

CRITICS of Western efforts to conduct Nazi war crimes trials are claiming that the recent collapse of some cases has confirmed concerns about the feasibility of mounting prosecutions after 50 years and the reliability of evidence provided by former Eastern bloc regimes.

Israel, for example, believed it had the notorious "Ivan the Terrible" convicted and sentenced to death in 1988 after it had extradited John Demjanjuk from the United States.

Now, the prosecution is in disarray amid new evidence in Demjanjuk's appeal that US Justice Department officials may have withheld crucial witness testimony pointing to the defendant's innocence.

On 30 July, Australian war crimes prosecutors suffered a big setback when an Adelaide magistrate dismissed charges against Mr Mikolay Berezowsky, 78, who was accused of being involved in the murder of 102 Jews in German-occupied Ukraine.

At one stage Mr Berezowsky's committal hearing turned to farce when an elderly witness from Ukraine scanned the court and identified a US tourist as the accused man.

Nazi war crimes trials are an emotive issue, with Jewish communities strongly supporting prosecutions and East European groups generally concerned that they have been made a target for political reasons.

Recent developments, primarily the publication of documents from the former Soviet Union and other former communist states, would seem to bear out some of those concerns.

A US war crimes expert and lawyer, Mr Paul Zumbakis, told 'The Age' that communist security services such as the KGB had clearly been orchestrating war crimes trials in the West.

And more ominously, Mr Zumbakis said, bodies such as the US Justice Department's office of special investigations, OSI, had been caught out withholding evidence favorable to defendants.

Mr Zumbakis said that, since the unearthing of new testimony in the Demjanjuk case, the US civil court that deported him to Israel had ordered an inquiry into the OSI's actions.

If the OSI is officially discredited, this could have implications for Australia, because the organisation has provided information on war crimes suspects to local authorities.

Mr Zumbakis, who gave evidence to an Australian Senate committee hearing on war crimes in 1989, cited the following as examples of the role played by former communist countries in war crimes investigations: Three KGB officers, who had given evidence against a US citizen tried for war crimes in Germany in the early 1980s, have since admitted in court that they withheld evidence favorable to the accused.

A private investigator has discovered evidence in the former Yugoslavia that a US citizen, Andrija Artukovic, was deported by the US on the basis of forged Yugoslav documents. It has been alleged that the OSI knew the documents were false.

A 1978 memo recently discovered in Soviet Lithuania's KGB archives indicated that the KGB was concerned that anti-communist Lithuanian emigre communities were getting on too well with Jewish groups. This required a remedy and the solution, according to the memo, was orchestration of war crimes trials in the West.

Mr Zumbakis, who has a Lithuanian background and has defended war crimes suspects, said that the revelations involving Demjanjuk and Artukovic showed that the OSI was concerned not about justice but victory.

While the Australian experience was preferable to the US because more stringent criminal trials were instituted here, he said, the problems of witness testimony after 50 years and the near-impossibility of verifying Soviet documents endangered the prospect of fair hearings.

"The US spent \$5million or \$10million prosecuting Demjanjuk and, if the KGB in fact faked them out and faked out Israel, then they can certainly fake out Australia," Mr Zumbakis said.

Mr Zumbakis said that, while he supported in principle the prosecution of genocide cases, the injustice in Australia was that only World War II suspects had been picked out.

"And that makes it a political trial, and political trials 50 years after the fact are simply not democratic," he said.

Australia decided to launch prosecutions in 1987 by creating the special investigations unit, but so far only two cases have made it to court, including that of Mr Berezowsky.

There is believed to be tension between Australia's chief war crimes investigator, Mr Graham Blewitt, and the Government, because of its decision to close down the investigations unit at the end of June.

Mr Blewitt, who is now helping to wind up the remaining few prosecutions, is not permitted to comment publicly on the issue for ethical reasons. But he said in June that the Government should have widened its investigations into war crimes suspects to include those from any country now living in Australia.

The Jewish community has also been criticised for allegedly going soft on the Government's move to wind down the war crimes unit. 'The Australian Jewish News' recently reported that Mr Efraim Zuroff, director of the Simon Wiesenthal Centre in Israel, had accused an Australian Jewish leader, Mr Isi Leibler, of defending the Government's decision.

And a visiting Canadian Jew, Mr David Matas, a human rights lawyer, said he disagreed vehemently with local Jewry's stance that the war crimes issue was about justice and humanity and not a "Jewish issue".

'The Age' sought comment from relevant officials in the office of the Attorney-General, Mr Duffy, but calls were not returned.