Centre for Peace, Non-Violence and Human Rights Osijek

Documenta – Centre for Dealing with the Past

Civic Committee for Human Rights

MONITORING OF WAR CRIME TRIALS

A REPORT FOR 2008

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INTRODUCTION

By their nature, war crime trials should not only function as an instrument of general and special prevention, but also be the first step towards post-war justice and reconstruction of trust. Additionally, they should be a process which is reverse to that of a crime, contributing to the reaffirmation of the values violated by a crime, elimination of the atmosphere favourable to crime, and re-examination of the political context in which a crime took place.

The responsibility to create a positive climate for war crime trials lies with the judicial, executive and legislative bodies of the Republic of Croatia. This further depends on the transformation and democratization of these bodies. The media and civil society also play an important role in this.

However, despite gradual improvement and public acceptance of the basic values of the legal system, the political elite and judicial bodies in practice show only partial readiness to take responsibility for the quality and efficient processing of war crimes. The trials still take place within the context of social *tolerance* towards *a nation's own* criminals. There has been no designed or constructive process of dealing with war crimes, necessary not only for the elimination of the anti-civilizational consequences these crimes bear, but also for building of a modern society which will be willing, both intelectually and emotionally, to absorb post-modernist civilizational heritage, and take an active stand while faced with the challenges of the globalization and the new (all) European project put before the countries of the Former Yugoslavia.

Croatian organizations for human rights – Centre for Peace, Non-Violence and Human Rights Osijek, Documenta, and Civic Committee for Human Rights, have systematically been monitoring war crime trials and their effect on the process of dealing with the past since 2004. Through their work, these organizations wish to encourage the judicial, legislative and executive bodies of the Republic of Croatia, as well as the whole public, to think more broadly of the ways to deal with the consequences of inadequately conducted trials in the past, ensure the application of the prescribed trial standards in the future, create an encouraging environment for victims/witnesses and witness testimonies, and improve the role of the victim in a criminal procedure.

We would like this report to be an encouragement to the relevant institutions to take problems as opportunities and challenges as inspiration to continue with reforms, which embody the fight against mentality, interest and inertia.

Centre for Peace, Non-Violence and Human Rights Osijek

Documenta - Centre for Dealing with the Past

Civic Committee for Human Rights

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OPINION SUMMARY

In our view, in 2008 the judicial, legislative and executive bodies of the Republic of Croatia failed to make the expected, necessary, and objectively realistic qualitative step forward in the creation of the positive atmosphere for the processing of war crime trials. The greatest problems occurring year after year are yet again the adverse political context, insufficient personnel and technical conditions for the processing of war crimes, insufficient application of the existing legal instruments for witness protection, and a large number of verdicts reached in absentia. Although pursuant to The Law on Application of the Statute of the International Criminal Court and Prosecution of Crimes Against the Values Protected by the International Humanitarian Law (NN 175/03) special departments for war crimes have been established within four county courts (in Zagreb, Osijek, Rijeka, and Split), in practice they have not really been utilized to their intended effect. War crime trials take place at approximately ten county courts, while county state's attorneys are not specialized for these trials. This reflects on the quality of war crime trials in Croatia. There is still a large number of trials in absentia, and many trials are inefficient and marked by frequent and long interruptions and repetitions of procedures. Policy on detention is inconsistent, while penal policy is both inconsistent and utterly inappropriate. One example is taking "patriotic elation" as an extenuating circumstance in the pronouncement of sentence for a war crime against civilians. Another issue to consider are imprecise indictments, which are often insufficiently checked and issued against a large number of the accused persons, some of whom not being charged with a single specific crime. Consequently, the investigations are conducted at main hearings, and prosecutors repeatedly change the indictments (sometimes to the extent that none of the original incriminations remain included), which leads to dismissals of charges or acquittals.

2008 was also marked by the direct interference of the Croatian Parliament with the first-instance procedure against the parliamentary representative and the first-accused for a war crime against civilians in Osijek, Branimir Glavaš, which clearly demonstrated the power of politics over justice. Another critical consideration to be placed within the context of the potential influence of politics on the course of the war crime trial against Branimir Glavaš and others, is that of the decision of the Croatian Constitutional Court on the cancellation of detention for the co-accused in this case. Such actions send messages to the witnesses and public that a crime committed for higher cause will be tolerated and concealed, and that there are motives other than establishment of facts and criminal responsibility that are a driving force in the (failure of) processing of criminal procedures. In the coming period, we find it crucial to animate the special departments at the four county courts, strengthen the special teams within the State Attorney's Office and the Ministry of Interior, systematically deal with the legacy of a large number of verdicts reached in absentia, and pay special attention to all methods of witness protection and regional cooperation – all this with the assumption that there should be a stronger political will for the processing of war crimes.

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KEY OBSERVATIONS

In 2008, criminal procedures instituted for the acts against the values protected by the international humanitarian law were observed at county courts and the Croatian Supreme Court by the monitors of the *Centre for Peace, Non-Violence and Human Rights* Osijek, *Civic Committee for Human Rights* and the *Documenta-Centre for Dealing with the* Past, Zagreb.

The procedures were observed in terms of their legality, publicity and fairness, and the extent to which they adhered to the European legal standards.

The assessment of the observed situation has revealed that the Croatian judiciary is faced with some serious issues, which at the same time should be viewed as challenges to be resolved in the times ahead.

Adverse political context

The Croatian Parliament as the highest legislative body has a formal and institutional responsibility to affirm the rule of law and create conditions for the successful operation of the judiciary. It was therefore inadmissible for such an institution to decide to cancel detention for Branimir Glavaš (charged with a war crime against civilians in Osijek), basing its decision on what was in our view a misinterpretation of the Constitution, and thus preclude judicial bodies from making an independent and unbiased decision on detention for the accused. Not only does such an action of the Parliament undermine the creation of favourable conditions for the processing of war crimes, but it also compromises both the institution of the Croatian Parliament and the autonomy of the judicial system, and calls into question the ability of Croatian institutions to guarantee equality before the law for everyone, the right which is guaranteed by the Constitution (explanation given on the page ??).[1]

Another critical consideration to be placed within the context of the potential influence of politics on the course of the war crime trial against Branimir Glavaš et al. is that of the decision of the Croatian Constitutional Court on the cancellation of detention for the co-accused in this case.

[1] The political climate surrounding the trial against Branimir Glavaš can be illustrated by the following:

At the session of 19 February 2008, the Croatian Parliament Elections, Appointments and Administration Committee unanimously accepted the proposition of the parliamentary representatives of the Croatian Democratic Alliance of Slavonija and Baranja (HDSSB), whose president is Branimir Glavaš, to elect Branimir Glavaš into the Committee on Human and National Minority Rights. According to the publicly available information, none of the members of the Elections, Appointments and Administration Committee, presided by Nevenka Majdenić (Croatian Democratic Union – HDZ), and composed of Zdravko Ronko (Social Democratic Party – SDP), Željka Antunović (SDP), Marin Brkarić (Istrian Democratic Assembly – IDS), Miljenko Dorić (Croatian People's Party – HNS), Zdenko Franić (SDP), Ratko Gajica (Independent Democratic Serbian Party – SDSS), Anton Mance (HDZ), Krunoslav Markovinović (HDZ), Nazif Memedi (independent member), Zvonimir Puljić (HDZ), Nenad Stazić (SDP) and Ivan Vučić (HDZ) objected to this proposition despite the fact that Branimir Glavaš was charged with a serious war crime against civilians, including murder and/or torture of ten persons. Without any expectation that the accused be treated guilty before the final verdict has been reached, we find it utterly cynical that such a proposition was even put, and scandalous for the members of the Committee to have shown this level of political irresponsibility and human insensitivity by accepting it. The actual political scandal, which would surely have resounded internationally, was prevented by Branimir Glavaš himself rejecting the candidacy for the position!

Namely, **the Croatian Constitutional Court reached the decision** to release from detention four of the former members of the Independent Uskok Company, accused of murdering civilians of Serb ethnicity in Osijek in 1991. Following the decision of the Constitutional Court, the Zagreb County Court released from detention the other two of the accused on the following day. Such decision inevitably raises several questions, the most important being whether it was entirely legally founded. Next, was this decision a justified reaction of the Constitutional Court to a potential violation of the constitutionally guaranteed human rights of the accused, or was it a product of the political signals sent to the Constitutional Court, in which case it degraded judicial authority (of the Zagreb County Court and the Croatian Supreme Court) which ordered and on several occasions extended detention for the accused. Finally, will such decision, in case it becomes an unwritten rule, create inconceivable problems to the efficient processing of the largest and most important criminal cases put before the Croatian judiciary?

Among other things, the Constitutional Court based this decision on the principle of linearity, explaining that the County Court and the Supreme Court had not considered "the rationality of the length of detention [of the co-accused] in relation to the period in which procedural actions had been taken thus far, or the fact that a long period of time had passed after the indictment was brought, while the evidence procedure set for the examination of a large number of witnesses and presenation of other evidence had practically only started." Put simply, the Constitutional Court concluded that the procedure had already lasted too long, and that it would last even longer, in which case further detention was unreasonable because it would practically turn into carrying out of the sentence before the final verdict was even reached. In the course of the procedure thus far, the defence repeatedly requested cancellation of detention, but at the same time procrastinated the trial using various procedural *tricks*. In our opinion, the Constitutional Court misinterpreted the principle of linearity in this case. Article 101, Paragraph 3 of the Criminal Procedure Law clearly defines the principle of linearity as a relationship between justifiability of detention and seriousness of the committed crime on one side, and the expected penalty on the other. However, the Constitutional Court interpreted this principle as a relationship between the length of the procedure and the expected penalty. This suggests that the Constitutional Court established that the potential penalty would equal or somewhat exceed the length of detention, and thus indirectly assessed the meritum of the case assuming the role of regular courts.

Further, the Constitutional Court also based this decision on the practice of the European Court of Human Rights, which finds detention justified if the reasons justifying it are still relevant and if the judicial bodies act with required attention. On the basis of specific verdicts reached by the European Court of Human Rights, used as guidelines in this decision, the Constitutional Court concluded that detention was no longer justified in this case. However, it is important to note that since the European Court of Human Rights has not had enough experience with war crime cases, the Constitutional Court could not only refer to these cases but had to resort to cases such as "Shiskov" (of 9 January 2003), which was merely a case of stealing. In simple terms, the Constitutional Court found that the reasons justifying detention in the case of stealing could be equaled with those applying to a case of the most serious crime – a war crime against civilians.

The question is why the Constitutional Court did not instead refer to what we believe is a more appropriate practice of the ICTY, which deals exclusively with war crime cases and where the accused

are detained regardless of the length of procedures, while the only condition for detention is that the verdict is legally valid.

The Law on Application of the Statute of the International Criminal Court has yet to be seen employed in practice – special war crime departments do not function in practice

The Law on Application of the Statute of the International Criminal Court and Prosecution of Crimes Against the Values Protected by the International Humanitarian Law (NN 175/03) came into effect five years ago, and this period has been long enough to evaluate its efficiency. Although *The Revision of the Action Plan for the Judiciary Reform Strategy,* issued by the Ministry of Justice, claims differently, we wish to warn of the actual inefficiency of the stated law, which has still not been applied in the sense in which, to our understanding, it took effect in the first place.

Officially, four departments for war crimes have been established within the County Courts of Zagreb, Osijek, Rijeka and Split. They have been given jurisdiction over war crime cases beyond the city limits, but they do not have adequate personnel capacity nor do they operate functionally, serving only as a possibility to be utilized in exceptional cases.[2] Because of such practice, as representatives of the State Attorney's Office have revealed to us, the judicial staff do not take seriously this part of the foregoing Law. It seems that there is an uncritical belief that all county courts have adequate personnel capacity to try the most serious crimes, and that all county attorney's offices are properly equipped for efficient conducting of the procedures against perpetrators of war crimes. However, the practice undermines this belief and demonstrates that these special departments do not operate functionally.[3] Furthermore, the war crime councils (court panels) before which procedures take place must be composed of three professional judges distinguished by their experience in working on most complex cases. However, the practice has shown

[2] Apart from the case against Rahim Ademi and Mirko Norac, which has been transferred to the Zagreb County Court from the ICTY, we have no records of any other trial being referred to special war crime courts in Zagreb, Osijek, Rijeka and Split during 2006, 2007 or 2008, pursuant to the foregoing Law. County courts in Osijek and Split have dealt with local cases; the Rijeka County Court has accepted two cases from Gospić, and the Zagreb County Court has accepted a case from Osijek, in accordance to the standard procedure of a change of place of trial. In the OSCE report for 2007, it is stated that in one of its requests Croatia had guaranteed that in case extradition was approved, the State Attorney Office would request that the case be investigated and tried before a court with a special war crime department, although such decisions should be made by the Supreme Court. In one case, the defence requested that the case be delegated from the Sisak County Court to one of the courts with a special war crime department, but the Council did not consider the request as the defendant or the defence are not subjects who can make such request. In another case, the Supreme Court of the Republic of Croatia concluded that investigating judge was also not a subject who could request delegation of the case to another court.

[3] For example, at the Rijeka County Court (which has formed a special department for war crimes in accordance with the Law on Application of the Statute of the International Criminal Court and Prosecution of Crimes Against the Values Protected by the International Humanitarian Law), the Council trying the case against the defendant Čubrilo and others for the war crime in Lovinac was until May 2007 comprised of two professional judges and three lay magistrates, which was a breach of Article 13, Paragraph 1 of the foregoing Law (NN175/03), which states that a council should be constituted of „two sets of three judges distinguished by the experience in working on most complex cases."

that they often include judges with experience in civil lawsuits and not criminal cases. Namely, the law does not specifically define what constitutes most complex cases. However, we believe that it was not the intention of this regulation to allow for the judges from the civic departments to be members of war crime councils. We advise that war crime councils be composed of judges from criminal departments with experience in criminal cases, and that this should be introduced as a new regulation in the stated Law.

The establishment of the so-called "Uskok courts" indicates that the authorities have realized that certain criminal procedures have to be conducted at specialized courts and by judges who have received further education. We believe that the stated arguments are strong enough to call for changes in the existing law and show that the County Courts of Zagreb, Split, Rijeka and Osijek should have the sole jurisdiction over war cime trials.

Insufficient personnel capacity and inadequate technical conditions in courts

The fact that many war crime councils comprise of judges from civic departments suggests an inadequate personnel capacity of the courts, regardless of the fact that the procedures take place before approximately 10 different county courts (i.e. not only before the County Courts of Zagreb, Osijek, Rijeka and Split). It is obvious that some courts do not have either technical4 or expert personnel capacity to try cases as serious as war crimes (for example, insufficient number of judges in criminal departments is evident from frequent repetitions of procedures whenever there is a need for the replacement of council members)[5]. Additionally, the Zagreb County Court does not have the adequate room capacity to concurrently host several big court cases, which greatly influences the dynamics and length of court procedures.

Further, county attorney's offices do not have a sufficient number of specialized replacement staff who work on cases of criminal acts committed against the values protected by the international humanitarian law. This reflects on the quality of indictments and work of the prosecution.

In 2007, the State Attorney's Office of the Republic of Croatia reported on having 703 registered cases of war crimes in its map of crimes. Out of this number, criminal procedures have been instigated for only 391 war crimes, while the perpetrators of the other 402 crimes have still not been identified.[6] This points to the need for more staff to conduct pre-trial investigations at both the national level (at the Department for Terrorism and War Crimes) and the level of regional police departments.

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[4] In the case against Damir Kufner and others, former members of the Croatian military units, conducted at the Požega County Court for the crime in Marino Selo, **the witnesses have to testify from the audience as there is no witness stand in the court room. Some of the questioned witnesses have expressed fear for having to testify, while one witness out of fear** refused to testify about events which she had learnt about indirectly. Also, as the Court lacks a device for video-conference examination, one session had to be held at the Osijek County Court.

[5] In the case against Radoslav Čubrilo and others for the crime in Lovinac, the Croatian Supreme Court twice overturned the verdict reached by the Gospić County Court. The case was then delegated to the Rijeka County Court since the Gospić County Court did not have enough judges to form a new council.

[6] A report on the work of state attorney's offices for 2007: A list of war crimes including a list of the tried and convicted defendants, p. 153.

A large number of verdicts reached in absentia

The Revision of the Action Plan for the Judiciary Reform Strategy states that all final court decisions reached during the 1990s were subjected to evaluation of the Supreme Court of the Republic of Croatia through appeal processes. In the view of the Ministry of Justice, this was enough to dismiss the criticism of the unlawfulness or insufficient quality of these verdicts (statistical data from the Supreme Court shows that a half of the total of 68 verdicts reached in absentia has been upheld, 11 have been changed, and 20 quashed). However, it is important to notice here that in the case of more than 300 verdicts, the defence had not appealed, so the verdicts became final upon the expiry of the appeal deadline even in cases where the accused were sentenced to maximum sentences of 20 years in prison. We hope that the report's failure to mention the total number of verdicts reached in absentia was unintentional.

The practice of conducting trials in absentia has continued. In the trials we observed in 2008, out of the total number of 78 accused, 31 were tried in absentia (39.7%).7 All of these trials are still in progress, and they have been conducted for the first time, some of which started several years ago (for example, the Lovas trial and the Mikluševci trial).8 The accused in these procedures are most commonly represented by court-appointed defence lawyers. In the Mikluševci case, most of the defence lawyers were appointed in 2008. The engagement of as many as 17 court-appointed defence lawyers in this case, in our view had more of a formal, legal effect than an actual effect to the quality of the defence. Namely, the court-appointed lawyers accepted to represent the accused tried in absentia only when the procedure was nearing the end; numerous changes have been made to the indictment; and the investigation conducted by the Vukovar County Attorney's Office unfortunately took place at the main hearing.

As the new Penal Procedure Law came into effect, procedures can now be repeated in favour of the accused regardless of his or her presence, if the legally defined conditions are met (for example, if the verdict was based on a false statement or recording; if it has been proven that the verdict was reached following the criminal offence of the state attorney or judge; if new facts or evidence emerge, which could lead to acquittal; if the accused has been convicted more times for the same criminal act or several persons have been convicted for the criminal act which could only have been committed by one person or some, but not all of them). A reinstitution of the procedure can be requested by the defence lawyer if he or she believes that there is new evidence which could lead to acquittal, regardless of the presence of the accused. The State Attorney's Office has now started a process of analysing the verdicts reached in absentia in order to be able to request reinstitution of those procedures for which it establishes irregularities or the existence of conditions for the renewal of trial.

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7 This relates to the procedures conducted at the County Courts of Vukovar, Sisak and Rijeka.

8 For the war crime in Mikluševci (a case of genocide), the procedure was initially instituted against 35 persons. During 2008, the County Attorney's Office dismissed charges against six of the accused. At the end of 2008, the procedure was conducted against 19 persons (5 present and 14 in absentia). In January 2009, the County Attorney's Office dismissed charges against another five defendants.

In the Lovas case, 16 defendants are tried for genocide and a war crime against civilians. While two defendants attend the trial, other 14 are tried in absentia.

Incorrect application of the General Amnesty Law

Part of the legacy of the poorly conducted criminal procedures of the early 1990s also relates to those cases in which the *General Amnesty Law* was inappropriately applied to the crimes of murder or war crimes. Two such cases have been recorded, each relating to a different legal situation.

In the case against Antun Gudelj, the legal battle of many years fought by the injured person resulted in the repetition of the procedure.[9]

In the case against Fred Marguš, charged with a war crime against civilians, the Supreme Court upheld the verdict of the Osijek County Court, including the part in the verdict referring to the murders in relation to which the previous criminal procedure against the accused was terminated pursuant to the General Amnesty Law. The Supreme Court concluded that the termination of the procedure instituted for murder did not preclude instigation of the procedure for war crime (although both crimes referred to the same act). We have no information whether the accused (who was convicted on this charge) appealed to the Constitutional Court.

In its Decision number U-III-543/1999 of 26 November 2008, the Constitutional Court of the Republic of Croatia referred to the application of Article 406, Paragraph 1, Item 5 of the Penal Procedure Law, which allows a reinstitution of a criminal procedure which ended with a final (legally valid) decision on dismissal, if it is established that the acts of amnesty, limitation, or any other circumstance which exclude criminal prosecution, do not refer to the actual criminal act for which the decision on dismissal was reached.

Penal policy

In war crime trials, processes of individualization and deliberation with regard to an appropriate criminal punishment should be equally important as reaching the decision on criminal responsibility. This means that the decisive facts on which the decision on penalty is based must be established with the same degree of certainty as the facts guiding the decisions on criminal responsibility and legal qualification of a criminal act. However, the practice has shown that verdict justifications are often most poorly elaborated with respect to the selection and rationale behind the selection of the appropriate type and measure of criminal punishment. The process of the individualization of penalty should not be understood as a mechanical process in which legal norm is applied in relation to a specific defendant. Quite the contrary,

[9] At the Osijek County Court, the repeated procedure against the accused Antun Gudelj ended in July 2008. Antun Gudelj was charged with the murder of the head of the Osijek Police Department Josip Reihl-Kir, a member of the Osijek Municipal Assembly Milan Knežević, and president of the Osijek Municipal Assembly Executive Board Goran Zobundžija. He was also charged with the murder attempt of the president of the Tenja Local Community Mirko Tubić on 1 July 1991, while he served as a member of the Reserve Unit of the Croatian Police. Although the previous procedure against him was terminated in 1997 by the decision of the Croatian Supreme Court, referring to the General Amnesty Law, the Croatian Constitutional Court overturned this decision and reversed the case for a new consideration. This time the Supreme Court rejected the appeal of the accused and upheld the decision of the Osijek County Court to reject the request for the termination of the procedure. It was only then that the conditions were created for Antun Gudelj to be tried for the crimes he was accused of.

this is a procedure where the judge, apart from being obligated to ensure the respect of legal framework for the pronunciation of the sentence and compliance to general rules on the selection of the type and measure of the punishment, is also obliged to appropriately value all relevant circumstances in order to pass an adequate sentence which will have been selected with consideration of the degree of guilt and severity of the crime, and most importantly, which will serve the purpose of punishment.[10]

In the process of individualization of punishment, the Court is obliged to consider the severity of the committed crime within the context of the specific action performed by a perpetrator, and assess the degree of severity of the acts within the committed action both from the perspective of the perpetrator and in view of the attitude of the society towards the performed action, and the degree of threat to or violation of a protected value. Also, consideration of the severity of the crime should particularly be sensitive to the perpetrator-victim relation. It need not be specifically stressed how important it is to adequately explain to the victim, community and expert public why a convict, proven to have committed a crime against the values protected by the international law, has received a minimum prison sentence, or a sentence lower than mandatory minimum for the given crime. In 2008, 47% of the accused convicted at the Croatian county courts received prison sentences which equalled or were lower than the specific minimum (of five years). It is, thus, appropriate to ask whether the courts, by such frequent passing of prison sentences which go below the mandatory minimum and offering only scant explanations of the circumstances leading to these decisions, make any contribution to the restoration of the dignity of victims and rebuilding of trust and harmony in the society.

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[10] In the case against the accused Počuča, convicted for a war crime in Knin, the War Crime Council of the Knin County Court applied the principle of sentence mitigation, establishing two three-year prison sentences and pronouncing a joint sentence of five years. In doing so, the Council had obviously failed to consider the number of criminal acts committed by the accused, and the number of the injured persons (as the first-instance court established) beaten and otherwise physically and sexually abused by him (he put salt on their wounds, extinguished cigarettes in their mouth, forced them to oral sex, etc.). The Supreme Court altered the sentence, establishing two five-year prison sentences and pronouncing a joint prison sentence of eight years.

While pronouncing a minimum sentence in the case against Mirko Norac for the crimes against civilians **in the Medak pocket**, in our opinion, the War Crime Council did not at all consider the severity of the consequences of the committed crimes or the suffering inflicted on more than a hundred families who had nowhere to return as their homes and property had been entirely destroyed. Also, despite recognizing them in the verdict, the Court failed to consider the facts that the defendant had already been legally convicted for the same crime, or that he "failed to express reverence for the killed or sympathy for those who had lost their loved ones in the operation." Yet, the Court explained that it considered the defendant's young age (just under 26) stressing that "obviously his young age and inexperience, caught in the atmosphere of patriotic elation, contributed to his indifference to potentially occurring forbidden consequences, and failure to utilize his command authority to prevent or punish illegal actions."

In the criminal procedure concerning the war crime in Bjelovar, the War Crime Council of the Varaždin County Court convicted four of the accused persons for assisting criminal acts of war crimes against civilians and war prisoners, which resulted in death of six people and wounding of one person. However, taking into consideration a number of mitigating circumstances (no previous convictions, a great contribution to the defence of homeland, and parenting under-aged children), the Court established individual prison sentences which were lower than mandatory minimum sentences, so that even the pronounced joint sentences failed to meet the prescribed minimum penalty (convicted Luka Markešić received a joint prison sentence of four years, while convicted Zdenko Radić, Zoran Maras and Ivan Orlović each received a prison sentence of three years), regardless of the fact that the murder of six people was taken as an aggravating circumstance.

The purpose of punishment is to, acknowledging the general purpose of legal sanctions, express the social condemnation of the committed crime, deter the perpetrator from future criminal activity and discourage others from commiting a crime, and through the application of the prescribed penalties raise awareness among citizens of crime severity and fairness of the principle of criminal punishment (pursuant to Article 50 of the Croatian Penal Law).

Further, previous participation in the Homeland War has commonly been considered as a mitigating circumstance by war crime councils. However, according to the law of nature, every person should be aware that expulsion, torture and murder of civilians, women, children, the elderly, the wounded and imprisoned are crimes against humanity. Even in defence, it is honouable to help the weaker, a civilian, a wounded, sick or helpless enemy. It is through such acts that a soldier contributes to the defence of the homeland. Contrary to this, by committing crimes against the international humanitarian law, the soldier only harms the victims, as well as the whole society and country. Therefore we do not find it appropriate that participation in the Homeland War is viewed as a mitigating circumstance in consideration of punishment.

We find it necessary that the Supreme Court of the Republic of Croatia gives opinion about the criteria used for establishing mitigating and aggravating circumstances. It is also necessary that while reaching the second-instance decision in criminal cases regarding crimes against the values protected by the international humanitarian law, the Supreme Court attentively evaluates the reasons provided for pronunciation of minimum prison sentences or prison sentences which go below the specific minimum.

Although withdrawal of decorations, medals or other recognitions is one of the established legal consequences of a criminal conviction (pursuant to Article 84, Paragraph 2 of the Croatian Penal Law, and the Croatian Law on Medals and Recognition, *Official Gazette,* 20/95), we are yet to see an example of this in practice. According to Article 36 of the Croatian Law on Medals and Recognitions, acting upon the proposal by the State Committee for Medals, or his or her own decision, President of the Republic of Croatia has the authority to withdraw a medal or recognition if the bearer has acted contrary to the Croatian law and the accepted moral principles. The initiative for withdrawal can also come from the House of Representatives, state ministries or other governmental bodies, political parties, religious communities, civil associations or other legal entities.[11]

Inefficient trials

There has been a downward trend in the number of procedure repetitions. According to the statistics published in the 2007 OSCE report, in the period between 2002 and 2007 the percentage of procedure repetitions ranged between 95%, as recorded in 2002, to 35%, recorded in 2006

[11] The detailed procedure of withdrawal of medals is regulated by the Statute for Medals and Recognitions (*Official Gazette,* 108/00). According to the set procedure, all legitimate initiators should file written proposals of both awarding and withdrawal of decorations and recognitions to the State Committee for Medals, which then considers the proposals and refers the accepted ones to the President of the Republic of Croatia for further consideration.

(namely, 95% of the cases were repeated in 2002, 50% in 2003, 55% in 2004, 65% in 2005, 35% in 2006, and 52% in 2007). Among the procedures we observed in 2008, 22.7% were repeated [12]. In four of 11 cases (36.3%) which reached the Supreme Court, the verdicts were entirely or partially overturned.

Main hearings starting all over again - if the trial is adjourned for longer than two months or for other reasons - have proved to be a frequent practice in war crimes trials which are in progress.[13] In some cases such long adjournments have only been scantily explained, so we can only assume that they related to a heavy caseload of the courts (in other words, inadequate capacity of the courts where war crimes are not given priority), or possibly some other reasons. Also, we do not believe that the war crime councils take into serious consideration the influence that the length of the process (affected by long and frequent adjourments) may have on the fairness of the process, including the length of detention for the defendants, and the right of the victims/injured persons to see the criminal responsibility of the accused established and the accused sanctioned for the committed crimes.[14]

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[12] To illustrate: In most of the cases we observed at the Sisak County Court, in which the Supreme Court made decisions through appeal process, verdicts reached by the Sisak County Court were overturned. In the period between 2006 and 2008, we observed six procedures at this county court. First-instance verdicts were reached in two cases: the case against Mile Letica for the crime in Selkovac and Šatornja, and the case against Branislav Miščević and others for the crime in Novska. The appeal sessions of the Supreme Court, however, have still not taken place. Among other four cases, one was renewed and three repeated:

- the case against the accused Jovo Begović for the crime in Petrinja, first tried in absentia and concluded with a verdict carrying a 20-year prison sentence, was reversed to the investigation stage and concluded with a verdict carrying a five-year prison, which was upheld by the Supreme Court;
- the procedure against the accused Rade Miljević for the crime committed at the Pogledić hill was repeated after the Supreme Court overturned the judgement due to incorrect and incomplete establishment of facts. In December 2008, the defendant received a 12-year prison sentence;
- the procedure against the accused Dragan Đokić for the crime in Ravno Rašće was repeated after the Supreme Court established that the principles of criminal procedure had been violated, thus overturning the verdict which sentenced the accused to 12 years in prison. The repeated procedure ended with the same prison sentence, which was upheld by the Supreme Court;
- the procedure against the accused Zoran Obradović and Janko Banović was repeated after the Supreme Court overturned the judgement which sentenced the accused to seven years in prison. In the repeated procedure the defendants were sentenced to five years in prison.

[13] The trials have been repeated in the cases against the defendant Branimir Glavaš and others for the war crime in Osijek (repeated twice); defendant Jugoslav Mišljenović and others for the war crime in Mikluševci (repeated several times); defendant Novak Simić and others for the war crime in Dalj; defendant Ljuban Devetak and others for the war crime in Lovas (one defendant is detained, the trial has started several times, while the last session was held in the first half of 2008); nondetained defendant Željko Čizmić for the war crime in Dalj (last session was held on 16 October 2007); defendant Radoslav Čubrilo and others for the war crime in Lovinac (repeated several times and tried in absentia, while the last session was held in late 2007); and defendant Milovan Ždrnja for the war crime in Sremska Mitrovica.

[14] In the procedures against defendant Čubrilo and others for the war crime in Lovinac (tried in absentia) and defendant Čizmić for the war crime in Dalj, last trial sessions were held in late 2007.

In the procedure against Žarko Leskovac (nondetained during the trial) held before the Vukovar County Court, the main hearing started on 20 February 2006. The verdict was finally announced on 26 November 2008. In two years and nine months, the Court examined 23 witnesses and a certain amount of material evidence.

Detention orders point to another inconsistent practice, where decisions on detention are often only briefly explained, and sometimes not at all.[15] The same is true of the implementation of protection measures for nondetained defendants. In our opinion, this segment needs to be seriously improved in order to prevent cancellations of detention from taking place due to violations of the Human Rights Convention.

However, in the case against Branimir Glavaš and others, accused of murder of civilians of Serb ethnicity in Osijek in 1991, the Supreme Court gave a thoroughly explained opinion on the justification and length of detention ordered for the first-accused and his accomplices. Despite this, the Croatian Parliament failed to lift Glavaš's parliamentary immunity from detention, so detention had to be cancelled. This was followed by the decision of the Croatian Constitutional Court to release four of the co-accused in this case, which the Zagreb County Court referred to the very next day, deciding to release the other two co-accused persons.

Inefficient trials (characterized by long and frequent adjournments, repetitions of proceedings, inconsistent detention policy and failure to implement the measures which would clearly show to the accused, victims, witnesses and the public that the judiciary protects the process from the unlawful pressure on witnesses) create apathy and disinclination among witnesses to testify, and add to unnecessary frustration of victims and injured persons. Such practices leave the defendants and victims dissatisfied with the work of the Croatian judiciary, and at the same time send a repeated message to the public long-term signalling that after the war we are yet to see justice done in what is the key *medium* of the law-governed state – fairly and legitimately conducted criminal procedures.

Status of the victim in the criminal procedure

For years now we have been recording only exceptional cases of victims appointing an attorney-at-fact in criminal procedures.[16] In some trials, witnesses, who had obviously suffered damage as a result of

[15] Examples:

- The convicted accomplice in a serious and brutal war crime committed in Berak (execution of three persons whose bodies were cut up and thrown into a well, into which a bomb was then thrown) was nondetained during the trial (the verdict was announced in late December 2007). Admittedly, the prosecution dismissed the charges during the procedure, but this in turn threw doubt on the existence of reasonable doubt for filing the charges against the defendant in the first place;
- In the case against the defendant Raič held before the Vukovar County Court for the crime in Drvena pijaca, the detention for the defendant was extended when the first-instance verdict was announced, due to a danger of escape (pursuant to Article 102, Paragraph 1, Item 1 of the Penal Law). At the time when the verdict was announced and the accused was sentenced to two and a half years in prison, he had already spent one year and nine months in detention. However, the Supreme Court overturned the verdict and cancelled detention due to incorrect and incomplete establishment of facts. By that time, the accused had spent two and a half years in detention. The repeated procedure was held in January 2009. The County Attorney's Office dismissed part of the indictment, while the Court convicted the defendant only of unlawful imprisonment (but not of inhumane treatment by denying medical assistance, which he had been convicted of by the overturned verdict) and sentenced him again to two and a half years in prison.

[16] The injured persons in the procedure regarding the war crime in Sotin approached the Croatian Bar Council requesting a pro bono attorney in the case held before the Vukovar County Court. Their request was however rejected because they did not meet

criminal activity (as confirmed by the pronounced verdict) were not at all informed of their right to make a property request or obtain the status of the **injured person**.[17] Such oversights primarily affect the victims, and result in their indifference to the work of the judicial institutions, which is best reflected in the fact that they very rarely attend the trials (even where they realistically can).

For the first time, the *new Criminal Procedure Law* will include the victim in the group of participants with special rights, thus **improving the status of witnesses and victims in the course of the criminal procedure**.[18] The novelties in the Law will warrant the rights of the victim to special consideration from all bodies participating in the legal procedure, protection from unlawful and unauthorized pressure from other participants in the procedure, an effective psychological and other expert support, and participation in the criminal procedure. However, this Law is not to come into effect until 2011, and in the foregoing passage we have already warned of frequent neglect of the existing legal instruments.

According to the information obtained from the Department for Support to the Witnesses in War Crime Trials, in 2008 the Department maintained written contact with witnesses, offered legal and psychological support, organized transport for witnesses from Croatia who testified before the courts in Croatia and abroad (for example, at the Belgrade District Court), ensured physical protection in cooperation with the Croatian Ministry of Interior, organized transport for witnesses from abroad, arranged hotel accommodation and offered witness support at the county courts in Zagreb (in the procedure against Rahim Ademi and Mirko Norac; and the procedure against Branimir Glavaš and others), Dubrovnik (the procedure against Mlađen Govedarica), and Sisak (the procedure against Rade Miljević; and procedure against Mile Letica and Siniša Martić).

In May 2008, the United Nations Development Programme in Croatia in cooperation with the Ministry of Justice started a pilot-project of providing emotional and practical (but not legal or psychological) **support to witnesses and victims of crimes** at four Croatian courts.[19] This should not only contribute to the improved ability of witnesses and victims to testify, but also reduce concurrent trauma, and help them keep their dignity.[20] We believe it is more than clear that dealing with this issue should not be delayed any longer, but rather addressed systematically by the judicial bodies (so as to ensure the required funds and man power). As for war crime trials, the centralization of trials in the four centres would ensure that systematic, psychological support is provided to all who need it.[21]

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the conditions for free legal support (social status). Namely, the law regulating free legal advice does not offer the possibility of free legal support (representation) to the victims (injured persons) of crimes committed against the values protected by the international humanitarian law, unless they meet general conditions for free legal support (social status).

[17] As examplified by the Berak case, held before the Vukovar County Court.

[18] The Criminal Procedure Law, *Official Gazette,* 152/08, Chapter V: The victim, injured person and private prosecutor.

[19] Victim and Witness Support Offices have been established at the county courts of Osijek, Vukovar and Zadar, and the Zagreb Municipal Court.

[20] In 2008, these Offices provided support to 621 persons, 119 of whom participated in war crime trials at the county courts of Zagreb, Sisak, Vukovar and Osijek.

[21] In October 2008, the Croatian Parliament adopted the Law on Changes and Amendments to the Law on Courts, which allows county courts to form specialized departments for victim and witness support in criminal procedures. This was the first step towards

Family members of some civilian victims of war, dissatisfied with inefficient investigations, filed charges against the Republic of Croatia and requested indemnity.[22] In the decision No: U-I-2921/2003 of 19 November 2008, the Croatian Constitutional Court determined that the law on responsibility for the damage suffered through terrorist acts and public demonstrations (*Official Gazette,* 117/03) is congruent with the Croatian Constitution, but also evaluated that coverage of court expenses would unreasonably place too much responsibility on prosecutors and could not be constitutionally justified. This would also raise a question of the violation of the constitutional guarantee of legitimate and fair court procedure.[23]

However, although the Constitutional Court took such position, it twice failed to protect the stated rights of prosecutors in a legally obligating manner. On the first occasion, the position taken by the Constitutional Court did not take a form of a disposition, but was only stated in the explanation of the decision the Court reached on this matter, which is not a form that obligates courts to act in a certain manner. On the second occasion, the Constitutional Court explained its position in the form of an announcement, and not a judicial decision. According to the Constitutional Law of Croatia, an announcement made by the Constitutional Court is a statement of declarative nature, in other words non-obligating, while verdicts and judicial decisions are obligating and executive. Although the decision of the Constitutional Court could have eased the situation of people who had suffered irrecoverable or severe material damage, it did not render such effect because it was non-obligating.[24] As a result, more than 17 years after the crimes happened, families of some victims vainly seek criminal prosecution of the perpetrators and compensation for the suffered loss, while the state charges their court expenses.

Work of the State Attorney's Office of the Republic of Croatia

Within the Action plan for judicial reform in the Republic of Croatia, in 2007 the Croatian State Attorney's Office started compiling a database of war crimes (a so-called map of crimes), basing it on the data obtained from various police reports. In the late 2008, the State Attorney of the Republic of Croatia and the Ministry of Interior designed an action plan for a coordinated approach to the investigation of war crimes. Also, the county attorney's offices started a revision of all criminal charges, including both rejections and cases where additional investigations had been instigated. In addition, the State Attorney's Office of the Republic of Croatia has announced a revision of all verdicts reached *in absentia* in order to evaluate which cases require a reinstitution of proceedings. According to the announced schedule, most of these procedures should be finalized in the first half of 2009, but there have been no announcements as yet on the progress made so far. What we have been warned of,

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institutionalization of the support service.

[22] Examples: Marica Šeatović and Vjera Solar in the cases against the Republic of Croatia.

[23] Article 29 of the Constitution of the Republic of Croatia.

[24] In the case of Marica Šeatović against the Republic of Croatia, whose husband was murdered by members of the Croatian Army in Novska in 1991, on 30 December 2008 the Novska Municipal Court for the second time decided to request the coverage of court expenses from Marica Šeatović.

however, is the lack of personnel capacity, which the State Attorney stated at the session of the Croatian Parliament while giving his explanation of the State Attorney's Office's annual report.

We have recorded **examples of inefficient performance** of the Croatian State Attorney's Office.

For example, in 2005 the *Centre for Peace, Nonviolence and Human Rights Osijek* filed criminal charges against P.K., former Osijek Military Housing Commission Chairman, accusing him of a war crime against civilians committed by organized, forced eviction of residents from military and public apartments and private houses. Statements on the circumstances of this incident and persons participating in it, given by members of 46 injured families on the premises of the *Centre for Peace, Nonviolence and Human Rights* were also submitted. So far, however, there has been no definite decision on this case. We believe that four years was more than enough time for the State Attorney's Office to conduct additional enquiry, if the data contained in the charges failed to offer sufficient grounds for criminal investigation, and depending on obtained results either reject or uphold the charges. We wish to emphasize here that a basic right and the main obligation of a state attorney is to prosecute perpetrators of a crime, and to this end he or she is authorized to take required action in order to reveal the criminal acts and identify perpetrators, and to make enquiry and initiate investigating actions in order to obtain the information essential for the instigation of a criminal procedure. Bearing in mind the access to the information contained in the filed documents, it is not easy to rationalize why the State Attorney's Office requires so much time to assess whether there is a reasonable doubt that the incriminated person actually committed the stated crime and on these grounds instigate criminal investigation, or otherwise reject the charges if no reasonable doubt is established.

To give another example, for almost two years we have been unsuccessful in our attempts to urge the State Attorney's Office of the Republic of Croatia to hand over the evidence on the crime committed in Sotin (for which the indictment was issued in 2006) to the Prosecutor's Office of the Republic of Serbia, as most of the accused persons live in the Republic of Serbia.

Indictments

In 2003, **the State Attorney's Office of the Republic of Croatia** compiled a list of all criminal procedures for war crimes instigated in the period between 1991 and 2003. In this period, 3,600 persons were accused of a war crime. In order to objectively evaluate whether those criminal charges actually qualified as war crimes, the State Attorney's Office then revised the list, and it resulted in dismissal of indictments against more than 2,300 persons. The revised data eventually revealed that until 1 April 2008, 1,293 persons had been charged with a war crime. The outcome of this revision indicates that in many cases prosecutors were not able to make an expert evaluation which would comply with the generally accepted judicial standards.

Conducting the revision of indictments and investigative requests, the State Attorney's Office applied the following criteria: precise interpretation of the legal definition of a war crime; individualization of indictments – refocusing from joint indictments to the ones in which there was reasonable doubt

that all accused persons committed a specific crime; and most importantly, the existence of sufficient evidence against each accused person. Although it has been five years since this revision, some county attorney's offices still follow the old practice.

Further, some newly issued **indictments are still not sufficiently precise**. They often include a large number of the accused persons, some of whom not being charged with a single specific crime. Consequently, the investigations are conducted during main hearings, and prosecutors repeatedly change the indictments (sometimes to the extent that none of the original incriminations remain included), which leads to dismissals of charges or acquittals.[25]

This inevitably raises a question of how these indictments became legally valid in the first place. Namely, even in cases where the defence did not object to the contents of the indictment, the court was obliged to examine it and, if required, refer it back to the prosecution for correction of the observed defects. However, so far not a single case of this practice has been registered.

The criminal case concerning the war crime committed in the Medak pocket is the first case which has been transferred to the Croatian judiciary from the ICTY (the International Criminal Tribunal for the Former Yugoslavia), pursuant to the Rule *11bis*. The work of the State Attorney's Office on this case needs to be critically examined, including the following considerations. First, the State Attorney's Office took two years to adjust the indictment to the legal system of the Republic of Croatia. However, in those two years it failed to undertake additional investigation, which later proved to have been prerequisite for establishing the zones of responsibility among the units which were involved in the operation *Pocket 93*, as well as the chain of command and command authorities. Namely, during the presentation of evidence, it was demonstrated that some crimes referred to in the indictment took place in the region which was under the control of the Croatian Special Police Forces, which in turn were not

[25] Examples of indictments raised by the Vukovar County Attorney's Office:

In the procedure against the accused for the crime committed in Berak, held before the Vukovar County Court, the prosecutor himself stressed in his closing speech a number of difficulties in this procedure: the fact that it had first been conducted during the 1990s and against a large number of the accused persons (53 in total); that the witnesses had given their depositions at the courts in Rijeka, Pula, Zagreb and Osijek; and that a proper investigation was conducted during the very main hearing at the court. Such investigation led to the indictment against 35 persons (16 of whom were not charged with a single specific crime), dismissal of charges against the defendants Vučetić and Gunj at the end of the evidence procedure, and a significant change to the indictment against the defendant Perić, so that the specific criminal charges against him were entirely modified. The three defendants, along with the defendant Vujić whose case has been separated due to procedural incapacity, are the only defendants (out of the total of 35) available to the Croatian judiciary.

In our report for 2007, we warned that in the Sotin case against the defendant Milan Ostojić and others, the prosecution changed the indictment against the two defendants available to the Croatian judiciary after their cases had been separated, omitting the charges which fundamentally represented certain types of a war crime against civilians, and suggested that witnesses who had given statements about these crimes be questioned again. However, the Court refused this.

The indictment in the procedure against Jugoslav Mišljenović and others for the crime committed in Mikluševci was changed two times in 2008 (including another change in January 2009, the indictment has undergone a total of seven changes). A modification made in 2007 included a change of the legal name of the criminal offence from genocide to a war crime, and a clearer specification of criminal charges against each defendant. At the very next court session, the prosecution reversed the decision on the qualification of the crime (from a war crime back to genocide), without having established new facts or circumstances of the crime, and leaving the same factual description of the criminal acts which had previously been qualified as instances of a war crime against civilians.

under the command of the accused Rahim Ademi or Mirko Norac at the time of or immediately after the operation *Pocket 93*.[26] As these facts were brought to light during the evidence procedure, the State Attorney's Office indicated that it was essential to change the indictment and align it with the newly established facts. However, the changes that were subsequently made did not qualitatively strengthen the indictment, nor did they comprise a modified factual description, which later resulted in ommission of another five victims from the convicting part of the verdict. The modified indictment also failed to include two victims which had been mentioned in some of the witness statements. Another fact established during the evidence procedure was that the commanding officers who were under the direct command of the second-accused had issued orders that the soldiers be given explosive to mine houses and that 40 dead bodies be transported to a house on the outskirts of Gospić, and then be thrown and buried in the septic tank. These facts were also overlooked in the modified indictment.

Failure to prosecute criminal acts of concealment of crime

Another recurrent problem is a **failure to prosecute criminal acts of concealment** or assistance to the perpetrators of crimes, due to the application of the Statute of Limitations to cases which have exceeded the prescribed time for prosecution of crimes. Evidently, the prosecution bodies (the State Attorney's Office, county attorney's offices, the police and military police) have acted *too casually*, allowing some cases to exceed the set timeframe for the enquiry by not launching an investigation into the criminal acts. At the same time, their press releases informed the public only about the new status of the cases, but included no mention of established responsibility or punishment of those responsible for neglecting these cases.[27]

Publicity of trials

In order to obtain information on the schedule of trial sessions, each month we sent memos to all county courts, requesting their monthly schedules of trial sessions. We additionally double-checked the schedules on the county courts' web pages. We have noted that most courts reply to requests, but some do not regularly update their website. Information on the schedule of public sessions of the Croatian

[26] Due to this oversight, six civilian victims (Anđa Jović, Milka Bjegović, Boja Pjevač, Dmitar Jović, Mara Jović, and Mile Pejnović) were excluded from the convicting part of the verdict, because they were killled in the zone of responsibility of the Special Police Forces, which were not under the command of the accused persons.

[27] Examples:

Bodies of 17 murdered civilians in the village of Paulin Dvor were systematically transported to a secret mass grave, while the house where they were killed was mined. A few years later, their bodies were moved and buried in a secondary grave, a few hundred kilometres away;

Bodies of five detainees executed in the Česma forest near Bjelovar disappeared after the police investigation and autopsy had been completed. It is still not known where the bodies were buried;

After the operation *Pocket 93*, 40 dead bodies were transported and thrown into the septic tank of a house on the outskirts of Gospić. The house was then mined.

Supreme Court is available on its website, but due to a large amount of information, the website is not easy to navigate and specific decisions of the Supreme Court are difficult to locate.

In 2008, none of the courts made audio or video recordings of trials, which would later be transcribed.[28] Although keeping minutes from dictation is in line with the law, this practice has its shortcomings, most significant of which is inability to fully reconstruct the course of the trial for various purposes of the Court Council, Supreme Court or parties involved in the process, and to record authentic statements of all participants in the proceedings.[29]

Namely, according to the current practice (which is pursuant to Article 75, Paragraph 2 of the Criminal Procedure Law), only the relevant content of given statements is entered in the court records in a narrative form. If, however, certain statements are considered to be of particular importance, on the recommendation from either of the parties or through an official authority, the presiding judge can order that these statements be fully quoted. We believe that such keeping of minutes is often imprecise, time-consuming, and does not contribute to an economical trial process.

Also, it is often the case that witnesses, including key witnesses, change their statements (most often those given in the investigation phase) even several times during the procedure. Audio and video recording of investigations and trials would significantly reduce such occurrences, making each previously taken statement fully authentic. This would further eliminate discussions on the accuracy of court records, which commonly take place at trials.[30]

Finally, monitors and other subjects from the concerned public have no access to the records and documents concerning the investigation, nor can they monitor the investigation in any other way. The only way to gain insight into the contents of these documents is to hear them read at a trial. Therefore, it is important to end the present court routine of merely establishing that the documents and statements obtained during the investigation have previously been examined, rather than reading them to everyone present at the trial. Our experience has shown that the actual reading or retelling of the contents of these documents in practice take place as an exception rather than a rule, with sometimes even the statements of key importance to a case not being read. This prevents the concerned public from monitoring the evidence procedure with adequate understanding and makes it more difficult to evaluate court decisions in relation to the respect of the right to a fair trial.

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[28] In 2007, during the procedure against Tomislav Madi and others for the crime in Cerna, part of the trial in which the defendants presented their defence was audio and video recorded. At the end of one of the sessions when this method was used, judge Ante Zeljko, Council President, stated: "It is so much easier for the judge to conduct the trial when it is being recorded."

[29] We find it extremely important to actively introduce the practice of audio recording at the four county courts (those in Zagreb, Split, Rijeka and Osijek) where cases of war crimes and so-called *Uskok* cases are tried.

[30] In the procedure for the war crime in Lovas, held before the Belgrade District Court, we observed the following: after the defence raised objection to a witness not having stated something during the investigation, judge Olivera Anđelković, Council President, read a part of the witness statement from the investigation transcript and declared: "If there is something of value in this court, it is these transcripts."

Availability of documentation to the monitoring team

After the monitoring team would announce its presence at a certain procedure and make a written request for court documentation (court records, indictments, verdicts), presiding judges in most cases provided us with requested documents. However, despite the fact that we have been monitoring war crime trials for five years, being recognized as an expert and objective public, some courts have made our work difficult by denying us access to copies of court records or case files [31], because we were not one of the parties in the procedure. The Criminal Procedure Law, however, does not limit access to case files only to the parties involved in the process.[32]

Considering the purpose and objectives of monitoring of war crime trials, we believe that we have a justified interest (which according to the law governing the right of access to information is not even requisite for access to such documentation), and thus a right to examine, copy and photocopy some parts of documentation. County attorney's offices have mainly been helpful and provided us with requested copies of indictments.

As indictments, court records and verdicts make public documents, we do not find it justified to deny anyone access to copies of these documents. In case there are reasons for restricted access, a relevant state body (a county attorney's office or a court) which holds a requested document is obliged to notify the claimant on these reasons (pursuant to Article 4 of the Law on the Right of Access to Information, *Official Gazette,* 172/03).

Regional judicial cooperation

At the Vukovar County Court, the procedure against 16 persons (two present and 14 in absence) accused of the crime of genocide and a war crime against civilians (pursuant to Article 119, and Article 120, Paragraph 1 of the Croatian Penal Law, respectively) commited in Lovas, a village near the town of Ilok, in October, November and December 1991, has been in progress since 2003. The accused persons are former members of the Territorial Defence and *Dušan Silni* paramilitary unit.

However, as we are of the opinion that trials *in absentia* require a substantial engagement of judicial workers and allocation of considerable funds while at the same time offering only an illusionary sense of justice and satisfaction of victims (given that persons convicted in absentia do not serve their sentences and will have to be tried again if they become available to the Croatian judiciary), we believe that it was necessary to make presumptions in order to try and punish the perpetrators of these crimes.

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[31] We have been denied access to court records at the Rijeka County Court and Šibenik County Court.

[32] Pursuant to Article 155, Paragraph 1 of the Criminal Procedure Law, everyone having a justified interest is allowed to examine, copy and photocopy certain criminal files. Also, the Law on the Right of Access to Information (*Official Gazette,* 172/03), which we refer to in our memos, clearly states that all relevant state bodies are obliged to provide access to the information and documentation which is in their possession.

Since it has often been the case that victims, witnesses, crime scenes or perpetrators of crimes were located in different countries, and regulations of the Republic of Croatia and the Republic of Serbia do not allow extradition of their citizens to other countries, it was essential to make a legal framework for a successful cooperation between the two countries in order to improve the results of criminal procedures against perpetrators of war crimes.

With regard to this, beside the existing conventions and accords, on 5 February 2005 the State Attorney's Office of the Republic of Croatia and the War Crimes Prosecutor's Office of the Republic of Serbia signed a Memorandum of understanding under which both sides agreed to improve mutual cooperation in the fight against all forms of serious crime, and on 13 October 2006 they signed an Agreement on the cooperation in the prosecution of perpetrators of war crimes, crimes against humanity, and crimes of genocide.

Based on these agreements, the State Attorney's Office of the Republic of Croatia and the War Crimes Prosecutor's Office of the Republic of Serbia exchanged information on the crime in Lovas. After the State Attorney's Office of the Republic of Croatia obtained some evidence material, in May 2007 the investigation was launched. The indictment was then issued in November 2007, while the trial commenced in April 2008 at the Belgrade District Court. 14 persons have been convicted (four of whom are residents of Lovas and defendants in the procedure held against them at the Vukovar County Court; four are former members of the Yugoslav National Army, and six are former members of the *Dušan Silni* paramilitary unit). Given that all of the foregoing convicts are (also) citizens of the Republic of Serbia, they could not be extradited to Croatia.

According to the data obtained from the State Attorney's Office of the Republic of Croatia, and in relation to the foregoing agreement on the cooperation in prosecution of war crime criminals, by the end of 2008 the War Crimes Prosecutor's Office of the Republic of Serbia had been provided with evidence relating to 22 criminal cases against the total of 38 persons accused of war crimes against civilians or war prisoners. The War Crimes Prosecutor's Office of the Republic of Serbia accepted to prosecute 13 persons, rejected prosecution of seven persons, while evidence against other 18 persons is still being analyzed.

The War Crimes Prosecutor's Office of the Republic of Serbia provided the State Attorney's Office of the Republic of Croatia with evidence material on only one person for a war crime against civilians. The State Attorney's Office of the Republic of Croatia has launched investigation into this case.

The repeated trial for the war crime at Ovčara, held at the Belgrade District Court, is nearing its end. This case has been merged with the procedures against the accused Saša Radak and Milorad Pejić.

Other trials in progress at the Belgrade District Court include procedure against Damir Sireta (extradited from Norway), accused of a war crime against war prisoners at Ovčara; procedure against Boro Trbojević, accused of a war crime against civilians in the village of Velika Peratovica, Grubišno Polje municipality (criminal acts of attack on civilians, apprehension, imprisonment and torture of hostages, inhumane treatment and killing of civilians), and previously convicted *in absentia* at the

Bjelovar County Court in 1993 with a sentence of 20 years in prison; and procedure against Pane Bulat and Rade Vranešević, accused of a war crime against civilians (murder of six Croatian civilians) in the village of Banski Kovačevac, Karlovac municipality.

The Prosecutor's Office of Montenegro has issued the indictment against six former members of the Yugoslav National Army reserve units for a war crime against war prisoners committed at the Morinja detention camp.

On 8 July 2008, the War Crime Council of the Belgrade District Court announced a verdict of guilty against Zdravko Pašić, sentencing him to eight years in prison for a war crime against civilians. This case was referred to the War Crimes Prosecutor's Office of the Republic of Serbia by the State Attorney's Office of the Republic of Croatia. Namely, the Karlovac County Court had previously convicted Zdravko Pašić of the same crime in absentia, as well as his accomplice Milan Grubješić, who is now serving a prison sentence of 12 years in Croatia. The Belgrade District Court established that Zdravko Pašić, a member of the police of the self-proclaimed Republic of Serb Krajina, had an agreement with Milan Grubješić, and on the night between 22 December and 23 December 1991 killed the doctor Dragutin Krušić, ethnic Croat, by luring him out of the medical centre in Slunj on the pretence that a number of wounded persons of Serb ethnicity in Cetingrad needed an urgent help. They took the doctor to the parking lot of the "Suzi" tavern in Mali Vuković, where they shot him several times with a machine gun and a pistol.

KEY RECOMMENDATIONS

We believe that implementation of the below outlined recommendations would lead to a much needed, and realistically possible, qualitative improvement in war crime trials in Croatia, as well as contribute to a more favourable political context. They would also play a role in strengthening of social processes required for the establishment of justice and rebuilding of trust after the war. Besides, unbiased processing of war crimes by the Croatian judiciary is an integral part of the judicial reform, which will thoroughly be assessed at the end of Chapter 23.

Recommendation: Strengthening of the role and capacity of special war crime departments

War crime trials in Croatia do not take place before specialized war crime departments. We find it necessary and urgent to make legislative changes which will strengthen the role and capacity of special war crime departments at the county courts in Zagreb, Osijek, Rijeka and Split for the following reasons:

- The existing judicial capacity is insufficient due to a large number of war crime cases held concurrently (20-35 a year), and a large number of the accused persons (according to the data from the State Attorney's Office of the Republic of Croatia, until 1 April 2008, 1,293 persons had been charged with a war crime, while no criminal procedures had been instigated for the other 402 reported cases of war crimes as the perpetrators were unidentified).
- To ensure the required quality and efficiency of criminal procedures, judges and state/county attorneys must be specialized.
- The specialization of judicial staff and enlarged capacity will most quickly lead to correction of court practice and its standardization.
- This should also make it possible to offer a systematic support for witnesses and victims involved in criminal procedures.
- Specialized departments will be capable of ensuring more efficient regional cooperation in war crime cases.

Departments for the support to victims and witnesses in a criminal procedure should be established at the foregoing four county courts without further delay, as they already have specialized war crime departments and are also centres of the *Uskok* courts.

Also, the practice of audio recording should be actively employed in investigations and trials held before the four county courts, as well as in *Uskok* cases.

Recommendation: Publishing of the list of verdicts reached in absentia

According to the new Criminal Procedure Law, procedures can be repeated in favour of the accused *regardless of his or her presence* if the legally defined conditions are met. A repetition of the procedure

can be requested by the defence lawyer if he or she believes that there is new evidence which could lead to acquittal, regardless of the presence of the accused. However, for an accused or a convicted person to be able to exercise this right, he or she needs to be adequately informed. For this reason, we find it important that the official gazette publishes a list of all verdicts reached in absence of convicts.

Recommendation: Intensification of cooperation with the judiciaries in the region

In the procedure against Milan Ostojić and others for the **war crime in Sotin**, family members of missing persons (designated as victims of this crime) have on several occasions insisted that the State Attorney's Office of the Republic of Croatia cooperate with the War Crimes Prosecutor's Office of the Republic of Serbia so that the criminal procedure would be instigated in Serbia, as many of the accused persons reside there. The two offices have thus far worked together on compiling and exchanging useful information. The families of the missing expect this cooperation to become more extensive within a reasonable timeframe.

Regarding **the Tenja war crime case**, in which there is enough evidence against the persons charged with the crime, we believe the cooperation between the State Attorney's Office of the Republic of Croatia and the War Crimes Prosecutor's Office of the Republic of Serbia is essential so that the procedure against the accused who are not available to the Croatian judiciary could take place in the Republic of Serbia.

Recommendation: Amendment of Article 75, Paragraphs 2 and 3 of the Constitution of the Republic of Croatia

We advocate an amendment of the Croatian Constitution regarding Article 75, Paragraphs 2 and 3, so that in the future it is not possible to terminate a criminal procedure against a parliamentary representative on the basis of the right to parliamentary immunity if the indictment charges this person with a serious crime which carries a minimum sentence of five years in prison.

Recommendation: Adoption of clear stance towards all victims of war crimes

We urge the Parliamentary Committee on Human Rights and Ethnic Minority Rights to discuss discourteous statements made by some parliamentary representatives and directed at victims of war crimes, and oblige them to responsible treatment of all victims of crime. We also encourage the Committee to initiate a declaration of the Croatian Parliament on all victims of war crimes.

AN OVERVIEW OF THE MONITORED PROCEDURES

In 2008, at county courts of the Republic of Croatia we monitored 22 trials for war crimes against civilians and one case of murder and murder attempt.[33]

Out of the 22 procedures, seven were conducted at the Vukovar County Court, four at the Sisak County Court, three at the Šibenik County Court, two each at the Zagreb, Rijeka, and Osijek County Courts, one at the Gospić County Court and one at the Požega County Court.

Five of the monitored procedures included trials which were reinstituted after the Supreme Court of the Republic of Croatia overturned the verdicts and reversed the cases back to county courts[34], while one was an instance of a second trial against the accused who had been legally convicted in absentia before he became available to the Croatian judiciary. [35]

In the 22 procedures, there was a total of 78 accused persons: 56 former members of Serb military units, 20 former members of Croatian military units, and two former officers in the army of the so-called Autonomous Region of Western Bosnia.[36]

Out of the total number of the accused (78), 47 attended their trials, while 31 were tried in absentia. All 31 fugitives from justice are charged with crimes which they committed as members of Serb military units.[37]

Out of the accused who attended their trials (47), ten were nondetained (nine former members of Serb military unit and one former member of Croatian military forces); one was serving a prison sentence (a former member of Croatian military forces); while 36 were detained (16 former members of Serb military

[33] The procedure against Antun Gudelj, held at the Osijek County Court, who is tried on three murder charges (murders of Josip Reihl-Kir, Milan Knežević and Goran Zobundžija) and a charge of murder attempt (of Milan Tubić). Although this is not a case of a war crime, it has raised great public interest and we find it significant because of the consequences these crimes bore at the outset of the war.

[34] The following procedures were reinstituted: at the Sisak County Court – the procedure against Janko Banović and others accused of war crimes in Petrinja II; the procedure against Rade Miljević accused of war crimes on the Pogledić hill near Glina; at the Šibenik County Court – the procedure against Milan Atlija and others accused of war crimes at the BiH "Corridor" and villages of Potkonje, Vrpolje and the town of Knin; at the Vukovar County Court – the procedure against Milovan Ždrnja accused of war crimes in Sremska Mitrovica; at the Gospić County Court – the procedure against Nikola Cvjetićanin accused of war crimes in the village of Smoljanac. This was the second renewed trial against the accused Nikola Cvjetićanin, as the Supreme Court had twice quashed the verdicts of the Gospić County Court.

[35] The procedure held at the Šibenik County Court against Sreten Peslać, accused of war crimes in the village of Ervenik, and previously convicted and sentenced to ten years in prison.

[36] The procedures against Zlatko Jušić, acting prime minister of the so-called Autonomous Region of Western Bosnia at the time of incriminating events, and Ibrahim Jušić, a police officer and former head of the National Security of the so-called Autonomous Region of Western Bosnia, were held at the Rijeka County Court.

[37] These include 14 accused (11 after a dismissal of charges against three of the accused in January 2009) in the case against Jugoslav Mišljenović and others for war crimes in Mikluševci; 14 accused in the case against Ljuban Devetak and others for war crimes in Lovas; and the accused Novak Simić, Janko Banović, and Bogdan Kuzmić in the procedures concerning war crimes in Dalj III, Petrinja II, and at Vukovar Hospital, respectively.

forces, 18 former members of Croatian military forces, and two former officers in the army of the so-called Autonomous Region of Western Bosnia). Out of the 36 accused who were detained at some point in 2008, 16 were released. Five accused persons (former members of Serb military forces) were released following the announcement of, legally still invalid, first-instance verdicts[38]; one (also former member of Serb military forces) was released following a decision by the Supreme Court to quash the verdict of guilty[39]; nine (eight former members of Croatian military forces and one former officer in the army of the so-called Autonomous Region of Western Bosnia) were released during the trial[40]; while one former member of Croatian military forces was released after his case was separated from other cases due to his procedural incapacity.[41]

In 13 procedures the following, legally still invalid, verdicts were announced:

- four acquittals – in the cases against Boško Surla for war crime in Tenja; Žarko Leskovac for war crime at Velepromet II; Nikola Cvjetićanin for war crime in Smoljanac; and Mile Letica for war crime in Selkovac and Šatornja, all former members of Serb military units;

- seven convictions of 15 accused persons – ten former members of Serb military forces (Rade Miljević convicted of war crime on the Pogledić hill near Glina; Saša Počuča convicted of war crimes in Knin; Željko Šuput and Milan Panić convicted of war crime in Korenica; Novak Simić, Miodrag Kikanović and Radovan Krstinić convicted of war crime in Dalj III;. Slobodan Raič convicted of war crime at Drvena pijaca in Vukovar[42]; and Janko Banović and Zoran Obradović convicted of war crime in Petrinja II); and five former members of Croatian military forces (Tomislav Madi, Mario Jurić, Zoran Poštić, Davor Lazić and Mijo Starčević convicted of war crime in Cerna);

- two verdicts included a conviction of one of the accused, and an acquittal of the other – in the procedure against Branislav Miščević and Željko Vrljanović for war crime in Novska, Branislav

[38] Željko Vrljanović (accused of war crime in Novska) and Mile Letica (accused of war crime in the villages of Selkovac and Šatornja) were released upon the announcement of the first-instance court verdicts of acquittal; while Radovan Krstinić (accused of war crimes in Dalj III), Željko Šuput and Milan Panić (accused of war crimes in Korenica) were released after the announcement of the first-instance court verdicts of guilty carrying prison sentences lower than 5 years.

[39] Slobodan Raič, who had been detained since 6 May 2006, was released from detention on 30 October 2008 by a decision of the Supreme Court of the Republic of Croatia to overturn the convicting verdict which sentenced him to two years and six months in prison, and order a reinstitution of the trial.

[40] Branimir Glavaš (accused of war crimes in Osijek) was released after he earned parliamentary immunity and the Croatian Parliament concurrently withheld approval of his detention; Gordana Getoš Magdić, Tihomir Valentić and Zdravko Dragić (accused of war crimes in Osijek) were released by a decision of the Constitutional Court of the Republic of Croatia; Ivica Krnjak and Dino Kontić (accused of war crimes in Osijek) were released by a decision of the out-of-court council of the Zagreb County Court.

Davor Šimić and Pavle Vancaš (accused of war crimes in Marino Selo) and Zlatko Jušić (accused of war crimes in Velika Kladuša) were released by decisions of the court councils.

[41] In September 2008, the Constitutional Court of the Republic of Croatia overturned the decision on extension of detention for Mirko Sivić, accused of war crimes in Osijek.

[42] In October 2008, the Supreme Court of the Republic of Croatia overturned the convicting verdict against Slobodan Raič, who was sentenced to two years and six months in prison.

Miščević was convicted, and Željko Vrljanović acquitted; in the procedure against Mirko Norac and Rahim Ademi for war crimes in the Medak pocket, Mirko Norac was convicted, and Rahim Ademi acquitted.

In sum, in 2008, 17 persons were convicted of war crimes by county courts of the Republic of Croatia.

Three convicts (16.7%) received maximum prison sentences: convict Tomislav Madi (20 years for war crime in Cerna), convict Branislav Miščević (20 years for war crime in Novska), and convict Mario Jurić, a minor at the time of the committed crime (12 years for war crime in Cerna).

Six convicts (33.3%) received sentences in the range between specific minimum and maximum prison sentences: convict Rade Miljević (12 years for war crime on the Pogledić hill), convict Mijo Starčević (ten years for war crime in Cerna), convict Novak Simić (nine years for war crime in Dalj III), convict Zoran Poštić (eight years for war crime in Cerna), convict Davor Lazić (seven years for war crime in Cerna), and convict Miodrag Kikanović (five years and six months for war crime in Dalj III).

Three convicts (16.7%) received prison sentences in the range of specific minimum for a war crime: convict Mirko Norac (after receiving two prison sentences of five years for war crimes in the Medak pocket, he was sentenced to a joint sentence of seven years in prison), and convicts Janko Banović and Zoran Obradović (five years in prison for war crime in Petrinja II).

Five convicts (29.4%) received prison sentences which went below mandatory minimum for a war crime: convict Saša Počuča (after receiving two prison sentences of three years for war crimes in Knin, he was sentenced to a joint sentence of five years in prison), convicts Radovan Krstinić and Željko Šuput (four years in prison each for war crimes in Dalj III, and war crime in Korenica, respectively), convict Milan Panić (three years and six months in prison for war crime in Korenica), and convict Slobodan Raič (two years and six months for war crime at Drvena pijaca in Vukovar).

In sum, eight convicts (47.1%) received sentences which were either in the range of specific minimum or went below mandatory minimum for a war crime.[43]

The Supreme Court of the Republic Croatia held 13 public sessions. In four cases, the Supreme Court upheld the decisions reached by county courts[44]; in three cases it overturned county court's decision

[43] In late December 2007, prison sentences below mandatory minimum were handed down to convict Stevan Perić for war crime in Berak, and convicts Luka Markešić, Zdenko Radić, Zoran Maras and Ivan Orlović for war crime in Bjelovar.

[44] The Supreme Court of the Republic of Croatia upheld the following verdicts:
- a Bjelovar County Court verdict of 7 November 2007 against Dobrivoje Pavković, sentenced to 15 years in prison for war crime in Doljani, punishable under Article 122 of the Penal Law of the Republic of Croatia;
- a Sisak County Court verdict of 26 September 2007 in a repeated procedure against Dragan Đokić, nicknamed Popizdeo (*Pissed-Off)*, sentenced to 12 years in prison for war crime in Ravno Rašće, punishable under Article 120, Paragraph 1 of the Penal Law of the Republic of Croatia;
- a Sisak County Court verdict of 25 April 2007 against Jovo Begović, sentenced to five years in prison for war crime in Petrinja, punishable under Article 120, Paragraph 1 of the Penal Law of the Republic of Croatia;

and ordered a reinstitution of trials[45]; in one case it partly overturned the verdict and partly altered the sentence[46]; while in three cases it altered the verdicts[47]. With regard to remaining two cases, we do not have information on the Supreme Court decisions.

In three criminal procedures there were no trial sessions scheduled during 2008. These included cases against Željko Čizmić for war crime in Dalj; Radoslav Čubrilo and others for war crime in Lovinac; and Vlado Tepavac for war crime at Borovo Commerce. The procedure against Vlado Tepavac was terminated in December 2008, pursuant to the General Amnesty Law, after the Vukovar County Court had altered the factual and legal description and legal qualification of the crime Vlado Tepavac was initially accused of (from a war crime against civilians into an armed rebellion).[48] Persons accused of war crimes in Lovinac (Radoslav Čubrilo, Milorad Čubrilo, Milorad Žegarac, Petar Ajduković and

- a Gospić County Court verdict of 23 September 2004 in the procedure against Dane Serdar, who was acquitted of war crime charges punishable under Article 120, Paragraph 1 of the Penal Law of the Republic of Croatia.

[45] The Supreme Court of the Republic of Croatia overturned the following verdicts:

- a Sisak County Court verdict of 31 August 2007 against Janko Banović and Zoran Obradović, sentenced to seven years in prison for war crime in Petrinja II. *In the repeated procedure, the accused were convicted on 19 June 2008, and sentenced to five years in prison*;.
- a Sisak County Court verdict of 13 June 2007 against Rade Miljević, sentenced to 14 years in prison for war crime on the Pogledić hill near Glina, punishable under Article 120, Paragraph 1 of the Penal Law of the Republic of Croatia. *In the repeated procedure, the accused was convicted on 17 December 2008 and sentenced to 12 years in prison.*.
- a Vukovar County Court verdict of 20 February 2008 against Slobodan Raič, sentenced to two years and six months in prison for war crime at Drvena pijaca, punishable under Article 120, Paragraph 1 of the Penal Law of the Republic of Croatia. *In the repeated procedure, in January 2009 the accused was convicted and sentenced to two years and six months in prison.*

[46] The Šibenik County Court sentenced the accused Milan Atlija to a joint sentence of 12 years in prison, and the accused Đorđe Jaramaz to ten years in prison. The Supreme Court of the Republic of Croatia overturned the first-instance court verdict with regard to two counts of the verdict (the one on which the accused had been sentenced to 10 years in prison, and one on which they had been acquitted), and ordered a reinstitution of the trial regarding these two charges. Also, in relation to one count of the verdict, the Supreme Court changed the sentence for the accused Milan Atlija from three years to five years in prison.

[47] The Supreme Court of the Republic of Croatia made alterations to the following decisions:

- an Osijek County Court verdict in the case against Novak Simić and others for war crime in Dalj III was altered with regard to the pronounced penalties: the pronounced prison sentences of nine years for defendant Novak Simić, five years and six months for defendant Miodrag Kikanović, and four years for defendant Radovan Krstinić were altered to ten years, six years and six months, and five years in prison, respectively.
- a Šibenik County Court verdict in the case against Saša Počuča for war crime in Knin was altered with regard to the pronounced sentences for each of the charges (a war crime against civilians, and a war crime against war prisoners): two sentences of three years and a joint sentence of five years were altered to two sentences of five years and a joint sentence of eight years in prison.
- a Vukovar County Court verdict in the case against Stevan Perić for war crime in Berak was altered with regard to the sentence: the pronounced prison sentence of four years was altered to a sentence of three years and six months in prison.

[48] Previously, the accused was convicted in absentia in 1996, and sentenced to five years in prison. A renewed procedure ended with an acquittal, which the Supreme Court of the Republic of Croatia overturned, ordering a reinstitution of the trial. The accused, however, did not respond to the summons to the trial. Trial sessions stopped being scheduled after January 2007, and the procedure was finally terminated in December 2008.

Gojko Markajlo) are fugitives from justice and have been unavailable to the Croatian judiciary.[49] It is not clear why there was not a single trial session in the procedure against Željko Čizmić, accused of war crime in Dalj. Last court session in this case was held in December 2007. Thus far, the accused (who had been nondetained) regularly responded to the summons to the court.

In 2008, the County Attorney's Office dropped charges against six persons (Dragica Anđelić, Slobodan Mišljenović, Dušanka Mišljenović, Aleksandar Anđelić, Stanislav Simić and Srđan Anđelić) accused of genocide against inhabitants of Mikluševci.

[49] This procedure has been in progress since 1994. The accused have been tried in absentia. The Gospić County Court reached two verdicts in this case, both of which were quashed by the Supreme Court of the Republic of Croatia. The case was then referred to the Rijeka County Court (due to personnel incapacity of the Gospić County Court to form a new council). In 2006, the Rijeka County Court formed a new council pursuant to Article 20 of the Criminal Procedure Law, but the council consisted of two professional judges and three lay magistrates, which was not in accordance with the Law on the Application of the Statute of the International Criminal Court and Prosecution of Crimes Against the Values Protected by the International Humanitarian Law (Official Gazette 175/03), which in Article 13, Paragraph 2 states that a war crime council of a county court must consist of judges with a long experience in most complex court cases. Last trial session in this case was held in September 2007, while a reconstruction of the incriminating events took place in October 2007.

OPINION ON THE MONITORED PROCEEDINGS

First-Instance Court Proceedings concluded with Non-Final Verdicts

The trial against Vlastimir Denčić and Zoran Kecman

Osijek County Court

Criminal offence of war crime against civilians, pursuant to Article 120, Paragraph 1 of the Basic Penal Law of the Republic of Croatia

The defendants: Vlastimir Denčić and Zoran Kecman (both undetained)

War Crime Council: Judge Krunoslav Barkić, Council President; Judge Katica Krajnović, Council member; and Judge Anto Rašić, Council member

Prosecution: Miroslav Bušbaher, Osijek County Deputy State's Attorney

Defence: lawyers Tomislav Filaković and Dragutin Mijoč

Opinion

The procedure was properly conducted.

In the case against Vlastimir Denčić and Zoran Kecman, charged with a war crime against civilians (pursuant to Article 120, Paragraph 1 of the Penal Law of the Republic of Croatia) for the expulsion of 140 non-Serb citizens from Dalj on 18 April 1992 (Holy Saturday, the day after the Good Friday according to the Gregorian calendar), the War Crime Council of the Osijek County Court convicted the defendant Denčić and sentenced him to four and a half years in prison, while the defendant Kecman was acquitted.

During the proceedings, 28 witness statements were given or read in court – the witnesses mainly being the expelled citizens of Dalj. Only one piece of suggested evidence was rejected (the evidence suggested by the prosecution and accepted by the defence), which was the hearing of an ill person on the circumstances to which her family members had already testified.

The only objections raised at the main hearing were the objections of the Denčić's defence to witness statements which had been accepted by the Court and later substantially referred to in the explanation of the conviction.

We believe that the fact that the defendant was a member of the Interim Police Force under the UN jurisdiction, and later a member of the Ministry of the Interior of the Republic of Croatia, should not have been viewed as an extenuating circumstance in the consideration of the sentence.

The repeated (third) trial against the defendants Luka Markešić, Zdenko Radić, Zoran Maras and Ivan Orlović

Varaždin County Court

Criminal offence of war crime against civilians pursuant to Article 120, Paragraph 1 of the Basic Penal Law of the Republic of Croatia

The defendants: Luka Markešić, Zdenko Radić, Zoran Maras and Ivan Orlović

War Crime Council: Judge Zdravko Pintarić, Council President; Judge Nevenka Bogdanović, Council member; and Judge Stanka Vuk-Pintarić, Council member

Prosecution: Biserka Šmer-Bajt, Varaždin County Deputy State's Attorney

Defence: hired lawyers Gordana Grubeša, Mirko Ramušćak, Zorislav Krivačić and Rajko Rudnički

17 years after a serious war crime was committed against five war prisoners and one civilian who were taken away from the detention facilities of the Bjelovar-Bilogora County Police Department and then executed in the Česma forest (the civilian Savo Kovač survived), following two previous acquittals, in the third (second restarted) trial the defendants were convicted of a crime against humanity and humanitarian law committed by assisting in a war crime against war prisoners, and a crime against humanity and humanitarian law committed by assisting (but not treated as accomplices) in a war crime against civilians. They received combined sentences of four (Luka Markešić), and three years of imprisonment (Zdenko Radić, Zoran Maras and Ivan Orlović, respectively).

Opinion

We find the passed sentences inappropriate to the seriousness of the committed crimes.

Considering the obvious inability to undoubtedly establish the causal sequence of the criminal actions, that is the direct link between the defendants who took away the war prisoners and the civilian Savo Kovač from the detention facilities of the Bjelovar-Bilogora County Police Department, and the execution of these victims, the State Attorney's Office decided to consider the verifiable evidence, and in the course of the repeated trial changed the factual and legal description of the indictment, charging the defendants with assistance in the criminal offence of a war crime.

According to the information we have obtained thus far, this incapacity to substantiate the claims has resulted from a series of obstructions by the repressive and judicial bodies of the Republic of Croatia which investigated this crime immediately after it had been committed and tried to cover it up. The police investigations stopped after the police officers had received threats; however, these incidents have never been prosecuted. The document written after the first inspection has also disappeared and the investigation had numerous oversights. Finally, after the autopsy of the victims was done at the

Institute of Forensic Medicine in Zagreb, the bodies were driven away by an undertaker from Bjelovar, but where they were buried has until today remained unknown.

If this verdict becomes legally valid, we expect that the state authorities, primarily the State Attorney's Office, will have a difficult task ahead to initiate the search for and processing of direct perpetrators of this crime. In view of the three conducted procedures and evidence presented during the third main hearing, this seems a mission impossible (unless a PENITENT witness comes forward, or one of the questioned witnesses 'regains' memory).

Besides, as the state institutions were slow to react in a timely manner, it is now impossible to initiate a process against those persons who assisted in covering up this case. Namely, according to the existing laws of the Republic of Croatia, a failure to report a war crime, or assistance to the perpetrator of a war crime, is not considered a type of a war crime in itself, but is rather viewed as a separate criminal offence. Given this interpretation, the criminal offences of the defendants became subject to the Statute of Limitation and a process could no longer be instigated.

If the State Attorney's Office is not capable of persisting on revealing the direct perpetrators of this crime, but is capable of allowing for the assistants to the perpetrators to go unprosecuted and their case to come under the Statute of Limitation, it should at least aim to reveal where the victims were buried – out of respect, so that their families could remember them without added resentment, being able to peacefully mourn, forgive and reconcile.

The Bjelovar case testifies to the incapacity of the judicial institutions to adequately and systematically sanction every act of war crime, regardless of the ethnicity of the perpetrators.

Explanation

In the criminal proceedings against the defendants Luka Markešić et al. for the criminal act pursuant to Article 120, Paragraph 1 of the Penal Law of the Republic of Croatia, instigated by the indictment No: K-DO-57/01 (issued by the County State Attorney's Office in Bjelovar on 25 September 2001 and altered at the main hearing of 27 November 2007), the **War Crime Council of the** Varaždin **County Court** (**comprising of Judges** Zdravko Pintarić as the Council President and Stanka Vuk-Pintarić and Nevenka Bogdanović as Council members), reached a convicting verdict after the open and concluded main hearing of 21 December 2007 attended by the defendants Luka Markešić, Zdenko Radić, Zoran Maras and Ivan Orlović, the Bjelovar County Deputy State's Attorney Darko Galić, and the hired lawyers Gordana Grubeša, Mirko Ramušćak, Zorislav Krivačić and Rajko Rudnički.

Luka Markešić received a joint sentence of four years in prison (three years for the criminal offence pursuant to Article 122 of the Penal Law of the Republic of Croatia, and one-and-a-half year for the criminal offence pursuant to Article 120, Paragraph 1 of the Basic Penal Law of the Republic of Croatia). The other defendants received joint sentences of three years in prison (two years for the criminal offence

pursuant to Article 122 of the Penal Law of the Republic of Croatia, and one year for the criminal offence pursuant to Article 120, Paragraph 1 of the Basic Penal Law of the Republic of Croatia). In view of a number of extenuating circumstances (absence of previous convictions, contribution to the defence of the homeland, being parents of minor children), an aggravating circumstance of executing six persons, and the fact that an accomplice to a crime can be pronounced a lighter sentence, the Court applied the rule of lawful sentence mitigation and sentenced the defendants with individual prison sentences lower than a set minimum sentence.

Based on the presented defence and conclusions reached during the evidence procedure through analysis and evaluation of each piece of evidence individually and in relation to other evidence, the Court found the defendants guilty on the charges contained in the altered indictment. The Court concluded that the defendants acted with premeditation and assisted others to execute war prisoners and attack a civilian, thus breaching the International Humanitarian Law and committing a crime against humanity and international law by assisting in a war crime against war prisoners and civilians.

The defendants Luka Markešić, Zdenko Radić and Zoran Maras were held in custody from 24 August to 20 December 2001, while Ivan Orlović was kept in custody from 29 August to 20 December 2001. The time spent in custody was calculated into their sentences.

The initial procedure was instigated by the indictment No: K-DO-57/01 issued by the County State Attorney's Office in Bjelovar on 21 September 2001, which was partly modified by the County State Attorney's Office in Varaždin into the indictment No: K-DO-27/04 during the repeated trial of 23 February 2005 held at the Varaždin County Court. This indictment was additionally modified at the main hearing of 27 November 2007, during the second restart of the trial.

The initial and the first modified indictments charged the defendants with a premeditated crime to which they had previously agreed, thus treating them as accomplices. The changes made to the indictment on 27 November 2007 by the Varaždin County State Attorney's Office altered the factual and legal descriptions of the indictment, charging the defendants with assisting unknown persons in committing a war crime against war prisoners and civilians.

During the main hearing, no breaches of the Code of Criminal Procedure were registered. The Council President (presiding judge) informed the defendants on their legal rights and duties, presided over the court hearings professionally and with focus, ensured that the case of the procedure was extensively discussed, while at the same time taking care that it was economically run. He properly recorded witness statements into the minutes of the court hearing and did not allow suggestive or forbidden questions.

The case against the defendants Slobodan Vučetić, Petar Gunj, Mirko Vujić and Stevan Perić

Vukovar County Court

Criminal offence of war crime against civilians pursuant to Article 120, Paragraph 1 of the Basic Penal Law of the Republic of Croatia

The defendants: Slobodan Vučetić (the County State Attorney's Office dismissed the charges on 19 November 2007), Peter Gunj (the County State Attorney's Office dismissed the charges on 19 November 2007), Mirko Vujić (a separate procedure against him was established on 22 December 2006 due to procedural incapacity) and Stevan Perić

War Crime Council: Judge Nikola Bešenski, Council President; Judge Branka Ratkajec-Čović, Council member; and Judge Željko Marin, Council member

Prosecution: Zdravko Babić, Vukovar County Deputy State's Attorney

Defence: lawyers Nediljko Rešetar, Branko Ivić, Andrej Georgievski and Tomislav Filaković

After the procedure was separated, the main hearing was held between September 2006 and December 2007 against four defendants (out of the total of 35) for the war crime against civilians in Berak. The case against the defendant Mirko Vujić was separated due to Vujić's procedural incapacity. The State Attorney's Office dismissed the indictments against Slobodan Vučetić and Petar Gunj and the procedure against them was terminated.

Opinion of the monitoring team after the first-instance court proceedings [50]

In December 2007, the Court announced a non-final conviction against the defendant Stevan Perić, sentencing him to 4 years in prison. The Court established that Stevan Perić, a minor at the time of the crime, committed specific acts of torture of detained civilians, but found that the prosecution had not proved the claims in the indictment that the defendant was involved in planning of ethnic cleansing in Berak, forming of the detention camp or execution and expulsion of non-Serb civilians. Considering the fact that the defendant was a minor (16 years of age) at the time of the committed crime, the Court viewed his immaturity and imprudence, as well as the absence of previous convictions, as extenuating circumstances. Another extenuating circumstance taken into account was the fact that while acting as a guard in the detention facility, the defendant was 'kind' to prisoners on certain occasions (several witnesses had testified to this). Regarding the question of his motives and personal circumstances, it was stated that the defendant's father and brother also acted as guards in the same detention facility.

[50] In the meantime, the Supreme Court of the Repubic of Croatia partly upheld the appeal filed by the accused Stevan Perić and altered the decision on penalty reached by the first-instance court, reducing the sentence pronounced by the War Crime Council of the Vukovar County Court on 24 December 2007 from four years to three years and six months of imprisonment.

We think that this is a clear example of a procedure in which it was crucial to reopen the investigation into the defendants available to the Croatian judiciary, and only afterwards, depending on the results of the investigation, issue the indictment or dismiss prosecution.

The main hearing should not be a stage of the criminal procedure in which investigation is conducted. Such practice only increases the damage done to victims of the crime and leaves both them and the defendants dissatisfied with the shallow approach of the Croatian judicial bodies, while the perpetrators remain beyond reach of justice. The entire society thus once again receives a message long-term signalling that neither legal security of citizens nor the conditions for sustainable peace have been secured. In other words, after the war, justice has failed in the key 'medium' of the law-governed state – the criminal proceedings.

It is also questionable how the indictment against 35 persons, which is not charging 16 of them with a single specific criminal act, could become legally valid. We do not know whether defence lawyers objected to the indictment, but even in cases where the defence does not object, the Court is authorised to examine the indictment and return it to the prosecution in case of any defects. Such evaluation of the Court was not recorded in this procedure.

During the main hearing, the witnesses, who had evidently suffered damage due to the crime (as confirmed also by the pronounced verdict) were not informed whatsoever of their right to making a property request, nor the right to the status of the injured person.

We believe that the witnesses in this case, who suffered severe trauma and lost family members to execution, should have received expert psychological help beside the support they have received from victim support volunteers.

Explanation

In his closing speech, the chief prosecuting attorney himself stressed the difficulties this procedure had encountered: it was first conducted during the 1990s and against a large number of the defendants (53 in total); the witnesses were questioned before courts in Rijeka, Pula, Zagreb and Osijek; and the main investigation was conducted during the main hearing.

Regardless of this, 15 years after the crime had been committed, the County Court decided to issue an indictment against 35 persons on the basis of a previously conducted, but insufficienly competent investigation. The chief prosecuting attorney pointed out that the County State Attorney's Office and the Court were «forced to conduct investigation during the main hearing». Namely, upon the completion of the evidence procedure, the prosecution decided to dismiss charges against the defendants Vučetić and Gunj, and significantly change the indictment against the defendant Perić (the specific criminal charges against him were entirely altered).

16 of the defendants were not charged with a single specific criminal act (including the defendant Vujić) and were only mentioned in the preamble to the factual description of the indictment. This brings into question the grounds for such indictment, which became legally valid regardless. We have no knowledge of whether the defence of the defendants objected to such indictment, but the Court itself (i.e. the Out-of-Court Council at the request of the Council President) is authorised to make a decision on every issue raised through objection.

The defendant Gunj was not kept in custody although he was accused of a very serious crime (before the case against him was dismissed, he was charged along with three other persons with executing Ljubica Garvanović and Tunica Garvanović and Ana Magić, cutting up their bodies, throwing them into a well and then throwing a bomb into the well). If there was reasonable doubt that the defendant had committed these crimes, their seriousness should have been enough to order detention pursuant to Article 102, Paragraph 1, Item 4 (provisions referring to particularly serious circumstances of a crime).

Several witnesses stated that they had been visited by a police officer a day or several days before the main hearing. The defence filed a charge against the unknown perpetrator claiming that police officers had paid visits to witnesses in order to 'refresh their memory'.

Many witnesses who, according to the indictment or the pronounced verdict, had suffered damage due to the criminal acts (witnesses Marica Mitrović, Tadija Mrkonjić, Zlata Latković, Petar Penavić and Marija Penavić) were not asked during the main hearing whether they wished to make a property request, nor was it overtly established that they had the right to claim the status of injured persons.

We believe that after the prosecuting attorney dismissed charges against the defendants Vučetić and Gunj during the main hearing, the Court should not have terminated the procedure, but rather separated the case against the defendant Perić, and dismissed the indictment against the defendants Vučetić and Gunj. Namely, the procedure can only be terminated if the prosecutor dismisses charges before the start of the main hearing. As this was not the case here, the Court should have acted as stated above. With a legally valid decision on dismissal of the indictment, the position of the defendants Vučetić and Gunj would be somewhat more favourable in case the procedure is reinstigated.

Despite of the engagement of victim support volunteers (all members of a victim support agency which supports victims and witnesses in court procedures before the Vukovar County Court), which sets an example for other courts, the witnesses in this procedure, **who had suffered severe trauma and lost family members to execution, were often agitated and unfocused. It was evident that** for such witnesses the volunteer support was not enough and they required expert help.

The trial against the defendants Rahim Ademi and Mirko Norac

The Zagreb County Court

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

Indictment: initial Indictment No: K-DO-349/05 issued on 22 November 2006; Amended Indictment issued on 20 May 2008

Defendants: Rahim Ademi (undetained and subjected to the measures specified by the ICTY) and Mirko Norac (during the procedure served a prison sentence at the Glina penal institution)

War Crime Council: Judge Marin Mrčela, Council President; Judges Siniša Pleše and Jasna Pavičić, Council members; Judge Zdenko Posavec, additional judge

Prosecution: Antun Kvakan, Deputy State Attorney of the Republic of Croatia, and Jasmina Dolmagić, Zagreb County Deputy Attorney.

Defence: lawyers Čedo Prodanović and Jadranka Sloković Glumac (representing defendant Ademi), and lawyers Željko Olujić and Vlatko Nuić (representing defendant Norac)

This is the first case that has been referred to the Republic of Croatia by the ICTY, pursuant to Rule 11*bis* of the Tribunal's Rules of Procedure and Evidence.[51]

In 2006, the State Attorney's Office of the Republic of Croatia issued a direct indictment against Mirko Norac and Rahim Ademi, aligning the original indictment of the ICTY Prosecution Office with the positive regulations of the Republic of Croatia. As there were no legal obstacles to such an indictment, the indictment became legally valid. It was based on the evidence material compiled by ICTY investigators.

The main hearing started on 18 June 2007. In 12 months, 77 trial sessions were held, 70 witnesses were heard, 20 witnesses were examined through video link by an out-of-court council, and hundreds of documents were read, briefly presented and examined, including all commands.

The first-instance verdict No: II-K-rz-1/06 was reached on 29 May 2008. Rahim Ademi was acquitted of all three charges in the indictment. Mirko Norac was acquitted on the charge of responsibility for random artillery, missile and mortar attacks, but convicted on other two charges: the charge of failing to prevent, curtail or punish his subordinate units, thus accepting the consequences of their criminal acts – death of civilians Nedjeljka Krajnović, Stana Krajnović, Đuro Vujnović and Stevo Vujnović, and destruction of property; and the charge of failing to prevent, curtail or punish his subordinates, thus

[51] Pursuant to Article 42, Paragraph 2, Item 4 of the Criminal Procedure Law; and Article 28, Paragraphs 2 and 3 of the Law on the Application of the Statute of the International Criminal Court and Prosecution of Crimes Against the Values Protected by the International Humanitarian Law..

accepting the consequences of their criminal acts - killing and wounding of the war prisoners Nikola Stojisavljević and Nikola Bulj. He was sentenced to five years in prison for each charge, receiving a joint sentence of seven years in prison.

Opinion

The Medak pocket war crimes trial tested the competence of the Croatian judiciary to conduct a criminal procedure against Croatian highly ranked military officers according to the standards of a fair trial, as well as its ability to independently establish and interpret facts about the committed crimes regardless of the pervasive political perspectives on the character of war and the *Pocket 93* military operation. It was expected that this trial would greatly contribute to the enhancement of processes of dealing with the negative heritage of the past, help reaffirm values crushed by the crime, and encourage condemnation of crime by shifting the attitude of the society from denial of crimes committed by its nationals and reluctunce to their prosecution, to solidarity with victims. It was also expected that the procedure, and particularly the verdict and imposed penalty, would have a positive influence on general prevention of violations of humanitarian law.

With the procedure over and the first-instance verdict announced, **we wish to express concern** in relation to the above stated expectations.

We believe that the State Attorney's Office of the Republic of Croatia dealt with this case with reluctance, doing only as much as it was required to meet the obligations towards the international community, but lacking true eagerness to reveal facts about committed crimes and punish those responsible. Oversights of the State Attorney's Office significantly influenced the verdict, which in its convicting part included only five out of 32 victims mentioned in the indictment.

Receiving the original indictment of the ICTY, the State Attorney's Office assessed that «the evidence on which the indictment is based is of a high enough degree of informativeness, both qualitatively and quantitatively, to issue a new indictment without additional investigation, basing it on evidence which provides required degree of informativeness pursuant to Article 191, Paragraphs 1 and 6 of the Criminal Procedure Law.» [52] However, **an additional investigation later proved to have been requisite** for establishing the zones of responsibility among the units which were engaged in the *Pocket 93* operation, as well as the chain of command and command authorities. The investigation would primarily have helped the State Attorney's Office to clarify the role of the accused and other persons who as commanders participated in planning and execution of the *Pocket 93* operation (including present-day Admiral Davor Domazet Lošo, Special Police Colonel Željko Sačić, and General Mladen Markač), and it would assumably have revealed the facts which were later discovered during the trial procedure. Namely, during the presentation of evidence, it was demonstrated that some crimes referred to in the indictment took place in the region which was under the control of the Croatian Special

[52] The Indictment, p. 17

Police Forces, which were not under the command of the accused Rahim Ademi or Mirko Norac at the time of or immediately after the operation *Pocket 93.* The revelation of new circumstances during the evidence procedure indicated that **it was essential to amend the indictment and align it with the newly established facts.** However, the changes that were made have not qualitatively strengthen the indictment nor did they include a change to the factual description, which resulted in five more people being excluded from the convicting part of the verdict. The amended indictment also failed to include two victims which had been mentioned in some of the witness statements. [53] In addition, the evidence material and the evidence procedure also revealed that the commanding officers who were under the direct command of the second accused gave orders that the soldiers be given explosive to mine houses and that 40 bodies be transported to a house on the outskirts of Gospić, and then thrown and buried in the septic tank. These facts were not included in the altered indictment.

The main prosecutor acted passively in a range of situations (for example, proposal of evidence, posing questions, raising objections, or selection of witnesses without prior investigation whether selected witnesses were still alive, where they resided, etc.). Instead, he let the defence take initiative, with a likely intention to obtain the goals of the prosecution through their opposition.

Although the evidence procedure brought to light the crimes which were committed outside the zone of command responsibility of the accused, and thus indicated the direction for future investigations, we are concerned whether and how efficiently the State Attorney's Office will conduct necessary investigations against responsible commanders and those persons which were named by protected witness No: 6 as direct perpetrators of crimes in the Medak pocket. **We believe that indictments against these persons should already have been issued.**

Judge Marin Mrčela, the War Crime Council President at the Zagreb County Court, conducted the procedure in accordance with the law and in an efficient manner, showing respect for the victims and their dignity. Provisions of Article 238, Items ***a*** through ***d*** of the Criminal Procedure Law, regulating special conditions of participation and examination of protected witnesses in a criminal procedure, were applied. Also applied were provisions of the Rules of Procedure and Evidence of the ICTY with modifications and amendments, and provisions of Article 28 of the Law on Application of the Statute of the International Criminal Court and Prosecution of Crimes Against the Values Protected by the

[53] Six civilian victims (Anđa Jović, Milka Bjegović, Boja Pjevač, Dmitar Jović, Mara Jović, and Mile Pejnović) were not included in the convicting part of the verdict since it was established that they were killed in the zone of responsibility of the Special Police. During the evidence procedure it was further established that these units were not under command of the accused (legal validity of this fact is still to be established). However, no one responsible for these crimes has been accused. Some victims were omitted from the verdict because factual description of the alleged crime in the indictment had not been changed. These victims include Pera Krajnović, Boja Vujnović and Janko Potkonjak, for whom it was established during the evidence procedure that they were not killed in mortar attack (as it was stated in the indictment), but by direct actions of Croatian soldiers (the fact which was not entered in the amended indictment). Another unchanged fact was that victims Nikola Jerković and Branko Vujnović, killed by unlawful actions of Croatian soldiers, were soldiers, and not civilians as it was stated in factual description. Finally, the indictment did not include civilian victims Štefica Krajnović and Milan Radaković, who were allegedly killed by members of the Croatian Army, and whose names appeared in witness statements.

International Humanitarian Law. International legal aid was used during the presentation of evidence and examination of witnesses residing in Canada, the U.S.A., Serbia and Norway.

The Supreme Court of the Republic of Croatia is still to make a decision on the lodged appeals. **We find some conclusions of the Court ambiguous, and fear that effects of the pronounced minimum sentence and the way it was justified could endanger individual and social processes of establishment of justice after the war, and prevention of war crimes in general.**

We question the legal assessment that the person accused and convicted of *failure to prevent, curtail or punish* commitment of a crime against international humanitarian law (that is, for failure to act) could not be held criminally resposible for crimes committed on the first day of the operation, because he had not ordered these crimes. On the basis of such assessment the Court omitted all seven civilian victims from the convicting part of the verdict against Mirko Norac, **who were killed as a result of unlawful actions of his subordinates on the first day of the operation *Pocket 93***. [54] The foregoing legal assessment did not take into account the criminal responsibility of a commander for **failing to punish** the perpetrator of a crime against humanitarian law, although in this case the Court established that Mirko Norac never did penalize or report the perpetrators despite his awareness of the crimes committed on the first day of the operation (see Explanation below).

Further, we believe that passing a minimum sentence on Mirko Norac (a commander who failed to take all required actions to prevent, curtail or punish his subordinates for committing serious crimes such as the massacre and crucifixion of a war prisoner on a tree), disregard of the fact that complete destruction of houses and property resulted in permanent dislocation of entire village population, and taking as an extenuating circumstance «the youth and inexperience [of the accused] *caught in the atmosphere of patriotic elation*», sends an unambiguous message that any crime serving a «higher cause» will be allowed and «concealed», and destroys hope (let alone expectations) of crime victims and their families that their suffering will be recognized through judicial mechanisms (see Explanation below).

Explanation

The Court found the second-accused Mirko Norac Kevo **criminally responsible** for a war crime against civilians, pursuant to Article 120, Paragraph 1 and related to Article 28 of the Penal Law of the Republic of Croatia, and a war crime against war prisoners, pursuant to Article 122 and related to Article 28 of the Penal Law of the Republic of Croatia, but **to a lesser degree** than what the indictment charged him with. The Court established that the second-accused was not responsible for the crimes against civilians and war prisoners committed in the zone of responsibility of the Special Police Forces of the Republic

[54] The court established that the following civilians were unlawfully killed in the zone of responsibility of the accused Mirko Norac on 9 September 1993: a blind 83-year-old Bosiljka Bjegović, Mile Sava Rajčević, Ankica Vujnović, Milan Rajčević, Đuro Krajnović, and sisters Ljubica and Sara Kričković.

of Croatia, which were not under his command [55], or for the death of victims who were established to have been killed as war prisoners (but designated as civilians in the indictment, which the prosecution failed to change) or soldiers in battle.

However, we question the decision of the Court that the second-accused Mirko Norac is **not criminally responsible for civilian victims who were killed due to unlawful actions of his subordinates on the first day of the *Pocket 93* operation.** This decision was based on the **legal assessment** that the person accused and convicted of ***failure to prevent, curtail or punish*** *commitment of* a crime against international humanitarian law (that is, for failure to act) could not be held criminally resposible for crimes committed on the first day of the operation, because he had not ordered these crimes.

The Court explained that the second-accused, after learning about unlawful actions of his subordinates, failed as a commander to take required steps to prevent such actions and ensure that they would not repeat, or to identify and penalize direct perpetrators, which made him criminally responsible for unlawful treatment of civilians which took place within the zone of his responsibility in the course of the following days.[56] Following such legal assessment and decision on guilt, the Court amended the indictment in the respective part of the factual description (making it more precise and reducing the degree of criminal responsibility), leaving out all civilian victims killed due to unlawful actions of the Croatian soldiers on 9 September 1993 (the civilians established to have been killed unlawfully within the zone of responsibility of Mirko Norac on 9 September 1993 include a blind 83-year-old Bosiljka Bjegović, Mile Sava Rajčević, Ankica Vujnović, Milan Rajčević, Đuro Krajnović, and sisters Ljubica Kričković and Sara Kričković; however they were left out of the indictment following the foregoing legal assessment).

We believe that the foregoing legal assessment did not take into consideration the criminal responsibility of a commander for **a failure to punish** the perpetrator of a crime against humanitarian law. The Court established that Mirko Norac had never penalized or reported unlawful actions of his subordinate soldiers although he was aware of their actions even on the first day of the *Pocket 93* operation.

One of the commander's duties during war or an armed conflict is to preclude actions which are against humanitarian law, and which would lead to consequences defined as adverse by the law for the opposing side – its civilians, war prisoners, property, cultural heritage or similar. In relation to these protected objects, **the commander should in fact act as a guarantor**, being the person who has the authority to command his subordinates so that their actions directed towards achievement of the aims of war or an armed conflict do not oppose principles of the international law. In pursuit of the main aims of their armed force, some members of military units take actions which are not stated in orders. When such actions enter a sphere of

[55] It should be noted, however, that establishing zones of responsibility within such a small geographical area simply on the basis of where a victim was killed could not have been so easy. For example, on 9 September 1993 Anđa Jović fled from the village of Divoselo, which was the zone where the preparatory artillery-missile-mortar attack was carried out. It was established that she was killed at the Drenjac field (on 11 September 1993), which was under the responsibility of the Special Police. Consequently, the accused Mirko Norac was not found responsible for her death although her body was found in a septic tank in Gospić where it was brought, thrown and buried by members of the units under the command of Mirko Norac!

[56] The Verdict: reference number II K-rz-1/06, pp. 262 and 266

war crimes, and the commander, who is aware of them, fails to take actions against perpetrators, he in fact widens his sphere of command tolerating the conduct of his subordinates. **The criminal responsibility of the commander lies exactly here, in the failure to punish such conduct and penalize the perpetrators of unlawful actions, which should be an active, integral part of his role as the commander.** Namely, a duty of the commander in time of war is to preclude forbidden actions. This equally relates to actions which have not been performed, those carried out, and any other future forbidden actions. The commander's task is **to take and firmly display his position by punishing and prosecuting the perpetrator.** A failure to take steps to preclude consequences that follow from actions of his subordinates committed against the international humanitarian law is equally unlawful as conduct of his subordinates which falls within the sphere of war crimes.

Further, the Court did not find it proven that the units under the command of the second-accused Mirko Norac acted unlawfully *using armed force in order to permanently relocate civilian population, which actually happened*, as alleged in the indictment. The Court explained that this motive of the Croatian Army was not proven because it was established that the relocation of civilians was not planned, and that formally, and in reality, preparations were made to ensure prevention of violations of the humanitarian law regarding war prisoners, and limitation of potential unlawful actions. However, in the indictment this charge was stated in Item 5, which referred to unlawful actions «committed after the operative manoeuvre, performed as part of the *Pocket 93* operation, ended, and after 15 September 1993, when during ceasefire the agreement was signed for Croatian troops wihdrawal from liberated and invaded areas to their original positions», and was therefore not strictly related to planning of or preparations for the *Pocket 93* operation. Also, such interpretation presupposes that the use of force (murders, deliberate destruction of houses, slaughter of animals, and contamination of wells) could not have occured as a direct reaction of vengeance (to the order of withdrawal), but with the exact motive being the intention to thwart the return of the civilian population to the villages. The Court did not find any other motive for such conduct of the soldiers under the command of Mirko Norac. Besides, it is obvious that a commander who sees houses being massively mined and does not react to this by issuing forbidding orders or applying disciplinary measures accepts the consequence that people might never be able to return to their homes! And this is the exact consequence which happened in this case.

All things considered, we believe that **during the sentencing process** the Court did not sufficiently consider the consequence arising from «a complete destruction of property in the Medak pocket, which was established during the procedure»[57], and this was the inability of more than a hundred families to return to their homes.

Namely, the Council passed minimum sentences on the second-accused Mirko Norac for the crimes he was convicted of[58], explaining that his actions were at a low level of guilt (potential premeditation) as he did not order the criminal actions but failed to prevent, curtail or penalize them, and that the scope of

[57] The Verdict: reference number II K-rz-1/06, p. 264

[58] The Verdict: reference number II K-rz-1/06, pp. 282-283

destruction of the protected property in relation to individual civilians was not maximum. Making this assessment, the Court considered the area where the operation took place (an area of 100 km), number of soldiers who participated in the operation on both sides (several hundreds) and the number of civilians in the area, including women and the elderly (several hundreds), as well as the fact that due to unacting of the second-accused in this specific case four civilians and one war prisoner (a soldier) were killed, one a war prisoner was tortured, while both war prisoners were subjected to inhumane treatment. The Court explained that «this was a different case to cases where property was almost entirely destroyed», but did not state whether it actually considered a number of people affected by this, or their suffering caused by complete destruction of their homes and inability to return to their villages.

Furthermore, although the Court acknowledged the awareness of Mirko Norac having previously been validly convicted of the same criminal offence (pursuant to Article 120, Paragraph 1 of the Penal Law of the Republic of Croatia) and sentenced to 12 years in prison, it did not consider this fact as an aggravating circumstance which indicated that the conduct of the convict was not in accordance with the law even before he committed these crimes. Yet, the Court considered the defendant's young age (just under 26) as an extenuating circumstance, stressing that «obviously his young age and inexperience, ***caught in the atmosphere of patriotic elation***, contributed to his indifference to potentially occurring forbidden consequences, and failure to utilize his command authority to prevent and punish illegal actions.»

The Court also considered moral and human decisions made by Mirko Norac, which earned him numerous medals for merits in the Homeland war. However, it is not clear what relevance the Court gave to the following statement in the explanation: **„Admittedly, [the accused] had failed to express reverence for the killed or sympathy for those who lost their loved ones in the military operation.»** This was clearly a circumstance which testified to the conduct of the accused after the committed crime and his attitude towards the injured persons, and as such should also have been taken into consideration in the sentencing process.

We still have not recorded another case in which a convict who has such considerable assets as Mirko Norac (retired from the Croatian Army with a HRK 6.000,00 monthly pension; owner of a 2007 Volkswagen Passat and a 100 m2 apartment; single with no children)[59] has at the same time been fully exempt from paying the cost of the criminal procedure (regarding the convicting part of the verdict), pursuant to Article 122, Paragraph 4 of the Criminal Procedure Law. The Court explained that the cost of this criminal procedure (amounting to over HRK 200.000,00) largely exceeded his income, so charging him **even a part of the entire cost** would endanger his existence.[60] This decision is particularly puzzling when considered within the context of a common court practice in civic cases where victims' family members who pursue lawsuit against the Republic of Croatia [61] are typically rejected and despite their poor assets charged all costs of the lawsuits.

[59] The verdict: reference number II K-rz-1/06, p. 6

[60] The verdict: reference number II K-rz-1/06, p. 284

[61] Šeatović against the Republic of Croatia; Mileusnić against the Republic of Croatia

The case against the defendant Slobodan Raič

Vukovar County Court

Criminal offence of war crime against civilians pursuant to Article 120, Paragraph 1 of the Basic Penal Law of the Republic of Croatia

The defendant: Slobodan Raič, detained since 6 May 2006

War Crime Council: Judge Nikola Bešenski, Council President; Judge Stjepan Margić, Council member; and Judge Željko Marin, Council member

Prosecution: Vlatko Miljković, Vukovar County Deputy State's Attorney

Defence: lawyer Zlatko Jarić from Vukovar

Opinion of the monitoring team after the first-instance court procedure[62]

The case against Slobodan Raič is one of the several criminal cases initiated by the Vukovar County State Attorney's Office in the last two years for which we believe the indictments were issued on the basis of insufficiently competent investigations. While some indictments were not precisely defined (such as the indictment for the war crime in Berak), some were not based on a closed set of indications (e.g. this indictment, and the indictments for crimes in Berak and Sotin). The practices observed during this procedure included the chief prosecuting attorney either dismissing the indictment or entirely changing the factual description of the criminal offence, and the Court ordering acquittals or pronouncing sentences lower than the set minimum for a war crime against civilians.

The criminal procedure against Slobodan Raič was initiated following the indictment charging Raič with a serious war crime – imprisonment and execution of the civilian Slavko Batik in Vukovar in 1991. After the veracity of the key witness' statement was denied, there was no evidence proving that the defendant had killed Slavko Batik, so the prosecution dismissed the charge of execution. The indictment was then changed to charge the defendant with inhumane treatment of the unlawfully captured Slavko Batik by denying him right to medical help.

The War Crime Council of the Vukovar County Court found Slobodan Raič guilty of a war crime against civilians due to unlawful detention of a civilian and denial of medical help. The Council found that the defendant Raič unlawfully detained Slavko Batik and by denying him right to medical help breached the rules of the International Humanitarian Law and committed a war crime pursuant to Article 120, Paragraph 1 of the Penal Law of the Republic of Croatia. However, taking into account

[62] On 30 October 2008 the Supreme Court of the Republic of Croatia overturned the verdict reached by the Vukovar County Court. The Supreme Court explained that the decision of the first-instance court in the part regarding the alleged ill-treatment of the injured person Slavko Batik was based on incorrectly established facts. On the same day, 30 October 2008, the Supreme Court cancelled detention for the accused Slobodan Raič (who had thus far been detained for almost two and a half years).

a number of extenuating circumstances, the Council sentenced him to two and a half years in prison, which is significantly lower than a minimum prescribed sentence for a war crime.

In view of the above, we wish to point to the following controversial factors:

- Will the Supreme Court find that under the material circumstances the defendant really denied the victim right to medical help and with this inhumane act committed a war crime against civilians?

- Will the Supreme Court find that the defendant has been proved to have detained the civilian? Evidently, conclusions about the acts of the defendant can be reached from his defence and the evidence presented by the State Attorney's Office (i.e. a photograph showing the victim being taken away and a video recording presenting the same incident)

- It is possible that the Supreme Court will overturn the verdict and order a new trial due to an absolute breach of the provisions of the Penal Law stated in Article 367, Paragraph 8 if it finds that this law was violated during the evidence procedure when an extract from a criminal record of the defendant was read. Namely, the presentation of evidence, in which an extract from the accused criminal record was read, was carried out after the defendant had presented his defence at the main hearing. He announced this in his statement given at the beginning of the main hearing, stating that he would present his defence at the end of the evidence procedure. The records from the main hearing state that the extract from his criminal record was read with the consent of all parties, but it is not clear whether this consent also referred to the consent of the defence for this piece of evidence to be presented after the presentation of defence.

When the first-instance court verdict was reached, sentencing the accused to two and a half years in prison, the detention for the defendant Raič was extended due to a danger of escape (pursuant to Article 102, Paragraph 1, Item 1 of the Penal Law). By this time, the defendant had already spent one year and nine months in custody, which was more than a half of his prison sentence (the verdict was, however, non-final). Thus, the extention of detention for the defendant practically turned into serving of the sentence.

The case against the defendants Novak Simić (tried in absentia), Miodrag Kikanović and Radovan Krstinić

Osijek County Court

Criminal offence of war crime against civilians pursuant to Article 120, Paragraph 1 of the Basic Penal Law of the Republic of Croatia

The defendants: Novak Simić (tried in absentia), Miodrag Kikanović, kept in custody since 22 February 2007, Radovan Krstinić, kept in custody from 22 February 2007 to the pronunciation of the verdict on 21 April 2008

War Crime Council: Judge Krunoslav Barkić, Council President; Judge Branka Guljaš, Council member; and Judge Dubravka Vučetić, Council member

Prosecution: Dražen Križevac, Osijek County Deputy State's Attorney

Defence: lawyers Hrvoje Krivić, Dinko Matijašević and Mihajlo Marušić

Opinion of the monitoring team after the first-instance court proceedings [63]

The procedure was properly conducted.

The pronounced non-final verdict found the defendants guilty of committing a war crime against civilians in Dalj while serving as members of the Military Police of the so-called Republic of Srpska Krajina Army. They received prison sentences of nine years (Novak Simić), five and a half years (Miodrag Kikanović), and four years (Radovan Krstinić).

The defendant Simić was tried in absentia, while the defendants Kikanović and Krstinić attended the main hearing. Although we generally do not support trials in absentia, in this case we find it justified due to the seriousness of the charge which accused the defendants of being accomplices to the crime (inflicting physical injuries on the injured person Antun Kundić, from which he later died). Namely, the facts established in relation to the defendants Kikanović and Krstinić related in great part to Novak Simić as well. Also, the time spent on establishing the facts in relation to the charges accusing Simić of being a single perpetrator in the physical abuse of the injured persons Ivan Horvat and Tomo Duvnjak did not cause any prolongation of the proceedings.

The arising question is: Will the Supreme Court judge the extenuating and aggravating circumstances in the same way as the War Crime Council of the Osijek County Court did?

Namely, the first-instance court made no finding of aggravating circumstances in the case against Kikanović and Krstinić. In the absence of aggravating circumstances, the extenuating circumstances found in relation to the defendant Krstinić (exemplary behaviour in court, absence of previous

[63] In the meantime, at the session held on 3 December 2008, the Supreme Court of the Repubic of Croatia altered the decision on penalty reached by the Osijek County Court, increasing the sentence for each of the accused for one year. The accused Simić thus received ten years, the accused Kikanović six years and six months, and the accused Krstinić five years of imprisonment.

convictions, being well integrated into the community of Dalj, good family relations (being married, with two children), and a serious health condition (suffering from lung tuberculosis) were taken as extremely extenuating, so that the defendant was sentenced to four and a half years in prison, which is less than the prescribed minimum sentence for the given crime.

However, in relation to the defendant Simić, the Court found aggravating circumstances of killing one person and inflicting severe physical injuries on four persons, superintendence over the co-defendants in the Army hierarchy, retribution (for the successful "Flash" military operation) as a partial motive for the committed crime, and ferocity of his acts. In the explanation of the verdict there was no indication as to why some of the stated circumstances (such as involvement in killing one person or retribution as a partial motive) were viewed as aggravating for one defendant, but not for the other two.

The repeated procedure against the defendant Dobrivoje Pavković

Bjelovar County Court

Criminal offence of war crime against war prisoners pursuant to Article 122 of the Basic Penal Law of the Republic of Croatia

The defendant: Dobrivoje Pavković, undetained

War Crime Council: Judge Antonija Bagarić, Council President; Judge Milenka Slivar, Council member; and Judge Ivanka Šarko, Council member

Prosecution: Ivan Rahlicki, Bjelovar County Deputy State's Attorney

Defence: lawyers Momčilo Borčanin and Božica Jakšić

Opinion of the monitoring team after the first-instance court proceedings[64]

The procedure was properly conducted.

Upon the analysis and evaluation of the presented evidence, the Court found that the defendant had been proven guilty of war crime, and reached a convicting verdict. The defendant was sentenced to 15 years in prison. In reaching the verdict, the Court accepted the statements of the two witnesses who had seen and recognized the defendant.

The defendant Pavković was not kept in custody and he attended the main hearing; however, shortly before the pronunciation of the verdict he escaped from Croatia. Thus, he has been declared a fugitive from justice and an international warrant for his arrest has been issued. He has residency in the Republic of Serbia and both Croatian and Serbian citizenships.

Explanation

In the criminal procedure against the defendant Dobrivoje Pavković for the criminal offence pursuant to Article 122 of the Penal Law of the Republic of Croatia, instigated by the indictment No: K-DO-81/03 (issued by the Bjelovar County State Attorney's Office on 5 February 2004 and altered at the main hearing of 7 November 2007), the Bjelovar **County Court** (**before the War Crime Council comprising of Judges** Antonija Bagarić as the Council President, and Milenka Slivar and Ivanka Šarko as Council members), reached a verdict of guilty after the main hearing was conducted and concluded in presence of the public and the accused Dobrivoje Pavković, the Bjelovar County Deputy State's Attorney Ivan Rahlicki, and the hired defence lawyer Božica Jakšić.

The Court adjudicated that the defendant Dobrivoje Pavković had committed the following war crime against war prisoners on 1 September 1991: according to the agreement he had with other armed members of Serb paramilitary units, he was aware of the torture and inhumane treatment of war prisoners, and was involved himself in the inhumane treatment of members of the village guard and Croatian police,

[64] At the public session held on 14 May 2008, the Supreme Court of the Republic of Croatia upheld the verdict of the War Crime Council of the Bjelovar County Court, which sentenced the accused Dobrivoje Pavković to 15 years of imprisonment.

thus injuring Željko Hunjek, Alfons Tutić, Vladimir Zimić and Marjan Polenus, and causing the death of Srećko Mandini, Željko Bulić and Eugen Lapčić. He was sentenced to 15 years in prison.

During the original trial, the charges against the first accused Stojan Vujić and the second accused Dobrivoje Pavković were dropped in absence of evidence, pursuant to Article 354, Item 3 of the Penal Law.[65] The Supreme Court decided the case should be reversed, rejecting the conclusions of the first-instance court on absence of evidence in the belief that the validity of the statements given by the witnesses who had seen and recognized both defendants should not have been denied.

The repeated procedure was conducted against the accused Dobrivoje Pavković, since the case against the first accused Stojan Vujić, who was unavailable to the Croatian judiciary, was separated.

In the repeated procedure, out of the total of 17 witnesses, the following witnesses testified against the defendant: witness Vladimir Zimić stated he was absolutely certain that the defendant Pavković shot him in the legs on the day in question; witness Mirko Joščak stated that the defendant was among some 20 members of Serb paramilitary units who had tied them, and beat them with rifle butts and boots while they were lying on the ground; witness Zdravko Joščak stated he had heard from others that the defendant was among the members of Serb paramilitary units who beat them and abused them. The court fully accepted the validity of the statements given by witnesses Klimeš, Halupecki, Mlinarić and Ružička, who had disputed the alibi of the defendant by stating that on the day of the attack on the village of Doljani they did not see the defendant in the village or in the vicinity of the local grocery store. Namely, during the criminal procedure no evidence that was presented indicated that there would be a reason for any of the witnesses to give false testimonies. The witnesses stressed that the fact that the village of Doljani was a home to multi-ethnic population only strengthened the relations between villagers. The statement of the witness Dušanka Pavković helped resolve doubts about some crucial facts in the cognitive sense. She confirmed having spoken to the defendant on the day when the armourmed vehicle of the Croatian Ministry of Interior drove through the village, which was the day after the committed crime according to the presented defence and some of the witness statements.

The court explained the grounds on which it had established that the defendant, who had a mutual agreement with other perpetrators about this criminal act, was actually aware of the abuse and inhumane treatment of war prisoners (three of whom were killed), and involved in it himself, acting with intent. Thus he breached the International Humanitarian Law and committed a crime against war prisoners.

During the main hearing, no violations of the Code of Criminal Procedure were observed. The Council President informed the defendant on his legal rights and duties, presided over the hearing professionally and with focus, ensured that the case of the procedure was extensively discussed but at the same time took care that it was run economically.

The Council President properly recorded witness statements into the minutes of the court hearing. The time that the defendant had spent in custody from 16 to 19 December 2003 and from 7 November 2007 onwards was calculated into the pronounced sentence.

[65] The original procedure was instigated following the indictment No: K-DO-81/03 issued by the Bjelovar County State Attorney's Office on 5 February 2004, which was partially modified at the main hearing of the repeated procedure on 7 November 2007.

The repeated (third) trial against the defendant Nikola Cvjetićanin

Gospić County Court

War Crime Council: Judge Dušan Šporčić, Council President; Judge Dubravka Rudelić, Council member; and Judge Milka Vraneš, Council member

Prosecution: Željko Brkljačić, Gospić County Deputy State's Attorney

Defence: court-appointed lawyer Dušan Višnić

Victims – the executed: Josip Matovina and Ana Bujadinović

Opinion

The procedure against the defendant Nikola Cvjetićanin for a war crime against war prisoners was properly conducted.

In the repeated trial against Nikola Cvjetićanin, the Gospić County Court found the defendant not guilty of the war crime against war prisoners which he was charged with. This had been the third trial against the defendant in six years.

The first trial for the criminal offence of a war crime against civilians was conducted in 2002 against, at that time, the first accused Nikola Cvjetićanin and the second accused Milan Milošević. After the completed procedure, defendant Cvjetićanin was found guilty and sentenced to nine years in prison, while defendant Milošević was also found guilty. The Supreme Court upheld the conviction against the second accused and sentenced him to 13 years in prison. However, the first instance conviction against the first accused Cvjetićanin was dismissed and the case was reversed for re-trial. In the repeated trial conducted in 2004, the War Crime Council of the Gospić County Court (consisting of Judge Pavle Rukavina, Council President; and Judges Milka Vraneš and Dušan Šporčić, Council members) concluded that on the basis of the presented evidence and established facts, the defendant Nikola Cvjetićanin had not been proven guilty of a war crime he was charged with pursuant to Article 120, Paragraph 1 of the Penal Law of the Republic of Croatia. At the public session of 21 December 2006, the Supreme Court upheld the appeal of the State's Attorney and abolished the overturned verdict, reversing the case to the first-instance court for a new trial.[66]

In reaching the verdict of acquittal, the court relied on the statement of the protected witness, which it had upheld.

[66] In the repeated procedure, the First Instance Court focused on evaluation of the evidence selected from the evidence record on the basis of a specifically issued decision. This decision was altered in the appeal procedure, so that the minutes of the questioning of the so called protected witness under the pseudonym «Witness No. 1» could not be taken out of the record, as it constituted a piece of unlawful evidence (the decision No. Kž-237/05 issued by the Supreme Court on 21 December 2006 broj). The Supreme Court believed that neglecting this evidence and its relation to other evidence would lead to incorrect and incomplete establishment of facts.

As the burden of proving the guilt of the defendant lay on the prosecuting attorney, who was unable to prove during the evidence procedure that the defendant Cvjetićanin shot the injured persons and thus committed the crime described in the indictment (while managing to prove that he followed the order to step out of the procession and go back to the house where the defendant Milan Milošević held the injured persons), the court appropriately applied the rules of the Presumption of Innocence (praesumptio innocentiae) and 'in dubio pro reo' (when in doubt, the court should judge in favour of the defendant) to assume the defendant's innocence, and decided to acquit him of all charges.

However, this case will be remembered for the rejection of the protected witness to be questioned via video link, even though the link secured the visual protection of the witness and the audio protection (voice distortion). It is not clear why the Council President failed to utilize other possibilities to examine the witness, which would be in accordance to the Penal Law. [67]

[67] Article 243, Paragraph 2 of *the Code of Criminal Procedure* prescribes a fine up to HRK 20,.000; also, a witness who has been summoned to court but refused to testify can be detained.

The case against the defendants Tomislav Madi, Mario Jurić, Zoran Poštić, Davor Lazić and Mijo Starčević

Vukovar County Court

Criminal offence of a war crime against civilians pursuant to Article 120, Paragraph 1 of the Basic Penal Law of the Republic of Croatia

The defendants: Tomislav Madi, Mario Jurić, Zoran Poštić, Davor Lazić and Mijo Starčević (all kept in custody)

War Crime Council: Judge Ante Zeljko, Council President; Judge Jadranka Kurbel, Council member; and Judge Branka Ratkajec-Čović, Council member (replaced by Judge Stjepan Margić due to retirement of Ratkajec-Čović)

Prosecution: Vlatko Miljković, Vukovar County Deputy State's Attorney

Defence: lawyers Emil Havkić and Zlatko Cvrković (for the defendant Madi); Biserka Treneski, later replaced by Vjekoslav Cestar (for the defendant Jurić); Branko Ivić, later replaced by Zlatko Jarić, replaced by Gordan Perić (for the defendant Poštić); Marko Dumančić (for the defendant Lazić); and Dražen Matijević (for the defendant Starčević)

Opinion

The trial was conducted in accordance with the international standards of a fair trial. The convicts received sentences which were in accordance with the law and appropriate to the seriousness of the committed crime. In our opinion, this trial and the pronounced penalty make a positive contribution to the establishment of individual and societal responsibility for the committed crime, and establishment of justice towards victims. They should additionally contribute to the prevention of future violations of the international humanitarian law.

This trial will also be remembered for the decision of the War Crime Council to order presentation of numerous pieces of evidence during the evidence procedure, which should in fact have been presented during the investigation, in order to clarify uncertainties about the case.

For 13 years, no criminal procedure had been initiated for the crimes committed against the Olujić family. It was only in 2005 that the first investigation was launched after the public had learnt about this crime from the Latinica TV show. The indictment was issued by the Vukovar County State Attorney's Office on 29 December 2006. Some of the witness statements, however, showed that the competent authorities had been aware of this crime since 1992, and even familiar with the likely perpetrators. [68] The evidence procedure also revealed omissions in the preliminary police inspection

[68] The witness Ivan Čačić stated that at the time in question he was the head of the Secret Intelligence Sevice of the 109th Vinkovci Brigade. In summer 1992, «Mato Boroz came to his office and informed him on the execution of the Olujić family in Cerna. Although the witness knew of this crime, and informed Mirko Grošelj, the head of the Osijek Secret Intelligence Service, about it, SIS failed to investigate this crime. The investigation was conducted by either Vinkovci or Županja Police Department, the witness is not sure.»

The witness Zvonko Jurman, an officer of the Osijek Secret Intelligence Service at the time in question, stated that «in spring 1992 Ivan Čačić informed him that he had learnt from Mato Boroz that Mario Jurić had information about the execution of the

conducted in February and March of 1992. [69] The War Crime Council President, Judge Ante Zeljko, concluded that «the police investigation carried out in this case is a textbook example of how not to conduct the police investigtion.»

Explanation

A first-instance criminal procedure against the defendants Tomislav Madi, Mario Jurić, Zoran Poštić, Davor Lazić and Mijo Starčević was held before the War Crime Council of the Vukovar County Court, for the war crime against civilians pursuant to Article 120, Paragaraph 1 of the Penal Law of the Republic of Croatia, which was committed on 17 February 1992 against the Olujić family members in Cerna.

According to the non-final verdict No: K-5/07 reached on 12 February 2008, the defendants were found guilty of the indictment charges, receiving the following prison sentences: Tomislav Madi – 20 years (a maximum prison sentence); Mario Jurić – 12 years (a maximum prison sentence prescribed for a minor perpetrator of a crime); Zoran Poštić – 8 years; Davor Lazić – 7 years; and Mijo Starčević – 10 years.

The trial lasted for 11 months and included 29 court sessions. The defendants were kept in custody pursuant to Article 102, Paragraph 1, Item 4 of the Code of Practice. The defendants Tomislav Madi, Mario Jurić, Zoran Poštić and Davor Lazić were held in custody since 22 August 2007, while the defendant Mijo Starčević was ordered detention on 12 October 2006.

Considering the amount of the presented evidence, the trial was run efficiently. Still, a lot of the evidence could have been presented during the investigation rather than the trial. Namely, beside the evidence suggested and presented by the prosecution and the defence, the War Crime Council ordered presentation of additional evidence in order to clarify uncertainties about the case.[70]

Olujić family from Cerna.. … Ivan Čačić arranged him a meeting with Mario Jurić at the park *"PIK headquarters" near Vinkovci. He informed his superintendant, now deceased, Colonel Mirko Grošelj about everything. Colonel Grošelj reported the received information to Zagreb, but the witness is not sure whether he spoke to somebody from the Ministry of Interior in Zagreb.»*

[69] "Ivan Vučetić" Criminal Forensics Centre in Zagreb has on two occasions received 7.65 mm calibre shells. According to forensic results, they were fired from two Scorpio guns. The guns were not delievered to the Forensics Centre. Next, the Centre received 7.62 x 39 mm calibre shells, fired from a Kalashnikov rifle. Later the Centre received more of the 7.65 mm calibre shells. The shells delivered to the Forensics Centre by the Županja Police Department (upon the request for forensic examination of 12 March 1992) were 7.65 mm calibre. Forensic results revealed that they had been fired from a third Scorpio gun. Consequently, the Council had to exclude the minutes of 25 September 2006 from the record, those referring to the recognition of the matter, as it had not been properly conducted. The Council requested a statement from the Županja Police Department on whether during the investigation they had tried to detect papillary lines, as this finding was missing from the minutes of the inquiry of 18 March 1992 which stated that «attempts were made to detect papillary lines at all potentially significant places in the house.» Also, the Council requested a statement from this Department on whether they had excluded cigarette butts during the inspection of the floor of the house at 51a Braće Radića street in Cerna.

[70] The War Crime Council ordered presentation of following additional evidence: a DNA analysis of the defendants' blood samples; an analysis of the epithelial cells detected on a cigarette butt found at the crime scene; verification of a possible match between a tooth sample and a part of a thigh bone from the exhumed body of the victim Stojan Vujnović «Srbin» and the cell samples detected

Three of the five accused (the accused Madi, the accused Jurić and the accused Starčević) presented their defence for the first time at the trial. Following the request of the accused Jurić, Council President allowed that the defence of the accused be audio and video recorded.

The Court explained that the sentencing process included considerations of the severity of the committed crime and its tragic consequences, as well as the cruelty and obduracy of the perpetrators.

The defendant Tomislav Madi was sentenced to a maximum prison sentence on the basis of his command responsibity. The Court justified the pronounced sentence with the following statement: «... because this is a case of the most severe form of a war crime against civilians and the highest degree of guilt. The cumulation of vicious energy put forward the defendant Tomislav Madi as the central figure of the committed crime. The order to execute and plunder the whole family, and then 'blow up' their house was savage and monstrous, or to put it in more detailed and comprehensible words - cruel, brutal, fearsome and outrageous.»

The defendant Mario Jurić was sentenced to a maximum prison sentence prescribed for a minor perpetrator, pursuant to Article 110, Paragraph 1 of the Juvenile Court Law, on the basis of direct responsibility for firing several shots, along with the unidentified individual under the nickname of «Bosanac», at Radomir Olujić, Anica Olujić, a minor Milena Olujić, and a child Marko Olujić, inflicting them severe wounds from which they died. The Court justified the decision on the maximum sentence by referring to the obvious monstrosity and viciousness of the committed crime: «The execution of the Olujić familiy, in which the defendant Mario Jurić directly participated by shooting the family members and planting the explosive, was utterly brutal and fearsome, cruel and monstrous. The entire family perished in one moment. The father, the mother, the daughter and the son were murdered in their family home, which is a symbol of security. The son Marko (who was 12 years of age) was shot from a gun held close to his body with the gun barrel touching his body.»

While determining the sentence for Zoran Poštić, the Court took into consideration the state of shock which the defendant claimed to have been in while he was in the house of the murdered victims, but he regardless later asked the defendant Tomislav Madi to keep the beret hat stolen from the victims' house.

on the cigarette butt found at the crime scene; verification of a possible match between a tooth sample and a part of a thigh bone from the exhumed body of the victim Stjepan Maleničić and the epithelial cell samples detected on a male ring obtained from the witness Nevenka Madi; verification of a possible match between a tooth sample and a part of a thigh bone from the exhumed body of the victim Radomir Olujić and the epithelial cell samples detected on a male ring obtained from the witness Nevenka Madi.

The procedure against the accused Žarko Leskovac

The Vukovar County Court

Criminal act of war crime against civilians pursuant to Article 120, Paragraph 1 of the Basic Penal Law of the Republic of Croatia

Indictee: Žarko Leskovac, undetained during the trial

War Crime Council: Judge Nikola Bešenski, Council President; Judge Stjepan Margić, Council member; and Judge Jadranka Kurbel, Council member

Prosecution: Vlatko Miljković, the Vukovar County Deputy State's Attorney

Defence: Zlatko Jarić, a lawyer from Vukovar

Opinion

Žarko Leskovac was charged with beating the civilians Ljubica Tepavac and Slađana Curnić at the end of 1991 or beginning of 1992 at the premises of the Velepromet company in Vukovar. In this way he tortured and ill-treated them, and imposed suffering and injuries of body integrity, thus committing a war crime against civilians pursuant to Article 120, Paragraph 1 of the Penal Law of the Republic of Croatia. The trial ended on 26 November 2008 with a non-final verdict of acquittal reached by the War Crime Council of the Vukovar County Court.

The Council tried to examine the case thoroughly, and after the evidence procedure it reached the decision to acquit the accused of the war crime charges. The Council accepted as valid the statement of the accused, who described what had happened between him and Slađana Curnić in the basement of the detention facility on the premises of the Velepromet company, explained the reasons of her stay there and the conflict that arose between them when she tried to escape and he stopped her. The Council did not accept as valid the statement of Ljubica Tepavac nor the part of the statement of Slađana Curnić in which she described the way she and Ljubica Tepavac were treated by the acccused. The Council also concluded that Ljubica Tepavac was not a captive at the Velepromet detention facility.

In his brief oral explanation given after the announcement of the verdict, Council President stressed that in this case the Council did not consider a conduct of the accused towards other captives, or his role at the Velepromet detention facility, as this was not the matter of examination in this procedure.

The trial first started on 20 February 2006. After an adjournment which lasted over two months, the trial started anew on 18 July 2007. Trial sessions were rarely scheduled, often at intervals just short of two months merely to be careful not to exceed the two-month deadline between two sessions. In two years and nine months between the start and the end of the trial, only 18 trial sessions were held, at which 23 witnesses were heard and a rather few pieces of evidence was presented.

Speaking generally, we believe that regardless of the engagement of council presidents and council members in other cases, court procedures should be conducted with greater efficiency and trials held over a shorter period of time.

The trial against the accused Saša Počuča

The Šibenik County Court

Criminal acts of a war crime against civilians pursuant to Article 120, Paragraph 1 of the Basic Penal Law of the Republic of Croatia, and a war crime against war prisoners pursuant to Article 122 of the Basic Penal Law of the Republic of Croatia

Indictee: Saša Počuča, held in custody

The War Crime Council: Judge Jadranka Biga Milutin, Council President; Judge Sanibor Vuletin, Council member; Judge Ivo Vukelja, Council member

Prosecution: Zvonko Ivić, Šibenik County Deputy State's Attorney, and Sanda Pavlović Lučić, Šibenik County Deputy State's Attorney

Defence: Vera Bego, lawyer from Šibenik

Observations of the monitoring team about the first-instance court procedure

The War Crime Council of the Šibenik County Court convicted the accused Saša Počuča of torture, inhumane treatment, and imposing of severe suffering and body injuries to the civilians and members of the Croatian Police Forces and Croatian Army held at the detention facility at the so-called Old Hospital in Knin. For each of the criminal acts – a war crime against civilians and a war crime against war prisoners, the accused received three years of imprisonment and was handed down a five-year joint prison sentence. During the sentencing process, the Court took as a mitigating circumstance the fact that the accused was a young adult at the time of the committed crime, and applying the sentence mitigation priciple pronounced the sentence which went below mandatory minimum for the given crimes.

Although the accused denied guilt, the War Crime Council found his defence unconvincing in relation to the incriminating witness statements. As many as 14 heard witnesses, all of whom were detained or imprisoned in the detention facility where the accused was a guard, gave depositions which directly incrimated the accused. Most of them stated that the accused, acting as a guard in the detention facility, beat them, while some stated that he participated in rape and other forms of abuse.

In the sentencing process, the Court applied the sentence mitigation principle and considered the age of the accused at the time of the committed crime as a mitigating circumstance. **It is questionable**, however, **whether the Supreme Court**, if it concludes that facts were correctly established in the first-instance court procedure, **will find the application of the sentence mitigation principle appropriate**, considering a number of criminal acts the accused committed, and a number of injured persons that the first-instance court has established were beaten or in other ways abused physically (the accused put

salt on their wounds and put out cigarettes in their mouths) and sexually (the accused forced them to perform oral sex).[71]

Although we did not monitor the whole trial, we wish to point to oversights that we observed during trial sessions we monitored:

- The material evidence and documents were neither read nor briefly presented during the trial, however, it was recorded otherwise in the court records. The public thus had no access to their content.
- Although it was recorded in the minutes that witnesses had been properly advised on their responsibility to testify and relevant legal regulations, witnesses were not entirely familiarized with the content of legal regulations.
- Council President occasionally posed suggestive questions, paraphrasing some of the earlier given witness statements and thus revealing names, dates and similar information without allowing witnesses to provide this information themselves. She thus left the impression of putting witnesses under suggestive influence.
- Council President interrupted the final speech of the accused. Although on certain occasions, and following prior warning, this is a right of a council president, in this case it was not recorded in the minutes that the speech was interrupted or why it was interrupted.
- Council President denied monitors access to the court records or the case file.

[71] At the public session held on 16 December 2008, the Supreme Court of the Republic of Croatia modified the decision on penalty made by the War Crime Council of the Šibenik County Court, passing five-year prison sentences for each of the crimes and pronouncing a joint sentence of eight years of imprisonment.

The trial against the accused Mile Letica

The Sisak County Court

Criminal act of a war crime against civilians pursuant to Article 120, Paragraph 1 of the Basic Penal Law of the Republic of Croatia

Indictee[72]**:** Mile Letica, held in custody until the announcement of the verdict

War Crime Council: Judge Snježana Mrkoci, Council President; Judge Željko Mlinarić, Council member; Judge Višnja Vukić, Council member

Prosecution: Ivan Petrkač, the Sisak County Deputy State's Attorney

Defence: lawyers Zorko Kostanjšek and Domagoj Rupčić

The procedure against the accused Mile Letica was separated from the procedure against the accused Siniša Martić alias „Šilt", who was a fugitive from justice.

Opinion

The War Crime Council of the Sisak County Court announced the verdict No: K-32/08 on 14 November 2008 acquitting the accused of war crime charges pursuant to Article 354, Item 3 of the Criminal Procedure Law, as it had not found it proven that the accused committed the crime he was charged with.

The trial was public and the Council rejected the request of the defence to close it for the public in order to protect the personal and family life of the accused.

Before reaching the acqutting verdict, the Court established that at the time of the crime the accused Mile Letica was a member of a paramilitary unit, acting as commander of the 2nd detachment of the Glina Territorial Defence, and that at this time paramilitary units assisted by armed forces of the Yugoslav National Army launched an attack on the villages of Šatornja, Gornji Selkovac and Donji Selkovac. However, it was stated in the verdict that the Court had not established without doubt that the accused Mile Letica, as commander of the 2nd detachment of the Glina Territorial Defence, ordered or was responsible for these attacks. The Court was not able to establish whether the order the accused gave was of a nature that would result in burning and destruction of residential facilities and farmhouses in the villages of Gornji Selkovac and Donji Selkovac, or death of the civilian Franjo Sučec.

Reaching the acquitting verdict „the Court has assessed that in this specific case there was no evidence that the degree of command responsibility which the second-accused Mile Letica had as the commander of the 2nd detachment of the Glina Territorial Defence was high enough to give him power or authority to mobilize all military forces which participated in the attack on these villages or to stop them from destruction of houses and killing of civilians after the armed forces barged into the villages."

[72] The amended indictment charged Mile Letica with a violation of the international humanitarian law by ordering an attack on villages of Šatornja, Donji Selkovac and Gornji Selkovac without selecting targets and excluding civilian facilities, which resulted in death of the civilian Franjo Sučec, and burning and destruction of all houses.

The trial against the accused Boško Surla[73]

The Osijek County Court

Criminal act of a war crime against civilians pursuant to Article 120, Paragraph 1 of the Basic Penal Law of the Republic of Croatia

Indictment No[74] : K-DO-38/2007, issued on 14 January 2008

Indictee: Boško Surla, held in custody from 15 May 2007 until the announcement of the verdict of acquittal

War Crime Council: Judge Zvonko Vekić, Council President; Judge Josip Frajlić, Council member; Judge Drago Grubeša, Council member

Prosecution: Zlatko Bučević, the Osijek County Deputy State's Attorney

Defence: lawyer Igor Plavšić

The procedure against the accused Boško Surla was separated from the procedure against other accused persons, who were not available to the Croatian judiciary. **Boško Surla** was charged with assisting a murder of ten civilians by embarking them on a truck by which they were taken to the execution site, with unlawful imprisonment of civilians who were later abused and killed, and with execution and passing on the orders to his subordinates to abuse and kill war prisoners.

The trial started on 7 May 2008 and ended on 1 July 2008. During five trial sessions, 44 witnesses were heard (21 of whom were injured persons), statements of witnesses who had in the meantime deceased were read, and material evidence was examined. The accused was held in custody over one year.

Observations

The War Crime Council of the Osijek County Court conducted a separate trial against the accused Boško Surla for a war crime against civilians and a war crime against war prisoners. The Council reached the acquitting verdict in the lack of evidence, applying the principle *in dubio pro reo* (in doubt in favour of the accused).

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[73] The procedure against the accused Boško Surla was separated from the procedures against indictees who were not available to the Croatian jdiciary.

[74] The indictment charges included the following accused persons: the first accused Jovan Rebrača as commander of the Tenja Territorial Defence Headquarters, Božo Vidaković and Žarko Čubrilo as members of the Headquarters, Branko Grković as commander of the Tenja Police Station, Boško Surla as deputy commander of the Tenja Police Station, and Milan Macakanja as a member of the Tenja Territorial Defence, Mile Jajić as commander of the Civil Protection Service. The accused were charged with ordering arrest and imprisonment, physical and psychological abuse, and killing of civilians (12 killed) and war prisoners (4 killed) without any reasonable grounds, but only because they were of non-Serb ethnicity, in the district of Tenja in the period between July and November 1991, during an armed rebellion of Serbs against the legal order of the Republic of Croatia, after the Tenja Territorial Defence assisted by the armed forces of the Yugoslav National Army occupied the town of Tenja and with the newly formed militia took control of the region.

This trial caused additional trauma to the injured persons and family members of the victims. Namely, the conducted investigation and issuance of the indictment against six accused persons have only provided an outline of the crime committed in Tenja, but this is not a guarantee that either a procedure will be conducted to prove the criminal responsibility of the accused or that a place of burial of the victims will be revealed. Apart from the accused Boško Surla, all other accused persons have been unavailable to the Croatian judiciary. Some of the accused possess dual citizenships and live either in the Republic of Serbia or in Montenegro, where they are protected from extradition by the current law. In order to prosecute the perpetrators of this crime, both those who gave and executed orders, and those who assisted in committing the crime, we find it necessary that the State Attorney's Office of the Republic of Croatia adheres to the agreement on cooperation in the prosecution of perpetrators of war crimes and genocide, signed with the Serbian Prosecution for War Crimes and the Montenegrin State Prosecution, and hands over the evidence material against unavailable accused persons so that they could be prosecuted in the countries where they reside.

Explanation

Witnesses who, in their depositions given during the investigation, accused Boško Surla, changed their statements during the trial, or clarified them. For example, during the investigation witness Lazar Radišić stated that he saw the police officers «who he remembered were Boško Surla and Pero alias „Cino"..., and knew that these police officers brought an older married couple Penić, a person nicknamed Medo the Postman, Ana Horvat, and a young man from Orlovnjak from one room at the front of the cinema where they had been detained for three to four days, and embarked them on a truck (*in which a group of captured civilians were taken in the direction of Silaš and later killed*). At the trial, this witness stated that "*neither today nor at the time when I gave the statement to the investigating judge did I know which two policemen were watching what was happening and failed to react."* Witness Drago Balog stated during the investigation that Boško Surla guarded the incarcerated villagers in the old school building, but he changed this statement at the trial, stating that he had known the accused Boško Surla before and that he only „visited" him on the day he was incarcerated, and did not beat or torture him, but helped him.

Witnesses - injured persons did not accuse Boško Surla of abusing or threatening them or their family members, nor of ordering torture and handing over the incarcerated civilians and war prisoners to members of the Tenja Territorial Defence. Some witnesses - injured persons claimed that they did not know the accused, while some stated that he was a member of Tenja Police, more specifically a deputy commander.

Witnesses who at the time of the crime were members of Tenja Police or Tenja Territorial Defence also stated that they did not find the accused to be the person who ordered or executed arrest, abuse or beating of the imprisoned civilians and war prisoners. However, they all stated that as members of the

Tenja Territorial Defence they guarded facilities where captives were incarcerated, but that the facilities were actually under control of the police.

Boško Surla's defence, which he had also presented on several occasions during the investigation, was based on the premise that he was forcefully mobilized into the police force as a former police officer, that at the time of the committed crime he was not officially a deputy commander of Tenja Police, but was perceived so because he had been an experienced policeman, that the Tenja Territorial Defence and not the Tenja Police had control over the detention facilities where captives were kept, and that the only connection between the police and the detention facilities was the fact that the facilities were located right next to the police station building. The accused denied any knowledge of the abuse or executions that happened in the detention facilities.

During the presentation of evidence at the trial, many witnesses were heard in a way which only included requests for their confirmation of the depositions they had given during the investigation. The statements were read if the prosecutor requested so, and additional questions were asked only exceptionally. During the investigation, however, witnesses gave no statements about circumstances of the alleged crime committed by Boško Surla, so it is unclear why they were selected as witnesses at the trial if there was no intention to question them further about these circumstances.

The trial against Antun Gudelj

The Osijek County Court

Criminal act of murder pursuant to Article 34, Paragraph 2, Items 1, 4 and 5 of the Penal Law of the Republic of Croatia, and a criminal act of murder attempt pursuant to Article 34, Paragraph 2, Items 1and 4 of the Penal Law of the Republic of Croatia and in relation to Article 17 of the Basic Penal Law of the Republic of Croatia

Indictee: Antun Gudelj

Court Council: Judge Damir Krahulec, Council President; Judge Drago Grubeša, Council member; lay magistrate Josip Ciprovac, Council member; lay magistrate Marica Miluković, Council member; lay magistrate Marija Rumbočić-Pezelj, Council member

Indictment No[75]: KT-148/91, issued on 25 March 1992 by the Osijek County State Attorney's Office, partly modified on 12 April 1994, 24 June 1994 and 19 June 2008

Prosecution: Dražen Križevac, the Osijek County Deputy State's Attorney

Defence: Nedeljko Rešetar and Domagoj Rešetar, lawyers from Osijek

Attorney-in-fact for the injured person Jadranka Reihl-Kir[76]76: Slobodan Budak, lawyer from Zagreb

Observations[77]

The repeated trial against the first-accused Antun Gudelj ended with the non-final conviction announced in July 2008 by the Osijek County Court. The Court sentenced Antun Gudelj to a joint sentence of 20 years of imprisonment for the murder of Josip Reihl-Kir, Head of the Osijek Police Department,

[75] According to the indictment issued by the Osijek County State Attorney's Office, which was partly modified on three occasions, on 1 July 1991 the accused Antun Gudelj, while on duty guarding a police checkpoint as a member of the Reserve Police forces, being informed and aware of negotiations that had taken place between representatives of Serb inhabitants of the village of Stara Tenja and representatives of political and administrative authorities of the Osijek Municipal Assembly, stepped out in front of the vehicle which was coming, with the indicators flashing, from the direction of Osijek and moving in the direction of the Tenja village centre and in which negotiators drove, and feeling bitter about negotiations and resentful towards the negotiators holding them responsible for the situation in the village, events that had happened and alleged attacks on his family, and with an aim to take revenge on them, fired a number of shots from the machine gun and in a vile and ruthless way killed a public security officer on duty, Josip Reihl-Kir, as well as Milan Knežević and Goran Zobundžija, while Mirko Tubić was severely wounded.

[76] Apart from the injured person Jadranka Reihl-Kir, other injured persons were not represented by attorneys-in-fact nor did they attend any of the trial sessions.

[77] The statement regarding the verdict against Antun Gudelj, signed by the Centre for Peace, Non-Violence and Human Rights (Osijek), Documenta – Centre for Dealing with the Past (Zagreb), Civic Committee for Human Rights (Zagreb), Croatian Helsinki Committee, and Humanitarian Law Centre (Belgrade), includes the following observation: „*The formally and legally corectly conducted repeated trial, and the convicting verdict reached by the Osijek County Court sentencing Antun Gudelj to a maximum prison sentence of 20 years for several murders and a murder attempt in brutal revenge, should not be a closure of the case of massacre of the Head of the Osijek-Baranja Police Department, Josip Reihl-Kir, and the negotiating team, committed in 1991. We find it obligatory that the State Attormey's Office, on the basis of existing indications, investigates further whether these murders had been planned and used as a drastic measure to undermine, even at the local level, any possibility for negotiations, compromise or cooperative multi-ethnic solution to become an alternative to the armed conflict.*" www.centar-za-mir.hr

Milan Knežević, a Board member of the Osijek Municipal Assembly, and Goran Zobundžija, President of the Executive Board of the Osijek Municipal Assembly, and for the murder attempt of Mirko Tubić, President of the Tenja Local Community, which he committed on 1 July 1991 as a member of the Croatian Reserve Police forces. At the police checkpoint in Nova Tenja, Gudelj fired shots at the automobile in which the negotiating team drove.

In 1994, Antun Gudelj was convicted in absentia, and sentenced to 20 years of imprisonment. After he was extradited to Croatia, the procedure was repeated. The defence requested termination of the procedure, but the Osijek County Court rejected this request. However, in 1997 the Supreme Court of the Republic of Croatia upheld the appeal of the defence and terminated the procedure referring to the General Amnesty Law. In June 1997, the injured person Jadranka Reihl-Kir filed a constitutional appeal against this decision, while in September the same year the state attorney filed a request for the protection of legality. In 2000, the Supreme Court concluded that the request for legality was grounded and that the decision on the termination of the procedure was not in accordance with the law, but since this was a request which did not go in favour of the accused, the Supreme Court did not change the legal validity of the decision. In 2001, the Constitutional Court upheld the constitutional appeal lodged by the injured person and overturned the decision of the Supreme Court on the termination of the procedure, reversing the case for retrial. This time the Supreme Court rejected the appeal of the accused against this decision and upheld the decision of the Osijek County Court on the rejection of the request for the termination of the procedure. The conditions to try Antun Gudelj for criminal acts he had been charged with were thus finally met, and he was once again extradited from Australia and put in custody on 15 July 2007.

During the repeated trial, 20 witnesses were heard, and they all confirmed their statements given in the first procedure, which matched up. Unlike the prosecutor, the Court did not consider that the murders were committed in a brutal manner, which was in the announcement of the verdict (but not in the written explanation) explained by the fact that the accused did not hide while committing the crime, and the injured persons could clearly see him.

Despite the attempts of the attorney-in-fact of the injured person to discover the names of persons who potentially ordered or encouraged these crimes, Council President disallowed such questions as they went beyond boundaries defined by the content of the indictment, and were thus not the matter of examination. In his closing speech, the attorney-in-fact of the injured person expressed his disagreement and disappointment with the fact that the trial procedure did not attempt to ascertain whether this was a case of a self-initiated crime or a wider preparation and plan of the murder of Josip Reihl-Kir, and stated that the prosecution failed to recognize that this was a case of a „conspiracy with attempt of murder".

Namely, Josip Reihl-Kir, Milan Knežević and Goran Zobundžija murder case and Mirko Tubić murder attempt case were marked by the passivity of the Croatian prosecuting bodies, starting from the point when the crimes were commited and Antun Gudelj was able to leave the crime scene in the presence

of several policemen, and the point when he was ordered detention in August 1991 at the time when he had already left the Republic of Croatia. Moreover, upon his extradition the Supreme Court of the Republic of Croatia terminated the criminal procedure against him, clearly incorrectly applying the General Amnesty Law to his case. Only after the initiative of the injured person Jadranka Reihl-Kir and her attorney-in-fact, who filed a constitutional complaint against this decision, was the decision of the Supreme Court on the termination of the procedure overturned and conditions for the reinstitution of trial were met.

During the procedure, an undoubted coincidence was established to have existed within the fact that Antun Gudelj killed Josip Reihl-Kir exactly at the time when Josip Reihl-Kir and a number of other high state officials knew that he had been threatened with murder and therefore ordered his transfer to Zagreb. Whether this fact was connected with the murder committed by Antun Gudelj is something that, in our view, has to be investigated.

OBSERVATIONS ON THE PROCEDURES IN PROGRESS

The trial against Branimir Glavaš and others

The Zagreb County Court

Case: K-rz-1/07

The indictment: The indictment No: K-DO-105/06 against Branimir Glavaš issued by the Zagreb County Attorney's Office on 27 April 2007, and the indictment No: K-DO-76/06 against Branimir Glavaš and other five accused persons issued by the Osijek County Attorney's Office on 16 April 2007 were merged; the combined and amended indictment No: K-DO-105/06 was issued by the Zagreb County Attorney's Office on 30 September 2008.

Criminal offence: a war crime against civilians, pursuant to Article 120, Paragraph 1 of the Basic Penal Law of the Republic of Croatia.

Defendants [78]**:** Branimir Glavaš, Ivica Krnjak, Gordana Getoš Magdić, Dino Kontić, Tihomir Valentić and Zdravko Dragić

War Crime Council: Judge Željko Horvatović, Council President; Judge Rajka Tomerlin Almer, Council member; Judge Sonja Brešković Balent, Council member; Judge Mirko Klinžić, additional Council member.

Prosecutors:
Jasmina Dolmagić, Zagreb County Deputy Attorney;
Miroslav Kraljević, Osijek County Deputy Attorney, temporarily referred to the Zagreb County Court.

Defence:
- lawyers Dražen Matijević, Ante Madunić and Veljko Miljević - hired defence lawyers representing the first accused Branimir Glavaš;
- lawyers Domagoj Rešetar, a hired defence lawyer, and Zoran Stjepanović, a court-appointed defence lawyer representing the second accused Ivica Krnjak;
- lawyers Antun Babić and Tajana Babić, hired defence lawyers representing the third accused Gordana Getoš Magdić;
- lawyer Radan Kovač, a hired defence lawyer representing the fifth accused Dino Kontić;
- lawyer Boris Vrdoljak, a defence lawyer representing the sixth accused Tihomir Valentić;
- lawyer Dragutin Gajski, a hired defence lawyer representing Zdravko Dragić;
- lawyer Ljiljana Banac, **attorney-at-fact representing the injured person** Radoslav Ratković.

The combined and amended indictment covers the periods between July and September 1991, and November and December 1991. The first accused Branimir Glavaš, who at the time of the incriminating events held the position of the Secretary to the County National Defence Secretariat and acted initially as actual, and as of 7 December 1991 as a formal commander of the First Osijek Battalion, more widely known under the names of Branimir's Battalion and the Guard Troop, is indicted for a failure to take actions to **prevent unlawful actions** of members of the unit under his command against civilians,

[78] Following the decision of the Out-of-Court Council of the Zagreb County Court of 5 June 2008, the criminal procedure against the fourth accused Mirko Sivić was separated from this procedure due to the poor health condition of the accused.

primarily of Serb ethnicity, and for **giving orders** to unlawfully arrest, detain, torture and murder civilians. The second accused Ivica Krnjak is indicted as commander of the special reconnaissance and sabotage unit of the Osijek Operational Zone; the third accused Gordana Getoš Magdić as commander of a squad within the unit; and other accused persons as members of her squad. They are indicted on charges of abusing and executing civilians of Serb and other ethnicities after, in the summer of 1991, Branimir Glavaš had ordered the second accused Ivica Krnjak and the third accused Gordana Getoš Magdić to form the special reconnaissance and sabotage unit under his supervision from a group of selected loyal and trustworthy persons, which they did. Branimir Glavaš subsequently ordered them to unlawfully arrest civilians on several occasion. The second accused Ivica Krnjak and the third accused Gordana Getoš Magdić **obeyed his orders, participated themselves in the execution of some of his commands and conveyed the orders to the subordinate members of their squad –** the deceased Stjepan Bekavac, the fourth accused Mirko Sivić, the fifth accused Dino Kontić, the sixth accused Tihomir Valentić, the seventh accused Zdravko Dragić, and other, currently unidentified soldiers. The accused persons are charged with unlawful arrest, torture and murder of ten civilians, one murder attempt, and unlawful arrest and torture of one person.

The main hearing, which first commenced on 15 October 2007 and started anew on two occasions[79], is still in progress. By the end of 2008, 76 court sessions were held (including 29 court sessions held since the trial started anew on 4 November 2008); the Court examined 37 witnesses, read seven witness statements taken during the investigation procedure, examined court experts (pathologists and ballistic experts), conducted an investigation in the house where civilians had been detained and interrogated, and examined a substantial amount of material evidence.

All accused persons were ordered detention pursuant to Article 102, Paragraph 1, Item 4 of the Criminal Procedure Law, due to the seriousness of criminal offence.

In January 2008, the first accused Branimir Glavaš was released from custody[80], while the rest of the accused were released in September 2008.[81]

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[79] The main hearing started anew on 5 November 2007 after the replacement of the additional Council member, and again on 4 November 2008 following the adjournment which lasted longer than two months. On 14 November 2008, the evidence procedure of the reinstituted trial after only five court sessions reached the phase in which the evidence procedure in the previous trial was on 7 July 2008.

[80] **The first accused Branimir Glavaš** went on hunger strike on 8 November 2007, which he ended after his detention order was cancelled. The medical expert team found him competent to stand trial. He was released from detention following the decision by the Out-of Court Council of the Zagreb County Court of **11 January 2008,** reached at the time when the Croatian Parliament had established his parliamentary mandate at the constitutional session, thus granting him parliamentary immunity pursuant to Article 75, Paragraphs 1 and 3 of the Constitution of the Republic of Croatia, and Articles 23 through 28 of the Rules of Procedure of the Croatian Parliament. With a majority of votes, the Croatian Parliament decided to withhold approval of his detention during the time of his parliamentary mandate. At the session of 17 January 2008, the Council of the Supreme Court of the Republic of Croatia rejected the appeal of the prosecutor against the decision of the Zagreb County Court of 11 January 2008, No: Kv-rz-1/08 (K-rz-1/07), so the decision on the cancellation of detention for Branimir Glavaš became legally valid.

[81] **On 17 September 2008, the Constitutional Court of the Republic of Croatia** decided to uphold constitutional complaints of the accused Gordana Getoš Magdić, Tihomir Valentić and Zdravko Dragić against the decision of the Supreme Court of the

Opinion on the progress of the trial thus far

In our opinion, the course of the procedure has thus far revealed the following practices: belated response of prosecuting bodies, interference of legislative bodies and the politics in the work of the judiciary, and inefficiency of judicial bodies in securing safe conditions for testifying.

The criminal procedure was first instigated in July 2005, 14 years after the alleged crimes took place. To our knowledge, there had been no initiations to investigate the crimes before. The first people to speak publicly of these crimes were the Osijek-based journalist Drago Hedl and certain individuals who had themselves participated in unlawful actions in Osijek. At the time when the first serious investigations into the case were instigated, the first accused was a parliamentary representative and a dissident party member of the ruling party – the Croatian Democratic Union, who has throughout the investigation and trial procedures based his defence before the public and the court on the claim that the case against him is politically motivated. Besides enjoying parliamentary immunity, political power, and a strong influence on the local media, all of which he has used in his defence, he also violated regulations of detention (without receiving any punishment) by recording a video clip for his election campaign.

The fact that an efficient investigation was instigated after 14 years of inactivity speaks of a shift in the political will and cannot be related to political contrivance (as claimed by the first accused), which would imply that the procedure was based on ungrounded accusations. However, the authenticity of the displayed political will to process war crimes committed by Croatian military commanders should be exhibited through efficient operation of the prosecution and independent work of the judiciary, which as the procedure unfolds, has become ever more doubtful.

In order to instigate a criminal procedure against Branimir Glavaš, the State Attorney's Office had to fight a legal battle to create, at least somewhat, secure conditions for testifying, and to earn the right to investigate a person enjoying parliamentary immunity. Urgent investigating actions, which included examination of witnesses before the official investigation had started[82], were conducted before an investigating judge of the Zagreb County Court following the consent of the President of the Supreme Court of the Republic of Croatia to change regional jurisdiction over the case in July 2006. Two out of six persons were examined as protected witnesses. The results of these examinations provided basis for the instigation of the procedure. However, already at the start of the investigating procedure, Croatian judiciary was unable to protect the procedure from improper pressure coming from Branimir Glavaš. All of the accused, except Branimir Glavaš, were ordered detention pursuant to Article 102, Paragraph

Republic of Croatia No: Kž-449/08-3 of 28 July 2008, and the decision of the Zagreb County Court No: Kv-rz-12/08 (K-rz-1/07) of 4 July 2008 on the extension of their detention. On 17 September 2008, the Constitutional Court of the Republic of Croatia also decided to uphold the constitutional complaint of the accused Mirko Sivić, thus overturning the decisions of the Supreme Court of the Republic of Croatia No: Kž-439/08-3 of 23 July 2008, and the Zagreb County Court No: Kv-rz-13/08 (K-rz-1/08) of 7 July 2008, on the extension of his detention. Following these decisions, **the Out-of-Court Council of the Zagreb County Court cancelled detention** for the other two accused, Ivica Krnjak and Dino Kontić, on **18 September 2008**.

[82] Urgent investigation actions including witness examination prior to official investigation were performed pursuant to Article 185, Paragraph 1 of the Criminal Procedure Law.

1, Items 2 and 4 of the Criminal Procedure Law. As the State Attorney's Office had not requested detention for the first accused parallel with filing the investigation request, it later had to demand from the Croatian Parliament to lift his parliamentary immunity before it could order detention. Also, investigating judges in Zagreb and Osijek rejected the State Attorney's Office's detention request on four occasions, claiming they had no authority to approve such request. The first accused thus spent most part of the investigation non-detained (and during this time 43 out of 45 selected prosecution witnesses were heard). As soon as his detention order came into force, the first accused went on hunger strike, which resulted in temporary termination of the investigation.

The main controversy in this case, however, has stemmed from the fact that **the Croatian Parliament made a political decision** on whether the first accused in the criminal procedure instigated for a serious war crime should be ordered detention or not, instead of allowing the judiciary to rule on this matter. Even if this had been a case of a legitimate right of the Croatian Parliament which was in line with the Constitution and laws of the Republic of Croatia (which we find questionable)[83], it was still a political decision used to directly intervene in the first-instance court procedure, resulting in the release of the first accused of a serious war crime, while other accused persons, his alleged subordinates who carried out his orders, remained detained. The message sent to witnesses by such decision is that the first accused holds strong, and for them threatening, political power which gives him influence over the procedure, thus making their exposure through testifying pointless. We believe that **absence of a necessary reaction of the prosecution** to this decision has made this message even stronger. It is not clear why the Croatian prosecution made no attempt to dispute this decision before the Constitutional Court of the Republic of Croatia, using **legal arguments against it**, which clearly existed. First, when the decision was made the criminal procedure had already entered the phase of trial and the Croatian Parliament had deprived the first accused of his parliamentary immunity; next, an explanation given for the decision on cancellation of detention was that «the accused should be released from custody as this will have no effect on the outcome of the trial"; and finally there are issues of interpretation of Article 75, Paragraphs 2 and 3 of the Constitution of the Republic of Croatia regulating the application of the parliamentary immunity system, and compliance of the Croatian Parliament Rulebook with provisions of the foregoing Article.

Further, **the Croatian Constitutional Court reached the decision to release from detention four of the co-accused persons**. Following this decision, the Zagreb County Court released the other two of the co-accused on the following day. Such decision inevitably raises several questions, the most important being whether it was entirely legally founded. Next, was this decision a justified reaction

[83] *Documenta – Centre for Dealing with the Past*, and the *Civic Committee for Human Rights* filed a request to the Constitutional Court of the Republic of Croatia for a clarification of the correct interpretation of the provisions of Article 75, Paragraphs 2 and 3 of the Croatian Constitution, which regulate the application of the parliamentary immunity system. We also find it necessary to open the discussion on the need for a change to the Constitution so that similar situations could be avoided in the future. We believe that it is not in accordance with the natural law (which is why the citizens cannot find the provisions of the Constitution, relied upon by the Croatian Parliament, just) or the spirit of democracy to (even temporarily) terminate a criminal procedure on the basis of the right to parliamentary immunity after the indictment has been raised for a serious crime which carries a penalty of over five years of imprisonment.

of the Constitutional Court to a potential violation of the constitutionally guaranteed human rights of the accused, or was it a product of the political signals sent to the Constitutional Court? Finally, will such decision, in case it becomes an unwritten rule, create inconceivable problems to the efficient processing of the biggest and most important criminal cases put before the Croatian judiciary?

The Constitutional Court based this decision, inter alia, on the principle of linearity, taking as an example the practice of the European Court of Human Rights which finds detention justified if the reasons justifying it are still relevant and if the judicial bodies act with required attention. When considering cancellation of detention for the co-accused, the Constitutional Court concluded that the procedure had already lasted too long, and that it would last even longer, in which case further detention was unreasonable because it would practically turn into serving of the sentence before the verdict was even reached and made legally valid. This suggests that the Constitutional Court established that the potential penalty would equal or somewhat exceed the length of detention, and thus indirectly assessed the merits of the case assuming the role of regular courts. At the same time, the Court disregarded the fact that during the procedure thus far, the defence repeatedly requested cancellation of detention, but at the same time procrastinated the trial using various procedural *tricks*.[84]

It should further be noted that the Constitutional Court decided to base this decision on the practices of the European Court of Human Rights even though this Court had not dealt with that many war crime cases. Thus the Constitutional Court could not only refer to such cases but had to resort to cases such as «Shiskov» (of 9 January 2003), which was merely a case of simple larceny. It seems that the Constitutional Court found that the reasons justifying detention in the case of larceny could be equalled with those applying to a case of the most serious crime, such as a war crime against civilians in Osijek. The question is why the Constitutional Court did not instead refer to what we believe is a more appropriate practice of the ICTY, which deals exclusively with war crime cases and where the accused are detained regardless of the length of procedure, while the only condition for detention is that the verdict is legally valid.

Since the beginning of the main hearing on 15 October 2007, we have observed various **situations of improper pressure on witnesses**. Several witnesses stated that they had been threatened; some witnesses requested protection, but there were cases when witnesses were not at all protected from the

[84] The defence lawyers kept requesting cancellation of detention at each court session, which the Council repeatedly rejected. On 7 July 2008, the trial had to be reinstituted because there had been **an adjournment of more than two months since the previous trial session**. The reason for this postponement was the fact that the second accused Ivica Krnjak did not have a defence lawyer. Namely, after the summer recess, his hired lawyer Domagoj Rešetar informed the Court of his inability to attend the trial due to illness, while the accused revoked the power of attorney of the other defence lawyer, Petar Šale, on 4 August. The Council assessed that actions of Domagoj Rešetar, the defence lawyer of the second accused, had been aimed at unnecessary prolongation of the trial, and decided to appoint a defence lawyer for the second accused Ivica Krnjak. The court-appointed lawyer insisted to be given ten days to prepare the defence, which added together with the period of the summer recess amounted to over two months. The trial had to be reinstituted again on 4 November 2008. Here we wish to point to the incautious decision of the Council President to schedule the first session after summer recess for only ten days before the two-month deadline for adjournment between the sessions would expire. Also, he should have approved the court-appointed lawyer a maximum amount of time possible for preparation of defence, which at the same time would not have exceeded the two-month deadline.

pressure coming from the defence lawyers.[85] We even recorded situations when witnesses openly spoke of the defendants' attempts to secretly provide them with court records so that they could align their statements with the statements recorded in the court minutes (witness Vlado Frketić).

However, the most typical example of violations of the regulations of the Criminal Procedure Law has been the publishing of secret testimonies taken at court sessions which were closed for the public[86]. Apart from violating the decision of the War Crime Council of the Zagreb County Court, these unlawful actions showed disrespect to the Court, as publishing or paraphrasing even a part of a testimony and making it available to the public showed clear disregard of the Council decision, but also single-mindedness and disrespect for the positive regulations of the Republic of Croatia on which the foregoing Council decision was based. Such actions are also a method of indirect influence not only on the witnesses whose statements have been published, but also on those who are yet to testify. However, although publishing of the details of the trial closed to the public is a criminal act carrying a penalty of three months to three years in prison (pursuant to Article 351), to our knowledge, the State Attorney's Office of the Republic of Croatia has not filed charges against any perpetrators.

The Council President has had **difficulty establishing the procedural discipline**, particularly at the beginning of the procedure. He gradually started applying legal disciplinary measures more frequently. On many occasions the defence lawyers and sometimes the defendants spoke without prior permission. We have also observed several situations in the court when witnesses were not protected from the pressure from the defence which could even have been interpreted as a direct threat to a witness, while at the same time these incidents were not recorded in the court records nor were the unlawful actions of the defence lawyers penalized. The second accused Ivica Krnjak disturbed the procedure on several occasions, receiving fines for procedural indiscipline. He also failed to attend the trial several times. After one occasion when he left the court room of his own free will, protesting against the Court Council's rejection of his defence lawyer's request for additional medical expert examination of Ivica Krnjak, he was ordered detention pursuant to Article 102, Paragraph 3 of the Criminal Procedure Law, for obstruction of the procedure by failing to attend court sessions.

As the Council President assessed that some actions of Ivica Krnjak's defence lawyer were directed towards procrastination of the procedure, the Council President requested for a court appointed lawyer to represent Ivica Krnjak. We find this decision correct.

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[85] A defence lawyer representing the first accused Branimir Glavaš, Ante Madunić, took photographs of witnesses using a mobile phone during the court sessions held between 13 and 15 February 2008.

[86] *Glas Slavonije* in its issue of 31 May 2008 published an article titled «Prosecution Witness Statements Put the Indictment against War Crimes in Osijek on the Rocks», and headlined «Prosecution Betrayed by Witnesses». The article paraphrased a part of the secret witness statement given by Nikola Vasić. Veljko Miljević, a defence lawyer representing the first accused, commented for *Večernji list* on the credibility of witness Nikola Vasić, thus revealing a part of his secret statement. This was published in the article titled «Vasić Convicted of Armed Rebellion». *Glas Slavonije* in its issues of 13 January 2009 and 4 February 2009 published parts of the secret statements given by protected witnesses under the pseudonyms «protected witness 06» and «Drava», respectively.

The procedure against the defendant Jugoslav Mišljenović and others for the crime in Mikluševci

Vukovar County Court

Case number: K-7/01

Indictment number: KT-37/93, issued on 29 April 1996 by Osijek County Court; transferred to and altered by Vukovar County Court as Indictment No: K-DO-71/01 on 15 April 2006; further altered following the memos dated on 26 March 2007 and 13 April 2007, and at the court hearing of 18 June 2008

War Crime Council: Judge Nikola Bešenski, Council President; Judges Slavko Teofilović and Nevenka Zeko, Council members

Prosecution: Zdravko Babić, Vukovar County Deputy State's Attorney

Criminal offence: genocide, pursuant to Article 119 of the Basic Penal Law of the Republic of Croatia

Victims – the murdered: Julijan Holik, Veronika Holik, Mihajlo Holik and Slavko Hajduk

Victims – the expelled: 98 inhabitants of Mikluševci

The Vukovar Police Department filed criminal charges (No: KU-06/93) on 19 January 1993, along with a special report of the Vukovar-Srijem County Police Department (No: KU-06/93) on 14 June 1995. It also attached a list of the expelled inhabitants of Mikluševci, compiled by the Vinkovci district department of the Croatian Red Cross, and a list of their movable and immovable possessions handed over to the authorities of the so-called Serb Autonomous District of Krajina. During the investigation the suspects were not questioned, as they were unavailable to the Croatian judicial bodies.

On 21 February 1997, the Out-of-Court Council of the Osijek County Court reached a decision (No. Kv-46/97) to try the accused persons in absentia. The Vukovar County Court took over the case from the Osijek County Court. The procedure resumed on 25 April 2005 before the War Crime Council of the Vukovar County Court. Nine of the defendants attended the trial, while the others were tried in absentia. At the end of 2008, the procedure was conducted against 19 accused persons, five of whom attended the trial, while 14 were tried in absentia. In the meantime, the procedure had been terminated against the deceased Momir Anđelić, Slobodan Anđelić, Rade Jeremić, Joakim Lenđel, Kiril Builo, Janko Kiš, Milenko Kovačević, Dušan Anđelić, Ljubica Anđelić and Živan Ćirić. In 2008 the prosecution also dropped charges against Slobodan Mišljenović, Dušanka Mišljenović, Dragica Anđelić, Aleksandar Anđelić, Stanislav Simić and Srđan Anđelić, and in January 2009 against another five accused persons (Milan Bojanić, Jaroslav Mudri, Nikola Vlajnić, Čedo Stanković and Saša Hudak). The accused who attend the trial have not been held in custody, but the precautionary measures have been taken.

On 18 June 2008, the Council President announced that the main hearing was completed and the verdict would be announced on 20 June 2008. On 20 June 2008, the main hearing was reopened.

MONITOR OBSERVATIONS

This has been a lengthy procedure, conducted against a large number of the accused, with the investigation process practically taking place at the trial. We express worry that the crime in Mikluševci will remain unpunished due to its qualification as the crime of genocide.

Unfortunately, the procedure revealed that the investigation of this case had been obstructed due to objective circumstances of the Vukovar County State Attorney's Office being displaced from Vukovar during the war and the expulsion of civilians. Thus, since 2005 the Vukovar County Court has been forced to investigate the crime at main hearings. The indictment has been changed on seven occasions, which also testifies to incomplete investigation and explains the hesitancy of the State Attorney as to what to do with this case. One alteration of the indictment included a change of the legal name of the criminal offence from genocide to a war crime, and specification of criminal charges for each defendant. However, the prosecution reversed the decision on the qualification of the crime (from a war crime to genocide) at the very next hearing, without having established new facts on the circumstances of the crime, and leaving the same factual description of the criminal acts which had previously been qualified as instances of a war crime against civilians.

The original indictment issued by the Osijek County State Attorney's Office charged 35 persons. It was discovered later that ten of the accused persons had died, and charges against them were dismissed. The Vukovar County State Attoerney's Office at quite a late stage of the trial in January 2009, dismissed charges against three more defendants. Finally, the indictment came to include 22 accused persons, five of which attended the main hearing, while the others were tried in absentia.

If we compare the practices of the ICTY (as there have been no other genocide cases in Croatia) and those observed in this procedure, with no intention to judge instead of the Court, it is evident that the Vukovar County State Attorney's Office will find it challenging to prove the following: that the defendants of Ruthenian ethnicity had genocidal intent (mens rea) against the Ruthenians (full or partial destruction of this ethnic group); that the group of 92 mainly Ruthenian inhabitants expelled from Mikluševci had „specific or objective characteristics of a group that make it specific enough" to represent „the majority of population", considering that after the expulsion Ruthenians continued to live in Mikluševci. In the verdict reached by the Appeal Council of the ICTY in the Jelisić case (from July 2001), the Appeal Council identified several factors which confirmed genocidal intent: the overall context, committance of other crimes against the same ethnic group and repetition of destructive and discriminating acts.

The procedure against the defendant Radoslav Čubrilo and others

Rijeka County Court

Case number: K-48/06

Indictment number: K-DO-53/06, issued by Rijeka County State Attorney's Office and altered on 17 September 2006

Prosecuting attorney: Zdravko Babić, Rijeka County Deputy State's Attorney

Criminal offence: war crime against civilians, pursuant to Article 120 of the Basic Penal Law of the Republic of Croatia

The defendants (all absent): Radoslav Čubrilo, Milorad Čubrilo, Milorad Žegarac, Petar Ajduković, Gojko Mrkajlo

The defence: court-appointed lawyers Alen Bilić from Rijeka; Goran Marjanović from Rijeka; Đuro Vučinić from Rijeka; Ivan Čerin from Rijeka; Milenko Škrlec from Rijeka

War Crime Council: Judge Saša Cvjetić, Council President; Judges Duško Abramović and Vlado Skorup, Council members.

Until 14 May 2007, when the main hearing restarted, the War Crime Council was constituted of Judge Srebrenka Šantić, Council President, Judge Dragan Katić, Council member, and Lay Magistrates Ivan Šuflaj, Marijan Peranić and Milan Draginić, Council members, which was not in accordance with the *Law on the Application of the Statute of the International Criminal Court and Prosecution of Crimes Against the Values Protected by the International Humanitarian Law.*

This is the second, repeated procedure for the war crime in Lovinac, which has been in progress since 1994. The defendants have been tried in absentia. Namely, the Gospić County State Attorney's Office issued the indictment No. KT-45/92 on 24 November 1992, charging seven persons with a war crime against civilians, pursuant to Article 120 of the Penal Law of the Republic of Croatia. So far the Gospić County Court has reached two non-final verdicts. The latter found the defendants Radoslav Čubrilo, Gojko Markajlo, Milorad Čubrilo and Petar Hajduković guilty of the crime and they were sentenced to 20 years in prison each, while the defendant Milorad Žegarac was convicted and sentenced to 15 years in prison. The defendants Bogdan Šobat and Bogdan Čubrilo were acquitted on all charges.

The Supreme Court of Croatia has twice ordered a restart of the trial.

The case No: IKž-847/1994 was reversed to the Gospić County Court for a repeated trial, but later the Supreme Court of the Republic of Croatia announced the decision (No. IKž 573/00) to delegate the case to the Rijeka County Court (as there were not enough judges at the Gospić County Court to form a new council), concurrently ordering requestioning of all witnesses, a detailed analysis of their statements and links among them.

The Rijeka County Court formed the Coucil pursuant to Article 20 of the Code of Criminal Procedure, and the procedure started on 14 May 2007 before the Council consisting of two professional judges and three lay magistrates. Such constitution of the Council is not in accordance with the Law on the Application of

the Statute of the International Criminal Court and Prosecution of Crimes Against the Values Protected by the International Humanitarian Law (NN 175/03), which in Article 13, Paragraph 2 states that a war crime council of a county court must consist of judges with a long experience in most complex court cases.

The Court thus breached this law, but there were no objections to the constitution of the Council.

The main hearing of the second repeated trial started on 17 October 2006. The indictment was changed during this hearing.

So far, 28 witnesses have been heard (Mile Račić, Manda Račić, Anka Katalinić, Ivan Katalinić, Karlo Sekulić, Ivka Sekulić, Mile Matajić, Željka Ivezić, Ivan Šarić, Manda Ivezić, Dane Pavičić, Ivan Pavičić, Petar Sekulić, Mirko Horvatin, Marko Bobinac, Ivan Grgat, Josip Šarić, Mate Šarić, Pavao Krpan, Andrija Ostojić, Tomislav Latvić, Marko Župan, Pavle Račić, Pavao Račić, Marijan Matijević, Josip Vrkljan, Milan Dobrić and Luka Budak).

The court expert Dr. Renata Dobi-Babić has testified on the cause and way of death of the victims, based on the autopsy findings and her own expert opinion. A ballistics court expert Rade Stojadinović has also testified. The circumstances of the execution of five civilians have been reconstructed in Lovinac.

MONITOR OBSERVATIONS

It is perplexing that the Rijeka County Court, which has in accordance with the *Law on the Application of the Statute of the International Criminal Court and Prosecution of Crimes Against the Values Protected by the International Humanitarian Law* already formed a special department for war crimes to which the Supreme Court delegates cases from the Gospić County Court, now failed to apply the same law and constitute a court council of three professional judges. Further, the Council members are judges from the civic department. Although the provisions of Article 13, Paragraph 2 of the mentioned law state that a war crime council should consist of «three judges distinguished by a long experience of working on the most complex of cases», they do not clearly state the type of these cases. However, we still think that the war crime council members should be judges with experience in working on criminal and not civic cases (due to the seriousness of war crime and better understanding of the matter). Here we wish to warn of the weakness of the mentioned law and the inappropriate practice of the Rijeka County Court to have an operating special war crime department to which cases from other courts are delegated, while at the same time it does not have enough judges who are experienced in working on criminal cases.

This procedure, which has already been in progress since 1994, yet again faces a new start given that it has been a year since the last court session was held. All trials with more than two months between two court sessions have to start anew. Although it may seem that this trial should not be given priority because the defendants are tried in absentia, after 14 years of being in progress, this procedure should draw to an end.

The procedure against the defendant Željko Čizmić

Osijek County Court

Case number: K-38/04

War Crime Council: Judge Krunoslav Barkić, Council President; Katica Krajnović and Dubravka Vučetić, Council members

Indictment number: KT-103/94, issued by Osijek County State Attorney's Office on 9 July 2004

Prosecuting attorney: Miroslav Bušbaher, Osijek County Deputy State's Attorney

Criminal offence: war crime against civilians, pursuant to Article 120, Paragraph 1 of the Basic Penal Law of the Republic of Croatia

The defendant: Željko Čizmić

The defence: lawyer Dražen Srb from Osijek

Victims: beaten - Damir Buljević, Stipo Sušić, Filip Đanko, Tomislav Hajduković, Marko Andabak, Ištvan Bačko, Slavko Palinkaš, Tomislav Kilić, Goran Šlinger, Vlatko Nikolić, Imra Moger; dispossessed - Ištvan Bačko

The first session of the main hearing was held on 12 September 2006. Five more sessions have been held since then, however, as the adjournments between them lasted longer than two months, the trial has started anew several times.

Considering that the last session was held on 11 December 2007, the main hearing will once again start anew. The witnesses who have been questioned so far (Damir Buljević, Marko Andabak, Ištvan Bačko, Slavko Palinkaš, Vlatko Nikolić, Imra Moger, Tomislav Kilić, Tomislav Hajduković, Goran Šlingar, Stipe Sušić, Nikola Rupčić, Antun Putnik, Bogoljub Ristić, Marija Galić, Živojin Savičić, Jelena Pavić, Siniša Bučkalović, Dragutin Grčić, Saša Lazić, Nedeljko Radić and Josip Čičak) will have to be questioned again, or their statements will be read as documentation which has already been examined.

MONITOR OBSERVATIONS

At the first session of the main hearing, held on 12 September 2006, after the indictment had been read and the defendants entered their guilty plea, the defence requested that the public be excluded from the trial during the evidence presentation by the defence, as the defendant had a status of protected witness before the ICTY in the Hague.

If this was true, then the defence lawyer had in fact revealed the identity of the ICTY protected witness during the part of the main hearing which was open for the public.

We do not know why the court sessions are held so far apart or why no more sessions have been held since the last session in December 2007.

The procedure against the defendant Ljuban Devetak and others

Belgrade District Court

Case number: K.V. 6/07

War Crime Council: Judge Olivera Anđelković, Council President; Judges Tatjana Vuković and Dragan Plazinić, Council members

Indictment: issued by the Serbian War Crimes Prosecution on 28 November 2007, specified on 12 December 2007

Prosecuting attorney: Veselin Mrdak, Deputy War Crimes Prosecutor of the Serbian War Crimes Prosecution

Criminal offence: war crime against civilians, pursuant to Article 142, Paragraph 1 of the Penal Law of the Federal Republic of Yugoslavia

The defendants: Ljuban Devetak, Milan Devčić, Milan Radojčić, Željko Krnjajić, Miodrag Dimitrijević, Darko Perić, Radovan Vlajković, Radisav Josipović, Jovan Dimitrijević, Saša Stojanović, Dragan Bačić, Zoran Kosijer, Petronije Stevanović and Aleksandar Nikolaidis

The defence: lawyers Zdravko Krstić (for Ljuban Devetak, Milan Devčić and Dragan Bačić); Gradimir Nalić and Igor Olujić (for Milan Radojčić); Vojislav Vukotić (for Željko Krnjajić); Miladin Živanović (for Miodrag Dimitrijević); Jasmina Živić (for Darko Perić); Zorko Boris (for Radovan Vlajković); Branko Dimić (for Radisav Josipović); Gordana Živanović (for Jovan Dimitrijević); Slobodan Živković (for Saša Stojanović); Branislava Furjanović (for Zoran Kosijer); Miodrag Planojević (for Petronije Stevanović); Mila Janković (for Aleksandar Nikolaidis)

Attorneys-in-fact of the injured persons: Nataša Kandić and lawyer Dragoljub Todorović

The main hearing started on 17 April 2008. So far, 34 sessions of the main hearing have been held and all defendants have presented their defence.

All of the accused persons pleaded not guilty of the criminal act they are charged with.

All defendants attend the main hearing. The defendants Ljuban Devetak, Milan Devčić, Milan Radojčić, Miodrag Dimitrijević, Darko Perić, Jovan Dimitrijević and Petronije Stevanović are kept in custody, while other defendants are undetained.

The defendant Aleksandar Nikolaidis was kept in custody until 13 June 2008, when the Council cancelled his detention. The Council President explained this decision by the facts that the defendant Nikolaidis had only been accused by the defendant Stevanović, his willingness to contribute to the establishment of facts in the Lovas case, and his exemplary conduct before the Court.

The defendant Jovan Dimitrijević, who was free until 19 September 2008, was ordered detention due to the seriousness of the crime. The defendant's impudent behaviour during the presentation of his defence was also stated as one of the reasons for detention order, as explained by Judge Olivera Anđelković.

	Case	Criminal offence / Court / Council	Indictment No / County State Attorney's Office	
1	**WAR CRIME IN SREMSKA MITROVICA** Retrial in progress The trial was terminated on 23 January 2009 as the Vukovar County Court dropped war crimes charges against the accused	A war crime against civilians The Vukovar County Court **War Crime Council:** Judge Slavko Teofilović, Council President Judge Zlata Sotirov, Council member Judge Berislav Matanović, Council member	Indictment No. K-DO-25/02 issued by the Vukovar County State Attorney's Office on 26 September 2002, and amended on 9 July 2004. **Prosecutor:** Zdravko Babić, the Vukovar County Deputy State's Attorney	
2	**WAR CRIME IN NOVSKA** On 24 October 2008, the first-accused Branislav Miščević was sentenced to 20 years of imprisonment, while the second-accused Željko Vrljanović was acquitted of charges	A war crime against civilians The Sisak County Court **War Crime Council**: Judge Snježana Mrkoci, Council President Judge Predrag Jovanić, Council member Judge Alenka Lešić, Council member	Indictment No. K-DO-15/06 issued by the Sisak County State Attorney's Office on 12 May 2008 **Prosecutor:** Marijan Zgurić, the Sisak County Deputy State's Attorney	
3	**WAR CRIME IN TENJA** The non-final verdict of acquittal was announced on 4 July 2008	A war crime against civilians and a war crime against war prisoners The Osijek County Court **War Crime Council**: Judge Zvonko Vekić, Council President Judge Josip Frajlić, Council member Judge Drago Grubeša, Council member	Indictment No. K-DO-38/2007 issued by the Osijek County State Attorney's Office on 14 January 2008 **Prosecutor:** Zlatko Bučević, the Osijek County Deputy State's Attorney	
4	**WAR CRIME ON THE POGLEDIĆ HILL NEAR GLINA** In the repeated procedure after the Supreme Court of the Republic of Croatia quashed the verdict of the Sisak County Court which sentenced Rade Miljević to 14 years of imprisonment, the accused was convicted on 17 December 2008 and sentenced to 12 years of imprisonment	A war crime against civilians The Sisak County Court **War Crime Council:** Judge Snježana Mrkoci, Council President Judge Ljubica Rendulić-Holzer, Council member Judge Predrag Jovanić, Council member	Indictment No. K-DO-3/06 issued by the Sisak County State Attorney's Office Sisku on 4 September 2006, and amended at the trial session of 9 May 2007 **Prosecutor:** Marijan Zgurić, the Sisak County Deputy State's Attorney	
5	**WAR CRIME AT VUKOVAR HOSPITAL** The procedure in progress	A war crime against civilians The Vukovar County Court **War Crime Council:** Judge Nikola Bešenski, Council President Judge Nevenka Zeko, Council member Judge Stjepan Margić, Council member	Indictment No. DO-K-12/98 issued by the Vukovar County State Attorney's Office on 19 March 2001 **Prosecutor:** Vlatko Miljković, the Vukovar County Deputy State's Attorney	

	Indictees	Victims listed in indictments
	Milovan Ždrnja Member of the Serb militias Not held in detention	**Victim - beaten:** Ivica Pavić
	Branislav Miščević and Željko Vrljanović Members of the Serb militias Both indictees were held in detention during the trial. The second-acused was released upon the announcement of the verdict.	**Victims - murdered members of the Grgić family:** Stjepan Grgić, Tomislava Grgić, Ivan Grgić and Anamarija Grgić
	Boško Surla Member of the Serb militias Held in detention until the announcement of the non-final acquittal	**Victims:** - **tortured and murdered:** Marija Knežević, Marko Knežević, Manda Banović, Franjo Fuček, Nedjeljko Gotovac, Elizabeta Gotovac and Andrija Gotovac, Ivan Valentić, Marija Cerenko, Ana Horvat, Katica Kiš, Pero Mamić, Josip Medved, Josip Penić, Evica Penić, Josip Prodanović, Vladimir Valentić, Franjo Burča, Mato Nađ - **tortured and murdered (registered as disappeared) members of ZNG (the Croatian National Guard):** Ivica Lovrić, Franjo Ciraki, Miroslav Varga, Ivan Vadlja - **physically and psychologically tortured:** Zoran Bertanjoli, Ivka Krajina, Mato Krajina, Drago Balog, Rozalija Varga - **imprisoned:** members of the Vuko family
	Rade Miljević Member of the Serb militias Held in detention	**Victims - murdered:** Janko Kaurić, Milan Litrić, Borislav Litrić, Ante Žužić
	Bogdan Kuzmić Member of the Serb militias Tried in absentia, a fugitive from justice	**Victims – taken away and murdered in an unidentified way:** Martin Došen, Marko Mandić, Branko Lukenda, Stanko Duvnjak and Tomislav Hegeduš

	Case	Criminal offence / Court / Council	Indictment No / County State Attorney's Office	
6	**WAR CRIME IN KNIN** On 3 July 2008 the Šibenik County Court announced a non-final conviction against the accused, giving him two prison sentences of three years, and pronouncing a joint sentence of five years in prison. *At the Council session of 16 December 2008, the Supreme Court of the Republic of Croatia altered the sentence pronounced by the Šibenik County Court, passing prison sentences of five years for each of the crimes, and pronouncing a joint sentence of eight years in prison.*	A war crime against civilians and a war crime against war prisoners The Šibenik County Court **War Crime Council**: Judge Jadranka Biga-Milutin, Council President Judge Sanibor Vuletin, Council member Judge Ivo Vukelja, Council member	Indictment No. K-DO-21/07 issued by the Šibenik County State Attorney's Office on 16 October 2007. godine, and amended on 31 March 2008 **Prosecutor:** Zvonko Ivić, Šibenik County Deputy State's Attorney, Sanda Pavlović-Lučić, Šibenik County Deputy State's Attorney	
7	**WAR CRIME IN MIKLUŠEVCI** The procedure in progress	Genocide The Vukovar County Court War Crime Council: Judge Nikola Bešenski, Council President Judge Zlata Sotirov, Council member Judge Nevenka Zeko, Council member	Original Indictment No. KT-37/93 issued by the Osijek County State Attorney's Office on 29 April 1996, taken over and amended by the Vukovar County State Attorney's Office on 15 April 2005 under No. K-DO-71/01, amended by a memo dated on 26 March 2007, amended by a memo of 13 April 2007, amended at a trial session of 18 June 2008, and finally amended by the statement of 25 August 2008 **Prosecutor:** Zdravko Babić, The Vukovar County Deputy State's Attorney	

	Indictees	Victims listed in indictments
	Saša Počuča Member of the Serb militias Held in detention	**Victims (civilians):** **- died from injuries:** Ivan Hodak **- tortured:** Šime Čačić, Ante Mijoč, Drago Šimić, Ivan Šimic, Ivica Zrno, Ivana Lipak i Živko Mikulić, Diki Šaban, Tomislav Tesker, Krsto Silov, Marko Salopek, Stipe Banovac, Franjo Haužan, Mirko Barbarić, Marko Sikavica, Mato Baković, Marko Baković, Marko Lojić, Davor Lojić, Mirko Pilipović, Mićo Katuša, Ivan Požeg, Lenko Škibola, Stanko Kolčeg, Mile Šindilj, Ante Lojić, Mile Skorup, Ilija Hodak, Ante Kamber, Mile Modrić, Mile Maričić, Ivan Žarković, Ivan Buljan and Mile Slavić **Victims (tortured war prisoners):** Jakov Ćosić, Žarko Matenda, Ivica Graberski, Nenad Lazarušić, Miho Periš, Ivica Matić, Željko Mrkonjić, Josip Keselj, Božo Franić and Tomislav Grubišić, Zdenko Blažević, Denis Delić, Slavko Silov, Ante Grgić, Ivica Jamičić, Pajo Jamičić, Jure Rogić (members of the Croatian Army); Radoslav Bobanović, Milan Špoljarić, Mirko Medunić, Ivan Škorić and Željko Lipak, Velibor Bračić, Ante Slavić, Vladimir Mikulić, Zvonko Maloča, Ante Kunac, Ivica Klanac, Ivan Validžić, Ivan Pavičić, Ante Marinović, Denis Bronić and Ivan Atelj (members of the Police Forces of the Republic of Croatia)
	Present indictees: Joakim Bučko, Jaroslav Mudri, Zdenko Magoč, Saša Hudak and Darko Hudak **Fugitives from justice:** Jugoslav Mišljenović, Milan Stanković, Dušan Stanković, Petar Lenđel, Zdravko Simić, Mirko Ždinjak, Dragan Ćirić, Milan Bojanić, Nikola Vlainić, Zlatan Nikolić, Jovan Cico, Đuro Krošnjar, Čedo Stanković and Janko Ljikar The procedure against indictees Momir Anđelić, Slododan Anđelić, Radoje Jeremić, Joakim Lenđel, Kiril Buil, Janko Kiš, Milenko Kovačević, Dušan Anđelić, Ljubica Anđelić and Živan Ćirić was terminated due to death by a legally valid decision. The procedure against indictees Slobodan and Dušanka Mišljenović, Dragica Anđelić, Aleksandar Anđelić, Stanislav Simić and Srđan Anđelić was terminated after the prosecutor dropped charges against them. 5 indictees attend the trial, 14 are fugitives from justice Members of the Serb militias Indictees who attend the trial are not held in detention *In January 2009, the procedure was terminated against another five indictees after the prosecutor dropped charges against them. At present, three indictees attend the trial, while 11 are fugitives from justice.*	**Victims - murdered**: Julijan Holik, Veronika Holik, Mihajlo Holik, Slavko Hajduk **Victims – beaten and tortured**: Đuro Biki, Eugen Hajduk, Vlatko Ždinjak, Mihajlo Hajduk, Emil Mudri, Željko Hirjovati **Victims – expelled from the village**: 98 persons

	Case	Criminal offence / Court / Council	Indictment No / County State Attorney's Office	
8	**WAR CRIME IN CERNA** On 14 February 2008 the non-final verdict was announced. The accused received the following prison sentences: **the accused Madi: 20 years of imprisonment, the accused Jurić: 12 years of imprisonment, the accused Poštić: 8 years of imprisonment, the accused Lazić: 7 years of imprisonment , the accused Starčević: 10 years of imprisonment.**	A war crime against civilians The Vukovar County Court War Crime Council: Judge Ante Zeljko, Council President Judge Jadranka Kurbel, Council member Judge Branka Ratkajec-Čović, Council member – after her retirement replaced by Judge Stjepan Margić (the trial started anew)	Indictment No. K-DO-52/06 issued by the Vukovar County State Attorney's Office on 29 December 2006, amended by a statement of 8 February 2008 **Prosecutor:** Vlatko Miljković, the Vukovar County Deputy State's Attorney	
9	**WAR CRIME AT VELEPROMET** On 26 November 2008, the War Crime Council of the Vukovar County Court announced the verdict acquitting the accused of war crime charges	A war crime against civilians The Vukovar County Court War Crime Council: Judge Nikola Bešenski, Council President Judge Stjepan Margić, Council member Judge Jadranka Kurbel, Council member	Indictment No. br. K-DO-10/03 issued by the Vukovar County State Attorney's Office on 11 February 2005, amended at the trial session of 24 November 2008 **Prosecutor:** Vlatko Miljković, the Vukovar County Deputy State's Attorney	
10	**WAR CRIME IN LOVAS** The procedure in progress	Genocide and a war crime against civilians The Vukovar County Court **War Crime Council:** Judge Ante Zeljko, Council President Judge Zlata Sotirov, Council member Judge Nevenka Zeko, Council member	Indictment No. KT-265/92 issued by the Osijek County State Attorney's Office on 19 December 1994, and Indictment No. K-DO-44/04 issued by the Vukovar County State Attorney's Office on 1 October 2004, merged into the combined Indictment No. K-DO-39/00 issued by the Vukovar County State Attorney's Office **Prosecutor:** Vlatko Miljković, the Vukovar County Deputy State's Attorney	

	Indictees	Victims listed in indictments
	Tomislav Madi, Mario Jurić, Zoran Poštić, Davor Lazić and Mijo Starčević Members of the Croatian militias Held in detention	**Victims – murdered:** Radomir Olujić, Anica Olujić, a minor Milena Olujić and a minor Marko Olujić
	Žarko Leskovac Member of the Serb militias Not held in detention	**Victims – beaten**: Ljubica Tepavac and Slađana Curnić
	Ljuban Devetak, Milan Devčić, Milenko Rudić, Željko Krnjajić, Slobodan Zoraja, Željko Brajković, Ilija Kresojević, Milan Rendulić, Obrad Tepavac, Zoran Tepavac, Milan Tepavac, Milan Radojčić, Milan Vorkapić, Dušan Grković, Đuro Prodanović, Ilija Vorkapić Members of the Serb militias Iindictees Milan Tepavac and Ilija Vorkapić attend the trial; other indictees are tried in absentia Milan Tepavac is held in detention, while Ilija Vorkapić is not detained.	**Victims:** - **24 persons killed in a mine field:** Božo Mađarac, Mijo Šalaj, Tomislav Sabljak, Slavko Štrangarić, Nikola Badanjak, Marko Vidić, Mato Hodak, Tomo Sabljak – junior, Ivica Sabljak, Slavko Kuzmić, Petar Badanjak, Marko Marković, Ivan Conjar, Ivan Kraljević – junior, Ivan Palijan, Josip Turkalj, Luka Balić, Željko Pavlić, Darko Pavlić, Darko Sokolović, Zlatko Božić, Ivin Vidić, Antun Panjek, Zlatko Panjek - **45 killed at different locations in Lovas:** Danijel Badanjak, Ilija Badanjak, Antun Jovanović, Anka Jovanović, Kata Pavličević, Alojzije Polić, Mato Keser, Josip Poljak, Ivan Ostrun, Dragutin Pejić, Stipo Mađarević, Pavo Đaković, Stipo Pejić, Živan Antolović, Milan Latas, Juraj Poljak, Mijo Božić, Vida Kriznarić, Josip Kraljević, Mirko Grgić, Mato Adamović, Marko Sabljak, Zoran Krizmanić, Josip Jovanović, Marin Balić, Katica Balić, Josip Turkalj, Petar Luketić, Ante Luketić, Đuka Luketić, Jozefina Pavošević, Marijana Pavošević, Slavica Pavošević, Stipo Luketić, Marija Luketić, Josip Rendulić, Rudolf Jonak, Andrija Deličić, Pero Rendulić, Franjo Pandža, Božo Vidić, Zvonko Martinović, Marko Damjanović, Anica Lemunović, Đuka Krizmanić - **15 persons severely wounded in a mine field:** Marko Filić, Emanuel Filić, Stjepan Peulić, Josip Sabljak, Stanislav Franković, Mirko Kefer, Ivica Mujić, Ljubo Solaković, Milan Radmilović, Zlatko Tomo, Josip Gešnja, Mato Kraljević, Petar Vuleta, Lovro Geistener, Dragan Sabljak - **18 persons severely injured due to torture:** Mato Mađarević, Đuro Filić, Zoran Jovanović, Marija Vidić, Đuka Radočaj, Berislav Filić, Emanuel Filić, Pavo Antolović, Ivo Antolović, Željko Francisković, Ivan Đaković, Anđelko Filić, Zvonko Balić, Vjekoslav Balić, Man Pejak, Petar Sabljak, Marko Grčanac

	Case	Criminal offence / Court / Council	Indictment No / County State Attorney's Office	
11	**WAR CRIME IN THE VILLAGE OF SMOLJANAC** On 23 January 2008 the non-final sentence of acquittal was announced at the second retrial (after the Supreme Court of the Republic of Croatia first quashed the verdict reached in the original trial, and then the acquittal reached by the Gospić County Court)	A war crime against civilians The Gospić County Court **War Crime Council:** Judge Dušan Šporčić, Council President Judge Dubravka Rudelić, Council member Judge Milka Vraneš, Council member	Indictment No. K-DO-2/02 issued by the Gospić County State Attorney's Office on 24 April 2006, amended at the trial session of 23 January 2008 **Prosecutor:** Željko Brkljačić, The Gospić County Deputy State's Attorney	
12	**WAR CRIME IN KORENICA** On 3 October 2008 the accused Šuput and Panić were convicted and sentenced to four and three years and six months of imprisonment, respectively	A war crime against war prisoners The Rijeka County Court **War Crime Council:** Judge Đurđa Jovanić, Council President Judge Duško Abramović, Council member Judge Vlado Skorup, Council member	Indictment No. K-DO-24/06, issued by the Gospić County State Attorney's Office on 31 January 2007, and amended on 2 October 2008 **Prosecutor:** Darko Karlović, the Rijeka County Deputy State's Attorney	
13	**WAR CRIME IN DALJ III** On 21 April 2008 the accused were convicted and pronounced the following prison sentences: the accused Simić 9 years of imprisonment, the accused Kikanović five years and six months of imprisonment, and the accused Krstinić 4 years of imprisonment. *At the public session of 3 December 2008, the Supreme Court of the Republic of Croatia altered the pronounced sentences, sentencing the accused Simić to ten years of imprisonment, the accused Kikanović to six years and six months of imprisonment and the accused Krstinić to five years of imprisonment*	A war crime against civilians The Osijek County Court **War Crime Council:** Judge Krunoslav Barkić, Council President Judge Branka Guljaš, Council member Judge Dubravka Vučetić, Council member	Indictment No. K-DO-20/07 issued by the Osijek County State Attorney's Office on 6 June 2007, and amended at the trial session of 18 April 2008 **Prosecutor:** Dražen Križevac, the Osijek County Deputy State's Attorney	
14	**WAR CRIME AT DRVENA PIJACA IN VUKOVAR** On 20 February 2008 the accused was convicted and sentenced to two years and six months in prison. *At the session of 30 October 2008, the Supreme Court of the Republic of Croatia overturned the verdict reached by the Vukovar County Court.*	A war crime against civilians The Vukovar County Court **War Crime Council:** Judge Nikola Bešenski, Council President Judge Stjepan Margić, Council member Judge Željko Marin, Council member	Indictment No. K-DO-28/06 issued by the Vukovar County State Attorney's Office on 2 March 2007, amended on 6 April 2007, amended at the trial session of 8 May 2007, and finally amended by a statement of 11 February 2008 **Prosecutor:** Vlatko Miljković, the Vukovar County Deputy State's Attorney	

	Indictees	Victims listed in indictments
	Nikola Cvjetićanin Member of the Serb militias Not held in detention	**Victims – murdered:** Josip Matovina and Ana Bujadinović
	Željko Šuput and Milan Panić Members of the Serb militias Held in detention until the announcement of the verdict	**Victims - tortured:** Nikola Nikolić, Mile Lukač, Perica Bičanić
	Novak Simić, Miodrag Kikanović and Radovan Krstinić Members of the Serb militias Indictee Simić was tried in absentia, indictee Kikanović was held in detention and indictee Krstinić was held in detention until the announcement of the verdict on 21 April 2008	**Žrtva – died from torture:** Antun Kundić **Victims – tortured:** Ivan Bodza, Karol Kremerenski, Ivan Horvat, Tomo Duvnjak, Emerik Huđik, Marijo Lazar, Josip Ledenčan
	Slobodan Raič Member of the Serb militias Held in detention until the foregoing session of the Supreme Court of the Republic of Croatia	**Victim – disappeared:** Slavko Batik

	Case	Criminal offence / Court / Council	Indictment No / County State Attorney's Office	
15	**WAR CRIME IN PETRINJA II** In the repeated procedure, on 19 June 2008 the accused were convicted and sentenced to five years in prison	A war crime against civilians The Sisak County Court **War Crime Council:** Judge Snježana Mrkoci, Council President Judge Predrag Jovanić, Council member Judge Višnja Vukić, Council member	Indictment No. K-DO-7/05 issued by the Sisak County State Attorney's Office on 2 March 2007, amended at the trial session of 21 August 2007 **Prosecutor:** Marijan Zgurić, the Sisak County Deputy State's Attorney	
16	**WAR CRIME IN THE MEDAK POCKET** On 30 May 2008 the non-final verdict was announced, acquitting the accused Ademi of all three counts of the Indictment, and acquitting the accused Norac of one count, while convicting him on two counts of the Indicment. He received two prison sentences of five years, and a joint sentence of seven years in prison.	A war crime against civilians **and a war crime against war prisoners** The Zagreb County Couty **War Crime Council:** Judge Marin Mrčela, Council President Judge Siniša Pleše, Council member Judge Jasna Pavičić, Council member Judge Zdenko Posavec, additional Judge	Indictment No. K-DO-349/05 issued by the Zagreb County State Attorney's Office on 22 November 2006, and amended on 20 May 2008 **Prosecutor:** Antun Kvakan, Deputy State's Attorney of the Republic of Croatia; Jasmina Dolmagić, the Zagreb County Deputy State's Attorney	
17	**WAR CRIME IN OSIJEK** The procedure in progress	A war crime against civilians The Zagreb County Court **War Crime Council:** Judge Željko Horvatović, Council President, Judge Rajka Tomerlin – Almer, Council member, Judge Sonja Brešković-Balent, Council member, Judge Mirko Klinžić, additional Judge	Indictment No. K-DO-76/06 issued by the Osijek County State Attorney's Office on 16 April 2007, and Indictment No. K-DO-105/06 issued by the Zagreb County State Attorney's Office on 9 May 2007, amended and merged into Indictment No. K-DO-105/06 dated on 30 September 2008 **Prosecutor:** Jasmina Dolmagić, the Zagreb County Deputy State's Attorney, and Miroslav Kraljević, the Osijek County Deputy State's Attorney (referred to the Zagreb County State Attorney's Office to perform duties of the Zagreb County Deputy State's Attorney)	
18	**WAR CRIME IN SELKOVAC AND ŠATORNJA** The verdict acquitting the accused of war crime charges was announced on 14 November 2008	A war crime against civilians The Sisak County Court **War Crime Council:** Judge Snježana Mrkoci, Council President, Judge Željko Mlinarić, Council member, Judge Višnja Vukić, Council member	Indictment No. K-DO-21/06 issued by the Sisak County State Attorney's on 1 August 2008, amended at the trial sessions of 1 October 2008 and 14 November 2008 **Prosecutor:** Ivan Petrkač, the Sisak County Deputy State's Attorney	

	Indictees	Victims listed in indictments
	Janko Banović and Zoran Obradović Members of the Serb militias Indictee Janko Banović is a fugitive from justice and was tried in absentia, indictee Zoran Obradović is held in detention	**Victims - murdered:** Ivan Stanić and Slavko Matković
	Rahim Ademi and Mirko Norac Members of the Croatian military forces Indictee Ademi was not held in detention, while indictee Norac is serving his prison sentence	**Victims - murdered civilians:** Bosiljka Bjegović, Ankica Vujnović, Ljubica Kričković-Živčić, Sara Kričković, Đuro Krajnović, Mile Sava Rajčević, Nikola Vujnović, Momčilo Vujnović, Ljiljana Jelača, Milan Matić, Nikola Jerković, Anđa Jović, Nedeljka Krajnović, Stana Krajnović, Milka Bjegović, Mile Pejnović, Dmitar Jović, Mara Jović, Đuro Vujnović, Stevo Vujnović, Boja Pjevač, Milan Rajčević, Branko Vujnović, Pera Krajnović, Boja Vujnović, Marko Potkonjak, Janko Potkonjak, Nikola Vujnović **Victims - murdered war prisoners:** Stanko Despić, Nikola Stojisavljević, Milan Jović, Dane Krivokuća, Dragan Pavlica **Victims - survived civilians:** Anka Rajčević, Ivanka Rajčević **Victims - tortured war prisoners:** Vladimir Divjak, protected witness No. 4, Nikola Bulj
	Branimir Glavaš, Ivica Krnjak, Gordana Getoš-Magdić, Dino Kontić, Tihomir Valentić and Zdravko Dragić The procedure against indictee Mirko Sivić was separated in June 2008 due to illness and subsequent procedural incapacity of the accused. Members of the Croatian military forces Not held in detention	**Victims – murdered:** Branko Lovrić, Alija Šabanović, Jovan Grubić, Dr. Milutin Kutlić, Svetislav Vukajlović, unidentified female person, Bogdan Počuča, Čedomir Vučković and Đorđe Petković **Victim – tortured and wounded:** Radoslav Ratković **Victims – tortured:** Nikola Vasić The amended and combined Indictment No. K-DO-150/06 of 30 September 2008 excluded from factual description the incriminations referring to the torture of two unidentified civilians who were imprisoned in a garage at the National Defence Secretariat, torture of Smilja Berić, Rajko Berić and Snežana Berić on the premises of the National Defence Secretariat, and arrest and murder of Petar Ladnjuk, Milenko Stanar and another unidentified male person.
	Mile Letica Member of the Serb militias Held in detention until the announcement of the verdict on 14 November 2008	**Victim:** Franjo Sučec (victims Franjo Klobučar and Andrija Grgić were excluded from the amended Indictment of 14 November 2008)

	Case	Criminal offence / Court / Council	Indictment No / County State Attorney's Office	
19	**WAR CRIME IN VELIKA KLADUŠA** The procedure in progress	A war crime against civilians The Rijeka County Court **War Crime Council:** Judge Ika Šarić, Council President, Judge Nataša Masovčić, Council member, Judge Darko Lupi, Council member	Indictment No. K-DO-90/07 issued by the Rijeka County State Attorney's Office on 19 March 2008, amended at the trial session of 16 October 2008 **Prosecutor:** Darko Karlović, the Rijeka County Deputy State's Attorney	
20	**WAR CRIME IN ERVENIK** Retrial. The accused was previously convicted in absentia and sentenced to 10 years of imprisonment.	A war crime against civilians The Šibenik County Court **War Crime Council:** Judge Branko Ivić, Council President, Judge Ivo Vukelja, Council member, Judge Jadranka Biga Milutin, Council member	Indictment No. KT-27/92 issued by the Šibenik County State Attorney's Office on 23 October 1992 Prosecutor: Sanda Pavlović Lučić, the Šibenik County Deputy State's Attorney Defence attorney: Vera Bego, lawyer from Šibenik	
21	**WAR CRIME IN MARINO SELO** The procedure in progress	A war crime against civilians The Požega County Court **War Crime Council:** Judge Predrag Dragičević, Council President, Judge Jasna Zubčić, Council member, Judge Žarko Kralj, Council member	Indictment No. K-DO-14/07 issued by the Požega County State Attorney's Office on 12 August 2008 **Prosecutor:** Božena Jurković, the Požega County Deputy State's Attorney	
22	**WAR CRIME AT THE BIH CORRIDOR, IN POTKONJE, VRPOLJE AND KNIN** Retrial in progress. The Šibenik County Court previously convicted the accused, sentencing the accused Atlija on 4 June 2007 to a joint prison sentence of 12 years, and the accused Jaramaz to 10 years in prison. The Supreme Court of the Republic of Croatia partly overturned the verdict against the accused Atlija and overturned the verdict against the accused Jaramaz, ordering a retrial of the case. The sentence for the accused Atlija was altered in one part and increased from three to five years in prison.	A war crime against civilians and a war crime against war prisoners The Šibenik County Court **War Crime Council:** Judge Jadranka Biga – Milutin, Council President, Judge Sanibor Vuletin, Council member, Judge Ivo Vukelja, Council member	Indictment No. K-DO-14/06 issued by the Šibenik County State Attorney's Office on 19 September 2006 **Prosecutor:** Zvonko Ivić, the Šibenik County Deputy State's Attorney	

	Indictees	Victims listed in indictments
	Zlatko Jušić and Ibrahim Jušić Former Prime Minister of the so-called Autonomous Region of Western Bosnia (the first-accused) and a member of the police forces and Head of the State Security Office of the so-called Autonomous Region of Western Bosnia (the second-accused)	**Victims:** Alija Feriz, Mujo Milak, Šemsudin Husić, Emin Redžić, Husein Mušić, Aziz Abdilagić, Hasib Delić alias „Heba“, Mehmed Jušić, Mehmed Sijamhodžić, Kasim Ćano, Đeko Bibuljica, Hasan Đanić, Asja Galijašević, Beiza Kekić, Fatima Dorić, Nura Salkić, Fata Omeragić, Zuhra Hozanović, Alema Grahović, Mehmed Miljković, Asiga Keserović, Almadin Trgovčević, Rifet Đogić, Osman Galijašević, Rasim Ičanović, Enisa Delić, Rasim Erdić (murdered)
	Sreten Peslać Member of the Serb militias Held in detention	**Victims:** **Physically and psychologically tortured:** Croatian inhabitants of the village of Ervenik
	Damir Kufner, Davor Šimić, Pavao Vancaš, Tomica Poletto, Željko Tutić and Antun Ivezić Members of the Croatian military forces Indictees Davor Šimić and Pavao Vancaš are not detained, while other indictees are held in detention	**Victims:** - **ill-treated and tortured:** Branko Stanković, Mijo Krajnović and Jovo Krajnović (inhabitants of the village of Kip); Bunčić Milka, Jeka Žestić and Nikola Ivanović (inhabitants of the village of Klisa) - **ill-treated, tortured, and murdered:** Pero Novković, Mijo Danojević, Gojko Gojković, Savo Gojković, Branko Bunčić, Nikola Gojković, Mijo Gojković, Filip Gojković, Jovo Popović – Tein, Petar Popović, Nikola Krajnović, Milan Popović (inhabitants of the village of Kip); Jovo Žestić, Jovo Popović Simin, Slobodan Kukić, Rade Gojković, Savo Maksimović, Josip Cicvara (inhabitants of the village of Klisa)
	Milan Atlija and Đorđe Jaramaz Members of the Serb militias Held in detention	**Victim - murdered**: an unidentified male person **Victims – tortured**: Nikola Požar, Zlatko Gambiraža, Mile Jelić, Ivan Požar, Ante Milić, Nikola Milić, Emilija Milić, a minor Toni Požar, Mile Jelić, Branko Batić, Ante Jelić, Branko Požar, Miroslav Jelić, Dragomir Grgić, Slavko Turudić, Ivan Knezović, Nebojša Škalic

	Case	Criminal offence / Court	Indictment No / County State Attorney's Office	
1	**WAR CRIME IN LOVINAC** Second repeated procedure. The case was transferred from the Gospić County Court (last trial session was held in September 2007, while a reconstruction of the incriminating events was conducted in October 2007).	A war crime against civilians The Rijeka County Court **War Crime Council:** Judge Srebrenka Šantić, Council President, Judge Duško Abramović, Council member, Judge Vlado Skorup, Council member	Indictment No. K-DO-53/06 issued by the Rijeka County State Attorney's Office. The case was referred to the Rijeka County State Attorney's Office by the decision of the Supreme Court of the Republic of Croatia numbered No. II-Kr-41/06 and dated 7 March 2006. The Indictment was amended at the trial session of 17 September 2006. **Prosecutor:** Darko Karlović, the Rijeka County Deputy State's Attorney	
2	**WAR CRIME IN DALJ** The procedure in progress (last trial session was held in December 2007)	A war crime against civilians The Osijek County Court War Crime Council: Judge Krunoslav Barkić, Council President, Judge Katica Krajnović, Council member, Judge Dubravka Vučetić, Council member	Indictment No. KT-103/94 issued by the Osijek County State Attorney's Office on 9 July 2004. **Prosecutor:** Miroslav Bušbaher, the Osijek County Deputy State's Attorney	
3	**WAR CRIME AT THE BOROVO COMMERCE** In the initial procedure, the accused was tried in absentia, convicted and sentenced to five years of imprisonment. In the repeated procedure the accused was acquitted of war crime charges, but the Supreme Court of the Republic of Croatia quashed this verdict. The accused did not respond to the next summons to the court. The last trial session was held in January 2007. In December 2008, the Court referred to the General Amnesty Law and terminated the procedure against the accused after the Vukovar County State Attorney's Office changed the indictment and modified the qualification of the crime into an armed rebellion.	A war crime against civilians The Vukovar County Court **War Crime Council:** Judge Nikola Bešenski, Council President, Judge Slavko Teofilović, Council member, Judge Stjepan Margić, Council member	Indictment No. K-DO-37/04 issued by the Vukovar County State Attorney's Office on 19 July 2004, amended by the statement issued on 21 November 2008 (modification of the criminal offence into an armed rebellion) **Prosecutor:** Vlatko Miljković, the Vukovar County Deputy State's Attorney	

	Indictees	Victims
	Radoslav Čubrilo, Milorad Čubrilo, Milorad Žegarac, Petar Hajduković, Gojko Markajlo Members of the Serbian paramilitary units Tried in absentia; all indictees are fugitives from justice	**Victims – murdered**: Stjepan Katalinić, Ivan Sekulić, Ivan Ivezić, Martin Šarić, Marko Pavičić **Victim – beaten**: Mile Račić
	Željko Čizmić, whose procedure has been separated from the procedure against other 19 accused and two accused against whom the procedure has been terminated Member of the Serb militias Not held in detention	**Victims - beaten**: Damir Buljević, Stipo Sušić, Filip Đanko, Tomislav Hajduković, Marko Andabak, Ištvan Bačko, Slavko Palinkaš, Tomislav Kilić, Goran Šlinger, Vlatko Nikolić, Imra Moger **Victim – appropriation of property**: Ištvan Bačko
	Vlado Tepavac Member of the Serb militias Not held in detention before he became a fugitive from justice	**Victim – beaten:** Petar Dreić

	Case	Criminal offence / Court / Council	Indictment No / County State Attorney's Office	
1	**CASE AGAINST ANTUN GUDELJ** The convicting verdict against the accused was announced on 7 July 2008. On three counts of the Indictment (murder of Josip Reihl-Kir, Goran Zobundžija and Milan Knežević), he received the sentence of 20 years of imprisonment for each charge, and on one count (murder attempt of Mirko Tubić) 10 years of imprisonment. He was sentenced to a joint prison sentence of 20 years.	Murder and murder attempt The Osijek County Court **Council:** Judge Damir Krahulec, Council President, Judge Drago Grubeša, Council member, Marica Miluković, lay magistrate, Josip Ciprovac, lay magistrate, Marija Rumbočić-Pezelj, lay magistrate	Indictment No. KT-148/91 issued by the Osijek County State Attorney's Office on 25 March 1992, amended by a statement of 12 April 1994, amended at the trial session of 24 June 1994, and finally amended at the trial session of 19 June 2008 **Prosecutor:** Dražen Križevac, the Osijek County Deputy State's Attorney	

	Indictees	Victims
	Antun Gudelj Member of the Croatian Police Reserve unit Held in detention	**Victims – murdered:** Josip Reihl-Kir, Goran Zobundžija, Milan Knežević **Victim – wounded:** Mirko Tubić

	Case	Criminal offence / Court / Council	Indictment No / County State Attorney's Office	
1	**WAR CRIME IN DOLJANI** The Supreme Court of the Republic of Croatia upheld the verdict reached by the Bjelovar County Court on 7 November 2007, sentencing the accused in the repeated procedure (after the Supreme Court of the Republic of Croatia overturned the original conviction) to 15 years of imprisonment	A war crime against war prisoners The public session of the Supreme Court of the Republic of Croatia was held on 14 May 2008	Indictment No. K-DO-81/03 issued by the Bjelovar County State Attorney's Office on 5 February 2004, amended at the trial session of 7 November 2007	
2	**WAR CRIME IN RAVNO RAŠĆE** The Supreme Court of the Republic of Croatia upheld the verdict announced by the Sisak County Court on **26 September 2007, sentencing the accused in the repeated procedure to 12 years of imprisonment**	A war crime against civilians The public session of the Supreme Court of the Republic of Croatia was held on 30 January 2008	Indictment No. K-DO-43/04 issued by the Sisak County State Attorney's Office on 8 November 2005	
3	**WAR CRIME IN PETRINJA** The Supreme Court of the Republic of Croatia upheld the verdict of the Sisak County Court announced on 25 April 2007, sentencing the accused in the repeated procedure to five years of imprisonment	A war crime against civilians The public session of the Supreme Court of the Republic of Croatia was held on 5 March 2008	Indictment No. br. K-DO-12/06, issued by the Sisak County State Attorney's Office on 21 July 2006, amended on 23 February 2007 and 23 April 2007	
4	**WAR CRIME ON THE POGLEDIĆ HILL NEAR GLINA** The Supreme Court of the Republic of Croatia quashed the verdict of the Sisak County Court, announced on 13 June 2007, which sentenced the accused to 14 years of imprisonment *In the repeated procedure, the verdict was announced on 17 December 2008. The accused was convicted and sentenced to 12 years of imprisonment.*	A war crime against civilians The public session of the Supreme Court of the Republic of Croatia was held on 5 February 2008	Indictment No. K-DO-3/06 issued by the Sisak County State Attorney's Office on 4 September 2006, amended at the trial session of 9 May 2007	
5	**WAR CRIME IN PETRINJA II** The Supreme Court of the Republic of Croatia overturned the verdict of the Sisak County Court, announced on 31 August 2007, which sentenced the accused to 7 years of imprisonment *In the repeated procedure, the War Crime Council of the Sisak County Court announced the verdict on 19 June 2008, sentencing the accused to five years of imprisonment.*	A war crime against civilians The public session of the Supreme Court of the Republic of Croatia was held on 21 January 2008	Indictment No. K-DO-7/05 issued by the Sisak County State Attorney's Office on 2 March 2007, amended on 21 August 2007.	

	Indictees	Victims
→	Dobrivoje Pavković (Indictment also included Stojan Vujić but the procedure against him was separated) Member of the Serb militias Not held in detention Indictee was not present at the announcement of the verdict. He has been a fugitive from justice since then.	**Victims - killed:** Srećko Manđani, Željko Bublić and Eugen Lapčić **Victims – received serious body injuries:** Vitomir Polenus, Željko Hunjek, Alfons Tutić and Vladimir Zimić **Victim – received body injuries:** Marijan Polenus
→	Dragan Đokić, alias Popizdeo (*Pissed-off*) Member of the Serb paramilitary units Held in detention	**Victim – murdered civilan:** Đuro Vučičević
→	Jovo Begović Member of the Serb militias Held in detention	**Victim – murdered:** Stjepan Bučar **Victims – wounded:** Ramiz Herelić, Angelina Banadinović, Đuro Vujatović, Zvonko Dumbović
→	Rade Miljević Member of the Serb militias Held in detention	**Victims-murdered:** Janko Kaurić, Milan Litrić, Borislav Litrić, Ante Žužić
→	Janko Banović and Zoran Obradović Members of the Serb militias Indictee Janko Banović is a fugitive from justice; he was tried in absentia. Indictee Zoran Obradović is held in detention	**Victims - murdered:** Ivan Stanić and Slavko Matković

	Case	Criminal offence / Court / Council	Indictment No / County State Attorney's Office	
6	**WAR CRIME AT THE BIH CORRIDOR, IN POTKONJE, VRPOLJE AND KNIN** The Šibenik County Court convicted the accused, sentencing the accused Atlija to a joint prison sentence of 12 years, and the accused Jaramaz to 10 years in prison. The Supreme Court of the Republic of Croatia partly overturned the first-instance verdict with regard to two counts of the verdict, ordering a retrial on these counts. With regard to one count of the verdict, the decision on penalty for the accused Atlija was changed to five years of imprisonment (the Šibenik County Court originally passed a three-year prison sentence for this charge).	A war crime against civilians and a war crime against war prisoners The public session of the Supreme Court of the Republic of Croatia was held on 16 April 2008	Indictment No. K-DO-14/06 issued by the Šibenik County State Attorney's Office on 19 September 2006	
7	**WAR CRIME ON THE KORANA BRIDGE** The Supreme Court of the Republic of Croatia on two occasions overturned the verdicts of acquittal reached by the Karlovac County Court. The third trial also ended with an acquittal. We are not familiar with the decision of the Supreme Court of the Republic of Croatia on this verdict.	Unlawful killing and wounding of the enemy The public session of the Supreme Court of the Republic of Croatia was held on 24 September 2008	Indictment No. KT- 48/91 issued by the Karlovac County State Attorney's Office.	
8	**WAR CRIMES IN BELI MANASTIR AND OTHER PLACES IN THE BARANJA REGION** The repeated procedure ended on 8 May 2006 with the non-final verdict of guilty against the accused Mamula (sentenced to four years and ten months in prison) and the verdict of acquittal of the other accused (after the Prosecutor changed the indictment and the qualification of the crime into an armed rebellion) We are not familiar with the decision of the Supreme Court of the Republic of Croatia on this verdict.	A war crime against civilians The public session of the Supreme Court of the Republic of Croatia was held on 15 October 2008	Indictment No. KT-136/94 issued by the Osijek County State Attorney's Office on 3 April 2001, amended by a statement of 14 March 2002, amended at the trial sessions of 26 March 2002 and 4 May 2006 (modification of the qualification of the crime into an armed rebellion)	
9	**WAR CRIME AT DRVENA PIJACA IN VUKOVAR** The Supreme Court of the Republic of Croatia overturned the verdict of the Vukovar County Court, announced on 20 February 2008, which convicted and sentenced the accused to two years and six months of imprisonment In the repeated trial held in January 2009, the accused was convicted and again sentenced to two years and six months of imprisonment	A war crime against civilians The public session of the Supreme Court of the Republic of Croatia was held on 30 October 2008	Indictment No. K-DO-28/06 issued by the Vukovar County State Attorney's Office on 2 March 2007, amended on 6 April 2007, amended at the trial session of 8 May 2007, and finally amended by a statement of 11 February 2008	
10	**WAR CRIME IN DALJ III** The Supreme Court of the Republic of Croatia altered the pronounced sentences, sentencing the accused Simić to ten years of imprisonment, the accused Kikanović to six years and six months of imprisonment, and the accused Krstinić to five years of imprisonment *The Osijek County Court had previously convicted the accused and pronounced the following prison sentences: the accused Simić -9 years of imprisonment, the accused Kikanović- five years and six months of imprisonment, and the accused Krstinić- 4 years of imprisonment.*	A war crime against civilians The public session of the Supreme Court of the Republic of Croatia was held on 3 December 2008	Indictment No. K-DO-20/07 issued by the Osijek County State Attorney's Office on 6 June 2007, and amended at the trial session of 18 April 2008	

	Indictees	Victims
	Milan Atlija, Đorđe Jaramaz Members of the Serb militias Held in detention	**Victim - murdered:** an unidentified male person **Victims – tortured:** Nikola Požar, Zlatko Gambiraža, Mile Jelić, Ivan Požar, Ante Milić, Nikola Milić, Emilija Milić, a minor Toni Požar, Mile Jelić, Branko Batić, Ante Jelić, Branko Požar, Miroslav Jelić, Dragomir Grgić, Slavko Turudić, Ivan Knezović, Nebojša Škalic
	Mihajlo Hrastov Member of the Croatian military units Not held in detention	**Victims - murdered:** Jovan Stipić, Božo Kozlina, Nebojša Popović, Milić Savić, Milenko Lukač, Nikola Babić, Slobodan Milovanović, Svetozar Gojković, Miloš Srdić, Zoran Komadina, Mile Babić, Vaso Bižić, Mile Počuča; **Victims –wounded:** Duško Mrkić, Svetozar Šarac, Nebojša Jasnić and Branko Mađarac
	Nikola Alaica, Mile Bekić, Drago Karagaća, Petar Mamula, Milan Prusac and Sreto Jovandić Members of the Serb militias Not held in detention during the re-peated procedure	**Victims - tortured:** Stjepan Sklepić, Ešref Hadžić, Elvis Hadžić, Franjo Kovač, Nikola Kršić, Ivan Belaj, Franjo Joha, Ivan Kusik, Matija Đurin, Mijo Jagatić, Ivo Jagatić, Šanjika Krek, Julijana Matošić, Vera Martin, Josip Klasić, Davor Ranogajac, Pavo Zemljak, Vladimir Zemljak, Gizela Zemljak, Zoran Bandov, Veljko Salonja, Jovan Narandža, Antun Knežević, Zlata Levačić, Ankica Svetličić, Drago Dominić, Stevo Šantić, Antun Kuček **Victims – expelled:** (18 inhabitants among whom were Nela Sklepić, Stjepan Varga, Nada Varga, Katarina Kosir, Franjo Malek, Katarina Tintar, Milan Bartolić, Vida Hadžikan, Franjo Furdi, Ivan Zadravec, Katarina Kolarić and husband, Zdenka Kner)
	Slobodan Raič Member of the Serb militias Held in detention until the session of the Supreme Court of the Republic of Croatia	**Victim – disappeared:** Slavko Batik
	Novak Simić, Miodrag Kikanović, and Radovan Krstinić Members of the Serb militias Indictee Simić was tried in absentia, indictee Kikanović was held in deten-tion, and indictee Krstinić was held in detention until the announcement of the verdict on 21 April 2008	**Victim – died from injuries suffered as a result of ill-treatment:** Antun Kundić **Victims – tortured:** Ivan Bodza, Karol Kremerenski, Ivan Horvat, Tomo Duvnjak, Emerik Huđik, Marijo Lazar, Josip Ledenčan

	Case	Criminal offence / Court / Council	Indictment No / County State Attorney's Office	
11	**WAR CRIME IN KNIN** The Supreme Court of the Republic of Croatia *altered the sentence pronounced by the Šibenik County Court, passing prison sentences of five years for each of the charges, and pronouncing a joint sentence of eight years in prison.* *The Šibenik County Court had previously convicted the accused, passing two prison sentences of three years, and pronouncing a joint sentence of five years in prison.*	A war crime against civilians and a war crime against war prisoners The public session of the Supreme Court of the Republic of Croatia was held on 16 December 2008	Indictment No. K-DO-21/07 issued by the Šibenik County State Attorney's Office on 16 October 2007 and amended on 31 March 2008	
12	**WAR CRIME IN BERAK** The Supreme Court of the Republic of Croatia altered the verdict of the Vukovar County Court, reducing the pronounced sentence from four years to three years and six months in prison	A war crime against civilians The public session of the Supreme Court of the Republic of Croatia was held on 5 November 2008	Indictment No. K-DO-42/01 issued by the Vukovar County State Attorney's Office on 5 April 2006, specified with regard to the four of the accused who attended the trial on 8 September 2006, and amended on 19 November 2007	
13	**WAR CRIME IN ŠIROKA KULA** After the Gospić County Court convicted the accused in absentia in 1994, sentencing him to 15 years of imprisonment, in the repeated procedure in 2004, the same Court acquitted the accused of war crime charges. The Supreme Court of the Republic of Croatia upheld the first-instance verdict and rejected the appeal of the state attorney as ungrounded, thus making the first-instance verdict legally valid.	A war crime against civilians The public session of the Supreme Court of the Republic of Croatia was held on 16 December 2008	Issued by the Gospić County State Attorney's Office	

	Indictees	Victims
	Saša Počuča Member of the Serb militias Held in detention	**Victims (civilians):** - **died from injuries:** Ivan Hodak - **tortured:** Šime Čačić, Ante Mijoč, Drago Šimić, Ivan Šimic, Ivica Zrno, Ivana Lipak and Živko Mikulić, Diki Šaban, Tomislav Tesker, Krsto Silov, Marko Salopek, Stipe Banovac, Franjo Haužan, Mirko Barbarić, Marko Sikavica, Mato Baković, Marko Baković, Marko Lojić, Davor Lojić, Mirko Pilipović, Mićo Katuša, Ivan Požeg, Lenko Škibola, Stanko Kolčeg, Mile Šindilj, Ante Lojić, Mile Skorup, Ilija Hodak, Ante Kamber, Mile Modrić, Mile Maričić, Ivan Žarković, Ivan Buljan and Mile Slavić **Victims (tortured war prisoners):** Jakov Ćosić, Žarko Matenda, Ivica Graberski, Nenad Lazarušić, Miho Periš, Ivica Matić, Željko Mrkonjić, Josip Keselj, Božo Franić and Tomislav Grubišić, Zdenko Blažević, Denis Delić, Slavko Silov, Ante Grgić, Ivica Jamičić, Pajo Jamičić, Jure Rogić (members of the Croatian Army); Radoslav Bobanović, Milan Špoljaric, Mirko Medunić, Ivan Škorić and Željko Lipak, Velibor Bračić, Ante Slavić, Vladimir Mikulić, Zvonko Maloča, Ante Kunac, Ivica Klanac, Ivan Validžić, Ivan Pavičić, Ante Marinović, Denis Bronić and Ivan Atelj (members of the Police Forces of the Republic of Croatia)
	Stevan Perić Member of the Serb militias Indictee Perić was held in detention, while indictees Vučetić and Gunj were not kept in detention The Indictment of 5 April 2006 charged 35 persons. After the procedure against four of the accused, who attended the trial, was separated (Slobodan Vučetić, Petar Gunj, Stevan Perić and Mirko Vujić), on 22 December 2006 the procedure against the accused Vujić was also separated due to procedural incapacity. On 19 November 2007, the Vukovar County State Attorney's Office dropped charges against the accused Vučetić and Gunj.	**Victims** *(according to the amended Indictment of 19 November 2007)***:** - **murdered**: Milan Jelinić and Marin Mitrović - **disappeared**: Slavko Mitrović - **physically tortured:** Mara Kraljić and Marica Mitrović - **psychologically tortured:** family members of Vladimir Mitrović, Marijan Kujundžić and Mate Mitrović - **appropriation of property:** Tadija Mrkonjić
	Dane Serdar	

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