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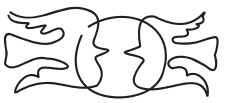

SUMMARIZED FINDINGS ON WAR CRIME TRIALS IN REPUBLIC OF CROATIA FOR 2007

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Osijek, 2007

MONITORING OF WAR CRIMES TRIALS

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in cooperation with

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SUMMARY OF MONITORS' FINDINGS AND OPINION

During the last three years, between 23 and 35 first-instance court trials for crimes against values protected by the international humanitarian law have been annually conducted in Croatia.

Except for a few obvious cases, the majority of war crime trials which we were monitoring during 2007, were not below the standards of legality and procedure of a just trial. Despite a pressure which was exerted by a part of the public and a serious political resistance which occurred, as well as obstructions within the state institutions, the war crimes committed by members of Croatian military units have also been brought to courts. After working on it for two years, the State Attorney's Office of the Republic of Croatia has modified the indictment against Ademi and Norac who had been accused of committing the crime in Medak pocket, which case was transferred from ICTY to Croatia. Moreover, the indictment was issued against the Croatian Parliament representative, Branimir Glavaš, and other six indictees, for war crime against civilians in Osijek, and the court hearings in the mentioned case have commenced. These trials are the visible effects of the most serious and politically most sensitive activities of the State Attorney's Office, and these are highly demanding trials since the accused persons are the generals of the Croatian Army, and the general public is still divided regarding the issue of necessity of having "our men" tried.

We could be content in principle with such a conclusion since it reflects what it seems to be a result of the "step-by-step" process towards the professional and impartial war crime trials carried out by the highest judicial instances of the Republic of Croatia by:

- synchronising the activities of the Croatian judicature with the Statute of the International Criminal Court;
- analysing and revising a current practice of the State Attorney's Office; by its insistence on ceasing a practice of conducting trials in absence and by opening investigations for crimes committed against ethnic non-Croats and investigations on persons accountable for crimes on the basis of command responsibility;
- having a corrective role of the Supreme Court of the Republic of Croatia;
- setting the legal conditions and strengthening institutional prerequisites for the witness protection and support;
- strengthening the regional cooperation on war crime trials.

The reported deficiencies point to the fact that current achievements of the judicature in conducting war crime trials **are at the same time its highest peak which current capacities and internal organisation can currently allow.** The mentioned occurrence appears to be the most significant weakness of the presented situation. In our opinion, all war crime trials are equally important, there are no less-important war crime trials; there is a large number of war crime trials; those trials are dispersed and carried out by fifteen county attorney's offices and county courts. Having in mind all these facts, it is not simple to internally track the trials, and it is even more difficult to fix damages made during the trials conducted in absence of the accused person, not to mention the difficulties with continuance of systematical improvement of judicial practice.

We believe that, without strengthening its specialised teams of competent, devoted and brave people, i.e. without improvement of *war crimes investigation centres*, the Croatian judicature will not be able to professionally and impartially carry out not even those criminal cases that have already commenced (also having in mind those cases which would need to be reinstituted since the trials had been conducted in absence of the accused), and there are still numerous crimes which have not been completely investigated yet or brought to the court.

For all the above mentioned reasons, **we strive for strengthening of *war crimes investigation centres*, which should be the highest priority task of the reform of the judicature.**

The following arguments support our opinion:

1. The need to have just and impartial trials followed by legally valid verdicts which would close the criminal cases of a large number of war crimes. (During the last decade, a prevailing practice in war crime trials at county courts in the Republic of Croatia was a multiple repetition of trials due to the verdicts which had been passed based on insufficiently established facts. This practice points to unwillingness of the court to pass verdicts that are unpopular among the general public).
2. The need to ensure and carry out just trials against the persons already convicted in trials that were conducted in their absence. (The majority of cases completed with legally valid verdicts was carried out in absence of the accused. Reinstitution of the trials, probably starting from the investigation phase, before the same county judi-

cial bodies which had conducted the previous trials, may be stigmatised with partiality that was previously expressed by those bodies. Reinstitution of those trials may also be burdened by "temptation of covering up" of omissions and violations of just trial regulations which had been done in previous trials. Furthermore, the issue of existence of capacities at those courts which are needed to conduct trials against perpetrators of the most serious crimes, still remains open).

3. The need for reopening of the previously conducted, seriously flawed investigations, and opening of new investigations, and the need for a regional cooperation. (A number of crimes which were actually committed has not yet been investigated or brought to the court; the victims must have a right to know the truth; the state itself is responsible for carrying out the investigation of crimes in a correct manner).

4. The need to provide a support to witnesses and victims during the war crime trials. (Concentration of war crime trials into the ***war crimes investigation centres*** would facilitate a more effective organisation of a deeply necessary support to the victims, witnesses and participants at the trial).

5. The need to make all war crime trials easily accessible for the general public and the media. ("Less important" trials at county courts are significantly less covered by the media; those trials have a rather poor access for monitors of human rights protection organisations; victims' families or families of accused persons are more exposed to the pressure arising from local communities).

6. The need for human resources and technical equipment – i.e. specialised teams. (The existing human resources are dispersed and insufficiently specialised).

□ Among the trials we monitored in 2007, we would like to point out to following trial as being a highly **disputable example**:

Trial against accused Predrag Gužvić, who was tried in absence following the indictment K-22/00. The trial was conducted at Požega County Court and the verdict is to be considered by the Supreme Court of the Republic of Croatia following an appeal. According to our information, serious violations of regulations of penal procedure were made during the trial, including the provision on court council constitution, and the provision stating that a defence lawyer must be present in the courtroom during the hearing. A court-appoint-

ed defence lawyer from Požega left the courtroom in the midst of evidence procedure, without a previous approval by the Council President. As we got to know later on, the defence lawyer left the courtroom in order to be present at another trial conducted at the same time at Požega Municipal Court. The trial against her defendant, Predrag Gužvić, did continue despite the fact that the Council President was obliged to adjourn the hearing according to Article 306 of the Penal Procedure Act. Furthermore, later on at the same hearing, after the completion of evidence procedure, the verdict was also passed and announced. Our opinion is that it is unacceptable in year 2007 to have such a trial conducted in absence of the accused.

- We would like to point to the following case as being a **special expectation**:

We expect **the Sisak County Attorney's Office to issue request for reinstitution of trial** against Ranko Pralica and Stanko Palančanin, in accordance with Article 407 of the Penal Procedure Act. In 1993, case No: K-23/93 was opened at the Sisak County Court and the trial was carried out against Ranko Pralica and Stanko Palančanin for two criminal acts of war crime against civilians stated in Article 142, Paragraph 1 of the Basic Penal Law of the Republic of Croatia. Accused Pralica and Palančanin were found guilty and sentenced to a 20-year prison term. The summary of facts stated in Item 2 of the verdict contained a statement affirming that the injured party Borislav Litrić had died in prison as a result of physical injuries which he had suffered during the beating. After the appeal term expired, the verdict became legally valid. In 2006, the Sisak County Attorney's Office issued the indictment No: K-DO-03/06 against accused Rade Miljević. During the trial against accused Miljević (case No: K-26/06), the Court established a fact that, as a consequence of actions done by the accused Miljević, Borislav Litrić was taken out of prison along with another three injured parties and killed on the Pogledić hill near Glina.

- We would like to **point to the following opinion**:

1. **We suggest the legislative bodies to consider the ways of modification of the Penal Procedure Act and other relevant regulations which stipulate victims' rights.**
2. It is our opinion that, after the indictment for serious crime which carries a penalty of the minimum five years' imprisonment has become legally valid, a cancellation of trial based on right to parliamentary immunity, is not in line with natural law (therefore, citizens cannot perceive such regulations of the Constitution as just) and we do not see the mentioned cancellation being in a spirit of democracy. **We deem it necessary to initiate a discussion on the need for modification of the Constitution**.

3. We would like to point up a **current practice of impunity of criminal act of concealment of war crimes.** The positive regulations of the Republic of Croatia, or such an explanation of current regulations, do contain a serious deficiency when omitting to consider the act of concealment of war crime as an action which greatly corresponds to actions of planning that particular crime, encouraging to commit the crime, complicity in crime, approval of crime, and the very act of committing the crime. We do expect from county attorney's offices and county courts to start dealing with the crime of concealment of bodies of killed victims, and other crimes of concealment, using practice of the ICTY, and regulations of the Geneva Conventions and other international acts in relation to war customs and humanitarian law.

KEY OBSERVATIONS MADE AT THE FIRST-INSTANCE COURT TRIALS

War crime trials are conducted at county courts. All courts which deal with war crime trials do not have appropriate human resources or technical equipment necessary for dealing with the most demanding crime cases. Moreover, the courts are exposed to pressure within the local communities, or they are burdened by a large number of trials in absence of the accused, which the courts were conducting in the early nineties and those trials were characterised by gross violations of the accused persons' rights.

Publicity of trials

Principle of publicity of trials was observed in all court cases.

Information on schedule of hearings is available either upon sending a written request to respective court, or at each court's billboard, or on website of those courts which do have active websites. However, although a victim has a right to receive information about the court trial and the information about a timetable of court procedures which are to be carried out, the judicial bodies, according to the existing laws, are not obliged to deliver the mentioned information to those victims unless they are witnesses or subsidiary suers.

Our monitors were usually perceived as an expert public, and therefore, following the approval from the War crime council president, they were receiving records from court hearings and written verdicts. County attorney's offices were regularly delivering the copies of indictments to our office. During presentations, inspections and reading of documents at the trial conducted at Zagreb County Court against accused Mirko Norac and Rahim Ademi, the documents and material evidence are presented on video screens which makes it a lot easier to follow the trial. In the case against accused Branimir Glavaš and other accused persons, the War Crime Council President reads out the depositions taken from the accused persons during the investigation procedure, which are being changed by the same accused persons later on.

Contrary to the above mentioned, a common practice at court hearings actually does not involve reading out of documents and depositions obtained in the investigation procedure, sometimes not even the documents of major significance for the case are read out in the courtroom. Instead, it is only concluded that the documents are being read, which makes it difficult for the in-

terested public, both, to comprehend the contents of the evidence procedure, and to observe the Council's decisions.

Considering a fact that the conducting of war crime trials, which are the most serious criminal acts, is very demanding, especially if there is a large number of accused persons, we think that it would be very useful if the hearings were recorded and the transcripts were used as regular court records. It would contribute to more transparent court hearings and improve communication from the courts.

Situation at the trials

Out of twenty-eight trials which we have monitored, we have not registered any incidents taking place in court lobbies, or disturbances of activities of war crime councils, or disturbances of the trial participants, which were caused by the public present in the courtroom, except in one case. At the hearings held at Zagreb County Court against accused Mirko Norac and Rahim Ademi, and against accused Branimir Glavaš and other accused persons, security measures were prescribed which required that each person should send a written announcement of her/his presence at the trial.

Defence lawyer for the accused Rade Miljević, at the trial held at Sisak County Court, received a written threat, however, the War Crime Council did not accept the suggestion to close the trial for the public but instead, it enforced more strict security measures at the hearings.

Major violations of the penal procedure

Among the monitored trials, we registered three major violations of penal procedure which the Supreme Court of the Republic of Croatia observes as a part of its regular activities, therefore, it can be expected that those cases would be sent back for retrial. In our opinion, a major violation of Article 367, Paragraph 1, Item 1 of the Penal Procedure Act was made in two cases, since the war crime council was constituted of two regular judges and three judges-jurors, which is contrary to Article 13, Paragraph 2 of the Law on Application of the Statute of the International Criminal Court on Prosecution for Crimes against International War Law and Humanitarian Law. In one case, the accused person was not asked to plead, i.e. the accused was not asked if he had understood the charges, after the original indictment was modified. The War Crime Council President did not cancel or adjourn the hearing after the defence lawyer (for the defendant who was tried in absence) had left the courtroom in the midst of evidence procedure and was absent from the trial for more than one hour.

Reinstitution of trials

Reinstitution of trials following the decisions by the Supreme Court of the Republic of Croatia due to verdicts based on insufficiently established facts is a prevailing practice in conducting war crime trials at county courts in the Republic of Croatia during this decade. Assuming that judges are professional and competent, a high incidence of reinstitution of first-instance court trials inevitably opens the issue of their willingness, i.e. courage, to pass the "unpopular" verdicts. Furthermore, it points to their significant, yet concealed, dependency upon non-judicial factors.

In four cases (out of five cases which we have monitored), in which the first-instance court trials are repeated for the third time, the trials have taken approximately 13-15 years – since the first indictment has come into effect, and yet, those trials still have not been completed and concluded with legally valid verdicts. Since the time-consuming trials do not bring justice either to accused persons or the victims, we think it is important that both, the Supreme Court of the Republic of Croatia and the State Attorney's Office, do take into consideration the particular aspect of fairness of trials when making decisions in those cases, especially having in mind the Article 5, Item 3 of the European Convention on Protection of Human Rights and Basic Freedoms. In exceptional cases, such as the case of Mihajlo Hrastov, which is repeated for three times at the Karlovac County Court, the Supreme Court of the Republic of Croatia may itself bring the decision, although it is not its usuals practice. Namely, in the third-time repeated trial, all pieces of evidence are established in accordance with the instructions provided by the Supreme Court of the Republic of Croatia. If the Supreme Court is to decide that not even the verdict passed at the third-time repeated trial has been based on established evidence, we think that it would not be morally acceptable, regarding the accused person and the victims, to send the case once again to the first-instance court for retrial.

The State Attorney's Office has got several operating options to chose from when dealing with multiple-repeated, time-consuming trials. This refers to a good practice of modification of insufficiently precise indictments, and a practice of separation of cases involving absent accused persons. However, these practices are not enough in some situations since the indictments are based on poorly conducted investigations, witnesses are not alive any more, and material evidence is destroyed or lost. In our opinion, such cases would be difficult to solve unless the investigations are re-opened and a cooperation is being established with the prosecutor's offices in the region, especially in cases against accused person on the run (as in case of cooperation established with the Prosecutor's Office of the Republic of Serbia on case of crime in Lovas).

Furthermore, due to verdicts which are based on insufficiently established facts, the State Attorney's Office may request that the Supreme Court of the Republic of Croatia should delegate those multiple-repeated first-instance court trials to the War Crime Investigation Centres for retrial.

Trials conducted in absence of accused persons

Trials in absence of accused persons are not illegitimate, unless they meet the minimum standards of a fair trial, and in some cases, such trials may be, both, justified and logical. However, the fact that the majority of war crime trials was conducted in absence of accused persons points to the policy which was used by judicial bodies of the Republic of Croatia in the early nineties. The mentioned practice of conducting war crime trials is also characterised by indictments based on poorly conducted investigations, which involve a large number of accused persons, and those indictments are also insufficiently precise and lacking enough evidence to corroborate the charges. In the process of monitoring of active cases (new cases or the repeated ones), we get to the trials which have been conducted in absence of accused persons, the cases in which the guilty verdicts carrying a long-term imprisonment sentences were passed based on indictments that are very poorly (or not at all) corroborated, where the court-appointed defence lawyers have not appealed against those sentences, which resulted in the sentences becoming legally valid after the time for appeal expired.

Following the instruction by the State Attorney's Office, the practice of separation and modification of indictments has been introduced and used for several years, so that we registered three cases (out of 28 cases which we have monitored) in which all the accused persons were absent, and four cases in which some of the accused persons were present at trial and some of them were on the run. One trial has been instituted for the first time, while all other cases have lasted for several years, or have been repeated. At the trial against accused Predrag Gužvić (case No: K-22/00), which was concluded in 2007 at the Požega County Court, and the verdict is still not legally valid, serious violations of regulations of the penal procedure were made.

The trial against Jovo Begović, held in absence of the accused at the Sisak County Court in 1993, is an example of a trial in absence of accused person in which case the verdict became legally valid since the court-appointed defence lawyer did not lodge an appeal to the Supreme Court of the Republic of Croatia. In this way, in case No:K-10/93 against Jovo Begović and another four accused persons, Jovo Begović was sentenced by the Sisak County Court to a 20-year imprisonment. Begović was found guilty on charges that he, in

his capacity as commander of mortar, had ordered shelling of Petrinja, in this way causing death of civilians and substantial material damage to civic facilities. The indictment and verdict were based on a deposition given by one witness who had stated that the accused person had acted as a mortar operator. However, after the reinstitution of trial (starting from investigation phase) was approved, which had been requested by the convicted Begović, the Sisak County Attorney's Office once again charged the accused Begović of being a commander of mortar unit but it omitted to provide any evidence for the mentioned charges. Following the conclusion of evidence procedure, the Sisak County Attorney's Office withdrew the mentioned charges and it modified the factual description of the crime, stating that the accused person, in his capacity as a mortar operator, had received and executed the order to shell civilian facilities in Petrinja, which he was found guilty of and sentenced to a 5-year imprisonment. The verdict is not legally valid yet..

In our opinion, such trials should not be repeated (reinstituted) at the same county courts which have conducted the first trial, due to their stigmatisation with previously expressed partiality, and to avoid a burden of "temptation to conceal" their omissions and violations of regulations of a just trial that were shown in previous court procedure. We do believe that the above mentioned is a serious reason to request the repeated trials to be delegated to war crimes investigation centres. Moreover, we think it is necessary that the State Attorney's Office of the Republic of Croatia should consider a possible action plan in order to systematically solve the mentioned legacy of previous practice, since we can assume (based on information we have gathered so far) that there is a considerable number of trials which will be evaluated as being conducted below the standards of a just trial in absence of accused person.

Indictments

The State Attorney's Office of the Republic of Croatia, as an independent judicial body authorised and obliged to take actions against perpetrators of crimes and other punishable acts, has a key role in a penal procedure. Deficiencies, which, in our opinion, burden the current war crime trials, and responsibility for it should be placed on the State Attorney's Office, primarily refer to issuance of new indictments based on insufficient investigations, while the indictments are imprecise and deficient regarding the evidence (examples are the indictments issued by the Vukovar County Attorney's Office for crime in Sotin and the crime in Berak; indictments issued by the Sisak County Attorney's Office in case against Jovo Begović and the case against Rade Miljević).

Such inadequate actions, in our opinion, raise an issue of State Attorney's Office's capability to accomplish its basic mission when representing the case in those trials on behalf of the state and its citizens, and its basic mission is to establish facts and ensure a just trial for the accused persons.

The trials, which are instituted following the inadequately conducted investigations, after a long period of time since the crime was committed, when many eye-witnesses have already been dead (as in case of trial against accused Opačić and accused Bjedov for crime in Sotin), and when material evidence has been destroyed or lost, will most likely be concluded with verdicts of acquittal. In those trials, the families of victims are exposed to repeated traumatisation due to their lack of chance to get a moral satisfaction for suffering of their loved ones, and they have the impression that the crimes and consequences of crimes are not systematically approached but are dealt with in a sporadic manner, depending on an occasion and the temporary political and judicial events.

Furthermore, we think that the Karlovac County Attorney's Office should not have missed the opportunity, based on the established evidence in the third repeated trial against Mihajlo Hrastov, to modify the factual description and a legal characterisation of crime stated in the indictment.

Besides, the reason for a repeated re-characterisation of an act of war crime against civilians into an act of genocide in case of trial against accused Jugoslav Mišljenović and other persons, for the crime committed in Mikluševci, is rather unclear.

Ordering detention of accused persons

During the reporting period, we have noticed that, in the majority of cases, the county attorney's offices have adhered to the view that they should request the accused person to be remanded in custody in all cases where there is no legal obstacle (for example a period of time which the accused person has already spent in custody; or a retrial following an abrogation of a not-legally-validated guilty verdict), or in cases with no other justified reasons against such a decision. In case of trial for the crime committed in Medak pocket, the viewpoint of the International Criminal Tribunal for the Former Yugoslavia has been observed, according which, the accused Rahim Ademi has awaited the commencement of the trial while being in house arrest, and the Zagreb County Court has introduced more-strict security measures.

In case of trial against accused Branimir Glavaš and other accused for crimes against civilians in Osijek, the County Attorney's Office has insisted on ordering custody for the accused persons based on the Penal Procedure Act, which prescribes, in Article 102, Paragraph 1, Item 4, that the custody may be ordered in case of the most serious crimes. The first-instance court and the Supreme Court of the Republic of Croatia have observed the mentioned argument and they rejected numerous requests for the cancellation of custody order, which were made by defence lawyers, not even taking in consideration the long period of hunger strike carried out by the first-accused person.

The first-accused, Branimir Glavaš, has run his campaign for the Croatian Parliament while being kept in custody. During the election campaign, the accused person's party, HDSSB (Croatian Democratic Alliance of Slavonia and Baranja) broadcast a video-clip in which the accused was illegally recorded while being kept in custody.

Verdicts

After conducting a repeated trial against accused Enes Viteškić, the War Crime Council of the Osijek County Court has failed to provide a clear explanation of the verdict of acquittal, and in this way, it ignored the reasons and arguments for abrogation of the previous verdict that had been passed by the Supreme Court of the Republic of Croatia.

We believe that only a complete, clear and unequivocal explanation of the verdict, as it was also specifically requested by the Supreme Court in the case against accused Enes Viteškić, can be accepted as appropriate and a fair act towards victims of crime, the accused person(s), and the general public, too.

We have not analysed in detail the length of long-term prison sentences. However, since we have registered significant discrepancies, we are going to prepare a survey of court sentences and analyse respective criminal acts, related aggravating circumstances and extenuating circumstances.

Verdicts, in which members of the Croatian Army and officials of the Ministry of Interior of the Republic of Croatia are found guilty and sentenced for war crimes, state that the participation in the Homeland war and decorations given to participants present the extenuating circumstances. We think that participation in war and the decorations for person's contribution in war, especially in a defensive war, means that the person involved in war is also highly aware of war regulations and respecting those regulations, as well as observing the

international humanitarian law, and therefore, a mere participation in war and the decorations should not present the extenuating circumstances for the court in reaching verdicts for war crimes.

POSITION OF WITNESSES AND VICTIMS IN A PENAL PROCEDURE

Right to a support

When a victim, or a witness, whose presence makes her/him a sort of a participant of the crime, is considered exclusively as a means of evidence in the penal procedure, it inevitably causes their additional traumatisation. Contrary to the stated, a support provided to victims and a fair procedure at the trial keep their human dignity, and at the same time, contribute to strengthening of victim's ability to testify on past events, which is of crucial importance for war crime trials. Positive legal regulations of the Republic of Croatia do not ensure and prescribe victims' rights in accordance with the established international standards. However, there are no obstacles which would impair introduction of some more appropriate options into legal practice.

During the last two years, the Republic of Croatia Ministry of Justice Department for Witness Support and Support to War Crime Trials Participants has been contributing to the above mentioned process. In 2007, the Department established a communication with a considerable number of witnesses (419) in 20 cases of war crime trials. In contrast to the previous year, the majority of witnesses whom the Department contacted were from Croatia and were testifying at trials conducted in Croatia.

Direct witness support provided by the Department is clearly visible at trials with witnesses coming from Serbia or Bosnia and Herzegovina.

Direct witness support which is provided by the Volunteers' Service for Witness' and Victims' Support volunteers has been functioning regularly at the Vukovar County Court, and only occasionally at the Osijek County Court. The volunteers' activities are supported by the Ministry of Justice and recognised and accepted by the courts.

However, direct support provided by the Witness Support Department is not available to witnesses testifying at other county courts (except Vukovar and Osijek county courts). Moreover, some courts do not even use the options they currently have, for instance, separate waiting rooms at courts to be used by

witnesses. Sporadic usage of non-specific-purpose rooms as a space for witnesses (as it is used at the Zagreb County Court) does not present a durable solution to this issue, which would call for planning and allocation of necessary funds from the state budget.

It is our opinion that the opening of witness support offices should be a top priority at county courts in Rijeka, Split and Zagreb, along with the existing offices in Vukovar and Osijek, since the War crime investigation centres are also located at the mentioned courts. Two rooms which would constantly and exclusively serve as witness support rooms, and a person professionally engaged and hired as a head of service, would be a minimum logistic requirement.

Right to obtain information

During the past year, we noticed communication problems between witnesses-victims and the judicial institutions, especially the State Attorney's Office of the Republic of Croatia.

At the trial conducted at the Zagreb County Court against accused Rahim Ademi and Mirko Norac, we have noticed that the witnesses who had been questioned during the investigation procedure were not contacted at all prior to the commencement of the trial at Zagreb County Court. It means that after giving their initial deposition, the witnesses were not formally contacted either by ICTY representatives, or officials from Croatian judicial institutions, during the period of several years, or not at all prior to commencement of hearings in Zagreb, and they did not receive an official information on a crucial change of the course of the trial which they have participated in - the information on the fact that the trial would not be held at the International Criminal Tribunal for the former Yugoslavia but at the domestic, national court in the Republic of Croatia.

Even if the mentioned practice of omission of witness-contacting is not illegal, it is morally unacceptable that the witnesses are informed on the transfer of their respective cases from the ICTY to a Croatian court only from the media and not in an official information, and that witnesses did not get a chance to share their dilemmas resulting from differences between their testifying at the ICTY and at a Croatian court.

We think that these omissions in communication between witnesses-victims and the judicial institutions, especially the State Attorney's Office of the Republic of Croatia, have compromised the right of witnesses-victims to respect

and dignity in all stages of the penal procedure, as well as their right to obtain information on current phases of the trial. Although the legally prescribed penal procedure does not order the judicial institutions to contact witnesses prior to the trial, we would like to remind that witnesses do need a support all the time, right from the moment when the crime is committed, even after the trial is completed and the verdict is legally validated, therefore, we call upon all judicial institutions to take on their share of responsibility in contacting the witnesses, in accordance with legal regulations and restrictions.

Communication problems which we noticed at the trial for crimes committed in Medak pocket are also relevant at other war crime trials, especially in the cases which are likely to be transferred from the ICTY to the domestic courts in the near future.

INVOLVEMENT OF THE STATE ATTORNEY'S OFFICES IN RELATION TO VICTIMS' RIGHTS

When contacting our organisations, members of families of the killed and missing persons have stated that they had a difficult time to obtain **information on the course of the particular legal procedure.** They have been searching on their own for the mentioned information, following their own initiative, trying to find out if the investigation procedure was in progress or not. Legally prescribed penal procedure does not stipulate that judicial bodies of the Republic of Croatia are compelled to provide any general information to victims and victims' families on the course of penal procedure and on their (victims') role in the procedure, except for the case when a victim (injured party) acts as a plaintiff or a subsidiary prosecutor. A victim does not even have a right to be informed on the results of investigation, unless the county attorney is withdrawing from further criminal prosecution, i.e. the county attorney is not obliged to inform the injured party on commencement of prosecution. We believe that the mentioned practice is below the standards prescribed by international documents on victims' rights, therefore we deem it necessary to improve both, the laws and the practice.

Furthermore, **it is a duty of the state to facilitate and carry out a scrupulous and correct investigation procedure** in order to establish circumstances and the perpetrator(s) of crimes who caused violent deaths, since the contrary actions of the state do contribute to prolongation of consequences of criminal acts, i.e. such conduct of the state (its omission to carry out its duty) arouses a reasonable suspicion that the state itself uses, or tolerates, force in dealing with opposing interests of citizens whose "reconciliation service" it

should present. If the judicial bodies of the Republic of Croatia omit to do the mentioned, the injured parties and victims may sue the state referring to the European Convention on Human Rights and Freedoms.

In some cases, which have already reached a court-hearing phase, it is clearly visible that the killings were not thoroughly investigated, or even that the results of investigations were concealed, or that the State Attorney's Office of the Republic of Croatia did not decide to modify or extend the indictments although the facts were established during the evidence procedure, through presentation of evidence and witnesses' depositions, and those facts were entered in court records showing that the existing indictments should have been extended or modified, and new indictments should have been issued.

We would like to point up a **current practice of impunity of criminal act of concealment of war crimes.** Contrary to the order to have them buried at the local Christian-Orthodox cemetery, the victims of war crime against civilians in Paulin Dvor were concealed in the "Lug" military compound, and the concealment of the mentioned crime still has not been investigated or brought to court, and the perpetrators still have not been punished. Moreover, five-and-a-half years after the victims' death, their bodies were secretly transferred to a secondary grave in Rizvanuša, in Lika, hundreds kilometres away from the place where the crime had been committed. To our knowledge, after the exhumation of bodies from the secondary grave, the County Attorney's Office did not request the investigation to be carried out and the facts to be established on the persons who had planned, ordered and carried out the transfer of the dead bodies and concealment of corpses, explaining the case with (in our opinion) unacceptable "lightness" and describing it as a criminal act of concealment of crime committed in 1991, stating that limitation in law had taken effect in the mentioned crime.

In our opinion, the positive regulations of the Republic of Croatia, or such an explanation of current regulations, do contain a serious deficiency when omitting to consider the act of concealment of war crime as an action which greatly corresponds to actions of planning that particular crime, encouraging to commit the crime, complicity in crime, approval of crime, and the very act of committing the crime. The case of direct concealment of bodies of civilians killed in Paulin Dvor in 1991, and a subsequent secret transfer of the bodies to a secondary mass-grave, specifically and clearly show that the mentioned actions, in their factual and legal aspects, correspond to the committed war crime, and in this way, the mentioned actions present a factual continuance of the crime, and even its prolongation.

MONITORS' OPINIONS ON SPECIFIC CASES

TRIAL AGAINST FRED MARGUŠ AND TOMISLAV DILBER FOR WAR CRIME AGAINST CIVILIANS COMMITTED IN ČEPIN

Osijek County Court

Case: K-33/06, war crime against civilians, stated in Article 120, Paragraph 1 of the Basic Penal Law of the Republic of Croatia.

Accused persons: **Fred Marguš** and **Tomislav Dilber**

Victims: names of victims are stated in the table on page 60 of the Annual Report on War Crime Trials Monitoring –Croatian language version

War Crime Council:
judge Krunoslav Barkić, Council President
judge Mario Kovač, Council member
judge Ante Budić, Council member, from 06 0f March 2007 judge Dubravka Vučetić, Council member

Representing the Prosecution:
Osijek County Attorney's Office, Miroslav Kraljević, Deputy County Attorney

Opinion

The trial was conducted in a correct manner.

Following the trial against Fred Marguš and Tomislav Dilber, accused for criminal act of war crime against civilians stated in Article 120, Paragraph 1 of the Penal Law of the Republic of Croatia, committed in November 1991 in the region of Čepin and its surroundings, the War Crime Council of the Osijek County Court reached a verdict in which the defendant Marguš was convicted to a 14-year prison sentence, and defendant Dilber was convicted to a 3-year prison sentence.

The trial procedure was followed and conducted in a correct manner. Prior to each hearing, a medical expert was checking defendant Marguš' health condition and his ability to stand trial. This court proceedings is a rare case of the trial held against members of the Croatian military units, which was conducted in

Croatia, and in which the eye-witnesses were willing to testify about the war crime that had been committed. President of the War Crime Council excluded the public from the trial in the moment when he estimated that the witness could come under public pressure which would be more than the witness could bear.

Crucial question in this trial is whether the Supreme Court of the Republic of Croatia would uphold the opinion of the War Crime Council of the Osijek County Court stating that the events described in Item ***a*** (murder and wounding of the Bulat family members) and Item ***b*** (detention, torture and killing of Nikola Vico and Nedeljka Vico) of the indictment against Fred Marguš are not viewed as an already definite sentence and legally valid decision, despite the fact that in relation to those events a verdict was passed in the previous Osijek County Court case No: K-4/97, when the indictment was rejected as a result of application of the General Amnesty Law.

The War Crime Council of the Osijek County Court has accepted the explanation of the prosecution which stated that a verdict on rejection of indictment in case of murder, when the General Amnesty Law was applied, did not exclude the verdict of guilty to be passed for criminal act of war crime against civilians since it was not only a crime against the person, but at the same time, it was also a crime against humanity and international law, in which cases there is no limitation period for criminal charges, and, according to international law, it is obligatory for the Republic of Croatia to bring them to court. If the Supreme Court of the Republic of Croatia upholds it, such a verdict will bring at least a partial satisfaction to the victims of crime, the Bulat and the Vico families. At the same time, the verdict should also be influencing the future judicial practice in the Republic of Croatia, since it is certain that this is not a single case in which a verdict on rejection of indictment in case of murder was passed by applying the General Amnesty Law, and that there are still some cases with such verdicts for murders committed by members of the Croatian military units during the Homeland War.

In addition to the stated, another question has also arisen as to which attitude the Supreme Court of the Republic of Croatia will adopt towards the defendant Dilber's complicity in the murder of Savo Pavitović. The War Crime Council of the Osijek County Court considers the statement, that the first shot at the body of Savo Pavitović was fired by the defendant Dilber, as a definite fact. If the Supreme Court of the Republic of Croatia forms the opinion regarding the stated incrimination in a way that it finds that there is a contradiction between the deposition given by the eyewitness, and the expert's findings and opinion, there is a possibility that the Supreme Court will request the facts to be re-established.

Moreover, the question remains- would the Supreme Court of the Republic of Croatia evaluate the extenuating and aggravating circumstances in the same way the War Crime Council of the Osijek County Court did it, or, on condition that it considers that the facts were correctly ascertained, would the Supreme Court modify the duration of prison sentences.

Our opinion is that the participation in the Homeland War and decorations for participation in the war should not present an extenuating circumstance in reaching a verdict on committed war crimes.

REPEATED TRIAL AGAINST ENES VITEŠKIĆ FOR WAR CRIME AGAINST CIVILIANS COMMITED IN PAULIN DVOR

Osijek County Court

Case: K – 18/03; war crime against civilians stated in Article 120, Paragraph 1 of the Basic Penal Law of the Republic of Croatia

Verdict/decision issued by the Supreme Court of the Republic of Croatia: I Kž 1196/04-5

The accused: Enes Viteškić.

Victims: names of victims are stated in the table on page 60 of the Annual Report on War Crime Trials Monitoring –Croatian language version

War Crime Council:
judge Zvonko Vekić – Council President
judge Nikola Sajter – Council member
judge Branka Guljaš – Council member

Representing the prosecution:
Osijek County Attorney's Office, Željko Krpan, Deputy County Attorney

Opinion

After the repeated trial, War Crime Council of the Osijek County Court did not provide a clear and plausible explanation of the verdict of acquittal, and by omitting to do so, the Council ignored the reasons which had led the Supreme Court of the Republic of Croatia to quash the previous verdict.

In a repeated trial against Enes Viteškić, accused for war crime against civilians, stated in Article 120, Paragraph 1 of the Penal Law of the Republic of Croatia, committed in December 1991 by killing 18 residents of Paulin Dvor (17 persons of Serb ethnicity and 1 person of Hungarian ethnicity), the War Crime Council of the Osijek County Court reached a verdict of acquittal, based on Article 354, Item 3 of the Law on Penal Proceedings (there was no proof that the defendant actually did commit the criminal act he was charged for).

The verdict, as well as the explanation of the verdict, is identical to the previous one which was quashed by the Supreme Court of the Republic of Croatia due to incorrectly established facts; the Supreme Court stated that the first-instance court had omitted numerous pieces of evidence and disregarded depositions

which had been taken during the evidence procedure and argued that the first-instance court failed to thoroughly analyse evidence and depositions. The Osijek County Court was instructed to present all evidence once again in the repeated trial, and if necessary, to produce new evidence, and only then to make decision whether the act of committing a crime by defendant Viteškić was a mere indication, or was it possible to make a conclusion based on the complete set of indirectly established facts, and ascertain that Viteškić himself was an accomplice in killing of civilians in Paulin Dvor. A new verdict was supposed to be adequately and completely explained.

The War Crime Council of the Osijek County Court had a difficult task since a possible judicial accountability of defendant Enes Viteškić regarding his involvement in the crime was supposed to be established on the basis of circumstantial evidence, by making connections between relevant facts – indications. Direct evidence is missing since defendant Viteškić (and convicted Ivanković) have denied their participation in the crime; eyewitnesses to crime did not identify the perpetrators; witnesses coming from the military, police and intelligence-security hierarchy, in their capacity as state officials were supposed to be informed on the event but claimed that they did not know the names of the perpetrators, i.e. all the persons who were actually involved in crime. Material evidence was deliberately destroyed or hidden (the house where civilians had been killed was destroyed in an explosion the day after the crime while the victims' bodies were secretly transferred to a secondary mass grave following the arrangements of the state institutions). Witnesses were claiming that an oral command had been issued ordering them not to write reports on the crime.

The repeated trial has met formal criteria; all evidence were established (mostly the evidence which had already been established). Many witnesses have once again given depositions containing wide discrepancies between their court statements and the statements given to the investigation judge; the witnesses have reluctantly given answers in the court and claimed that they cannot remember or have no knowledge on the committed crime. The witnesses have not explained the discrepancies between their depositions. The prosecutor failed to propose direct questioning of the sole surviving witness who lives in Serbia. The prosecutor failed to request from the Court to order that the deposition given by a witness to the County Attorney be removed from Branimir Glavaš' web site in order to protect the witness from pressure and threats. New evidence was not adduced..

In reaching its verdict, the Court has taken into consideration a majority of depositions which the witnesses gave to the investigation judge, and it deemed

those depositions credible, which were providing far more information on circumstances and the very murder of civilians than the modified depositions given at the court hearing.

However, the explanation of verdict of acquittal contains only the analyses of depositions given by the same witnesses that were accepted by the Court in the previous trial, yet again, it is not clear how the Court approaches to the depositions given by other witnesses about the indications which could possibly charge defendant Viteškić, and what is the reason why the Court does not consider the information the other witnesses have about the crime as relevant, especially since the Supreme Court pointed to that issue. For example, whether it was established that the defendant:

1. was loading the dead bodies on truck, alongside with convicted Nikola Ivanković;
2. was present in Našice discotheque as a part of the group of Croatian soldiers who had been allowed by Grošelj to go to that disco prior to their transfer to another military post to guard the „Pump", instead of receiving a punishment for the committed crime;
3. was indeed a part of the group of soldiers who were entrusted with a task of guarding the „Pump", instead of being punished for the crime, and if he was actually sent to the mentioned military post where the perpetrators of the crime were deployed.

Actually, the explanation of verdict of acquittal, its contents, arguments and formulations, is no different from the explanation of the first-instance court verdict which was quashed by the Supreme Court, and, apparently, the explanation of verdict of acquittal is almost its copy. Therefore, a question remains whether the Supreme Court would this time make a different decision from the previous one, or if it would stick to its opinion and defend its requests stated in the cancellation decision which would lead to quashing of this verdict and sending the case back to the first-instance court for a retrial.

We would like to point out that only a complete and clear explanation of the verdict, as requested also by the Supreme Court of the Republic of Croatia, would be a just and correct thing to do regarding the victims of crime, the defendant, and the general public, too.

We have expected the Court to be extremely cautious in this particular case since the victims of crime in Paulin Dvor have already been depreciated on several occasions – in the moment when they were massacred, when the per-

petrators returned to the crime scene to finish the victims off with knives, as well as by failure to publicly acknowledge the crime and its judicial proceedings, by covering up the crime, by hiding and transferring the victims' dead bodies, destroying the crime scene and by persistent silence on the issue of names of perpetrators. At the time when the crime was committed, it was a crime involving a group of 6 or 8 perpetrators, who – in a moment of unacceptable weakness- wilfully and brutally added to their military service a hue of a mere inter-ethnic cleansing. During the years-long period of concessions made to perpetrators by state officials- starting from the police officials and moving up to political level, the accountability for the crime has gradually, and almost undetectably, become the STATE ACCOUNTABILITY. Since the state officials were failing, or refusing, to bring the group of perpetrators to court and sanction them for committing an ethnically-motivated crime, a stigma of unpunished crime remained attached to, both, the state and the nation.

Therefore, we expect the authorities of the Republic of Croatia, after the court trial at the domestic court did establish the fact that members of the Croatian military units had committed the crime by carrying out a massacre of eighteen civilians, to provide, in the name of Croatian citizens, an appropriate symbollic damages to the killed victims and a moral and material damages to the survivors and their closest family members.

Moreover, the case of crime in Paulin Dvor has blatantly shown that the covering up of victims' dead bodies also constitutes a criminal action of the penal act of war crime. We do request that the State Attorney's Office and the courts institute proceedings against such acts by using a practice of the International Criminal Tribunal for the former Yugoslavia and the regulations of the Geneva Conventions and other international acts in the area of war and humanitarian law.

THE THIRD REAPETED TRIAL AGAINST [1] MIHAJLO HRASTOV FOR ILLEGAL WOUNDING AND KILLING OF ENEMY

The Karlovac County Court

Case: K-7/04; illegal wounding and killing of enemy, Article 124 of the Basic Penal Law of the Republic of Croatia

Decision by the Supreme Court of the Republic of Croatia: I-Kž-948/02, dated on 09 March 2004

The accused:

Mihajlo Hrastov, member of the Special Unit of the Ministry of Interior of the Republic of Croatia, Karlovac Police Administration; the accused is not kept in custody during the trial.

Victims: names of victims are stated in the table on page 60 of the Annual Report on War Crime Trials Monitoring –Croatian language version

Court Council for War Crimes:
judge Marijan Janjac, the Council President
judge Denis Pancirov Percev, the Council Member
judge Ivan Perković, the Council Member

Representing the prosecution:
Ljubica Fiškuš-Šumonja, the Karlovac County Attorney's Office

Opinion

The trial against Mihajlo Hrastov, accused of criminal act of illegal killing and wounding of enemy, stated in Article 124 of the Basic Penal Law of the Republic of Croatia, is being conducted at the Karlovac County Court for fifteen years. The trial repeated for the third time was finalised by the verdict K-7/04 passed on 28 March 2007, which, based on Article 354, Item 1 of the Law on Penal Proceedings, in relation to Article 29, Paragraph 1 of the Penal Law, acquitted the defendant of the accusations of committing a criminal act of illegal killing of thirteen persons and wounding two persons who had unconditionally surrendered at the Korana river bridge on 21 September 1991, thus violating the rules of international law during an armed conflict. The Court concluded that the accused had acted in his self-defence.

The War Crime Council was conducting the procedure in a correct manner by presenting evidence supplied both by the prosecution and the defence, as well

[1] Monitoring team, consisting of the human rights organisations from the region and the Republic of Croatia, has monitored this case from the beginning of the third repeated trial. The presentation is based on reports on court hearings provided by monitors and the information from court documentation that was available to monitors (indictment No:KT-48/91, dated on 25 May 1992; appeal by the Karlovac County Attorney's Office dated on 04 November 2002 against the verdict No:K2/94 passed by the Karlovac County Court on 18 September 2002; and the decision by the Supreme Court of the Republic of Croatia: I Kž-948/02 dated on 09 March 2004; the President of the War Crime Council did not allow the monitors to receive the records from court hearings).

as the instructions given by the Supreme Court of the Republic of Croatia.

For the first time in fifteen years, three survived victims-witnesses and the most important people in the chain of command gave their testimonies. Taking into consideration the reconstruction of the event at the very crime scene, ballistic expertise was conducted and medical expert witness testimony was provided during the evidence procedure. Using the presented material evidence and personal evidence, new/more detailed information/facts and opinion by the court experts were obtained on critical event.

From the basis of the presented evidence procedure, we expected that the Karlovac County Attorney's Office would change the indictment in a way that it would press charges against at least one more unidentified person, along with the stated Mihajlo Hrastov, and that the Attorney's Office would change the legal characterization of the criminal act by accusing the defendant of criminal act of war crime against war prisoners. Namely, the presented evidence procedure, especially the testimonies of the survived witnesses, obviously showed that the captured reserve members of the Yugoslav National Army had been beaten and physically abused (including wounds inflicted upon the victims using knives), which presented the action that was constituting a criminal act of war crime against war prisoners. By omitting these two elements from the indictment, the Karlovac County Attorney's Office indirectly supported the thesis taken by the defence which tried to prove that the defendant's action was actually taken in defence of his own life.

We do expect that the State Atorney's Office finally reacts to this opinion and therefore strengthens its team in Karlovac, or to request the Supreme Court to delegate a competence of the case to one of the War Crime Investigation Centres, beginning from the investigation phase, in order to determine all circumstances under which the thirteen reserve members of the Yugoslav National Army were killed and the two members were wounded at the Korana river bridge, and to determine whether Mihajlo Hrastov, and possibly some other persons, are responsible for committing this criminal act

The Supreme Court of the Republic of Croatia will reach the decision on the verdict that was passed by the Karlovac County Court.

We point out to the fact that the Court did not pass the verdict of acquittal due to a lack of evidence on how the accused, alone in his action, had illegally killed 13 persons and wounded 2 persons who were disarmed enemies. The Court has taken an attitude, based on deposition by the witness whose

credibility should be cautiously reconsidered because of his testimony which contained considerable discrepancies, and the Court determined that the attack by disarmed reserve members of the Yugoslav National Army against the witness and the defendant was an undoubted fact which was also taken as a basis for the verdict arguing that the defendant acted to save his own life and that the injured parties were not a harmless, completely subdued, and in a physical sense, disarmed group of captives. The Court is being dissonant since its verdict argues for the defendant's action in self-defence, and at the same time accepts the evaluation of expert psychiatric examination on the defendant's ***temporary psychic derangement*** which made him considerably less able to comprehend his own actions and largely incapacitated to control his own acts.

We are worried about the expressions that the Court used to explain its verdict, and which are quite unusual for the institution which is expected to provide an impartial trial and which is supposed to base its decisions on established facts and the presented evidence, and those expressions may point to judges' bias against the injured parties and to their own opinion on the particular event. For example, the verdict states: "…from his previous experience and warnings that the group (of reserve members of Yugoslav National Army) should be thoroughly searched for weapons, the accused ***knew very well who was he dealing with***". Furthermore, the accused, with every justification, since „***it was also his duty,*** stood to defend his fellow soldier and warded off a direct incoming attack against himself, in this way ***preventing a greater harm (enemy occupation of the town)".***

TRIAL AGAINST PETAR GUŽVIĆ FOR WAR CRIME AGAINST CIVILIANS COMMITTED IN PAKRAC

Požega County Court

Case: K-22/00; war crime against civilians stated in Article 120, Paragraph 1 of the Basic Penal Law of the Republic of Croatia

The accused: Petar Gužvić. Petar Gužvić is tried in absence

Injured party: Stjepan Picek

The Council:
judge Žarko Kralj, Council President
judge Jasna Zubčić, Council member
judge- juror Ivica Pavlović, Council member
judge - juror Slađana Pejaković, Council member
judge - juror Dragica Trupina, Council member

Representing the prosecution:
Krešimir Babić, Požega County Attorney's Office, Deputy

Opinion

Court hearing was held at the County Court in Požega on 13 November 2007. At the end of the evidence procedure, concluded on the same day, the War Crime Council of the Požega County Court, presided by judge Žarko Kralj, publicly announced the verdict which found Predrag Gužvić guilty and sentenced him, in absence, to a 7-year prison sentence for the criminal act of war crime against civilians, stated in Article 120, Paragraph 1 of the Basic Penal Law of the Republic of Croatia, committed in Pakrac in 1993. According to the verdict, the accused, in his capacity as a member of the Serb paramilitary formations, was found guilty of arresting the civilian Stjepan Picek in Pakrac in May 1993, contrary to regulations of the Geneva Convention on Protection of Civilians during the War, which Gužvić had done along with Petar Baždar and Branko Bjelan, thus violating the regulations of international law during the armed conflict by committing an illegal arrest of the civilian. This particular case was separated from the case conducted against Petar Baždar and Branko Bjelan. Petar Baždar had been sentenced to a 7-year prison sentence and he died while serving his sentence, while criminal proceedings against Branko Bjelan were cancelled since the Požega County Attorney's Office dropped all charges against Bjelan.

During the trial, two major violations of the penal procedure were made; one violation was made regarding the constitution of the War Crime Court Council; and the other one regarding a right of the accused to the defence.

Already at the very beginning of the court hearing, a major violation of penal procedure, stated in Article 367, Paragraph 1, Item 1 of the Penal Proceedings Act, was made. Namely, the Court Council was constituted of 2 judges and 3 judges-jurors, although the Republic of Croatia had promulgated the Law on Application of the Statute of the International Criminal Court and Prosecution of Criminal Acts against International War Law and Humanitarian Law in 2003, therefore, the mentioned law has been valid for 4 years. Article 13, Paragraph 2 of the mentioned law explicitly states that the county court councils, which conduct trials for criminal acts of war crime, are constituted of 3 (three) judges who have a previous experience in dealing with the most complex cases. It is expected that the court- which deals with criminal proceedings for war crimes- actually applies the law which is currently a valid law in the Republic of Croatia.

It is worth mentioning that neither the person representing the indictment, nor the defence lawyer, had any objections to such a method of constitution of the court council.

2. During the evidence procedure, witness-injured party Stjepan Picek was heard; documents suggested and listed in the indictment were read out in the courtroom; and the document K-27/99 was inspected (i.e. the defence plea of Branko Bjelan was read out). In the moment when the injured party, Stjepan Picek, a sole witness and also the key witness to corroborate the indictment, was giving his testimony, Mira Matić-Primorac, a court-appointed defence lawyer from Požega, left the courtroom without approval by the Council President, and the reason for her absence (as we got to know it later on) was her attending a hearing at the Municipal Court in Požega that was held at the same time as the hearing at the County Court. The hearing at the County Court was continued, although the Council President was supposed to adjourn the hearing according to Article 306 of the Law on Penal Proceedings. It is our opinion that the mentioned conduct presents a major violation of penal proceedings, as stated in Article 367, Paragraph 3, since the Court violated the defendant's right to defence during the hearing, which could have had an influence on verdict.

With such a conduct, the defence lawyer expressed her lack of respect for Court's authority. However, it is particularly worrying that her conduct might

have caused irreparable damage to the defendant. Namely, Article 7 of the Law on Legal Practice, states that lawyers are obliged to provide legal assistance in a diligent manner and that it is a lawyer's duty to use all available legal instruments, in accordance with her/his own discretion, which may assist the party to whom she/he provides legal counselling.

TRIAL AGAINST MIRKO NORAC AND RAHIM ADEMI FOR WAR CRIME AGAINST CIVILIANS AND PRISONERS OF WAR COMMITTED IN MEDAK POCKET

Hearings at the trial commenced on 18 June 2007

Zagreb County Court

Case: II K-rz-1/06, war crime against civilians, stated in Article 120, Paragraph 1, and war crime against prisoners of war, stated in Article 122 of the Basic Penal Law of the Republic of Croatia.

Accused persons: Mirko Norac and Rahim Ademi

Victims: names of victims are stated in the table on page 60 of the Annual Report on War Crime Trials Monitoring –Croatian language version

War Crime Council:
judge Marin Mrčela, Council President
judge Siniša Pleše, Council member
judge Jasna Pavičić, Council member
judge Zdenko Posavec, additional member of the Council

Representing the Prosecution:
Antun Kvakan, Deputy State Attorney

In 2006, the State Attorney's Office laid the indictment against accused Mirko Norac and Rahim Ademi. The case transferred from the International Criminal Tribunal for the former Yugoslavia to the judicature of the Republic of Croatia is based on the evidence material collected exclusively by the ICTY investigation teams. The indictment issued by the ICTY Prosecutor's Office was prepared in line with positive regulations of the Republic of Croatia. Since there were no legal obstacles, the indictment became legally valid.

The public does have access to the trial provided that security measures have been taken including a written announcement of the person wishing to attend the hearing(s), security check at the entrance of the County Court building and at the courtroom entrance. Newsreporters are placed in a separate room where they watch the trial through video link. The hearings are audio- and visually recorded. National media (radio, TV and press) report on each hearing with a short information.

Both accused persons pleaded not guilty for the charges stated in the indictment. Both of them will present their defence at the end of evidence procedure.

The court has accepted many pieces of material evidence and many witnesses proposed by the State Attorney's Office and the defence. During a process of reading of documents, inspection and oral presentation of material evidence, the same documents are presented on screens in the courtroom which makes it easier to follow the hearing.

During the course of evidence procedure**, the monitors have not noticed any violations of legal procedure** so far**.**

However, we have noticed that a large number of protected witnesses did not appear in the court (instead of the planned 28 witnesses, only seven witnesses showed up at the hearing). The Council President has not publicly presented the witnesses' reasons for not appearing in court and giving their testimonies. According to information which the Council President did provide, it appears that at least one of the reasons is the fact that, in many cases, the Court was given incorrect addresses of witnesses (the addresses where the witnesses have not been residing for years), i.e. it appears that the State Attorney's Office has not checked the status or addresses of witnesses whatsoever but it only took over the information from the ICTY. It is obvious that the State Attorney's Office did not check addresses of the witnesses it had named and intended for direct questioning, which was supposed to be done despite the fact that the case was transferred to Croatia, and having in mind a long time lapse. ICTY did not contact witnesses either, which means that the first official information the witnesses actually received about the transfer of case from ICTY to the Croatian judiciary was in a form of subpoena. A witness' right to a respect and dignity in all phases of penal procedure includes also a witness' right to receive information.

Furthermore, when accepting and taking over the indictment from ICTY, the State Attorney's Office proposed many witnesses to have a status of protected witnesses and requested protection measures to be taken in order to conceal witnesses' names and technical measures to conceal witnesses' voice and appearance. However, some of those witnesses have indirectly disclosed their identity at the hearing, by omission, or maybe even consciously revealing their identity, thinking that they did not require identity protection. Namely, it appears to us that a certain number of witnesses would have abandoned their request for identity protection if they had been contacted and asked about it in the meantime.

At earlier stages of the trial, on many times (when offering evidence, putting questions, making objections, etc.), prosecutor did not take initiative thus giving more space to the defence lawyers. The prosecution was asking all wit-

nesses almost the same questions, while some questions were arising (which were supposed to be asked) but the prosecution failed to ask them. It is possible that the prosecution's intention was to achieve its goal by contrasting the defence lawyers of both sides, however, it seems that the prosecutor in many situations appeared to be insuficiently prepared and passive. During the course of the trial, the prosecution has changed its method of questioning, especially in relation to presentation of depositions which witnesses gave during the investigation procedure.

The overall evidence procedure points to the fact that new trials and investigation procedures following the completion of Ademi-Norac trial will be instituted against some witnesses in this trial whose depositions confirmed that they were in command chain of the "Pocket 93" operation.

TRIAL AGAINST BRANIMIR GLAVAŠ AND OTHERS FOR WAR CRIME AGAINST CIVILIANS COMMITTED IN OSIJEK

Hearings commenced on 15 October 2007. The indictment No: K-DO-105/06 issued by the Zagreb County Attorney's Office against the accused Branimir Glavaš on 27 April 2007; and the indictment No: K-DO-76/06 issued by the Osijek County Attorney's Office against Branimir Glavaš, Ivica Krnjak, Gordana Getoš-Magdić, Mirko Sivić, Dino Kontić, Tihomir Valentić, and Zdravko Dragić, on 16 April 2007, have been merged into one indictment. All accused persons were ordered detention in accordance with Article 102, Paragraph 1, Item 4 of the Penal Procedure Act, due to seriousness of the criminal act.

Zagreb County Court

Case: K-rz-1/07, war crime against civilians, stated in Article 120, Paragraph 1 of the Basic Penal Law of the Republic of Croatia.

Victims: names of victims are stated in the table on page 62 of the Annual Report on War Crime Trials Monitoring –Croatian language version

War Crime Council:
judge Željko Horvatović, Council President
judge Rajka Tomerlin Almer, Council member
judge Sonja Brešković Balent, Council member
judge Mirko Klinžić, additional member of the Council

Prosecution:
Jasmina Dolmagić, Zagreb County Deputy Attorney
Miroslav Kraljević, Osijek County Deputy Attorney

In order to avoid a possible influence on witnesses, the Supreme Court of the Republic of Croatia approved a transfer of investigation procedure against Branimir Glavaš from the County Attorney's Office in Osijek and its delegation to the Zagreb County Attorney's Office. In May 2006, the Croatian Parliament lifted Branimir Glavaš' parliamentary immunity from criminal prosecution in order to allow a criminal procedure to be instituted against him. On 26 October 2006, the Croatian Parliament lifted Branimir Glavaš' parliamentary immunity allowing the accused person to be ordered detention. Prior to the commencement of court hearings, all accused persons were ordered detention in accordance with Article 102, Paragraph 1, Item 4 of the Penal Procedure Law, due to a seriousness of criminal act. Accused Branimir Glavaš spent most of the time of his detention in the Prison hospital in

Zagreb or in the Osijek Clinic and Hospital Centre due to complications developed during his hunger strike.

The trial is open for the public, however, security measures were introduced including a written announcement of the person(s) wishing to attend the hearing(s), registration of persons present in the courtroom, security check at the County Court building entrance and at the courtroom entrance. Newsreporters watch the trial in a separate room through video link. The hearings are being audio-and visually recorded. Several television companies have been recording entire hearings. National media (radio, TV and press) report on each hearing with a short information. A local TV station, Slavonian television, usually broadcasts more comprehensive reports during the trial days.

On 5 November 2007, the hearing started right from the beginning due to a replacement of an additional member of the Council. The fact that the additional member of the Council would soon be retiring could have been expected, and appropriate actions could have been done in order to avoid unnecessary repeating of trial.

All accused persons pleaded not guilty for the charges stated in the indictment. All of them decided to present their defence at the beginning of evidence procedure.

During the course of evidence procedure**, the monitors have not noticed any violations of legal procedure** so far**.** The Council President has only rarely used legal instruments in the form of sanctions in order to establish a **required discipline at the trial**, despite the fact that the defence lawyers, sometimes even the defendants, do speak without requesting leave to speak. Besides the fact that such a conduct may have influence on the length of trial, a question of whether such an atmosphere in the courtroom would influence the witnesses remains to be seen. Moreover, it is strange that an order was issued to the first-accused Branimir Glavaš forbidding him to wear "unappropriate" clothes, which got the Court Council into a situation of constant giving in to the defendant's threats and resulted in serious damage to the Council's authority.

At each hearing, the defence lawyers have been issuing **requests for cancellation of detention orders** for defendants, which have regularly been rejected by the Court Council. The Supreme Court has rejected as unfounded the defence lawyers' appeals against previous decisions on extension of detention orders, in which the defence lawyers called upon the provisions of the Conven-

tion on Protection of Human Rights and Basic Freedoms; the Constitution of the Republic of Croatia, as well as upon the purpose of detention and a possible substitution of detention for an appropriate precautionary measure. The Court also established that an appeal on recent cases of trials cannot present a sufficient argument which could influence the Court to reach a different decision regarding cancellation of detention order, and neither can humger strike. Namely, the first-accused Branimir Glavaš has been on a hunger strike since 8 November 2007. The medical expert team has found that Branimir Glavaš is capable of standing the trial, he is focused and active at hearings.

Existence of approval of detention and institution of penal procedure is **a constitutional and legal precondition** for ordering detention and instituting penal procedure against the person who enjoys parliamentary immunity on the basis of his/her status of the Croatian Parliament representative. When his mandate of parliamentary representative was established at the constitutional assembly, accused Branimir Glavaš was granted immunity in accordance with the provisions stated in Article 75, Paragraphs 1 and 3 of the Constitution of the Republic of Croatia and provisions from Article 23 through Article 28 of the Rule book of the Croatian Parliament. At the session held on 12 January 2008, the Mandate-Immunity Committee brought decision by a majority vote (5 votes "for" and 4 votes "against") on their withholding of approval for detention of parliamentary representative Branimir Glavaš during the time of his mandate, and the Committee unanimously concluded that there were no constitutional and legal grounds stated in Article 75, Paragraph 2 of the Constitution of the Republic of Croatia that would require application of parliamentary immunity, therefore, the Committee gave the approval for further conducting (instituting) a trial against accused Branimir Glavaš. The Croatian Parliament upheld with a majority of votes the decision of the Mandate-Immunity Committee. The stated political decision made by the Croatian Parliament may considerably influence the Court's further work.

We think that the following legal dilemmas do exist:

- the trial is in the phase of court hearings, which brings the issue of interpretation of Article 75, Paragraph 2 of the Constitution of the Republic of Croatia on application of the instrument of parliamentary immunity, i.e. Article 75, Paragraph 3 of the Constitution of the Republic of Croatia and a coordination between the Rule book of the Croatian Parliament and the mentioned articles;
- the issue of continuity/discontinuity of the previous decision reached by the Croatian Parliament on the same subject.

We believe that the decision of the Croatian Parliament not to cancel immunity in case of ordering detention to a parliamentary representative, who is the first-accused person in the case of war crime against civilians, is actually a bad political decision since the case is in the phase of court hearings, while trust was supposed to be placed in the judicature itself so that it could come up with a concept of securing the trial and its successful completion, including the confidence in judicature's assessment of necessity for ordering detention to the accused person.

In our opinion, explanation of the decision has exceeded the authority of the Croatian Parliament since the Parliament has got only a constitutional-legal authority, and not a penal-legal authority. The explanation states the following reason for such a decision: "believing that the accused person should be enabled to defend himself while not being ordered detention, since it cannot influence the outcome of the trial".

At its session held on 17 January 2008, the Council of the Supreme Court of the Republic of Croatia brought the decision to reject the State Attorney's appeal against the decision No: Kv-rz-1/08 (K-rz-1/07) on cancellation of detention order for accused Branimir Glavaš brought by the Zagreb County Court on 11 January 2008. In this way, the decision on cancellation of detention order has become legally valid, therefore, accused Branimir Glavaš is no longer kept in custody during the trial.

Factual basis of the indictment No: K-DO-76/06, dated on 16 April 2007, is largely based on depositions given by the third-accused Gordana Getoš-Magdić, the fourth-accused Mirko Sivić, and the seventh-accused Zdravko Dragić during the investigation procedure. In the meantime, Gordana Getoš-Magdić, Mirko Sivić and Zdravko Dragić refuted those depositions. In their defence, accused Getoš-Magdić, Sivić and Dragić were denying legal validity of the depositions they had previously given, stating that they were forced to give such depositions. At the same time, denying a legal validity of the depositions due to their forced taking, the defence of the first-accused Branimir Glavaš argued that the trial is politically motivated. Therefore, personal and material evidence is being established which will serve as a basis for the Court's decision **whether to accept the mentioned depositions as legally valid ones**, or remove them from the case, which will have a significant impact on the chance to prove charges stated in the indictment.

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