings, the Supreme Court granted the appeal, overturned the initial verdict, and ordered a full retrial before a new panel. This decision was made to ensure a fair and impartial reassessment of all evidence and to establish the true factual basis of the case.⁷⁸

How *novum* is interpreted and the rigidity of the courts is demonstrated through this case from the jurisprudence of the County Court in Osijek. This case is under review of the Croatian Innocence Project as a first true case of wrongful

⁷⁸ See County Court in Zadar, case number KŽ-932/2008-15.

conviction. This case involves a trial in absentia and raises serious concerns about a potentially wrongful conviction, particularly due to the emergence of a true *novum* a recantation of the victim's original testimony. The term "potential" is used deliberately here, as the research team believes this case warrants further legal examination within the framework of the Innocence Project Croatia. The conviction was based on a false statement, later deemed inconclusive by the court, as well as flawed DNA analysis. Referred to as the "Horvat case" to protect the identities of those involved and avoid media exposure, the case stems from events that occurred during and after the Croatian Homeland War. Mr. Horvat was convicted in absentia in 1999 for rape and sodomy and sentenced to seven years in prison. His conviction rested primarily on his own confession, which he later claimed was obtained under coercion during his eight-month pretrial detention. After his conviction, Mr. Horvat moved to Serbia and remained unaware of the charges until he was arrested in 2015 based on an Interpol Red Notice and extradited back to Croatia. Following his arrest, Mr. Horvat challenged the legitimacy of the original trial, stating that he had never received the indictment and was denied the opportunity to defend himself. These claims led to a successful request for a retrial under Article 497 of the Croatian Criminal Procedure Code. At the retrial, the court revisited the same evidentiary materials from the original trial. However, a significant development occurred when the alleged victim Mr. Horvat's daughter recanted her earlier testimony. She stated that her father had never raped her but had pushed her during a family dispute, and that the accusations were made under the influence of Mr. Horvat's then-partner. Despite this major shift in the core testimony and the absence of DNA evidence to support the original charges, the court ultimately dismissed the new information and reaffirmed the initial seven-year sentence. The retrial featured a series of testimonies highlighting the complexity of the family dynamics. Medical and psychological experts offered conflicting interpretations: one cited physical injuries consistent with assault but not with sexual violence, while another provided psychological assessments indicating that Mr. Horvat exhibited traits of a personality disorder and that his daughter was susceptible to confabulation due to past trauma. The daughter herself admitted that her recollection had been shaped by external pressures and personal relationships. She described how she was manipulated into making the accusation and noted that, on the day in question, she had engaged in consensual sex with her boyfriend, not suffered an assault by her father.

Despite this revised testimony, the court anchored its judgment in the perceived consistency of the victim's original statement and expert reports from the initial proceedings. It reaffirmed Mr. Horvat's conviction based on those prior assessments, dismissing the recantation as unreliable without thoroughly investigating the reasons behind the change in her account or the newly presented facts. In its decision, the court reviewed psychiatric assessments, testimonies from the victim and her brother, medical and gynecological documentation, and the defendant's criminal history. Although the judgment mentioned the existence of material DNA evidence (a skirt belonging to the victim), it failed to include any substantive analysis or clear factual findings regarding this evidence in its reasoning. Here we see the need for very critical questions about the treatment of

new evidence and victim recantation in retrials, especially in the context of trials in absentia. It suggests the need for a more nuanced judicial approach to post-conviction claims, particularly when the original proceedings lacked full procedural safeguards and the new testimony significantly alters the factual landscape of the case.⁷⁹

3.3. Field Research's Results

The results of the filed research have indicated that the courts currently employ stringent threshold required to reopen criminal cases. The concept of *novum* new evidence not available or considered during the original trial remains the key legal criterion for retrial. Courts interpret *novum* narrowly, often rejecting requests that are based on re-evaluated but previously known facts or conflicting expert opinions. For a retrial to be granted, the evidence must be genuinely new, materially relevant, and capable of altering the verdict, with keeping in mind that the evidence wasn't already known during the previous trial. While this protects the courts from being overburdened by unfounded claims, it also places a heavy burden on convicted individuals, because of their limited access to funds and the freedom to gather new evidence, because they are serving prison time.⁸⁰ Legal practitioners interviewed by the project generally support the existing high threshold, arguing that lowering it could flood the system with baseless petitions and undermine public confidence in the judiciary. However, the project's results draws attention to international experiences particularly in the Netherlands where overly strict evidentiary standards have discouraged legitimate claims and reinforced procedural finality at the expense of justice. In both jurisdictions, the challenge lies in striking the right balance: maintaining legal certainty while ensuring that truly innocent individuals have a meaningful path to exoneration.

*"They reiterated that reopening of the criminal procedure based on faulty DNA evidence is very rare in practice. In practice, there are cases of faulty DNA; however, judges must carefully examine each piece of expertise, statement, and evidence material. The interviewees highlighted that the request for reopening the criminal procedure, based on new evidence, such as DNA evidence, is uncommon in practice. When questioned about the definition of "new evidence," the consensus among the respondents was that the Supreme Court adopts an approach to maintain the stability of the judicial process. They emphasized that the responsibility to gather and present new evidence falls on the parties seeking to reopen the case, which further means that they must demonstrate the existence of new evidence that could significantly alter the presented factual state."*⁸¹

The conclusions of the results indicate that advocacy for more procedural reforms is needed and is most welcome. The reason behind these claims is that such

⁷⁹ See County Court in Osijek case nm. K-15/95, judgement.

⁸⁰ *Ibid*

⁸¹ See Primorac et.al, *op.cit.*, note 37, at pp. 20-23, Conclusions of the field research undertaken in this project.

reforms would facilitate more effective access to justice for the wrongfully convicted. This includes better access to expert reviews, forensic testing, and mechanisms for identifying *novum*. It also calls for a more flexible interpretation of what constitutes “new” evidence in light of evolving scientific methods and the complexity of criminal investigations. As the project matures, it aims to not only contribute to national justice reform but to strengthen Croatia’s alignment with broader European human rights standards. Its comprehensive approach combining legal research, policy advocacy, education, and public outreach marks a significant step toward a more just, transparent, and accountable criminal justice system.

To compare the Croatian legislation and practice with the Italian legislation and practice (which served as a model for the Croatian reform of the criminal procedure) on the reopening of the criminal procedure, particularly concerning new evidence, the Italian approach offers a more flexible approach. In Italian law, particularly under Article 630 of the Italian Code of Criminal Procedure, the emergence of *new evidence* (*prova nuova*) is the most commonly invoked ground for revision. Italian jurisprudence, as analyzed by Luparia, has recognized various forms of such evidence: medical records substantiating alibis, new expert and witness testimony, statements made in foreign proceedings, and even new psychiatric evaluations that may alter the understanding of the accused’s mental state at the time of the crime.⁸² Over time, the Italian Court of Cassation narrowed the concept of new evidence primarily to *noviter repertae* (discovered after the judgment) and *noviter productae* (existing but not previously acquired), although more recent jurisprudence has re-expanded this to include any non-evaluated evidence, provided it is *novel* and materially relevant to the case. Particularly progressive is Italy’s evolving treatment of new scientific methods, especially following the *Ghiro* case, where the Court of Cassation introduced clear criteria for when re-analysis of previously evaluated evidence, using modern techniques, may justify reopening the case.⁸³

In comparison, Croatian practice interpretation of *novum* is stricter and often more formalistic. The dubbed Horvat case from the jurisprudence of the County Court of Osijek illustrates these limitations: although the victim recanted her testimony and new expert opinions were introduced, the court refused to recognize this as

⁸² *Ibid* pp. 25-27.

⁸³ See Court of Cassation, Sec. I, 8th of March 2011, *Ghiro*, in C.E.D. Cass, no.249864. The Court of Cassation tackled the issue of whether new scientific methods applied to previously collected evidence could be considered a valid ground for revision under Article 630 of the Italian Code of Criminal Procedure.

Basically, Italian courts were cautious between *res iudicata* and *novum*. They feared that revisiting old evidence with new techniques might amount to a disguised appeal, violating Article 637(3), which prohibits revisions that simply contest the court’s factual assessments. However, in *Ghiro*, the Court made an important shift to that practice by setting 5(five) criteria for when the application of new scientific methods to existing evidence may justify reopening of a case. Case is available here: <https://archiviodpc.dirittopenaleuomo.org/d/533-cass-pen-sez-i-832011-dep-1342011-n-15139-pres-di-tomassi-rel-cassano-ric-ghiro-prova-scientifica-e?>

valid *new evidence*, thus by reaffirming the original verdict without properly reassessing the changed statement from the victim or explaining why the revised testimony was rejected and basing its judgment solely on the expertise done by the psychiatric expert testimony, even though all other evidence did not substantiated this expertise. Furthermore, Croatian courts generally do not accept reevaluation of previously assessed evidence unless it clearly qualifies as *noviter reperta* or *noviter producta*, and the standards for what constitutes a *true novum* remain narrowly interpreted. Hopefully the work of the Croatian Innocence Project can aid into reforming the high threshold of admissibility of new evidence.

4. RIGHTS OF WRONGFULLY CONVICTED PERSONS IN CROATIA

4.1. Right to Fair Trial

Since innocence projects are operating within the realm of criminal law, free legal aid should be given to encompass these situations. In Croatia, the right to a fair defense and access to legal counsel is a well established into the criminal justice system, and it is inline with the international legal obligations. Furthermore, it should be stated that it is the right to a fair trial, and that the minimum rights of defense are special rights enjoyed by the defendant in criminal proceedings" specified in Article 6, paragraph 3 of the European Convention on Human Rights and Article 29, paragraph 2 of the Constitution of the Republic of Croatia. In the terminology of criminal procedural law, the terms: "Right to a fair trial" and "Minimum rights of defense" are used in criminal proceedings.

The Constitution guarantees that any individual accused of a criminal offense has the right to be promptly informed, in a language they understand, of the nature and reasons for the charges against them.⁸⁴ They are entitled to sufficient time and resources to prepare their defense, to defend themselves personally or with the assistance of a lawyer of their choice, and to communicate freely and confidentially with that lawyer. For those unable to afford legal representation, the Constitution provides a right to free legal aid under conditions prescribed by law.⁸⁵ The Constitution guarantees the right to legal representation, including free legal assistance when a defendant lacks the means to pay. The ECHR similarly guarantees free legal aid when required *in the interests of justice*. This right is further detailed in the Law on Criminal Procedure, which allows for two main scenarios: appointment of counsel in cases of mandatory defense and upon request for indigent defendants in more serious cases, but only after the indictment has been filed and if the offense carries a sentence of five or more years. Pajcic further argues that this restriction can leave defendants without legal assistance in earlier procedural stages, even when their financial circumstances prevent them from

⁸⁴ See Constitution of the Republic of Croatia, Official Gazette, No. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 5/14, Art. 29.

⁸⁵ *Ibid.*

securing private counsel.⁸⁶ However, analysis of the provisions of the Law on Criminal Procedure indicates that they are clearly tailored to the pre-trial and trial phases of criminal proceedings up to the moment a judgment becomes final. These articles establish the right to legal counsel at the expense of public funds under specific financial and procedural conditions, but they are confined to the initial phases from investigation through trial and regular appeal before the judgment attains finality. Crucially, these rules do not extend to the post-conviction stage, particularly to requests for the reopening of criminal proceedings initiated by convicted persons. The right to appointed counsel in the context of such extraordinary legal remedies is not addressed in these provisions, and any entitlement to legal assistance in that stage would need to be grounded either in a different section of the law typically the part governing the reopening of proceedings or derived analogously through judicial interpretation or constitutional guarantees. As such, convicted persons seeking to reopen their cases cannot rely directly on Articles 72–74 to claim the right to a publicly funded defense, and any support in this regard would have to come from elsewhere in the legal framework.

Furthermore the Law on Advocacy, Article 21 obliges the Croatian Bar Association to provide free legal aid to vulnerable groups, including the socially disadvantaged and war victims.⁸⁷ This obligation, while not limited to specific proceedings, is governed by ethical rules and internal decisions of the Bar, and it can extend to criminal defense. It does not specifically mentions free legal aid for post-conviction proceedings. Furthermore, the Law on Free Legal Aid, envisages primary and secondary legal aid, where primary legal aid includes legal advice and assistance in administrative matters, while secondary aid covers court representation and preparation of legal submissions. However, in practice, authorities rarely apply this law to criminal cases, often interpreting it as not extending to criminal or misdemeanor proceedings, which are regulated by the Law on Criminal Procedure (mandatory defense and indigent defense, as well as the law on misdemeanors). These legal inconsistencies may create a fragmented legal ecosystem, wrongfully convicted defendant. The current legal aid structure also results in potential overlaps, where courts may be asked to decide on legal aid under both the Law on Criminal Procedure and the Law on Free Legal Aid, leading to procedural inefficiencies. To close this gap, the legislator must acknowledge wrongfully convicted persons as a special group of victims and accordingly provide free legal representation in post-conviction proceedings.

4.2. Compensation for Unfounded Conviction or Unjust Detention

Another right of the wrongfully convicted person is the right to compensation for unfounded conviction or unfounded detention. Article 25(4) of the Constitution of

⁸⁶ See Pajčić, M., *Pravo okrivljenika na branitelja i na besplatnu pravnu pomoć*, *Hrvatski ljetopis za kazneno pravo i praksu*, Vol. 17, No. 1, 2010, pp. 53–107.

⁸⁷ Art. 26 of the Law on Advocacy, Official Gazette, No. 9/94, 117/08, 50/09, 75/09, 18/11, 126/21.

the Republic of Croatia guarantees this right. The exercise of this constitutional right is regulated by specific statutory provisions. The Law on Criminal Procedure and the subsequent amendments, does not contain provisions on compensation for unjust conviction because the prevailing view is that this matter should be regulated by a special law. Therefore, Article 573 of the Law on Criminal Procedure stipulates that Chapter XXX (entitled *Procedure for Compensation and the Exercise of Other Rights of Wrongfully Convicted or Unjustifiably Arrested Persons*) of the 1997 Criminal Procedure Act, with subsequent amendments and supplements, shall continue to apply until a special law is enacted.⁸⁸ Regarding misdemeanor proceedings, the Misdemeanour Act, stipulates that the same rules from the Law on Criminal Procedure apply to compensation claims in misdemeanor proceedings unless otherwise specified.⁸⁹ Basically Croatian law recognizes the state's liability for damages from misconduct by judicial or prosecutorial authorities. These rights are specifically regulated in Articles 476 to 484.a of the Criminal Procedure Act. A person may seek compensation for a unfounded conviction if they were subjected to a final criminal sanction or found guilty but not sentenced, and if the case was later reopened through an extraordinary legal remedy leading to the discontinuation of proceedings, an acquittal, or a dismissal of charges. However, if the proceedings were discontinued because the injured party or private prosecutor withdrew the complaint as part of a settlement with the defendant, the right to compensation does not apply. Similarly, individuals who intentionally caused their own conviction such as through false confessions or fabricated evidence are not entitled to compensation, unless it can be proven that such actions were the result of coercion. Seen through these legal provisions it is noticeable that a distinction is made between positive and negative conditions for granting compensation. On one hand, the existence of a final conviction that was later reversed in the defendant's favor forms the basis for a compensation claim. Ljubanovic argues that this applies even if the sentence was never executed and includes cases involving multiple offenses, in which the individual may be compensated for parts of the conviction that were overturned. On the other hand, the right is excluded when the conviction resulted from the deliberate actions of the convicted person or from procedural outcomes based on private agreements rather than judicial findings.⁹⁰ The law also addresses compensation for unjustified arrest or detention. Individuals who were held in pre-trial detention without charges being filed, or whose charges were later dropped or dismissed, are entitled to seek damages. Likewise, if someone served more time than warranted by a revised sentence or if they were detained unlawfully due to procedural errors or official misconduct, they may be compensated in accordance. Yet again, the right to compensation is not absolute. If the individual's own actions such as attempting to flee, hiding evidence, or otherwise obstructing the

⁸⁸ Criminal Procedure Act 1997, Official Gazette, No. 110/97., 27/98., 58/99., 112/99., 58/02., 143/02., 62/03. - službeni pročišćeni tekst, 178/04., 115/06., 152/08., 76/09., 80/11., 143/12. (ZKP), Arts. 476-484.

⁸⁹ Misdemeanour Act, Official Gazette, No. 107/07, 39/13, 157/13, 110/15, 70/17, 118/18, 114/22.

⁹⁰ Ljubanović, B., *Pravo na naknadu štete zbog neopravdane osude ili neutemeljenog uhićenja ili pritvaranja, s naglaskom na upravno postupanje u ostvarivanju toga prava*, Pravni vjesnik, Vol. 35, No. 2, 2019, pp. 85–103.

investigation led to their arrest or extended detention, compensation may be denied. Croatian courts examine such cases carefully, and the burden is on the claimant to demonstrate that they did not act with intent to provoke their detention. The principle is clear: when a person consciously contributes to their own deprivation of liberty, the state bears no responsibility to make them whole. Through this carefully balanced approach, Croatian law seeks to protect the rights of those wrongfully deprived of liberty, while also ensuring that the justice system is not exploited by those who deliberately manipulate legal proceedings. In case the applicant does not accept the offer of the Ministry of Justice and Administration, then he/she has the right to file a complaint with the competent court. The amount paid for 2022 refers to payments based on decisions made in a peaceful procedure.

Year	Number of Requests	Number of Condemnations	Amount Paid in Compensation (€)
2020	332	180	1,290,594
2021	332	131	1,106,447
2022	380	149	3,224,053

Table 1: Gathered data on requests for compensation for unjust arrest/detention and conviction in 2020-2022. Source CEPEJ Report 2024.

Evidently from the CEPEJ-gathered data made available by the Ministry of Justice and Public Administration, covering compensation claims related to wrongful actions in the Croatian justice system from 2020 to 2022. The data reveal a relatively stable number of requests in 2020 and 2021 (332 each year), followed by a slight increase in 2022 (380). However, the number of successful claims, or condemnations, fluctuated dropping from 180 in 2020 to 131 in 2021, then rising again to 149 in 2022. Most notably, the total amount of compensation paid saw a dramatic increase in 2022, more than doubling the figures from previous years, despite the number of condemnations not increasing proportionally. This suggests that individual compensation amounts in 2022 may have been significantly higher, potentially reflecting more serious or high-profile violations. This data provides important insight into the financial impact of judicial errors on the state and highlights the need for ongoing improvements in procedural safeguards and accountability mechanisms. For the purposes of my doctoral research, a formal request has been submitted to the Ministry of Justice to obtain updated data for 2023 and 2024. This will allow for a comparative analysis to identify whether the observed trends continued, stabilized, or reversed in more recent years.

Category	2020	2021	2022
Total compensations granted	180	131	149
Excessive length of proceedings	48	59	60
Non-execution of court decisions	NAP	NAP	NAP
Wrongful arrest/detention	132	72	89
Wrongful conviction	NA	NA	NA

Table 2: Overview of Compensations Granted for Violations of Procedural Rights in Criminal Justice: CEPEJ Classification Data for the Republic of Croatia (2020–2022).
Source: CEPEJ Report 2024

The total number of compensations granted decreased sharply from 180 in 2020 to 131 in 2021, then rebounded to 149 in 2022 an increase of 13.7%. This recovery, however, did not fully return to the levels seen in 2020, suggesting a fluctuating pattern in judicial decisions or claim submissions. Furthermore, what is important for this work, wrongful conviction continues to be marked NA (Not Available), indicating either the absence of recognized cases in these areas or a lack of comprehensive reporting. The absence of data on wrongful convictions is particularly noteworthy, given the seriousness of such violations and the growing international emphasis on wrongful conviction as a critical human rights issue. Compensations continue to arise from procedural violations, particularly prolonged proceedings and wrongful detentions, highlighting areas where the justice system still faces systemic challenges. The fluctuations in granted compensations over the three-year period suggest a need for continued monitoring and perhaps greater consistency in how such claims are assessed.⁹¹

5. CONCLUSION

Concluding is challenging since wrongful convictions are a real and troubling occurrence, hard to identify yet in many European jurisdictions they remain under-researched and poorly documented. The phenomenon is still considered novel in the European context, where systematic academic literature is scarce. One of the key challenges in researching wrongful convictions is the lack of reliable data there are no official registers, indicators, or standardized reporting mechanisms across jurisdictions. These limitations significantly affect the scope and depth of available research. Within this constrained context, the Croatian Innocence Project for Croatia offers valuable insights. While it has helped uncover serious procedural gaps and raised awareness about the issue, the project’s findings also highlight structural barriers that prevent wrongfully convicted individuals from accessing justice. Strict interpretations of what constitutes “new evidence” (*novum*), limited forensic access, and privacy concerns around DNA data retention are just some of the obstacles identified. My doctoral research aims to contribute to the emerging

⁹¹ European Commission for the Efficiency of Justice (CEPEJ), *Evaluation of the judicial systems – 2024 edition (data 2022): Croatia*, Generated on: 30/09/2024, Reference data 2022 (01/01/2022–31/12/2022), data collection campaign: 15/03/2023–01/10/2023, <https://www.coe.int/cepej>, 31 March 2025.

field of wrongful conviction studies in Europe by bridging gaps in the literature, offering critical analysis of Croatian legal practices, and supporting the development of fairer, more transparent mechanisms for addressing miscarriages of justice. Additionally, as comparative experiences show Western countries have recognized the issue of wrongful convictions and are implementing legal reforms to lower the high threshold for admitting new evidence. The Dutch approach, particularly the specialized advisory ACAS Commission, offers valuable insights for potential legal changes and reforms.

Another key consideration is the role of DNA evidence, as demonstrated by Italy's approach to admitting new scientific methods for re-examining existing evidence. Domestic judicial practice should adopt this solution, allowing old DNA evidence to be retested using advanced scientific techniques. Furthermore, as discussed in the chapter on DNA evidence handling, amendments to domestic criminal procedure laws are necessary. Currently, the law mandates the preservation of DNA material for 20 years post-conviction, extending to 40 years for serious crimes like rape or murder (*corpora delicti*). However, the provision requiring DNA data retention for 10 years after a defendant's exoneration is unclear and illogical. If a court has declared a defendant innocent, retaining their DNA data undermines trust in the judiciary. Citing the Marper and Gaughran standards, the law should regulate DNA data control, ensuring its destruction once it is no longer needed.

Croatia provides formal constitutional and legal protections for wrongfully convicted persons, including the right to a fair defense and compensation for unjust convictions or detention. However, significant gaps remain in practice particularly regarding post-conviction legal aid, which is not explicitly guaranteed by current legislation. While legal representation is available during pre-trial and trial phases, individuals seeking to reopen their cases must navigate the process without state-funded support, despite their vulnerability. The framework for compensation is set out in the Criminal Procedure Act and the Constitution, allowing for claims where convictions are overturned or detention was unjustified. Still, eligibility depends on strict legal criteria and excludes those deemed to have caused their own conviction or arrest. CEPEJ data (2020–2022) show a steady number of claims but rising compensation amounts, suggesting more serious cases or higher awards. Yet, data on wrongful convictions remain absent, hindering transparency. To improve access to justice, Croatia should recognize the wrongfully convicted as a distinct category of victims and ensure legal aid extends to post-conviction remedies. Better data collection and targeted legal reforms are essential to uphold fair trial rights and prevent further miscarriages of justice.

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