

The crime of perjury in the legislation of the Republic of Croatia

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Objective: This paper aims to provide a description and analysis of perjury in the legislation of the Republic of Croatia, the legal theory behind this concept, and how perjury charges and prosecution work in practice.

Methods: Legal provisions concerning the crime of perjury in Croatia were analyzed, including, statistical data on perjury charges and conviction rates, perspectives of other authors, and relevant judicial practice.

Results: The legislature has established criminal liability for perjury on the part of any witness, expert, translator, or interpreter who provides false testimony in a procedure. However, parties other than the defendant can be liable for perjury only if the final decision in the procedure resulted directly from their false testimony. Legal theory and judicial practice agree that a prescribed form should be observed when testifying, a witness can be guilty of perjury only after their testimony has been completed and their testimony can be examined in its totality, that perjury may be committed not only affirmatively by lying but also by withholding a decisive fact, as well as that in general, a retrial of a proceeding in which the perjury allegedly occurred is permissible only if based on a final judgment against the perjurer. An exceedingly large percentage of suspended sentences may fail to advance either general or specific prevention. Regarding the contentious issue of necessary conditions for initiating perjury proceedings, the author argues that the conditions are met immediately upon providing false testimony.

Conclusion: The Croatian legislature has criminalized perjury because providing false testimony constitutes an intentional obstruction of the process of proving facts in issue in proceedings before competent authorities. The judicial sentencing policy is not consistent regarding the application of prescribed punishment. By imposing criminal liability on a party only if their testimony was instrumental to the judgment, the party unjustifiably enjoys a more favorable position in relation to witnesses, experts, interpreters, and translators.

Keywords: perjury; evidence; crimes towards the justice system; false testimony; defendant; witness

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Introduction

In addition to courts and the state attorney's office (judiciary in the narrower sense), the judiciary in the broader sense involves public law bodies that handle administrative procedures, public notaries, arbitral bodies, and disciplinary bodies. These entities have a special role in society as they are involved in making decisions on contending issues concerning the application of the rule of law, such as (legal) dispute resolution, with important repercussions for the state and its citizens. The lawful, effective, and unobstructed operation of the judiciary is the mainstay of the functioning of the legal system at large.

The Criminal Code (CC/11) of the Republic of Croatia, Chapter XXIX: Crimes against the Justice System ([Kazneni zakon, 2011](#)), defines 13 criminal offenses: failure to report an intention to commit a crime (Art. 301), failure to report a committed crime (Art. 302), aiding a perpetrator after the commission of a crime (Art. 303), false report of a crime (Art. 304), perjury (Art. 305), suppression of evidence (Art. 306), violation of the secrecy of the proceeding (Art. 307), revealing the identity of a vulnerable person or protected witness (Art. 308), rioting of persons deprived of liberty (Art. 309), permitting escape of a person deprived of liberty (Art. 310), non-execution of a court decision (Art. 311), coercion against a judicial official (Art. 312), and unlicensed practice of law (Art. 313). These articles are an effort to protect judicial bodies from actions that may threaten or prevent them from carrying out their function, realization their objectives, and implementing their decisions.

The legislature has criminalized perjury to prevent persons participating in legal proceedings as witnesses, experts, interpreters, translators, or parties from obstructing, curtailing, or disrupting the process of proving facts in issue, as this may result in miscarriages of justice and erroneous outcomes. The crime of perjury is prosecuted by a state attorney *ex officio*. It is treated as a very serious crime in the legislation as it is classified as a crime subject to the real or protective principle of jurisdiction ([Derenčinović, 2013](#), p. 261; [Kazneni zakon, 2011](#), Art. 13, para. 4).

The basic form of perjury is committed when a witness, expert witness, translator, or interpreter provides a false testimony. The special form of perjury by a party (other than the defendant) has formally been committed only if the final decision in the proceeding was based on false testimony. The legislature has provided for the possibility of exemption from prosecution if the declarant voluntarily retracts his or her testimony. In this way, the giver of a false statement is stimulated to retract that statement before the occurrence of a harmful consequence.

This paper aims to provide the perspectives of other authors, describe court practice, and cite charge and conviction statistics, as well as provide an overview and analysis of the crime of perjury in Croatian legislation, views on the regulation of and prosecution for perjury in legal theory, and perjury prosecution in practice, i.e., how judicial practice resolves clashing interpretations of legal provisions and what is court policy regarding the prosecution of perjurers.

Perjury by a witness, expert, translator, or interpreter

Any witness, expert, translator or interpreter who in a previous criminal proceeding, proceedings in front of the court, or an international tribunal with a jurisdiction recognized by the Republic of Croatia, arbitration, misdemeanor or administrative proceedings, proceeding before a notary public, or disciplinary proceedings provides false testimony, a false finding or opinion, or a false translation will be punished with imprisonment of six months to five years ([Kazneni zakon, 2011](#), Art. 305, para. 1).

Criminal prosecution for this crime will become statute-barred after 15 years from commission ([Kazneni zakon, 2011](#), Art. 81, para. 1, indent 4).

The perjurer

The perjurer may be any witness, expert, translator, or interpreter. The necessary condition is that they have been called to testify in their capacity by the competent authority. A party acting as a subsidiary prosecutor or private prosecutor in criminal proceedings may also be examined as a witness ([Zakon o kaznenom postupku, 2008](#), Art. 283, para. 2).

This is a *delictum proprium* or a special type of crime where the role of the perpetrator is a fundamental or constitutive feature of the nature of the crime, meaning that the crime can be committed only by a person acting in a certain capacity ([Kurtović Mišić & Krstulović Dragičević, 2014](#), p. 108). It is also a so-called single-perpetrator crime, meaning that it can be committed only by a single perpetrator personally although it may also involve complicity (aiding and abetting), but not co-perpetration or indirect perpetration.

Types of proceedings in which perjury can be committed

According to the old Criminal Code from 1997 (CC/97) ([Kazneni zakon, 1997](#), Art. 303, para. 1), any witness, expert, translator, or interpreter providing false testimony, a false finding or opinion, or a false translation in court proceedings, administrative proceedings, proceedings before a notary public, or disciplinary proceedings will be punished with a fine or imprisonment of six months to five years.

According to the new Criminal Code from 2011 ([Kazneni zakon, 2011](#), Art. 305, para. 1), any witness, expert, translator, or interpreter may commit perjury: in a previous criminal proceeding (criminal proceedings instituted under a final decision to conduct an investigation), by confirming the indictment if the investigation has not been conducted, by determining proceedings based on a private lawsuit and the passing of a verdict on the issuance of a criminal order ([Zakon o kaznenom postupku, 2008](#), Art. 17, para. 1)), in proceedings before a court (in criminal and any other court proceedings), in proceedings before an international tribunal with a jurisdiction recognized by the Republic of Croatia, (International Criminal Court, International Court of Justice, International Tribunal of Law of the Sea, European Court of Human Rights, Court of Justice of the European Union), in arbitration, misdemeanor, administrative, or disciplinary proceedings or in proceedings before a notary public. Legislation has not foreseen sanctions against providing false testimony before a peace council. Specifying that the crime, except in the proceedings prescribed by the old CC/97, can also be committed in a previous criminal procedure (be-

fore the state attorney or investigator); in misdemeanor proceedings (which may be initiated by courts as well as state administration bodies authorized to carry out proceedings ([Prekršajni zakon, 2007](#), Articles 93 and 96)); and in arbitration proceedings was a necessary addition as none of these proceedings are covered by the old CC/97.

Crime commission

Perjury is committed at the moment of finishing providing false testimony in a proceeding. If a person testified in several consecutive hearings instead of a single hearing, testimony is considered to be completed at the end of the last examination and represents a single whole. In such cases, the declarant may retract previously given false testimony at any time before the end of the examination and in any such case will not be deemed to have committed perjury.

For a crime to have been committed, the perjury need not have actually harmed any particular person. The Supreme Court of the Republic of Croatia, in Judgment no. III Kr-324/1998-3 of October 21, 1998, found that the convict

“acted in the capacity of a witness rather than a party in the proceedings, so (...) the judgment need not have been made on the basis of his false testimony, whereas in this particular case, testimony evidently concerned decisive facts” ([Vrhovni sud Republike Hrvatske, 1998](#)).

Perjury refers to a false testimony given in the process of providing evidence. Testimony need not be entirely false. The falsity of a testimony must primarily concern the facts relevant to the judgment and disputed matter ([Derenčinović, 2018](#), p. 448). A false testimony regarding circumstances that are otherwise inconsequential to the judgment concerning the disputed matter does not constitute perjury ([Bačić & Šeparović, 1989](#), p. 344).

Perjury by a witness can concern only facts and not the witness's opinions or conclusions concerning the disputed matter. The Supreme Court of the Republic of Croatia, in Judgment no. IV Kž 167/1990-4 of February 13, 1991, found that

“the falsity of testimony must necessarily concern only facts and must not concern conclusions drawn from the facts; consequently, the conclusions of witnesses M.I. and B.M. regarding the existence or non-existence of damage are irrelevant to the assessment of the quality of truthfulness or falsity of their testimony, as this fact (...) has been established based on other evidence rather than based on their testimony” ([Vrhovni sud Republike Hrvatske, 1991](#)).

According to procedural regulations, witnesses are required to tell the truth and the whole truth ([Zakon o kaznenom postupku, 2008](#), Art. 288, para. 3; [Zakon o općem upravnom postupku, 2009](#), Art. 64, para. 6; [Zakon o parničnom postupku, 1991](#), Art. 243, para. 2). Refusal to testify (silence of a witness) cannot be treated as perjury, even when it is known that the witness is aware of a fact that is being proven. In comparison, if a testifying witness withholds only certain facts from time to time, the witness is committing perjury as witness testimony has to be circumstantial, credible, and true ([Sokanović, 2021](#), p. 228). Namely, the witness is obliged to tell the truth and must not withhold anything, including the facts that could lead the body (in front of which the proceedings are conducted) to draw the wrong conclusion that something happened. If any witness or another person withholds some facts because they do not deem them important, there is no intent. In that case there is no

criminal responsibility either, because this criminal offense is only responsible if it was committed intentionally, and not when the perpetrator acted negligently. The crime has not been committed if a witness withheld certain facts because testifying to them might disgrace, cause significant material damage, or result in the criminal prosecution of the witness or their close family members ([Zakon o kaznenom postupku, 2008](#), Art. 286; [Zakon o općem upravnom postupku, 2009](#), Art. 63, para. 2; [Zakon o parničnom postupku, 1991](#), Art. 238, para. 1).

If a declarant provided two contradictory testimonies in a procedure, it is necessary to establish which of the testimonies is false, rather than just establish that the declarant made two different, mutually exclusive testimonies about the same event ([Mrčela, 2003](#), p. 609).

Any person who is free to withhold testimony under Criminal Procedure Act (e.g. an adoptive parent of the defendant), but waives that right by providing false testimony may be prosecuted for perjury ([Derenčinović, 2011](#), p. 356).

If perjury was suborned by the defendant in a criminal proceeding, the defendant cannot be held liable for the subornation of perjury due to his or her vested interest in reaching the most favorable possible outcome in the proceeding, since subornation may in such cases be linked to the defendant's lawful right to present a defense in a broader sense ([Garačić, 2016](#), p. 918).

The crime of perjury does not depend in any way on whether the statement is being made under oath or not.

The perpetrator's motivation for the perjury is irrelevant to the crime of perjury.

Voluntary retraction of false testimony

If the perjurer (witness, expert, translator, interpreter) voluntarily retracts his or her testimony before the final decision, he may be exempt from punishment ([Kazneni zakon, 2011](#), Art. 305, para. 4).

The privilege of exemption from punishment concerns only the crime referred to in CC/11 ([Kazneni zakon, 2011](#), Art. 305, para. 1). A false testimony may be revoked and replaced by a new testimony as a special form of the so-called effective remorse, in which case legal impunity is permissible ([Turković et al., 2013](#), p. 383). A new testimony may be given as long as the rules of the procedure allow it, or until a final decision is made regarding the given false testimony, so it can be done even during the appeal procedure. The perjurer's motive to retract a previous false testimony and give a new testimony is irrelevant. Given this option, the court's decision will certainly be influenced by the kind of harmful consequences caused by the false testimony, if any.

Form of testimony

Witness testimony can be given in the prescribed (oral or written) form. However, there is no requirement that all formalities of the testifying procedure have to have been met in order to bring perjury charges. For example, General Administrative Procedure Act ([Zakon o općem upravnom postupku, 2009](#), Art. 64, para. 6), states that witnesses should be notified

of the consequences of providing false testimony, but a failure to notify will not protect the witness from being liable for perjury because General Administrative Procedure Act does not stipulate that in such a case the testimony of the witness is illegal.

However, no perjury can be committed if necessary conditions of lawful procedure have not been met during the testifying process, in which case any evidence produced is legally inadmissible. For example, in misdemeanor proceedings, witnesses must be notified that they are required to tell the truth and the whole truth, that providing false testimony is a crime, and that they are under no obligation to answer questions if doing so would expose the witness or a close family member to criminal prosecution, severe disgrace, or substantial financial loss. The warning will also go on record ([Prekršajni zakon, 2007](#), Art. 157, para. 7–8, Art. 173; [Zakon o kaznenom postupku, 2008](#), Art. 286, para. 1, Art. 288, para. 3, and Art. 300 para. 1, item 5). Without a recorded warning to the witness of the crime of perjury, the record is otherwise inadmissible as evidence in (misdemeanor) proceedings and such witness testimony is considered to be nonexistent and deprived of a legal effect. For example, the High Misdemeanor Court of the Republic of Croatia, in Judgment no. Ppž-4632/2021 of January 4, 2022, established that witness testimony recorded on July 27, 2020, at the First Police Station in Split cannot be the basis of a guilty judgment as

“the record in question was inadmissible in the proceeding and could not be used as the basis for judgment” because, “in accordance with the provisions of Article 158, paragraphs 7 and 8 of the Misdemeanors Act, in order for the knowledge of an authorized person in a state administration entity to be admissible as evidence in a misdemeanor proceeding, their examination must comply with the provisions of the Misdemeanor Act regarding the examination of witnesses in a misdemeanor proceeding, whereas it is unclear from the record of the examination (...) whether the witness received any warnings and if so, which warnings” ([Visoki prekršajni sud Republike Hrvatske, 2022](#)).

Falsity of testimony

Testimony must be false, i.e., if it does not correspond to reality (the so-called objective falsity requirement) or when it confirms a falsehood or refutes the truth in whole or in part. Asserting a falsehood means asserting that a fact exists when it, in fact, does not, or that an event occurred even though it did not. Denial of the truth means denying a fact that does exist or has existed or an event that has actually occurred.

If an expert gives testimony of fact, his or her report must be objective in the sense that it corresponds to the actual state of affairs, whereas his or her opinion must not conspicuously contradict the factual situation on which their judgment is based ([Pavlović, 2015](#), p. 1283).

Generally, the falsity of testimony can be based on evaluation of the evidentiary material.

Types of guilt

Liability exists if the perpetrator had the intent to commit the crime. Perjurers need to have been aware of their role in the proceedings and deliberately provided false testimony so that such testimony is also untrue because the perjurer knowingly provided testimony that is at odds with what they know to be true. *Dolus eventualis* or legal intention is also sufficient: the crime was committed and the perpetrator is liable if he or she represents a

statement as true even if he or she is not fully certain of its truthfulness if he or she doubts the truthfulness of the testimony, allows that the testimony may not be true, but still represents the statement as true without expressing any doubts. The existence of a crime requires the cumulative existence of objective and subjective untruths; consequently, no crime has been committed if the declarant makes statements that are true but he or she believes to be false, or, conversely, if the declarant makes false statements and mistakenly believes them to be true. For example, the Varaždin County Court, in Judgment no. Kž. 131/01 of June 15, 2001, established that

“in the sense of criminal law, testimony is not false if it has not been established with certainty that the declarant knew that his or her statement does not correspond to the actual state of affairs” ([Županijski sud u Varaždinu, 2001](#)),

whereas the Zagreb County Court Judgment no. 8 Kž-52/2022-3 of March 1, 2022, stated that the declarant was aware of

“all elements of the crime of perjury and acted with a direct intent and motive – to improve the position of his uncle in the litigation in question” ([Županijski sud u Zagrebu, 2022](#)).

Perjury by a party other than the defendant

Until now we have discussed the testimony of non-party witnesses. If any party in a previous criminal proceeding, proceeding before a court or international tribunal with a jurisdiction recognized by the Republic of Croatia, arbitration, misdemeanor, or administrative proceedings, proceedings before a notary public, or disciplinary proceedings, other than the defendant, provides false testimony and that testimony becomes the basis for the final decision in that procedure, such party shall be punished with imprisonment of six months to five years ([Kazneni zakon, 2011](#), Art. 305, para. 2).

If the party is a legal entity, the perpetrator can only be a natural person who testified on behalf of the legal entity.

Criminal prosecution for this crime will become statute-barred after 15 years from commission ([Kazneni zakon, 2011](#), Art. 81, para. 1, indent 4).

Crime commission

The crime is committed by any party to the proceedings, other than the defendant in a criminal proceeding, who has provided a false testimony only if that testimony was necessary to the final decision in the proceedings. Therefore, merely providing false testimony is not a sufficient condition – testimony has to affect the judgment. A “final decision” is a decision that resolves the subject matter of a dispute and concludes the dispute. Crime commission in this case requires a direct or indirect intent ([Kazneni zakon, 2011](#), Art. 28).

The Pula County Court Judgment no. Kž-413/16 of May 3, 2017, confirmed that D.P. committed perjury by going on record with false testimony, claiming

“that he lost his driver’s license and motor vehicle certificate, even as he knew that he had given these documents to S.P.’s husband, B.P.”, after being duly warned about criminal and material liability in case of perjury by a party in administrative proceedings. The court stated that the false statement of the party in the administrative procedure “was a

basis for the decision to issue a new vehicle registration certificate in the administrative procedure, pursuant to Art. 45 and Art. 46 of the Ordinance on Vehicle Registration and Marking. In the factual description, it was, therefore, correctly stated that the final decision in that procedure was based on the false testimony of the defendant as a party in the administrative procedure” ([Županijski sud u Puli, 2017](#)).

The Slavonski Brod County Court Judgment no. 2 Kž-84/2022-4 of January 16, 2023, confirmed that the defendant committed perjury as a party (plaintiff) in civil proceedings for the recognition of ownership rights, having falsely testified

“that he bought the house from the late father of J.N., but there was no time to conclude a purchase agreement due to his death. He claimed that he borrowed EUR 160,000.00 to buy the house from W.K., which he then gave to the aforementioned. During the hearing, he submitted a certificate showing that W.K. lent him the money as proof of his claim, and the judgment upholding the claim was consequently passed based on his testimony. The first-instance court found that W.K. had not lent EUR 160,000.00 to the defendant, as he himself testified to the fact as well as that the certificate he signed was untrue meaning that Judgement no. P-509/06-79 was based on the defendant’s false testimony. Therefore, the defendant’s claim that the final decision in proceeding no. P-509/06 and corresponding Judgement no. P-509/06-79 of December 31, 2007, was not predicated on his testimony is wrong” ([Županijski sud u Slavonskom Brodu, 2023](#)).

Judgment no. 2 Kž- 41/2022-8 of December 9, 2022, confirmed that the defendant committed perjury by

“delivering false testimony on August 25, 2020, in the proceeding concerning the founding of an entity registered in the court register of the Varaždin Commercial Court, meaning that he knew that he was falsely representing that the company T. – B. j.d.o.o. had no outstanding tax and contribution debts even though he knew about the debt, and the subsequent registration was based on his application to register the company F. – L. d.o.o. V. in the court register, substantiated by his testimony and other relevant documents” ([Županijski sud u Slavonskom Brodu, 2022](#)).

Testimony by parties in civil proceedings

Presenting evidence during a hearing of a party is a subsidiary element in civil proceedings, resorted to when there is no other evidence or when, despite other evidence-proving procedures, the competent authority rules that this evidence-proving procedure is necessary to establish material facts ([Zakon o parničnom postupku, 1991](#), Art. 264). A party in litigation is not criminally liable for perjury if the party admits a claim ([Zakon o parničnom postupku, 1991](#), Art. 331) while knowing it is unfounded, as this cannot be equated with a party’s testimony in the sense of Civil Procedure Act ([Zakon o parničnom postupku, 1991](#), Art. 264).

Testimony by parties in administrative proceedings

Parties in administrative procedures have the right to take part in the procedure, make statements of any facts, present facts on which they have based their claims, and give statements and explanations; if there is no other evidence to prove certain facts, the party’s statement may be admitted as evidence ([Zakon o općem upravnom postupku, 2009](#), Art. 70). If a party in an administrative procedure presents only false documents that then become instrumental for the judgment, essential features of the crime of perjury have not been met ([Mrčela, 2003](#), p. 609).

Defendant's testimony in criminal proceedings

As a party in criminal proceedings, a defendant cannot be held liable for perjury. Although the letter on rights (*Zakon o kaznenom postupku*, 2008, Art. 239) provides that the defendant may not be compelled to testify, there are no provisions to the effect that the defendant must tell the truth or that the defendant's false testimony is a criminal offense. The defendant is not required to testify or answer questions truthfully (*Krapac*, 2003, p. 358).

When deciding on the criminal liability of persons who gave contrasting testimonies in the capacities of defendant and witness, courts affirmed that these are different procedural roles with a significantly different requirements to tell the truth, as evident from the notices they are given before testifying – a witness is required to tell the truth, but there is no such requirement for a defendant as he or she cannot commit perjury by providing false testimony in his or her own defense. According to the Zagreb County Court Judgment no. 2 Kž-104/2019-3 of March 5, 2019,

“as the fundamental right of the defendant in criminal proceedings, the defendant has the absolute right to tailor his or her own defense, the right to defend oneself or appoint a defense attorney, the right to remain silent during the whole procedure, the right to not answer any questions or answer only some questions, and the right to present his or her defense in the most suitable manner. In contrast to the above rights of the defendant, the primary duty of a witness is to tell the truth, as stated in the notice to the witness. Therefore, any comparison between the representations of the same person who was a defendant in one proceeding and a witness in another is unlawful and inadmissible” (*Županijski sud u Zagrebu*, 2019).

However, according to Judgment no. 8 Kž-657/2021-3 of September 7, 2021,

“the defendant had the right to defend himself in any way he saw fit, but as a witness, he is required to tell the truth and may be held criminally liable for perjury, whereas, as a defendant, he cannot be held liable for perjury, in accordance with the provisions of CC/11, Article 305, paragraph 2” (*Županijski sud u Zagrebu*, 2021).

Form of testimony

Not every statement (presentation) made by a party in a proceeding may be seen as providing false testimony. As a precondition, the competent authority must have decided to prove evidence by hearing a party and the party's testimony is relevant.

Failure to warn the party of liability in case of false testimony does not affect criminal liability if the party does give false testimony in the proceedings. In its Judgment no. 5 Kž-471/2019-4 of January 14, 2020, the Varaždin County Court found that

“statements of heirs in probate proceedings instrumental for proving legally-relevant facts, including the determination of rightful heirs based on genealogy, have the characteristic of a party's testimony and are therefore prosecutable as perjury under Art. 305, para. 2, in relation to para. 1 of CC/11,” and that “the fact that, in this particular case, the defendants were not warned about the potential consequences of giving false statements that may and would be construed as a party's testimony in the probate proceedings before making statements regarding the determination of genealogy and, consequently, the determination of rightful heirs, does not preclude the application of Art. 305, para. 2, in connection with para. 1 of CC/11, and, therefore, does not preclude the existence of a crime under the aforementioned legal provision” (*Županijski sud u Varaždinu*, 2020).

Crime qualification

If the crime of perjury (described in [Kazneni zakon, 2011](#), Art. 305, para. 1 and 2) has led to the conviction of an innocent defendant or some other particularly serious consequence for the defendant, the perjurer may be sentenced from one to ten years in prison ([Kazneni zakon, 2011](#), Art. 305, para. 3). The “defendant” should be interpreted here in a broader sense to include both the suspect and the accused ([Vlada Republike Hrvatske, 2011](#), p. 254).

When speaking of qualified form of perjury in criminal case, we mean testimonies given in criminal or misdemeanor proceedings that produced one of the described consequences for the defendant, such as illegal custody or pre-trial detention, a conviction for a crime or misdemeanor, a more serious conviction (more severe sentence), serving time in prison, implementation of security or protective measures based on a final judgment that was later overruled and replaced by a final acquittal or dismissal or suspension of proceedings.

The contingency that providing a false testimony may cause serious consequences for the defendant may or may not be part of the perpetrator’s intention at the time of the commission of the crime, so negligence is a sufficient requirement ([Kazneni zakon, 2011](#), Art. 27, para. 2).

Criminal prosecution for this crime will become statute-barred after 20 years from commission ([Kazneni zakon, 2011](#), Art. 81, para. 1, indent 3).

Initiation of criminal proceedings for perjury

Criminal proceedings for perjury may be initiated as soon as the crime is committed, without waiting for the end of the proceedings in which the testimony was given. This is because the offense was already committed at the time of providing false testimony, and that the competent authority in the procedure in which the false testimony is not involved in any way with the criminal prosecution for perjury. The risk of the statute of limitations for perjury expiring is thus eliminated, which might otherwise often be the case for perjury committed in complex, protracted civil or criminal cases.

Recent judicial practice supports the separate nature of the criminal prosecution for perjury. According to Velika Gorica County Court Judgment no. Kž 241/2020-3 of July 1, 2020, the legal description of the crime of perjury does not lend itself to

“the conclusion that criminal proceedings for that crime may be initiated or a judgment made in such proceedings only after the criminal proceedings in which the witness is charged with a crime under CC/11, Art. 305 are finally disposed. The crime was committed on the day when the person charged with the crime provided testimony that is considered to be false. The statute of limitations also begins to run on that day. Moreover, paragraph 2 of the same Article prescribes a qualified form of that crime, which exists if a party to the proceedings, other than the defendant, gives false testimony and the final decision in that proceeding is then predicated on that testimony, and paragraph 3 of that Article prescribes another qualified form which exists if the crime referred to in paragraphs 1 and 2 of that Article caused the conviction of an innocent defendant or other particularly serious consequences for the defendant. After a meaningful reading of all cited paragraphs under CC/11, Art. 305, it is clear that a person charged with perjury under CC/11, Art. 305, para. 1 may be prosecuted immediately after providing testimony that the state attorney considers to be false and there are no obstacles to passing a verdict immediately after gathering

the evidence in that procedure, so there is no need to wait for the outcome of the criminal proceeding in which the alleged crime of perjury was committed. Not only would a different reasoning open the possibility of criminal prosecution for perjury under CC/11, Art. 305, para. 1, becoming statute-barred (taking into account that the criminal proceedings in which the alleged perjury was committed may also relate to a serious crime punishable by a long-term prison sentence, so the duration of such proceedings may undoubtedly be significantly longer than the statute of limitations for the crime of perjury), but the de facto court that has to decide whether the crime under CC/11 Art. 305, para. 1 was committed to some extent has to accept the assessment of the credibility of the testimony given by the accused as a witness in another proceeding before another court. Finally, the reasoning of the first-instance court is wrong pursuant to the provisions of CC/11, Art. 305, para. 4, according to which the perjurer referred to in paragraph 1 of that Article may voluntarily revoke the testimony before the final decision and be given impunity. More specifically, this implies that the defendant, having been accused of a crime under CC/11, Art. 305, para. 1, subsequently revoked the false testimony made during the same procedure before the end of the proceedings for the crime of perjury under CC/11, Art. 305, para. 1” ([Županijski sud u Velikoj Gorici, 2020](#)),

whereas the Pula County Court in its Judgment no. Kž-48/2020-7 of March 3, 2021, stated that

“from the legal description of the crime charged against the defendants, it does not follow that criminal proceedings may be initiated only after the final conclusion of the criminal proceedings in which the defendants gave false testimonies as witnesses according to the factual descriptions of the indictment, which is also referred to by the provision of CC/11, Art. 305, para. 4, as correctly cited in the appeal by the state attorney, according to which the perjurer may be given impunity if he or she voluntarily revokes the testimony before the final decision in the proceedings in which he gave a false testimony as a witness, obviously in the proceedings for the crime of perjury” ([Županijski sud u Puli, 2021](#)).

Sokanović (2021, pp. 225–226) advocates the opposing view that perjury cannot be criminally prosecuted after the discovery that a crime has been committed and, possibly, of the perpetrator’s identity; rather, a prosecution can be instituted only if a judgment was passed in the case in which the witness allegedly provided false testimony. Elaborating on a specific case of dismissal of the indictment against a defendant accused of giving false testimony in another ongoing proceeding, she cites the Zagreb Municipal Criminal Court Judgement no. 8 KOV-658/18-4 of September 28, 2018, stating that

“state attorney and court practice do not permit criminal proceedings for the crime of perjury if the criminal proceeding from which the alleged false testimony originates has not been legally terminated by a court verdict” ([Općinski kazneni sud u Zagrebu, 2018](#), as cited in Sokanović, 2021),

as well as the Zagreb County Court Judgement no. 12 Kv II-1392/2018-2 of November 27, 2018, stating:

“Bringing criminal proceedings against any defendant for the crime of perjury allegedly committed in a still ongoing proceeding, especially if the evidence is still being presented at the hearing in that proceeding, would necessarily and logically affect the judicial panel in the latter procedure. Therefore, none of the evidence that will be evaluated by the judicial panel may have a pre-existing effect that would be binding for or, at least, be able to influence the court” ([Županijski sud u Zagrebu, 2018](#), as cited in Sokanović, 2021).

Renewal of proceedings due to perjury

A criminal conviction can be overturned if it is proven that the verdict was based on false witness testimony. If the criminal proceedings for perjury cannot be instituted because the alleged perjurer has died or there are other circumstances precluding criminal prosecution, the falsity of witness testimony can be proved by other evidence ([Zakon o kaznenom postupku, 2008](#), Art. 501). The Supreme Court of the Republic of Croatia found that the conditions for the renewal of the proceedings due to false testimony have not been met in Judgment no. I Kž 6/09-3 of March 3, 2009, because the convicted person's

“allegations about the testimony of witness D.E. being false were supported only by a certified statement of the witness, rather than a final verdict finding D.E. guilty of perjury, nor was any circumstance from which the conclusion on the existence of circumstances that preclude criminal prosecution of the said person brought to light, as expressly prescribed by law” ([Vrhovni sud Republike Hrvatske, 2009](#)),

as well as in Judgment no. I Kž 743/06-3 of January 11, 2007,

“due to the fact that the legal presumption of the possibility of proving perjury with other evidence is the expiry of the absolute statute of limitations for a criminal prosecution, which has not yet expired” ([Vrhovni sud Republike Hrvatske, 2007](#)).

Civil proceedings that have been terminated by a final judgment may be re-opened at a party's request if the judgment was based on false testimony by a witness, expert, interpreter, or translator within thirty days of the party learning of the final judgment for the crime of perjury, and if the criminal proceedings cannot be brought from the day when the party became aware of the suspension of that criminal proceeding or of other circumstances precluding its initiation ([Zakon o parničnom postupku, 1991](#), Art. 421, para. 1, items 4 and 6, Art. 423, para. 1, item 4).

The renewal of an administrative procedure ending in a decision that cannot be appealed may be initiated at the request of a party or *ex officio* within three years from the date when the party was served with the decision if the decision favorable to the party was based on the party's untrue and misleading statements. Renewal of a procedure ending in a decision that cannot be appealed may be initiated at the request of a party or *ex officio* without a time limit if the decision was based on a false document or false witness or expert testimony ([Zakon o općem upravnom postupku, 2009](#), Art. 123, para. 1, item 2 and Art. 123, para. 2, item 1). The falsity of witness and expert testimony as a reason to reopen the proceedings should also be determined in criminal proceedings; the falsity of testimony may be determined in administrative proceedings only if there is no possibility of criminal prosecution ([Đerđa, 2010](#), p. 284).

Charges and convictions for the crime of perjury between 2017 and 2021

Statistical data from the Croatian State Bureau of Statistics ([Državni zavod za statistiku Republike Hrvatske, 2018; 2019; 2020a; 2020b; 2020c; 2020d](#)) concerning the charges and convictions of perjurers in the Republic of Croatia during the five years between 2017 and 2021 were analyzed for the purposes of this paper ([Table 1](#)).

Table 1. Persons charged and convicted for perjury based on attempts and imposed sanctions

Year	Total charged	Total convicted	Attempted	Suspended sentence	6–12 months total/suspended	3–6 months total/suspended	2–3 months total/suspended	Fine total/suspended
2017	462	65	3	62	26/25	38/36	1/1	-
2018	467	60	2	58	24/22	32/32	4/4	-
2019	384	66	1	62	29/25	36/36	1/1	-
2020	347	38	-	38	15/15	22/22	1/1	-
2021	401	59	-	55	20/18	38/37	-	1/0

In 2019 and 2020, there was a significant decrease in the number of charges compared to 2017 and 2018. In 2021, there was an increase in the number of charges, but the figures were still lower than in 2017 and 2018. There was a significant difference between the number of charges and convictions. The percentage of convictions in relation to the number of charges ranges from 11% (2020) to 17% (2019). In terms of convictions (sanctions), suspended sentences predominate, ranging from 93% (2021) to 100% (2020). The most common type of punishment was a suspended prison sentence of 3 to 6 months.

Discussion

Perjury is a criminal offense because society has an interest in the conscientious and honest discharge of duties of individuals in proceedings where the rights, obligations, and responsibilities of legal and natural persons are decided, in a way that contributes to a lawful resolution of disputes. This safeguards the proper functioning of the judiciary in order to ensure that the facts in issue are proved in a complete and appropriate manner as a material basis for a legal decision. This also protects the interests of persons who have been injured by false testimony and incorrect decisions on the rights, obligations, or liability of the (injured) persons made by competent authorities.

The crime can be committed by a witness, expert, translator, interpreter, or a party to the proceedings, other than the defendant. Compared to the old CC/97, which cited proceedings before the court, administrative proceedings, proceedings before a notary public, and disciplinary proceedings, the legislator extended the criminal liability for perjury to previous criminal proceedings, arbitration, and misdemeanor proceedings, as well as proceedings before an international tribunal with a jurisdiction recognized by the Republic of Croatia.

To be relevant, testimony must be given in a procedure prescribed by law and must concern facts material for the judgment. The person must be aware of the capacity in which he or she is testifying and a prescribed form must be observed when giving a testimony – the person must be notified about his or her rights as well as acquainted with the consequences of providing false testimony. Flaws in the form of testimony may make testimony legally inadmissible and therefore preclude criminal liability for perjury. Remaining silent may also constitute perjury since witness testimony must be circumstantial, credible, and true. If a party's testimony is taken as evidence in a proceeding, to be then used to prove

the facts at issue and, consequently, apply the law, the party enjoys a more favorable position in relation to other perjurers, since the party has only committed perjury if the final decision in the proceeding is ultimately based on the testimony. Moreover, if the party is the defendant that party is not required to testify or tell the truth – and may, therefore, lie – therefore by definition he or she cannot commit perjury. Perjury is difficult to prove, especially when witnesses testify about their memory of an event.

Perjury under oath is not treated separately nor in detail as this is neither a feature nor a qualifying circumstance of the crime.

The crime of perjury is committed at the moment of testifying. Criminal prosecution may, consequently, be instituted against the perjurer from that day, regardless of whether the procedure in which false testimony was provided has ended. The legislature prescribed a qualified form of perjury, in cases where false testimony has led to a conviction of an innocent defendant or particularly severe consequences for the defendant. On the other hand, impunity is an option in cases of voluntary revocation of false testimony at any time before the final decision in the procedure in which the testimony was given.

Renewal of the procedure in which false testimony was given is permissible only based on a final judgment against the perjurer and based on other evidence only in case of circumstances that preclude criminal prosecution.

Statistical data show a very low number of convictions compared to the number of charges for the crime of perjury, indicating a high frequency of unfounded charges raised in attempts to dispute testimonies of witnesses, experts, translators, interpreters, or parties deemed trustworthy by the competent authority in order to obtain verdicts (convictions for the crime of perjury) that can then be used as evidence when seeking to renew a proceeding. In other words, the crime is very difficult to prove because it requires proving that a declarant knew certain facts but deliberately kept silent or was stating the opposite of what he or she knew had happened. The exceedingly large percentage of suspended sentences – usually short-term prison sentences – does not support the functions of general and special deterrence because they do not correspond to the gravity of the criminal act and the degree of responsibility of the perpetrator, they do not express appropriate social reproach and they do not sufficiently deter future perpetrators from committing this criminal act.

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