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**MONITORING
WAR CRIME TRIALS**

A REPORT
FOR 2011

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Civic Committee for Human Rights

MONITORING WAR CRIME TRIALS

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FOR 2011**

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Mladen Stojanović and Marko Sjekavica

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LIST OF ABBREVIATIONS USED IN THE TEXT

ARWB	Autonomous Region of the Western Bosnia
BiH	the Republic of Bosnia and Herzegovina
DORH	the State Attorney's Office of the Republic of Croatia
HV	Croatian Army
HVO	Croatian Defence Council
ICC	International Criminal Court
ICTY	The International Criminal Tribunal for the Former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
JNA	Yugoslav National Army
KZRH	Criminal Law Act of the Republic of Croatia
MP	Member of Parliament
MUP (RH)	Ministry of the Interior of the Republic of Croatia
OG	Official Gazette
OKZRH	Basic Criminal Law Act of the Republic of Croatia
PU	Police Administration
RC	the Republic of Croatia
RS	the Republic of Serbia
RSK	the Republic of Serb Krajina
SAO Krajina	Serb Autonomous Region Krajina
SFRY	the Socialist Federal Republic of Yugoslavia
SNO	People's Defence Secretariat
SUS	Independent USKOK Company (military unit)
TO	Territorial Defence
UNDP	United Nations Development Programme
USKOK	Office for Prevention of Corruption and Organised Crime, under the DORH
USRH	the Supreme Court of the Republic of Croatia
ZKP	Criminal Procedure Act
ZNG	Croatian National Guard
ŽDO	County State Attorney's Office



Centre for Peace, Nonviolence and Human Rights-Osijek

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SUMMARY AND RECOMMENDATIONS

The year 2011, to which this report pertains as an overview of issue of war crimes trials in the Republic of Croatia, was a markedly dynamic period in terms of war crimes prosecution and the related process of dealing with the past. The objective of this publication is to document all noticed trends and highlight important moments, elaborated in more detail below in the text.

Closing of negotiations chapters on Croatia's accession to the European Union, particularly of *Chapter 23 "Judiciary and Fundamental Rights"*, lead to the improvement of legislative framework in which prosecution of war crimes and of other grave forms of violation of values protected by the international law takes place, through synergy of criticism by international organizations and organizations dealing with human rights protection and recommendations by the European Commission. This primarily involves amendments to the *Act on the Application of the Statute of the International Criminal Court* which created a normative starting point for specialization of courts competent to try war crimes¹, as well as a possibility to use evidence collected by the bodies of the International Criminal Tribunal for the former Yugoslavia in criminal proceedings in the Republic of Croatia.² However, in order for the mentioned specialization to take place, more resolute changes are necessary in the forthcoming period.

The adoption of the *Act Declaring Null and Void certain Legal Documents of the Judicial Bodies of the former JNA, the former SFRY and the Republic of Serbia*, which we deem to be anti-constitutional and unlawful (we provide an explanation in a special chapter of this report) jeopardizes a painstakingly built and increasingly efficient regional cooperation between the State Attorney's Office of the Republic of Croatia and the War Crimes Prosecutor's Office of the Republic of Serbia which is, due to frequent unavailability of defendants to judicial bodies of the country which prosecutes a crime, a *conditio sine qua non* for efficient prosecution of all those responsible for war crimes.

Looking back at the political context in which trials are taking place, of particular concern is the fact that it turned out to be politically profitable to base election campaign on the promotion of persons sentenced for or indicted with war crimes. At the parliamentary elections held in December 2011, no less than 6 MP seats went to the party Croatian Democratic Alliance of Slavonija and Baranja (HDSSB) whose founder and member of presidency Branimir Glavaš is currently serving eight-year prison sentence in Bosnia and Herzegovina for a war crime committed against civilians in Osijek. He fled to Bosnia and Herzegovina before the Croatian police and judicial bodies. The party started its

¹ The amendments stipulated exclusive actual and local competence of county courts in Osijek, Rijeka, Split and Zagreb.

² The mentioned amendments will render it possible to use evidence collected by ICTY bodies in all criminal proceedings that will be initiated after the amendments have come into force. However, in criminal proceedings which were initiated before, most probably it will not be possible to use evidence collected by ICTY bodies. Namely, after the amendments came into force, the War Crimes Council of the Osijek County Court in the repeated trial against Damir Kufner *et al.* refused to use witness depositions collected by ICTY Prosecutor's Office investigators which was later upheld by the VSRH.

Summary and recommendations

election campaign with attempted appointment of Branimir Glavaš as head of all their election lists.³ This, as well as participation of a top ranking party member in an attempted bribe of VSRH judges in order to obtain a more favourable outcome of the appellate procedure for their ideological leader, represents violation of constitutional principles and principles of a law-based state that needs to be viewed in the context of ethnic intolerance and disruption of restitution of co-existence between war-conflicted ethnic groups.

During 2011, with a visible delay, after persistent advocating by civil society organizations, indictments were laid in cases that we emphasise for large scale, cruelty and systematicness of committed crimes. Although indications of criminal responsibility of certain persons existed and the public was aware of them, due to lack of political good will investigations against them have not been initiated for many years. Those are criminal proceedings against Tomislav Merčep, war advisor in Croatian MUP for the crime in Pakračka Poljana and at the Zagreb Fair and the case against Vladimir Milanković and Drago Bošnjak for a war crime against Serb civilians in Sisak.⁴ Likewise, indictment was issued against Aleksandar Vasiljević and Miroslav Živanović for a war crime against Croatian civilians and war prisoners in detention camps of Begejci, Stajićevo, Sremska Mitrovica and Niš in Serbia and the detention camp Stara Gradiška in Croatia.

In spite of increased number of cases in which prosecuted commanders were charged that, with their failure to act, they omitted to prevent the crimes, the establishment of practise in indicting and adjudicating such cases is still at an early stage. This is pointed at by a relatively large number of (non)final acquitting verdicts in such cases.⁵

In addition to that, although witness testimonies and the facts established in certain criminal war crimes cases indicate (potential) responsibility by individual high ranking military and political officials, criminal proceedings against them have not been initiated.⁶

³ Although the appointment of Branimir Glavaš as head of election lists was permitted by the *Act on the Election of Representatives to the Croatian Parliament*, after the statement of the Constitutional Court of the Republic of Croatia that it was unacceptable in terms of Constitution for Glavaš to be the head of election lists, the HDSSB abandoned the idea.

⁴ Suspect Đuro Brodarac, direct superior to these two defendants who was under investigation, passed away in detention before indictment was issued.

⁵ Apart from Rahim Ademi, who was previously acquitted of charges by a final verdict (crime in Medak pocket), during 2011 Damir Kufner was acquitted of charges by a final verdict (crime in Marino Selo), charges were rejected by a final verdict in relation to Davor Šimić, while Ivan Husnjak and Goran Sokol were acquitted of charges by a first-instance verdict (arson in Pušine and Slatinski Drenovac). All of them are/were accused that, as commanders of Croatian formations, although they were aware that their subordinates commit crimes, they failed to prevent them from doing so, thus they agreed with the commission and consequences of those crimes. Apart from Mirko Norac Kevo, previously sentenced by a final verdict (crime in Medak pocket), only member of Serb formations Čedo Jović was sentenced for this kind of command responsibility by a first-instance verdict during 2011 (crime in Dalj IV).

⁶ No criminal proceedings were initiated against Davor Domazet Lošo, whose responsibility is indicated by a finally completed trial for the crime in Medak pocket. On several occasions the DORH issued statements that inquests for the crimes in Medak pocket were underway, both in relation to persons responsible pursuant to command responsibility and in relation to direct perpetrators. Following the repeated mentioning of Vladimir Šeks in the context of possible responsibility for the suffering of Serb civilians on the territory of Osijek and Eastern Slavonija in 1991, at the beginning of 2011 the DORH issued a statement that inquests had been carried out and there was no basis for criminal prosecution.

The continuation of previously noticed trend of inefficiency of the judiciary reflected itself this year through several examples of multiple repeated criminal proceedings. The most glaring such example is trial against indicted member of Croatian formations Mihajlo Hrastov for unlawful killing of 13 and injuring 2 enemy soldiers on the Korana Bridge in Karlovac which has been conducted for twenty years already. The mentioned trial continued in 2011 and 2012, respectively, following the decision of the Croatian Constitutional Court which opposed procedural interpretations by the VSRH, released finally sentenced Hrastov from prison and remanded the case for a retrial. Glaring examples of inefficiency are also criminal proceedings against defendant Luka Markešić *et al.* for the crime in Bjelovar, against defendant Petar Mamula for the crime in Baranja, against defendant Enes Viteškić for the crime in Paulin Dvor, against defendant Rade Miljević for the crime on Pogledić hill near Glina etc.

After several examples from domestic practise and ICTY practise in which persons sentenced for grave violations of international criminal law were conditionally released from prison after having served two thirds of the sentence although they often did not express remorse for the crimes they had committed or regret for the victims whose suffering they were pronounced responsible for, a need appeared for public discussion on the topic of conditional release of persons sentenced for this specific type of criminal offences. In a legal and interdisciplinary discussion that we will attempt to initiate in the forthcoming period it will be necessary to valorise arguments *pro et contra*, some of which point at the equality of criteria for conditional release of perpetrators of criminal offences of general crime and criminal offences of war crimes, while the others point at particularly harmful consequences of the latter criminal offences for the entire community and their distinction in relation to other crimes, as well as the fact that they do not fall under statute of limitations.

The event which definitely marked the observed period is pronouncement of the first-instance ICTY verdict in a criminal case against defendants Ante Gotovina, Ivan Čermak and Mladen Markač in which Gotovina and Markač were found guilty and sentenced to 24 and 18 years in prison, respectively, for the crimes committed against humanity and violation of laws and customs of warfare and for participation in joint criminal enterprise the objective of which was permanent expulsion of Serb population from the area of the so-called Republic of Srpska Krajina.⁷ Significant degradation in the process of dealing with the past was most evident in the relation of political elites, public television and the majority of media towards this verdict. What was terrifying was a lack of piety and sensitisation for the victims of criminal offences which were the subject of this large-scale and long criminal procedure. Petty political commentaries, elevation of persons sentenced by first-instance verdicts at the pedestal of national heroes, organization of support protests throughout Croatia where nationalistic rhetoric and hate speech were used, are the result of biased media reporting on the course of criminal procedure, along with quoting non-objective and interest-related involved representatives of defence teams. The media completely ignored the facts and legal conclusions on the basis of which criminal responsibility of defendants in the verdict was established. Politicians, including top ranking state officials, interpret-

⁷ In the first-instance verdict it was stated that, apart from Gotovina and Markač who were sentenced by a first-instance verdict, other participants of the joint criminal enterprise were Franjo Tuđman, Gojko Šušak, Zvonimir Červenko, as well as other representatives of the Croatian political and military top structures who participated at presidential meetings and who were Tuđman's close associates (Jure Radić, Davor Domazet Lošo, Ivan Jarnjak, Miroslav Tuđman...)

Summary and recommendations

ed the mentioned ICTY verdict, almost as a rule, as a verdict in which the entire Homeland War was characterized as a criminal enterprise. Responsibility for creating stadium-like atmosphere of support to defendants and inexplicable minimization of victims' suffering, primarily on the part of public television but also on the part of all other television networks, is large. We can look at it as a consequence of never-opened issue of political and moral responsibility for creating the atmosphere of lynch, fear and impunity of crimes in the first half of the 90's and, according to our opinion, possible criminal responsibility of certain journalists for inciting a crime.⁸

Arrests of the most-wanted and the last remaining ICTY fugitives, Ratko Mladić and Goran Hadžić, marked a significant progress in ending impunity of the highest ranking military and political officials charged with grave violation of the international humanitarian law. Completion of criminal proceedings against the mentioned persons will close the valuable circle of ICTY heritage which will transform itself into the Residual Mechanism in 2013 thereby entering the final stage of its existence.

In relation to 2010, at the national level we did not notice any progress with regard to writing-off of litigation costs of plaintiffs who lost lawsuits initiated against the Republic of Croatia for the purpose of compensation of damage for the killing of close persons, as well as for property destroyed by the entities for whom the Republic of Croatia is responsible. Plaintiffs mostly failed with their claims against the Republic of Croatia due to the fact that in the majority of cases criminal responsibility of perpetrators of criminal offences that resulted in the killing of a close person or destruction of plaintiffs' property had not been previously established. Still, there is a light at the end of the tunnel, at least in relation to compensation of non-pecuniary damage; in two verdicts rendered by the European Court for Human Rights (*Jularić v. Croatia* and *Skendžić v. Croatia*) which ordered the Republic of Croatia to pay just reparation to the plaintiffs for failing to carry out efficient and appropriate investigations about the committed crimes. Unless the Government of the RC realizes that non-resolving the issue of victims indemnification causes injustice, plaintiffs/injured parties will be forced to exercise the right to pecuniary satisfaction for the killing of their close family members outside the Republic of Croatia.

We also point at insufficiently investigated rapes as a modality of committed war crimes, as well as at insufficiently psychologically profiled approach to questioning injured parties and eye witnesses who are at the same time informants (insider witnesses) of the subject criminal offences and who are exposed to secondary victimization through multiple questionings in criminal procedures.

This annual report on monitoring war crimes trials provides a detailed overview and table overview of all war crimes trials that we monitored during the last year at competent courts in the Republic of Croatia.

On the basis of systematic monitoring of all war crimes trials at Croatian courts, as well as monitoring ICTY court practise, we deem it necessary to do the following:

- To ensure true specialization of special departments at 4 county courts which will have exclusive competence in trying war crime cases, the legislative framework for which has been established, but the

⁸ The practise of the International Criminal Tribunal for Rwanda went in the direction of establishing criminal responsibility of media representatives for grave violation of the international humanitarian law, but there were no such cases before the ICTY.

adoption of implementing strategy was lacking. We deem it necessary that judges from other county courts with experience and successful work on war crimes cases are assigned to war crimes departments at specialized courts. It is necessary to ensure continuity in the work of judges trying these cases in order to provide them with permanent professional education;

- Additional amendments to the Act on Application of the ICC Statute need to amend provisions concerning composition of the VSRH chamber when it conducts hearing as a second-instance court in such a manner that, instead of lay judges, professional judges will be exclusively appointed into VSRH trial chambers and then, in cases of multiple quashed first-instance verdicts, to conduct hearings before the VSRH as the second-instance court;
- To intensify efforts in order to prosecute as many direct perpetrators as possible, as well as military and political officials of conflicting parties for whom indices exist that they are criminally responsible for committed war crimes;
- To ensure a possibility of re-opening of criminal proceedings and prosecuting perpetrators in cases in which, due to erroneous application of the Amnesty Act, certain number of persons who are suspected of being responsible for the committed war crimes were amnestied during the 90's due to political reasons⁹;
- To write off litigation costs of parties who failed with their lawsuits against Croatia for compensation of damage due to the killing of a close person or destruction of property by the persons for whom the Republic of Croatia is responsible and to come up with a political solution to indemnify all civilian war victims in compliance with *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*;
- To actively include public radio and television in the process of dealing with the past, with its duty and responsibility of objective and professional reporting about war crimes cases before domestic judiciary, courts in the region and before the international tribunal;
- To repeal the *Act Declaring Null and Void certain Legal Documents of the Judicial Bodies of the former JNA, the former SFRY and the Republic of Serbia* and to transfer evidence material in cases in which defendants are unavailable to Croatian bodies of criminal prosecution to the judicial bodies of countries in the region and to establish legal framework for cooperation between public prosecutor's offices of the Republic of Croatia and Bosnia and Herzegovina when dealing with war crimes cases;
- To publish all final indictments as well as final and non-final verdicts on the DORH's web site, taking into account data the DORH has at its disposal in its *War Crimes Database*;
- To conduct a public discussion on the conditions of conditional release from prison of persons sentenced for the most severe forms of violations of values protected by the international law.

⁹ Once again we point at the still non-finally resolved war crimes cases in Novska, as well as the case of killing of D. Ž. by four HV members at the Jakuševac garbage landfill in Zagreb.

OBSERVATIONS

Political and social context in which trials are taking place

Closing negotiations with the EU in spite of politisation of war crimes prosecution

Year 2011 was marked by closing of negotiations in June and signing of the contract on accession of the Republic of Croatia into the European Union in December, as well as by parliamentary elections and change of Government.

Although war crimes prosecution in the Republic of Croatia received positive remarks by the international community after many years of monitoring, there are still reasons for concern.

An important segment on which the assessment of readiness of the Republic of Croatia to close negotiations depended was meeting the benchmarks contained in *Chapter 23 "Judiciary and Fundamental Rights"* that, *inter alia*, pertained to improvement of war crimes prosecution. Immediately prior to closing negotiations, the Republic of Croatia undertook necessary measures that should contribute to qualitative progress in war crimes prosecution, as well as progress in investigating numerous crimes in which perpetrators are, for the time being, unidentified - legislative framework was improved and the strategy and action plan for war crimes prosecution were adopted.¹⁰

However, during the entire 2011 and particularly before parliamentary elections in December, high ranking politicians used the rhetoric and made moves which undermined the painstakingly achieved progress in public attitudes about moral condemnation of all crimes, the need to prosecute all crime perpetrators and respect all crime victims.

The case of Tihomir Purda, Croatian defender arrested in Bosnia and Herzegovina, who was charged by Serbian judicial bodies with committing a war crime in Vukovar in 1991 and publication of the first-instance verdict of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the case of Gotovina, Markač and Čermak prompted protests at which the authorities were requested to abandon war crimes prosecution against the accused members of Croatian formations, to suspend cooperation with judicial bodies of the Republic of Serbia and suspend cooperation with the ICTY.

Pronouncement of the first-instance (non-final) verdict in which Gotovina and Markač were found guilty caused consternation in the major part of poorly informed Croatian public, negative reactions by numerous politicians and top officials of the Catholic Church in Croatia.

¹⁰ Amendments to the *Court Standing Orders* and the *Act on the Application of the Statute of the International Criminal Court* rendered it possible to establish war crimes departments at county courts in Zagreb, Split, Rijeka and Osijek and stipulated exclusive competence of the mentioned courts for trying war crime cases. It became possible to use evidence collected by the ICTY in proceedings before Croatian courts. The Ministry of Justice drafted the *Strategy for Investigation and Prosecution of War Crimes Committed in the Period between 1991 and 1995*, the Ministry of the Interior adopted the *Implementing Plan*, while the DORH adopted the *Operational Programme*.

Politicians, including the highest-ranking state officials, interpreted the mentioned ICTY verdict, almost as a rule, as a verdict which characterized the entire Homeland War as a criminal enterprise and they used that platform to achieve political points before poorly informed electorate. Similar statement by politicians continued in the months that followed, coming also from representatives of the newly-appointed Government.¹¹ Because of that, we deem it necessary to call upon the leaders of the new Government to more prudent reactions in relation to prosecution of all war crimes.¹²

Concern is raised due to the fact that in the above-described atmosphere there is a clear lack of solidarity with all victims, condemnation of all crimes and support for revealing all crimes, even in reactions coming from top officials of the Catholic Church in Croatia.¹³

Media, including public television, played an important role with their biased reporting in inciting public bitterness against the ICTY verdict. Even the arrest of Ratko Mladić (in May 2011) and Goran Hadžić (in July 2011) and their extradition to the ICTY did not significantly influence the change of negative public attitude towards the work of the ICTY, although these arrests definitely represent an important step forward towards achieving justice for victims and ending impunity for perpetrators of the most serious crimes.¹⁴

¹¹ At the parliamentary elections held in December 2011, the majority of seats in the Croatian Parliament went to “Kukuriku Coalition” – a coalition between the Social Democratic Party of Croatia, Croatian People’s Party, Istrian Democratic Assembly and Croatian Party of Pensioners.

¹² Examples:

- Zlatko Komadina, the Minister of Maritime Affairs, Transport and Infrastructure in the newly-formed Government, stated that “some of our countrymen in the Hague paid with their verdicts for Croatia’s accession to the European Union”;
- Ante Kotromanović, the new Minister of Defence, attended the marking of the anniversary of the 72nd Military Police battalion and failed to react after speakers on the platform denied crimes committed in military prison „Lora“ in Split as well as findings contained in the final verdict. Otherwise, eight members of the 72nd HV Military Police battalion were found guilty by a final verdict for the crimes committed against civilians in “Lora”. In another trial in 2008, an indictment was laid against six persons for crimes against war prisoners, while criminal investigations are underway in the third case because of a suspicion of killing war prisoners.

¹³ *HBK (Croatian Bishops’ Conference) Commission “Iustitia et pax”* called upon the President of the Republic Ivo Josipović to withdraw his decision on presenting an award on the occasion of the International Human Rights Day to Drago Hedl, a journalist who undoubtedly contributed with his writing to revealing the crimes and establishing facts about the killings in Osijek and Slavonija. In spite the fact that the alleged motive for the reaction by the *Commission “Iustitia et pax”* is Drago Hedl’s writing from thirty years ago, the reaction did not contain solidarity with victims of crimes, but one can recognize intolerance towards the writing of the mentioned journalist.

¹⁴ Mladić, former commander of the JNA Knin Corps and former commander of the Republika Srpska Army, was charged by the ICTY that, in the period between 1992 and 1995, he participated in joint criminal enterprises the objective of which was to eliminate or forcefully and permanently remove Bosnian Moslems and Croats from large parts of BiH territory, crimes against civilian population of Sarajevo, taking UN personnel hostage in May and June of 1995 and genocide in Srebrenica in July of the same year. Although several trials *in absentia* were conducted or are conducted against Mladić in the Republic of Croatia (in one trial he received a final sentence to 20 years in prison) and although, according to DORH’s statement, in mid 2003 the ICTY’s Prosecutor’s Office received copies of cases against Ratko Mladić, the ICTY’s Prosecutor’s Office did not charge Mladić with crimes committed on the territory of the Republic of Croatia.

Immediately before the parliamentary elections, *the Act Declaring Null and Void certain Legal Documents of the Judicial Bodies of the former JNA, the former SFRY and the Republic of Serbia* was adopted in urgent procedure, in spite of numerous and serious warnings that it is detrimental and with adverse effects on hardly established regional cooperation between judicial bodies of Croatia and Serbia in prosecution of war crimes perpetrators.¹⁵ Likewise, disputes between Croatian and Serbian top state officials about the character and objective of the military-police action “Storm” have escalated.¹⁶ This additionally deteriorates relations between the two countries that are still burdened by the unresolved issue of missing persons, restitution of stolen cultural treasure, prosecution of war crimes and mutual lawsuits for genocide.

It turned out that a part of political elites, which had worked for years on Croatia’s accession to the European Union and successfully concluded negotiations on accession were ready, in order to pursue their own interests, to promote attitudes contrary to impartial prosecution of crimes in their public speeches and activities. Of particular concern is the fact that it turned out to be politically profitable to base election success on the promotion of persons sentenced for or indicted with war crimes. Thus Branimir Glavaš, sentenced for a war crime against civilians, became a successful political brand of the party he had founded.¹⁷ Expressing support to Ante Gotovina, non-finally sentenced by ICTY verdict for a war crime but in general public almost plebiscitary accepted as a hero of the Homeland War, was a part of the usual pre-election folklore of almost all political parties.¹⁸

Hadžić, former Prime Minister of the Government of the so-called Serb Autonomous District of Slavonija, Baranja and Western Sirmium and later President of the so-called Republic of Srpska Krajina, is charged with participation in a joint criminal enterprise the objective of which was forceful and permanent removal of Croats from parts of Croatia under Serb control. He is charged with murder, detention, torture, prosecutions, destruction and looting of property in the territory of Slavonija, Baranja and Western Sirmium.

¹⁵ Public statement issued by the Civic Committee for Human Rights, Documenta – Centre for Dealing with the Past and Centre for Peace, Nonviolence and Human Rights - Osijek on the occasion of adopting the “Nullity Act”, published on 21 December 2011, was co-signed by Stipe Mesić, Predrag Matvejević, Tomislav Jakić, Čedo Prodanewć and Rajko Grlić.

¹⁶ Tensions in relations between Croatia and Serbia have for years been escalating at the beginning of August, at the time of marking the Day of Victory and Homeland Gratitude and the Day of Croatian Defenders and the anniversary of the military-police action „Storm“. The immediate cause for new disputes about the character and objective of the “Storm” operation was the speech delivered by the Prime Minister Kosor in Knin in which she greeted “all Croatian generals” whereby she particularly emphasised non-finally sentenced Ante Gotovina and Mladen Markač.

¹⁷ The party Croatian Democratic Alliance of Slavonija and Baranja (HDSSB) announced that it would put Branimir Glavaš, a war criminal sentenced with a final verdict, as head of their election lists for the parliamentary elections. By doing so, they opened a long debate in the media in which they sent messages about non-recognizing the final court verdict and invited voters to give support to the convicted war criminal. However, after the statement of the Constitutional Court of the Republic of Croatia that it was unacceptable in terms of Constitution and laws that Glavaš was head of election lists, the HDSSB abandoned the idea. Although the intention of the HDSSB was to express disrespect for the judiciary of the Republic of Croatia and although USKOK laid indictment against four persons, including HDSSB MP Ivan Drmić for attempted bribe of judges of the Croatian Supreme Court in order to pass a decision favourable for Glavaš, the mentioned political party achieved a much bigger success at the parliamentary elections held in December when compared to previous parliamentary elections.

¹⁸ The popularity and influence of Ante Gotovina is evident by his repeatedly broadcast call for citizens to vote in the referendum and support the accession of the Republic of Croatia into the European Union.

All of the mentioned indicates that reactions on prosecution of members of Croatian formations are still negative and that additional efforts are needed on the part of authorities in order to establish social and political framework conducive to prosecution of all war crimes.¹⁹ That would be contributed by the acceptance of political responsibility for crimes which were not only “individual excesses by irresponsible individuals”, as it is often worded, but they were planned and organized by high positioned civilians and military persons, which is also confirmed by certain final verdicts.²⁰ Although it is well known today that political and military leaders were aware of certain crimes immediately after they were committed and that, instead of prosecuting them they were systematically covering them up, political circles still do not want to talk about it.²¹

Negative reactions against the ICTY verdict in the case of Gotovina, Markač and Čermak

The first-instance verdict in which generals Ante Gotovina and Mladen Markač were found guilty for crimes against humanity and violation of laws and customs of war through their participation in a joint criminal enterprise (together with the-then highest-ranking Croatian politicians) with the objective of permanent expulsion of Serb population from the area of the so-called Republic of Srpska Krajina stirred almost general consternation among the general public, as well as negative reactions by the highest-ranking political authorities.

Erroneous interpretations and clearly expressed negative reactions towards the verdict encouraged distrust in the ICTY – an institution which played a major role in impartial prosecution of war crimes committed on the territory of the former Yugoslavia, prosecuted at least a part of top-ranking officials belonging to political and military authorities of the conflicting parties responsible for war crimes, thereby providing a huge contribution to peace and recovery of societies devastated by war conflicts.

¹⁹ Centre for Peace Osijek and *Documenta* were included in *Platform 112 – for Croatia as a law-based state*, a platform comprising approximately 20 civil society organizations which, on the eve of parliamentary elections, forwarded to political parties and independent slates a list with 112 requests, the fulfilment of which they expect from the new Government. The requests by civil society organizations were grouped into five areas, one of which was *War Heritage, Dealing with the Past and Peace Building*.

²⁰ Tihomir Orešković, formally the secretary at the Gospić Operational Headquarters but actually ... “a person in whose hands all the power in Gospić was concentrated ...” (VSRH verdict No. I Kž 985/03-9 of 2 June 2004), was found guilty by a final verdict for the crimes committed in Gospić and was sentenced to 15 years in prison; Mirko Norac Kevo, at the incriminating time commander of the 118th Brigade in Gospić, was sentenced by a final verdict to 12 years in prison for the same crime; Branimir Glavaš, at the incriminating time secretary of the Municipal Secretariat for People’s Defence, the actual commander of the 1st battalion of Osijek defenders and for a part of the incriminating period also commander of Osijek defence, was sentenced by a final verdict to 8 years in prison.

²¹ Example:

According to testimonies by several witnesses, after the killing of 18 civilians in Paulin Dvor near Osijek at the beginning of December 1991, state officials were informed about the crime. However, the crime was covered up, allegedly due to expectations of international recognition of the Republic of Croatia. On the next day after the commission, victims’ bodies were buried in a military warehouse near Osijek, while the house in which the victims were killed was mined. In 1997, victims’ bodies were secretly transported to a secondary grave in the village of Rizvanuša near Gospić, 500 km away from the place of commission. In 2002, victims’ bodies were found by ICTY’s investigators.

Thus it was stated “*that the first-instance chamber established that Croatia participated in a joint criminal enterprise, which is unacceptable for the Government of the RC*” (Prime Minister of the Government of RC, Jadranka Kosor) and that “*the formulation of ‘joint criminal enterprise’ is ill-founded and a serious insult to the Croatian people, as well as to justice in general*” (the Croatian Bishops’ Conference).

Although a bit more moderate, the assessments by Croatian President Ivo Josipović were unexpected (for instance, “*We will respect the ICTY verdict, but we do not have to admire them*”), even more so because it was precisely President Josipović, on his own or together with President of the Republic of Serbia Boris Tadić, who significantly contributed to the establishment of trust between the countries formed after the disintegration of the former Yugoslavia by visiting the places of suffering, paying respect to all war victims on the territory of the former Yugoslavia and by advocating prosecution of all crimes.

After the pronouncement of verdict against the generals, legally well-founded activities performed by the former President Mesić related to cooperation with the Hague Tribunal were also brought into question. The Government announced and then subsequently abandoned investigation related to delivery of evidence to the ICTY.

Due to all of the mentioned, when delivering a report to the UN Security Council on 6 June 2011, ICTY Prosecutor Serge Brammertz stated that it is “*unfortunate that in the aftermath of the judgment, the highest ranking state officials failed to comment objectively on the outcome of the trial.*”

Non-objective media coverage of the non-final ICTY verdict against generals Gotovina and Markač

During the court proceedings, the majority of media, including public television, only sporadically and very often in a biased manner, reported about court proceedings. Unlike other countries in the region, programmes that would regularly inform the public about the case before the ICTY (such as the programme of SENSE Agency) could not be broadcast on any TV station in the Republic of Croatia. Croatian media was announcing the acquitting verdict. By doing so, they contributed to the fact that publication of the verdict would cause shock and a feeling of injustice among the majority of the public, as well as to the escalation of a deeply rooted standpoint which denies/justifies crimes committed by “our guys”.

Expressions of support and empathy with the sentenced generals completely suppressed informing the public about the scope of crimes (killings, inhumane treatment, plundering and destruction of property) and the mass-scale exodus of the Serb population. There was a lack of empathy and reverence for the victims of committed crimes.

Explanations that a joint criminal enterprise does not represent the responsibility of the state, but a special form of individual criminal responsibility, that a decision by the state’s top political and military leaders to ethnically cleanse the area of the so-called Republic of Srpska Krajina from Serb population was proclaimed criminal, but not legitimate decision of the Croatian authorities to use military force to crush rebellion of the Serb population in the so-called RSK and regain control over its territory, such explanations did not have room in the media nor did they reach wider audience.

The impression about non-professional and biased reporting by the public television was supported by the results of the Analysis of Contents Broadcast in Central News and Current Affairs Programme of the Public Television – Dnevnik after the Verdict against the Generals between 15 April and 30 April 2011.²² Editions of Dnevnik broadcast in the mentioned period mostly presented citizens, the so-called *vox populi*. Although journalists and editors-in-chief may only use *vox populi* to present a whole range of attitudes in the society, in this case it served them to present an almost uniformed attitude, whereby it was often possible to hear hate speech. In all analyzed editions of Dnevnik, victims' families and victims themselves were presented on only three occasions. Journalistic reports disregarded victims' testimonies provided during the two-year trial, the description of their suffering, documented footage that illustrates their suffering and evidence that substantiated their testimonies.

In all footages and commentaries there was a complete mess in relation to DORH data about the proceedings and war crimes victims during and after the “Storm” operation. The key information that was missing was the fact that not a single person has been sentenced by a final verdict for a war crime committed during or after the “Storm” operation.

Improving the normative framework for prosecution of war crimes as opposed to “Nullity Act”

In order to achieve a qualitative step forward in investigation and prosecution of war crimes, new legal documents were adopted or the existing ones were amended in Croatia during 2011. This contributed to the fulfilment of benchmarks contained in *Chapter 23 “Judiciary and Fundamental Rights”* pertaining to war crimes trials.

Normative framework for more efficient prosecution of war crimes was improved by adopting or amending the following legal documents:

a) Strategy for Investigation and Prosecution of War Crimes Committed between 1991 and 1995

On 11 February 2011, the Ministry of Justice adopted the *Strategy for Investigation and Prosecution of War Crimes Committed between 1991 and 1995*.

For the purpose of implementing the *Strategy*, the Ministry of the Interior adopted the *Implementing Plan*, while the DORH adopted the *Operational Programme* which elaborated coordination between the MUP and the DORH, determined resources and responsible persons.

Back in 2010, the MUP and the DORH agreed on the *list of priority crimes* in which perpetrators have still not been identified. A total of 127 crimes were determined as priorities. Out of that number, 8 crimes were determined as priorities at the national level, while others were priorities at regional levels.

²² Eugen Jakovčić and Suzana Kunac: Results of Research of Contents Broadcast in Dnevnik on the Public Television after the Verdict against Generals Gotovina, Markač and Čermak, Zagreb, 4 August 2011, *Documenta* – Centre for Dealing with the Past.

Teams comprising police officers, state attorneys and their deputies have been established to work on those cases. The Ministry of the Interior established a total of 20 police investigating teams (8 charged with national and 12 with regional priorities). 120 police officials were included in teams. The State Attorney's Office tasked 15 deputy state attorneys to prosecute national priorities, while 34 deputy state attorneys were tasked with regional priorities.

During 2011, with a visible delay, after persistent advocating by civil society organizations, indictments were laid for crimes in Pakračka Poljana, at the Zagreb Fair, in Sisak, as well as in detention camps in Begejci, Stajićevo, Sremska Mitrovica and Niš in Serbia and Stara Gradiška in Croatia. Whether more intensified work by the police and the DORH will lead to new long-awaited indictments will become clear during 2012 and the next several years.

b) Amendments to the Act on the Application of the Statute of the International Criminal Court and the Prosecution of Crimes against International Law of War and Humanitarian Law

- with regard to courts' competences

For several years we have been warning about the problems arising due to dispersion of war crimes trials over a large number of county courts. We emphasised the need to stipulate exclusive (not facultative) competence of county courts in Zagreb, Split, Rijeka and Osijek in war crimes trials.²³ We emphasised that concentration of trials at a smaller number of "specialized courts" would create conditions for better quality of trials - specialization of judges working with this type of cases, harmonization of court practise, facilitated regional cooperation, providing support for witnesses and victims and eliminating the possibility of negative influences on court proceedings in local environments.

Changes in that sense were undertaken during 2011. The Croatian Parliament on two occasions amended *the Act on the Application of the ICC Statute*. In May, immediately prior to closing negotiations on accession, *the Act* was amended for the first time, but since those amendments from May contained certain flaws, *the Act* was also amended at the end of October.²⁴

The amendments stipulated exclusive (actual and local) competence of county courts in Osijek, Rijeka, Split and Zagreb to try criminal proceedings for war crimes in all "new" cases - cases in which criminal proceedings have yet to start.²⁵

²³ As an alternative to stipulation of exclusive competence of the four mentioned courts, we proposed the establishment of one court specialized exclusively for dealing with war crimes cases.

²⁴ Amendments were published in the Official Gazette No. 55, 18 May 2011 and No. 125, 7 November 2011.

²⁵ Thus, the Osijek County Court has local competence in war crimes cases also for the areas of county courts in Slavonski Brod and Vukovar, the Rijeka County Court for the areas of county courts in Pula and Karlovac, the Split County Court for the areas of county courts in Dubrovnik, Šibenik and Zadar, while the Zagreb County Court for the areas of county courts in Bjelovar, Sisak, Varaždin and Velika Gorica.

Amendments to *the Act* also regulated the competence in criminal cases which were initiated prior to coming into force of the amendments to *the Act*.²⁶

In compliance with amendments to the *Court Standing Orders* from March 2011, special **war crimes departments** were established at county courts in Zagreb, Osijek, Rijeka and Split. A total of 16 investigating judges and 38 trial and extra-trial judges were appointed in those departments.

Such legal amendments ensure that new proceedings will not be initiated at smaller courts which neither had sufficient personnel capacities nor spatial and technical preconditions and which very often had insufficient good will/courage to professionally and impartially conduct a trial. Likewise, judges from civil departments will no longer be appointed into war crimes councils.

However, the fact is that real specialization of courts (and judges) has yet to be conducted. Namely, taking into account current personnel capacities of county courts in Osijek, Rijeka and Split, almost all judges from criminal and investigating departments of the mentioned courts were appointed into war crimes departments. The same judges try “USKOK” cases which are under exclusive competence of the mentioned four county courts, while at the same time they also try other criminal cases. Because of that, real specialization of judges for the time being cannot take place.

In order to ensure continuity of work of individual judges in war crimes cases which would contribute to their specialization, it is necessary to appoint them into war crimes departments for a period of several years. Apart from that, we are of the opinion that it would be purposeful to also assign judges from other county courts to war crimes departments at the four county courts, judges who distinguished themselves in war crimes trials with their previous experience and the number of verdicts upheld by the VSRH.

Although we emphasized the need that the *Act on the Application of the ICC Statute* should be amended with a provision that would stipulate the composition of the VSRH’s council when it conducts hearings as the second-instance court in such a manner that lay judges are excluded from the council’s composition and that council members should comprise VSRH judges exclusively, such amendments did not take place.

- with regard to use of evidence collected by the ICTY

In March 2010, the VSRH quashed the verdict against defendant Damir Kufner *et al.* (crime in Marino Selo) deeming that it was not possible to use witness depositions taken by the ICTY Prosecutor’s Office investigators as evidence in criminal procedures before domestic courts. Immediately thereafter we

²⁶ If trial is ongoing in a criminal case that was initiated before the amendments to *the Act*, the trial will continue before the county court which is competent pursuant to the provisions of the *Criminal Procedure Act*. However, even in these cases the President of the VSRH may approve transfer of the trial to one of the four courts, upon an explained proposal by the Chief State Attorney. In trials in which a verdict is quashed pursuant to legal remedy and the case is remanded for a retrial, the trial will be repeated before one of the four county courts. A trial may be repeated before the court which rendered a quashed verdict only if the facts in the quashed first-instance verdict were correctly established and if the verdict was quashed due to essential violation of criminal procedure provisions and it is evident that the trial will be easier to conduct in such a manner.

pointed at the need to amend the *Act on the Application of the ICC Statute* in order to render it possible to use the mentioned evidence.

Namely, ICTY investigators conducted numerous investigations after which the ICTY Prosecutor's Office did not issue indictments because the ICTY Prosecutor's Office mostly focused on issuing indictments against top ranking persons from military and civilian authorities of the conflicting parties. Some of such cases were transferred to the judiciary of the Republic of Croatia, but the impossibility of using the mentioned depositions decreases the possibility to prosecute perpetrators.

Amendments to the *Act on the Application of the ICC Statute* stipulated that evidence collected by ICC (ICTY) bodies may be used in criminal proceedings in the RC providing that this evidence was presented in a manner governed by the Statute and ICC (ICTY) Rules of Procedure and Evidence and that it may be used before that court.

The mentioned amendments will render it possible to use evidence collected by ICTY bodies in all criminal proceedings that will be initiated after the amendments have come into force.

However, in criminal proceedings which were initiated before, most probably it will not be possible to use evidence collected by ICTY bodies. Namely, in June 2011, after the amendments came into force, the War Crimes Council of the Osijek County Court in the repeated trial against Damir Kufner *et al.* refused to use witness depositions collected by ICTY Prosecutor's Office investigators. In November 2011, the VSRH fully upheld the first-instance verdict rendered by the Osijek County Court.²⁷ It would not be good to apply such practice in two other proceedings which were initiated before the amendments to the *Act on the Application of the ICC Statute* came into force and which pertain to crimes that were of interest for the ICTY. Those are proceedings against Tomislav Merčep for torture and liquidation of civilians in Kutina, Pakrac and Zagreb and against Frano Drljo *et al.* for liquidation of civilians in Grubori after the "Storm" operation.

The Act Declaring Null and Void certain Legal Documents of the Judicial Bodies of the former JNA, the former SFRY and the Republic of Serbia – jeopardizing regional cooperation in the prosecution of crime perpetrators

The Nullity Act was adopted at the initiative of the-then ruling party (HDZ) in urgent parliamentary procedure on 21 October 2011, immediately before dissolving the Croatian Parliament due to forthcoming parliamentary elections.²⁸ This Act, adopted at the pre-election time in order to gain political

²⁷ In Osijek County Court's verdict rendered after the repeated trial and upheld by the VSRH, out of six defendants for the crime in Marino Selo only two direct perpetrators were sentenced by a final verdict. Three defendants were acquitted of charges, while charges were dropped in relation to one defendant. The indictment included detention and torture of 24 civilians of Serb ethnicity, of whom 17 were killed. No one was found guilty according to command responsibility for the crime of such large proportions.

²⁸ *The Nullity Act* was published in the Official Gazette No. 124/2011 on 4 November 2011.

points, is detrimental because it jeopardizes cooperation between judicial bodies of Croatia and Serbia in investigation and prosecution of crimes. Because of that, it needs to be repealed as soon as possible.

The general public was presented that the motive for adopting the *Nullity Act* was non-final sentence of Croatian defender Veljko Marić at the Belgrade Higher Court and indictment against Vladimir Šeks and 43 other persons which the JNA Military Prosecutor's Office issued in 1992.²⁹ After the mentioned events, the-then ruling coalition, with the exception of the SDSS (Serb Democratic Independent Party) sharply attacked the Serbian *Act on the Organization and Competences of State Bodies in War Crimes Proceedings*, i.e. any possibility that Croatian citizens could be prosecuted in the Republic of Serbia for crimes committed on the territory of the Republic of Croatia.³⁰

Subsequently it turned out that the most responsible politicians from the Government and advocates of this Act were aware of the indictment against Šeks *et al.* months before the information was released to the public, at the beginning of pre-election campaign.³¹

The Act pronounced null and void legal acts of judicial bodies of the former JNA, the former SFRY and of the Republic of Serbia in which citizens of the Republic of Croatia are suspected, indicted and/or sentenced for criminal offences against the values protected by the international law and which were committed on the territory of Croatia. It also anticipated exceptions from nullity providing the acts meet certain legally stipulated but nevertheless insufficiently defined criteria ("Nullity does not pertain to acts for which judicial bodies of the Republic of Croatia have determined that they meet legal standards from criminal legislation of the Republic of Croatia"). It stipulated that decisions on handling requests for legal assistance in war crimes cases received from Serbia will be left at the discretion of the Minister of Justice of the RC. Thereby, a totally unnecessary and detrimental political arbitration was introduced into judicial procedures.

²⁹ On 23 September 2011 at the Belgrade Higher Court, Veljko Marić, arrested and detained in the Republic of Serbia, was found guilty by a first-instance verdict that, as a member of Croatian formations in October 1991 in the vicinity of Grubišno Polje he killed one civilian of Serb ethnicity. He was sentenced to 12 years in prison. It is important to mention that indictment against Marić for the mentioned criminal offence was also issued in January 2011 in the Republic of Croatia.

A few days after the pronouncement of the non-final verdict against Veljko Marić, it was published that the Republic of Serbia forwarded indictment issued by the former JNA Military Prosecutor's Office against 44 members of Croatian formations in which, *inter alia*, Vladimir Šeks, Branimir Glavaš, Ivan Vekić and Tomislav Merčep were also indicted.

³⁰ *The Act on the Organization and Competences of State Bodies in War Crimes Proceedings* has been in force in the Republic of Serbia since 2003. Since then, it has been amended on several occasions. It stipulated that state bodies of the Republic of Serbia are competent to try proceedings for war crimes that were committed on the territory of the former SFRY regardless of citizenship of perpetrators or victims.

³¹ During the first half of 2011, the Osijek ŽDO conducted inquests pertaining to possible responsibility of Vladimir Šeks for the suffering of Serb civilians on the territory of Eastern Slavonija in 1991 and it reached a conclusion that there was no basis for criminal prosecution. Inquests were carried out after Amnesty International at the beginning of 2011 mentioned possible responsibility of Vladimir Šeks for the mentioned crimes.

After the parliamentary elections, Amnesty International again pointed out the need to re-assess the role and possible responsibility of Vladimir Šeks for the mentioned crimes, but also of Davor Domazet Lošo for the crimes in Medak Pocket in 1993.

We are of the opinion that the *Nullity Act*, contrary to interpretations of the act's purpose, actually jeopardizes RC citizens who were possibly ill-foundedly indicted by Serb judicial bodies because legal acts which indicted and/or sentenced them continue to exist outside of Croatian borders regardless of their non-recognition in Croatian legal system. Instead of examining well-foundedness of such acts and thereby removing ill-founded prosecutions or possibly inciting prosecutions of actual perpetrators, *the Nullity Act* narrows down cooperation between prosecutor's offices of the Republic of Croatia and the Republic of Serbia. Therefore it is actually more favourable for perpetrators of crimes, whether those living in Serbia or Croatia, because their chances of not having to stand trial for the committed crimes have increased.

President of the RC Ivo Josipović, Chief State Attorney of the RC Mladen Bajić, opposition politicians and representatives of non-governmental organizations assessed the adoption of the *Nullity Act* as detrimental for regional cooperation and achieving justice in prosecution of war crimes. Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia Serge Brammertz, War Crimes Prosecutor of the Republic of Serbia Vladimir Vukčević and the European Commission also assessed *the Act* to be detrimental.

A lack of consensus at the political scene when adopting this *Act* was also indicated by the manner of its adoption because, when the Parliament was voting about *the Act* it barely managed to have a quorum. Although it could be considered an organic act because it regulates the manner of work of state bodies, it was voted by the majority vote of present MPs, not by the majority vote of all MPs. The *Act* is also contrary to the international treaties which regulate international legal assistance between Croatia and Serbia, the legal power of which supersedes the *Act*. At the end of December, President Josipović forwarded to the Croatian Constitutional Court a request for assessment of constitutionality of the *Nullity Act*.³²

Availability of data concerning war crimes prosecution

In the past decade, progress was made with regard to issue of availability of data concerning war crimes prosecution in the Republic of Croatia.

Since 2004, the State Attorney's Office of the Republic of Croatia has been publishing statistical data in its annual reports on the number of prosecuted persons. The Supreme Court of the Republic of Croatia publishes decisions of its chambers in war crimes cases on its web site.

Web site of the Centre for Peace, Nonviolence and Human Rights - Osijek contains data (information about each individual case, indictments, reports on monitored trials, verdicts) about 134 cases (106 in

³² The request stresses that *the Nullity Act* disrupts constitutional right of Homeland War defenders to defend themselves in a potential criminal procedure for war crimes, that it exposes them to legal insecurity and deprives them of a possibility to remove ill-founded accusations in cooperation with competent bodies of the Republic of Serbia. Since this is an organic act, the President of the Republic of Croatia deems that the Croatian Parliament did not adopt the *Act* according to the majority vote stipulated by the Constitution. The request also stresses that, contrary to the Constitution, the Minister of Justice received powers to decide whether or not some actions from the competence of regular courts will be conducted, as well as that *the Act* was contrary to constitutional provisions pertaining to relation between international treaties and domestic acts.

the Republic of Croatia, others in BiH and Montenegro) which were tried or are still being tried in the period between 2004 and 2011.

During 2011, the State Attorney's Office of the Republic of Croatia, mostly when marking anniversaries of individual crimes, on several occasions published data on criminal proceedings in which individual crimes were prosecuted. Such practice needs to be welcomed and it needs to continue, but it also needs to be improved – by publishing complete data about proceedings (more complete information that would contain names of indicted/sentenced persons, factual description of committed crimes, names of victims and outcomes of the proceedings).

Unfortunately, not a single web site provides the public with data on all crimes which were prosecuted in a simple and well laid out manner. Taking into account information that they possess in its *War Crimes Database* – an IT programme which the DORH set up in the past several years, we estimate that such step forward could be made precisely by the State Attorney's Office of the Republic of Croatia. Public has the right to know and have in one place insight into all final indictments, non-final and final verdicts.

DORH database

DORH's *War Crimes Database* contains data on crimes, victims, evidence and identified perpetrators. It also needs to facilitate exchange of information with competent bodies from other countries which has, in the past several years, proved essential for efficient prosecution of war crimes perpetrators.

The DORH publishes statistical data from its *Database* about the number of persons against whom criminal proceedings were initiated, the number of indicted persons, the number of persons in relation to whom proceedings were completed and the number of prosecuted persons according to their affiliation with the conflicting sides.

However, the mentioned data is insufficient in order to establish actual progress in investigation and prosecution of crimes during many years. Namely, the establishment of *Database* changed the categorization of crimes, thus data on prosecuted crimes during the years are not comparable.³³ We hope that classification has been established now that will be applied through the years to come and that would render it possible to monitor progress in prosecution of crimes.

Data on criminal offences committed during and after the military-police operation „Storm“ – no one was sentenced by a final verdict for war crimes

After the first-instance ICTY verdict in the case against generals Gotovina, Markač and Čermak, the public was interested in data on criminal offences, primarily war crimes, committed during and af-

³³ In its 2007 report, the DORH stated that its database contains 703 war crimes – out of which number criminal proceedings against suspected persons were initiated for 301 crimes while perpetrators of 402 crimes were unidentified. In the newly established *Database* they recorded a total of 490 crimes. Criminal proceedings were initiated against perpetrators of 316 crimes, while perpetrators of 174 crimes are unidentified.

ter the „Storm“ operation which were prosecuted by domestic judicial bodies. With that regard, the DORH published a document titled *Data on Reports, Prosecuted Cases, War Crimes Victims and Proceedings Related to Criminal Offences Committed during and after the “Storm” Operation*.

According to the mentioned *Data*, a total of 6,390 criminal reports was filed with regard to criminal offences committed during and immediately after the “Storm” operation. A total of 4,128 known perpetrators were reported, out of whom 3,728 were prosecuted and 2,380 persons were sentenced. Offences in question mostly included criminal offences against property and, to a lesser extent, killings and war crimes.

DORH records contain data on 214 killed persons of whom 167 persons died as victims of war crimes while 47 persons died as victims of criminal offences of murder.³⁴ Perpetrators of killing of 26 victims have not been identified. 33 persons were prosecuted for the killing of 21 persons, out of whom 14 persons were sentenced.³⁵

Out of the total number of criminal reports, 27 were registered as war crimes. In 24 reported war crimes, the commission of which caused death to 156 persons, perpetrators are unidentified. 10 members of Croatian formations were prosecuted in three cases for the killing of 11 persons however no one has been sentenced up to now. Trials against 8 persons are underway, while trials against two persons were discontinued.³⁶

Efficiency and quality of war crimes prosecutions

Only one fifth of recorded crimes was resolved – mostly in defendants’ absence

DORH’s *Database* contains data of 490 crimes. Each individual crime contains one or several cases that are logically, geographically and time-wise linked, which mostly include a large number of

³⁴ As opposed to DORH data, data from the Croatian Helsinki Committee for Human Rights (HHO), registered 677 victims, while the Directorate for Detained and Missing Persons with the Ministry of the Family, Veterans’ Affairs and Intergenerational Solidarity has records on 697 exhumed persons and additional 563 persons are listed as missing. Bearing in mind significantly different data, the DORH stated that victims of criminal offences of murder and victims of war crimes often cannot be differentiated from war victims – for whom there is no criminal responsibility of conflicting parties for their deaths.

³⁵ Monitoring team of the Centre for Peace, Documenta and Civic Committee for Human Rights does not have at its disposal data on all cases involving perpetrators of murder who were sentenced. Information about the number of sentenced perpetrators of murder was presented by DORH representatives at the *Public Discussion on Non-prosecuted Crimes during and after the Military-police Action Storm*”, held in the Human Rights House in Zagreb on 28 April 2011.

³⁶ Trials:

- Božo Bačelić, Ante Mamić, Luka Vuko and Jurica Ravlić are indicted for the crime in Prokljan. Since the 1st defendant Bačelić is unavailable to Croatian judiciary, the court ordered the stay of proceedings;
- an investigation was conducted for the crime in Grubori after which the State Attorney’s Office laid indictment against Frano Drljo, Božidar Krajina and Igor Beneta, while deciding not to prosecute Berislav Garić. Investigation against Frano Drljo (the 1st defendant for the crime in Grubori) and Željko Sačić for the crime in Ramljani has continued;
- we have no data on the third trial, which was discontinued and which was conducted against one accused person.

perpetrators and victims.³⁷ 393 crimes (80%) were committed by members of the Yugoslav People's Army or formations of the so-called SAO Krajina, 86 (18%) by members of the Croatian Army or police, two (less than 1%) by members of the so-called People's Defence of the Autonomous Province of Western Bosnia, and seven crimes (1.4%) by members of, for the time being, unidentified formations.³⁸

On 21 October 2011, the State Attorney's Office of the Republic of Croatia had information on perpetrators in 316 crimes (in 849 criminal cases). In 174 recorded crimes, perpetrators are still unknown. Out of 316 crimes in which perpetrators were identified, 103 were resolved. It ensues from the mentioned that, starting from 490 recorded crimes, only 1/5 of the crimes (21%) was resolved in its entirety.

According to data from the State Attorney's Office, criminal proceedings were initiated against 3,432 persons (of whom 104 were members of Croatian formations, or 3.03%). In a large number of cases in relation to no less than 2,998 persons (87%) criminal proceedings were initiated in their absence (87%).

At various stages proceedings were discontinued or acquitting or rejecting verdicts were rendered in relation to 1,921 persons. A total of 554 persons were sentenced by a final verdict (of whom 29 were members of Croatian formations, or 5.23%).³⁹ The majority of a total number of persons sentenced by a final verdict were sentenced *in absentia*.

Slow and inefficient prosecution

At various stages, criminal proceedings are underway in relation to **993** persons.⁴⁰ The dynamics of resolving cases in 2011, which is in compliance with trends in the past decade, is a warning that not all initiated criminal proceedings will be completed any time soon.

During 2011, indictments were laid against **29 persons**. In 28 first-instance trials in which main hearings were held, **65 persons** were indicted. Out of the mentioned 28 trials, 16 are new while 12 were

³⁷ In 490 crimes the DORH recorded 5,987 killed persons, 2,266 seriously injured, 2,336 maltreated, 67 raped and 3,085 victims who were injured parties.

³⁸ Data from the *Report on the Fulfilment of Obligations from Chapter 23 – Judiciary and Fundamental Rights*, Government of the Republic of Croatia, 12 May 2011.

³⁹ A total number of sentenced persons has decreased by 48 in relation to the number of sentenced persons which was published for 2004. This can be explained by reopening of proceedings against individual persons who were previously sentenced *in absentia* and which were conducted after the requests for reopening were filed by the convicts themselves (to a lesser extent) or pursuant to a request by state attorney's offices (in the majority of cases). After a reopening was approved, proceedings against previously sentenced persons mostly ended with state attorney's offices abandoning prosecution, changes of legal qualifications of criminal offences from the indictments into armed rebellion, application of amnesty or with rendering acquitting verdicts.

⁴⁰ The mentioned number includes defendants against whom the investigation is ongoing or suspended, indicted persons and persons in relation to whom first-instance verdicts were rendered.

repeated (42.8%). County courts rendered first-instance verdicts in 17 criminal proceedings which included **36 defendants**.

Sessions of appeals chambers of the Supreme Court of the Republic of Croatia were held in 13 criminal cases (in relation to 23 defendants). A final verdict was rendered in respect of **12 defendants**. Only **5 defendants** were sentenced by a final verdict!

Examples of cases which courts are unable to complete by rendering a final verdict

Judicial bodies are unable to complete by a final verdict certain trials that we monitored during 2011 or in previous years. Some of them have been lasting for 10 or more years, mostly they are active but the VSRH, as a rule, on several occasions (two, three or even four times) quashes verdicts rendered by first-instance courts. In our opinion, the length of these proceedings represents violation of the rights of both defendants and victims.

Below in the text we will mention several such trials:

- **trial against Mihajlo Hrastov (crime on Korana Bridge)** has been conducted since 1992. Hrastov is charged that, as a member of Croatian special police, he killed 13 and wounded two detained JNA reservists on Korana Bridge in Karlovac, whereby he committed a criminal offence against humanity and international law by unlawful killing and injuring the enemy. It is the most glaring example of inefficiency of Croatian courts. The Supreme Court of the RC two times quashed the acquitting verdicts of the Karlovac County Court and then, after the third acquitting first-instance verdict, decided to conduct hearing itself. After the conducted hearing, the VSRH Chamber sentenced Hrastov to 8 years in prison, but in 2009 the sentence was reduced to 7 years. The trial then became a case before the Supreme and the Constitutional Court, respectively, because the Constitutional Court in 2010 quashed the convicting verdict rendered by the Supreme Court of the RC and remanded the case to the Supreme Court for a retrial. The VSRH decided to conduct hearing again and it began at the end of January 2012;
- **in trial against defendant Petar Mamula (crime in Baranja)**, the VSRH in November 2011 quashed for the fourth time the first-instance convicting verdict rendered by the Osijek County Court and remanded the case to the mentioned Court for a fifth hearing. After the conducted fourth (third repeated) trial, the defendant was pronounced guilty and sentenced to 3 years and 6 months in prison. Previously the VSRH also quashed the verdicts in which the defendant was sentenced to 5 years and 6 months in prison in the first trial, i.e. to 4 years and 10 months in prison in the second and third trials. He is charged that, while interrogating an unlawfully arrested catholic priest, he beat him and mentally maltreated him. The indictment was issued in 2001;
- **in the trial against defendant Enes Viteškić (crime in Paulin Dvor)** the third (second repeated) main hearing is ongoing. Trial has been conducted since 2002. So far, the VSRH two times quashed the

- acquitting verdict rendered by the Osijek County Court. The defendant is charged that, as a member of Croatian formations, out of retribution participated in liquidation of 18 civilians in Paulin Dvor;
- **in the trial against defendant Radoslav Čubrilo (crime in Lovinac)** in October 2011, after the conducted third (second repeated) trial the first-instance verdict was pronounced in which the defendant was found guilty and sentenced to 15 years in prison. The trial has been conducted since the 90's in the absence of defendant Čubrilo. He is charged with killing six persons of Croatian ethnicity;
 - **in the trial against defendant Rade Miljević (crime on Pogledić hill near Glina)** the third (second repeated) main hearing is ongoing.⁴¹ The VSRH two times quashed the convicting verdicts rendered by the Sisak County Court in which the defendant was sentenced to 14 and 12 years in prison, respectively. The defendant is charged that, as a member of Serb formations and according to a previous agreement with direct perpetrators, he took four civilians out of the prison and handed them over so that they would be executed.

In this overview we also mention **trial against defendant Božo Bačelić *et al.* (crime in Prokljan)**, which is currently in recess due to unavailability of the first defendant Bačelić. Defendants Božo Bačelić, Ante Mamić, Luka Vuko and Jurica Ravlić are charged with killing two elderly persons of Serb ethnicity upon the completion of the military-police operation "Storm". The trial was initiated in 2001. In the verdict rendered by the Šibenik County Court in 2002 the defendants were acquitted of charges, but the VSRH quashed the verdict in 2007 and ordered the defendants to be taken into custody. Since then Bačelić has been a fugitive from justice, while other defendants were taken into custody. After expiry of the maximum detention period, detention was vacated.

The final outcome of trials conducted against indicted members of Croatian formations to whom the Amnesty Act was previously erroneously applied is still uncertain. Two such trials which pertain to **killings of Serb civilians in Novska** were conducted during 2010 before the Sisak County Court.⁴² The VSRH has still not decided about appeals against the verdicts by the Sisak County Court in these cases. In the third trial, it is still not possible to see a remedy of consequences of erroneous application of amnesty. After the State Attorney's Office in 2010 dismissed criminal report in which wife of a killed person attempted to re-initiate criminal prosecution of perpetrators, the chances of crime perpetrators ever being punished are next to zero.⁴³

⁴¹ The indictment was laid in 2006. The defendant is currently attending the trial undetained. He was in detention from March 2006 until December 2010. Then detention was vacated due to expiry of the maximum detention period.

⁴² In the first trial on 16 April 2010, the War Crimes Council of the Sisak County Court sentenced the absent defendant Damir Vid Raguž to 20 years in prison, while present defendant Željko Škledar was acquitted of charges.

⁴³ In the second trial on 19 November 2010 the Council, presided over by the same judge as in the first trial, by way of application of the *ne bis in idem* institute, rendered a verdict rejecting the charge in relation to present defendants Željko Belin, Dejan Milić, Ivan Grgić and Zdravko Plesec, deeming that it is a matter previously decided upon by a final verdict.

⁴³ The criminal report filed by the injured person S. G.-Ž. against R. A., D. Š., D. K. and V. K. due to a war crime against civilians committed to the detriment of D. Ž. was dismissed. D. Ž. was a distinguished engineer working in the Sisak oil refinery

We also mention **trial against defendant Luka Markešić *et al.* (crime in Bjelovar)**. In this case, after the conducted fourth (third repeated) first-instance trial, in November 2011 the first-instance verdict by the Zagreb County Court was pronounced in which the defendants were acquitted of charges. The mentioned first-instance trial was conducted at the third county court. The VSRH had previously two times quashed the acquitting verdicts by the county courts in Bjelovar and Varaždin and in February 2011 it also quashed the convicting verdict rendered by the Varaždin County Court. The indictment was issued back in 2001 and afterwards it was modified on several occasions. Eventually, the defendants were charged that, as members of Croatian formations, they aided and abetted unknown persons in the commission of war crime against war prisoners and war crime against civilians. 6 persons were killed in the incriminating event and one person survived.

Increased transferral of cases to county courts in Zagreb, Split, Rijeka and Osijek

The Act on Application of the ICC Statute rendered it possible even before the amendments that President of the VSRH, upon explained proposal of the Chief State Attorney, permits transferral of a trial to one of the four county courts. Bearing in mind that leading judicial officials deemed that war crimes trials should/could be conducted at all county courts, the mentioned possibility was used only exceptionally.

Trial against Branimir Glavaš and other defendants for the crime in Osijek was for several years the only case in which local competence was transferred pursuant to *the Act on Application of the ICC Statute*.

This possibility of delegating competences started to be used more intensively two years ago. Thus in 2010 transferrals to one of the four county courts were requested in nine criminal cases, while in 2011 in even thirty cases. President of the VSRH granted all requests in which he has passed a decision up to now.

Trials in absentia – current practice and reopening of trials

The majority of a total of 554 persons sentenced by a final verdict for war crimes at Croatian courts was sentenced *in absentia*.⁴⁴

Conducting trials *in absentia* may only be explained by social need to achieve justice after the war under circumstances when defendants are unavailable to the judiciary. However, there are serious objections which may be addressed at *in absentia* prosecutions of defendants for war crimes before Croatian

who was executed by members of the Sisak ZNG at the Zagreb garbage landfill Jakuševac in November 1991. The criminal report was dismissed because, according to the opinion of the ŽDO, there was no broader context of the events than the one which had already been factually described in the proceedings held before the Zagreb Military Court when the offence was legally qualified as murder. Proceedings before the Military Court were suspended by way of application of the then valid *Act on Amnesty from Criminal Prosecution and Procedures for Criminal Acts Committed in Armed Conflicts and in the War against the Republic of Croatia*.

⁴⁴ We do not have the exact number of persons sentenced *in absentia*. After the adoption of a new ZKP in 2008, the DORH submitted requests for reopening of trials in relation to 94 persons sentenced *in absentia*, trials against the majority of whom have already been suspended, and they presented data according to which a total of 464 persons were sentenced *in absentia* in 118 cases.

courts. A large number of such trials was conducted unprofessionally and ethnically biased. Convicting verdicts were rendered on the basis of poor indictments and without sufficient evidence, against which court-appointed defence counsels often did not lodge appeals. Thereby defendants' rights were violated, while such proceedings did not bring satisfaction to victims because the convicts, unavailable to Croatian criminal prosecution bodies, did not serve pronounced sentences.

Since during the 90's unprofessional and ethnically biased trials *in absentia* were systematically conducted, legislative and judicial authorities of the Republic of Croatia started to rectify damage done and establish different practice in war crimes prosecution.

In 2004 the DORH assumed a standpoint that it will oppose trials *in absentia* in the future. Since then we have witnessed more and more separations of criminal proceedings and trials conducted only in relation to present defendants. Although we still notice cases of *in absentia* trials, in the past several years the number of cases in which hearings are conducted in the absence of defendants has been decreasing.⁴⁵

Reopened criminal proceedings

The Criminal Procedure Act even before its amendments from 2008 rendered possible reopening of trials conducted *in absentia* providing convicted persons became available to judicial bodies and requested reopening.

However, in order to rectify consequences of a large number of war crimes trials which were not conducted pursuant to criteria of objective and fair trial, the new *Criminal Procedure Act* from 2008 rendered it also possible for state attorney's offices to request reopening of trials. Apart from that, a possibility to request a reopening was also granted to unavailable convicts. Unlike the previous legal solution, pursuant to which a condition to request reopening was return to Croatia, the new Act rendered it possible for convicts to request reopening regardless of whether they are available to the court or not.

State attorney's offices filed requests for reopening in 2009 and 2010. According to DORH data from December 2011, state attorney's offices requested reopening of trials in relation to 94 persons previously sentenced *in absentia* (all members of Serb formations).⁴⁶ Courts positively assessed all requests by state attorney's offices and permitted reopening of trials. The majority of reopened trials was completed, thus following the change of legal qualification of the offences contained in the indictments and application of the Pardon Act, trials were suspended in relation to 69 persons who were previously convicted by final verdicts. In one trial in relation to two convicts, the previous convicting verdict was

⁴⁵ Thus, during 2011, in 6 cases hearings were conducted against 23 absent defendants. However, out of that number, in only one case hearing was conducted in the absence of 15 defendants, while in one case it was conducted in relation to two persons after reopening of proceedings was granted upon request by the State Attorney's Office.

⁴⁶ Approximately 20% of total number of persons was sentenced *in absentia*.

upheld, while in relation to other persons reopening was permitted, but proceedings are still at the investigating or indicting stages.

In order for convicted persons to be able to check whether they are on the list of convicted persons and then, possibly, request reopening of trials themselves, in July 2010 the Croatian Ministry of Justice forwarded to the Ministry of Justice of the Republic of Serbia a list with names of 1,543 persons who were convicted (538), charged (563) or against whom investigations are taking place in Croatia (433) for criminal offences of war crime.

However, requests for reopening of trials by convicted persons are still quite rare. According to DORH data, 22 convicted persons (12 present and 10 absent) requested reopening of trials.

Requests were granted to all present defendants. In reopened trials, following the change of legal qualification of the offences contained in the indictments and application of the Pardon Act, trials against six persons were discontinued, four persons were acquitted of charges, while no decision has been reached in relation to two persons.

Out of ten absent convicted persons, requests for reopening were denied in relation to 7 of them, reopening of trials were granted in relation to 2 convicts, while in relation to one convict no decision has been reached whether reopening of trials would be granted.

Sexual violence as a way to commit a war crime in criminal proceedings in the Republic of Croatia

Motivated by public testimonies of women raped during the occupation of Vukovar, we have analyzed available court documentation and singled out 17 court cases which are at various stages of criminal proceedings (from indictments to final verdicts) and which, as a way to commit a war crime, also contain elements of sexual abuse of civilians and war prisoners.

Rape/sexual violence in analyzed cases was committed during detention (in camps, prisons, detention facilities or other locations of detention) or in settlements (during the attacks on villages and cities or in settlements during the occupation).

In analyzed cases, 28 persons were indicted - 26 direct perpetrators and 2 persons indicted according to command responsibility. In several cases, indictments contain elements of sexual abuse or rape as an exclusive, single act of committing a war crime, while in the majority of cases, apart from rape, defendants were also charged with other ways of committing a war crime.

Out of the mentioned 17 trials, in 11 of them courts rendered verdicts (3 acquitting verdicts, of which one is non-final, 8 convicting verdicts, of which 6 were rendered in the absence of defendants who have up to now been unavailable to Croatian judiciary). Prison sentences were pronounced ranging from 3 years and 6 months up to 15 years, while in some verdicts a maximum prison sentence of 20 years was pronounced.

While monitoring court proceedings in which the subject of proceedings was war crime with elements of sexual violence, we noticed that not in a single case the councils applied measures of protection of victim's identity such as: testimonies taken from another room via video-link, modification of face and voice or use of victim's pseudonym. Only in some cases during victims' testimonies public was excluded from the main hearing.

Victims/witnesses, while providing testimonies, did not receive psychological support because the majority of trials were conducted during the 90's when departments for support to victims and witnesses were not established.

In analyzed cases there are 27 victims of rape/sexual violence.⁴⁷

Apart from the mentioned cases, we also noticed one case conducted before the former Bjelovar Military Court which was legally qualified as murder and rape. Perpetrator, member of Croatian formations, not long after he was finally sentenced to 15 years in prison was released from prison by the act of pardon by the President of the state.

The actual number of raped and sexually abused persons during the war is difficult to determine and has up to now definitely not been determined. Because of trauma, shame or fear that they will be condemned and marked in their community or in family, victims very often do not talk about it, thus crimes remain non-reported. Victims of rape and sexual abuse must be provided with psychological support before and during criminal proceedings which did not happen in analyzed cases, bearing in mind that they were mostly conducted before the establishment of services for support to victims and witnesses of criminal offences at courts.

Regional cooperation in prosecution of perpetrators

Cooperation between judicial bodies of all countries in the region is essential in order to bring as many various war crimes perpetrators before justice as possible. In the Republic of Croatia investigations were conducted against the majority of persons, indictments were issued or verdicts were adopted in their absence. Crime perpetrators mostly reside in neighbouring countries, primarily in Serbia. Bearing in mind that countries are not able to extradite their own citizens, it is necessary to establish as efficient cooperation as possible so that perpetrators would be prosecuted in countries of their citizenship, in which they mostly reside.

Agreements on cooperation in prosecution of perpetrators of war crimes and crimes against humanity and genocide, which facilitated exchange of evidence, documents and data, were signed between the State Attorney's Office of the RC and competent prosecutor's offices in Serbia and Montenegro in 2006. Still, efficient prosecution of perpetrators also requires close cooperation with judicial bodies of

⁴⁷ DORH's *Database* recorded 67 raped victims. Perpetrators of rape of 57 victims are identified, while perpetrators of rape of 10 victims are not identified. The State Attorney's Office issued a press release at the beginning of January 2012 in which it called victims to contact them for the purpose of providing a testimony because, without their testimonies, proving this particularly odious form of war crime against civilians is almost impossible.

Bosnia and Herzegovina. Agreement, such as the one the DORH concluded with prosecutor's offices of Serbia and Montenegro in 2006, was not concluded with the Prosecutor's Office of Bosnia and Herzegovina, while similar agreement was not concluded between the War Crimes Prosecutor's Office of the Republic of Serbia and the Prosecutor's Office of Bosnia and Herzegovina either. Its conclusion was expected in July 2011, but it was postponed because the B-H side abandoned the idea.

Cooperation between the DORH and competent prosecutor's office in Montenegro

According to data of the State Attorney's Office of the Republic of Croatia, on the basis of the *Agreement on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide*, signed by the DORH and the competent prosecutor's office in Montenegro, the DORH transferred two cases to Montenegro which pertain to 7 persons. One case (in relation to 6 persons) was accepted by the Montenegrin prosecutor's office. It is a trial for the crime committed against detained Croatian prisoners and civilians in the Montenegrin camp of Morinj in which, in January 2012 after the repeated first-instance trial, a non-final verdict was rendered.⁴⁸

In another case which relates to one person, the Montenegrin prosecutor's office rejected a request for action because subsequent verifications established that the defendant was not a citizen of Montenegro, but a citizen of the Republic of Serbia.

Evident results in cooperation between the DORH and competent prosecutor's office in the Republic of Serbia

Cooperation between prosecutor's offices of Croatia and Serbia brings more evident results. During the last several years, 10 persons (all members of Serb formations) were sentenced by a final verdict in Serbia in trials in which the DORH forwarded evidence to the War Crimes Prosecutor's Office of the Republic of Serbia on the basis of the *Agreement on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide* from 2006.⁴⁹

⁴⁸ In the first-instance verdict dated 25 January 2012, defendants Mladen Govedarica and Zlatko Tarle were acquitted of charges, while Boro Gligić was sentenced to 3 years in prison, Ivo Gojnić to two, Špiro Lučić to 3 and Ivo Menzalin to 4 years in prison.

⁴⁹ The following persons were sentenced by a final verdict:

- Milan Španović to 5 years in prison for maltreatment in Stara Gradiška camp;
- Boro Trbojević to 10 years in prison for participation in taking hostages and killing of 5 civilians in Grubišno Polje;
- Pane Bulat to 20 and Rade Vranešević to 13 years in prison for the killing of 6 civilians in Banski Kovačevac;
- Zdravko Pašić to 10 years in prison for the killing of one civilian in Slunj;
- Milorad Lazić to 3, Mirko Marunić to 2 and Nikola Konjević to 3 years in prison for maltreatment of a captured and wounded HV member in Medak;
- Darko Radivoj to 12 years in prison for the killing of a captured and wounded HV member in Čelije;
- Stanko Vujanović to 9 years in prison for the killing of 4 and injuring one person in Vukovar, but since he had been previously sentenced to 20 years in prison by a final verdict for the crime in Ovčara, he was pronounced a joint prison sentence in the duration of 20 years.

According to DORH's data, on the basis of the *Agreement* the DORH forwarded to the Prosecutor's Office evidence and data in 30 criminal cases which pertain to a total of 55 persons.

Statistical data of the War Crimes Prosecutor's Office of the Republic of Serbia include cooperation in war crimes cases on the basis of the mentioned *Agreement* from 2006 and on the basis of the *Memorandum on Realization and Enhancement of Co-operation in Fighting All Forms of Grave Crimes*. According to the Prosecutor's Office data, on the basis of the *Agreement* and *Memorandum* the DORH forwarded to the Prosecutor's Office evidence and data in 41 cases against 80 persons.

Out of that number, the DORH's request was rejected or criminal report was dismissed against 23 persons, criminal proceedings in various stages are ongoing against 30 persons, 10 persons were sentenced by a final verdict, proceedings was discontinued in relation to one person, while in relation to 16 persons requests are being reviewed (verifications are conducted and additional evidence collected).

The Prosecutor's Office forwarded to the DORH evidence and data in 15 cases against 22 persons who are in certain cases unidentified. The DORH rejected requests or dismissed criminal reports against 7 persons, one person passed away, request was accepted for 4 persons, while requests are still being reviewed against 10 persons.

According to information from the prosecutor's offices, contacts between prosecutors working on war crimes cases are very frequent. Thus during 2011, the DORH requested assistance (documents, information and reports) from the Prosecutor's Office on the basis of the *Memorandum* in 39 cases.

Apart from the mentioned forms of cooperation, data on which we obtained from competent prosecutor's offices, while monitoring trials we also noticed an increasing number of requests for legal assistance when questioning witnesses. Witnesses are questioned pursuant to requests or are heard via video-conference link.

However, evident progress which was made in the past several years in cooperation between judicial bodies of Croatia and Serbia, as already mentioned, was put into jeopardy by the *Act Declaring Null and Void certain Legal Documents of the Judicial Bodies of the former JNA, the former SFRY and the Republic of Serbia*.

Conditional release of sentenced war criminals from prison

Conditional release as a criminal institute which reduces coercion in society and brings human face to a pronounced prison sentence is known to all modern liberal legislations and is often used in relation to persons sentenced before the ICTY.

In Croatia, the issue of using the institute of conditional release, as well as of a body competent for its approval, was opened after conditional release of Mirko Norac from a prison where he served sentence for committed war crimes.

Although Norac did not express remorse for liquidation of Serb civilians in Gospić or for his responsibility for the killing of civilians and war prisoners in Medak Pocket, the Commission for Conditional Release of the Ministry of Justice approved his request for conditional release after having served two thirds of his prison sentence.⁵⁰

Bearing in mind that war crimes are criminal offences with broad and far-reaching detrimental consequences for the whole society which do not fall under statute of limitations, we deem it necessary to conduct expert discussion on the topic of conditional release of persons sentenced for war crimes and the manner of deciding about it.⁵¹

Support to victims and witnesses of criminal offences

Victims and witnesses of criminal offences have been neglected for years. Until several years ago there were no services in the Republic of Croatia that would provide support to victims and witnesses of criminal offences at any stage of (pre)criminal proceedings.

Bearing in mind the fact that many crimes were not prosecuted at all, victims and witnesses of war crimes gradually lost confidence in the judicial system. Proceedings, conducted most often in the absence of defendants, often caused additional anxiety among victims and lead to their secondary victimization.

Apart from emotional consequences that a crime and the conduct of proceedings caused to victims, there were other consequences that negatively reflected themselves on criminal prosecution of crime perpetrators, as well. Due to previous negative experiences, victims and witnesses are often not interested in criminal proceedings and do not want to take part in them.⁵²

Development of support

The origins of support to victims and witnesses of criminal offences at courts in the Republic of Croatia are linked with the beginning of functioning of the Association of volunteers for support to victims/witnesses in Vukovar. The mentioned Association provided support to victims/witnesses since 2006 at the Vukovar County Court as a part of the project financially supported by the Embassy of the Great Britain to the Republic of Croatia.

⁵⁰ Pursuant to the new Criminal Law Act which should come into force on 1 January 2013, the competence to decide about a proposal for conditional release will rest with a court. According to the mentioned Act, the court may release a prisoner from prison if he/she has served at least half of the sentence which was pronounced and if there are reasonable expectations that he/she will not commit a criminal offence, providing that the convict agrees with this.

⁵¹ We tried to collect data on the number of sentenced war criminals who were conditionally released from prisons, but the Directorate for Prison System at the Ministry of Justice informed us that it was not possible to forward the requested data due to their confidentiality.

⁵² Example: In a trial for the crime in Lovas which is conducted before the Belgrade Higher Court against fourteen members of Serb formations, numerous witnesses/victims do not want to testify.

Development expanded in 2008 when departments for support at the county courts in Osijek, Vukovar, Zadar and Zagreb and at the Criminal department of the Zagreb Municipal Court started to work as a result of cooperation between the Ministry of Justice of the RC and UNDP within the framework of the project „Assistance to the development of system of support to witnesses and victims“. Upon the completion of the project, the mentioned departments were incorporated in court administration of the mentioned courts. Supervision of their work, coordination, strategic development of the support system, as well as provision of support in special cases is performed by the Sector for Support to Victims and Witnesses of Criminal Offences with the Ministry of Justice.

Expanding the network of offices at courts took place at the beginning of 2011 when, at the second stage of the project, the Ministry of Justice and UNDP opened new departments at county courts in Split, Rijeka and Sisak.

Employees and volunteers of departments at the mentioned seven county courts provide informative and emotional support to victims and witnesses of criminal offences. Witnesses are provided general information about criminal proceedings and on their role therein. Special waiting rooms were arranged for victims and witnesses, except at the Zagreb County Court.

Support strategy to victims and witnesses has not been drafted yet

Establishment of offices for support to victims and witnesses at seven county courts represents progress for the Croatian judiciary. However, since the existing system needs to be developed and improved, the Government of the Republic of Croatia in January 2010 established the *Commission for Monitoring and Improving the System of Support to Victims and Witnesses*. The task of the Commission is to draft a National strategy for support to victims and witnesses, i.e. establish a unified national support system to victims and witnesses which would link all criminal bodies and public institutions that provide support to victims and witnesses.

However, the strategy has still not been adopted. According to information at our disposal, the Commission should draft the Strategy at the beginning of 2012 and forward it to the Government for adoption.

Further guidelines for development

We are of the opinion that scope of support needs to be expanded.

Apart from informative and emotional support, support should also include provision of logistical support (organization of accommodation for victims and witnesses and their travelling arrangements). In war crime trials the need for organization of witnesses' travelling arrangements from their place of residence to the place where trials are conducted became evident after the amendments to the *Act on Application of the ICC Statute* which stipulated exclusive competence of county courts in Osijek, Zagreb, Rijeka and Split for all war crimes cases. Even more so because victims and witnesses of war crimes are

predominantly elderly persons, of poor financial situation, who often come from smaller rural places poorly connected with places in which trials are conducted.⁵³

Protection of victims' interests should not be limited exclusively at the provision of support during court proceedings. Victims and witnesses need support from the moment a criminal offence was committed until the completion of court proceedings. Because of that, it is necessary to expand the existing system of support also within the bodies of criminal and pre-criminal proceedings and to establish departments for support within the State Attorney's Office and the police, but also to expand the scope of support and, in order to alleviate consequences of committed criminal offences, provide psychological and legal assistance to victims and witnesses.

Development of a support system definitely needs to be followed by adequate training of judges, state attorneys and police officials with the objective of their sensitisation for the needs of witnesses and victims in (pre)criminal proceedings and for understanding the role and importance of witness support.

Only with a comprehensive support system it is possible to respond to the needs of witnesses and victims, to protect their rights and prevent or at least decrease secondary victimization, whereby contributing to a quality and efficient functioning of all criminal prosecution bodies and a more efficient prosecution of crime perpetrators. Strengthening and expanding a comprehensive support system will continue to depend primarily on Government's efforts and on efficient cooperation between involved ministries, state institutions and civil society organizations.

Reparations of civilian victims - necessary precondition for a stable and healthy society

Status of civilian victims

Status of civilian victims of the Homeland War, both of civilian invalids and members of families whose dearest ones were killed or went missing, is regulated by the *Act on the Protection of Military and Civilian War Invalids* and can be exercised under administrative procedure. The mentioned *Act* and the accompanying subordinate acts have been subject to strong criticism for years. Non-recognition of rights belonging to certain civilian war victims, determined deadlines for submission of requests, impossibility to obtain credible documentation and linking the possibility of exercising rights with material status are some of the reasons for a failure in exercising the status and rights of civilian victims and their family members. Data on 359 beneficiaries of family disability benefits left behind civilian war invalids⁵⁴ compared to ap-

⁵³ During the investigation for the crimes in Sisak which was conducted at the Osijek County Court, *Documenta* was approached by several summoned witnesses who were not in a position to organize trip to Osijek and respond to the summons since there is no direct public transportation line between Osijek and Sisak.

⁵⁴ Source: http://www.mzss.hr/hr/zdravstvo_i_socijalna_skrb/socijalna_skrb/uprava_za_zastitu_zrtava_i_sudionika_rata/godisnji_prikaz_broja_korisnika_iz_sustava_zastite_vojnih_i_civilnih_invalida_rata

proximately 6,670 civilians killed during the Homeland War in Croatia⁵⁵ talks about failure to exercise the rights of civilian victims and their family members.

Victims and their family members are dissatisfied with the existing legal solutions. The Union of Associations of Croatian Civilian Sufferers from the Homeland War requests alignment of all victims and alignment of compensations received by all civilian and military war victims.

While contacting representatives of raped or sexually abused persons, we learned that victims of these crimes are not able to exercise the rights adequate to their suffering in the procedure of recognising the status of a civilian war victim.

Likewise, the rights of victims of mine devices on mine-contaminated areas are regulated by the mentioned Act. However, we deem it necessary to ensure quality support for mine victims and their families, particularly at the territory of psychosocial reintegration and rehabilitation of children of mine victims.

The still unresolved issues of compensation of damage caused by the killing of a close person and of the costs of lost lawsuits

Former authority holders were not willing to resolve the issue of crime victims' family members who attempted to receive compensation of damage caused by the loss of their close relatives through indemnity lawsuits before Croatian courts. Family members mostly lost the lawsuits in which they requested compensation of damage from the Republic of Croatia. Apart from that, they were also obliged to pay the costs for the lost lawsuits.⁵⁶

We base our conclusions on the analysis of 108 initiated court proceedings. In the majority of proceedings, claims were rejected. Plaintiffs were successful mostly in lawsuits in which criminal responsibility of crime perpetrators had been previously established. However, in numerous cases where claims were filed although criminal responsibility of perpetrators had not been previously established, the plaintiffs/injured parties, almost as a rule, lost the lawsuits.

The decision of the Government of the RC of 28 May 2009 by which claims for court expenses awarded in respect of plaintiffs/injured parties were written off only affects the plaintiffs who initiated proceedings pursuant to Article 180 of the *Civil Obligations Act* (until 1996 when the mentioned Article was revoked). The mentioned decision did not include the majority of plaintiffs/injured parties who initiated proceedings after the mentioned deadline.

⁵⁵ Source: Dr.sc. Dražen Živić and prof. Bruna Esih: War crime – Means and Consequence of Serbian Aggression on the Republic of Croatia, Institute of Social Sciences *Ivo Pilar*; <http://www.studiacroatia.org/zivic/zivicesih.htm>

⁵⁶ Even in 2011 plaintiffs were called upon to settle the costs of lost lawsuits. Thus Jasenka Borojević from Sisak, whose husband Stevo Borojević was detained, tortured and killed in October 1991, received on 16 March 2011 a request from the Sisak Municipality Court to pay litigations costs in the amount of 26,950 kuna. Jasenka Borojević's income, as is the case with the majority of plaintiffs who lost their lawsuits, is only a small pension. Crime perpetrators have not been sentenced.

We deem it unacceptable that family members of the killed are additionally punished by charging them with high litigation costs. Here we particularly stress the fact that most often the reason for loss of litigations is a lack of criminal prosecution of perpetrators, which is the obligation of the state.

Implementation of acts adopted in 2003⁵⁷ which filled a legal vacuum that occurred after Article 180 of the *Civil Obligations Act* was repealed and on the basis of which civilian victims or their family members requested compensation of damage from the Republic of Croatia for damage caused by a terrorist act or by the activities performed by unknown perpetrators, members of Croatian formations, resulted in fatal and scandalous consequences for civilian victims and their close family members.

Bearing in mind that the process of indemnification of civilian victims of war and post-war period has not been resolved in a satisfactory manner, it is necessary to do the following:

- a) Pass a decision in which the RC waives the charging of litigation costs from all plaintiffs who were unsuccessful with their requests for compensation of damage for the death of a close person;
- b) Adopt the *National Programme* and the *Act on the Establishment of the Fund for Indemnification of all War Victims* which would regulate the issue of compensation of damage in compliance with UN *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.

Unless the Government of the RC realizes that non-resolving the issue of indemnification of victims causes injustice, plaintiffs/injured parties whose close family members were mostly killed in, for the time being, non-prosecuted or insufficiently prosecuted crimes will be forced to request the right to pecuniary satisfaction for the killing of their close family members outside the Republic of Croatia. The judgments of the European Court of Human Rights in two cases (the case of Jularić v. Croatia and the case of Skendžić v. Croatia) ordered the Republic of Croatia to pay reparation to the plaintiffs for failing to carry out appropriate investigations about the crime.

Command responsibility – responsibility for omission of a commander and judicial practice in Croatia

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Command or superior responsibility, as defined by the international law doctrine, indicates the accountability of a military or civilian superior who does not take all measures which he is required to take so as to prevent his subordinates from committing war crimes, crimes against humanity or genocide, i.e. the accountability of a commander who does not attempt to punish the perpetrator af-

⁵⁷ *The Act on Responsibility for Damage Caused by the Acts of Terrorism and Public Demonstrations* (OG No. 117/03) and the *Act on Responsibility of the Republic of Croatia for Damage Caused by Members of Croatian Armed and Police Forces during the Homeland War* (OG No. 117/03).

ter the commission of crimes. This form of criminal liability has been established with the purpose of improving compliance with international humanitarian law, and is applied to both international and non-international armed conflicts.⁵⁸

The doctrine of command responsibility has been summarised in Article 7 (3) of the ICTY Statute, Article 6 (3) of International Criminal Tribunal for Rwanda⁵⁹ Statute and Article 28 of the Rome Statute of the ICC.⁶⁰ By way of judicial practice, the two *ad hoc* international tribunals have developed and reinforced the command responsibility concept, clearly distinguishing it from individual criminal liability⁶¹. By doing so, they enabled prosecution and punishment of those in the military and political chain of command responsible for failing to prevent and punish their subordinates who have committed crimes. Such judicial practice also defined conditions which have to be met for command responsibility to exist:

- 1) **Superior-subordinate relationship:** this is manifested through commanders' effective control over persons directly committing a crime, i.e. through material, factual ability to prevent and punish unlawful acts of their subordinates. There are different forms of effective control - in order for command responsibility to exist, *de facto* control suffices, or *de facto* and *de iure* control at the same time, but not merely *de iure* control if it solely entails a form of legal authority not manifested as effective control;
- 2) **The fact that a defendant knew** (actual knowledge) **or had reasons to know** (constructive knowledge, a stricter standard of responsibility compared to negligence⁶²) that his subordinates were about to commit a crime; the presumption is that this knowledge existed if a commander could have gained relevant information about committed offences, and had not done so on purpose;
- 3) **Failure of a defendant to take** necessary and reasonable measures **to prevent** a crime or **punish** its perpetrators.

⁵⁸ The distinction between international and non-international conflicts is important for the application of material law. For instance, the precondition for the application of Article 2 of the ICTY Statute, Gross violations of 1949 Geneva Conventions, is the existence of an international conflict.

⁵⁹ These two *ad hoc* tribunals have solved the issue of command responsibility in an identical manner, stipulating requirements which should be met cumulatively so as to find a defendant criminally liable under the concept of superior responsibility.

⁶⁰ Article 28 of the ICC Statute defines command responsibility with regard to military and civilian commanders. This rule makes an explicit distinction between military and civilian chains of command. The difference is apparent also in terms of the degrees of guilt (*mens rea*) of a perpetrator. The mentioned article demands the fourth element of command responsibility to be present: a causal relationship with regard to the failure of the commander to prevent commission of such crimes. The concept "should have known" practically implies negligent commission because the commander did not know about unlawful acts of his subordinates.

⁶¹ Individual criminal responsibility is a form of criminal liability whereby a person directly commits or contributes to the commission of a crime by way of different commission modes (joint commission, soliciting, aiding, inducing, planning, issuing orders, abetting, and joint criminal enterprise).

⁶² Namely, ICTY and ICTR rejected negligence as the basis of command responsibility, and this stricter, standardized degree of guilt has materialized in the verdict of the ICTR Appeals Chamber in the case against Ignace Bagilishema, as well as in the ICTY proceedings against defendant Tihomir Blaškić.

This step forward in international criminal law, taken by the two *ad hoc* international tribunals, has not had as successful application in national war crimes trials in Croatia. Apart from the political factor, which ensured impunity for the continually powerful members of military and political elites, the occurrence of various legal dilemmas influenced the current state of affairs, especially as these legal issues were accompanied by the ability to process war crimes in the national legal system on the basis of command responsibility. Until the 2004 amendments to the Criminal Law, command responsibility did not exist in the Croatian legal system as a general legal principle parallel to criminal liability. That is to say, war crimes committed in the period from 1991 to 1995 are processed under the legal basis of the Basic Criminal Law of the Republic of Croatia, as binding law *tempore criminis, in concreto* Article 28.⁶³ This provision serves the Croatian courts as the legal basis when processing war crimes in the context of command responsibility. Due to the constitutional ban on retroactive application of law, and to the principle of legality, it is not possible to process defendants on the basis of command responsibility for crimes which had been committed approximately 10 years before the above mentioned legislative novelty was passed. Furthermore, with regard to *mens rea* of a defendant and according to some criminal law theoreticians, the situation in which a defendant “had reasons to know“ of crimes committed by his subordinates, puts command responsibility very close to the concept of objective responsibility and introduces negligence as a defendant’s degree of guilt (negligence is punishable only if this is explicitly stipulated by law, which is not the case with responsibility for war crimes in the Croatian criminal justice legislation).⁶⁴ In terms of processing of war criminals in Croatia in general, a certain positive development is noticeable when it comes to ethnic impartiality towards direct perpetrators, and there is a trend in the growing number of cases against members of the Croatian armed forces for crimes committed against Serb civilians and prisoners of war.⁶⁵ However, apart from a few examples, criminal prosecution of political and military commanders has been absent, especially in cases of crimes committed against members of a national minority group. Exemptions, which paved the way for the introduction of the concept of command responsibility into the Croatian legal practice, are, without doubt, the criminal proceedings against Rahim Ademi and Mirko Norac, as well as the trial of Branimir Glavaš *et al.* These proceedings concluded with final and conclusive judgements elaborating in detail key elements of this form of defendants’ criminal liability.

The criminal justice process against Rahim Ademi and Mirko Norac represents a turning point in legal practice because the judges combined the legal basis provided in Article 28 of the Basic Criminal Law of the Republic of Croatia with the principle of responsibility of military commanders for acts of their

⁶³ Article 28 of the Basic Criminal Law of the Republic of Croatia stipulates that a crime can be perpetrated only by “commission” or “omission”. A crime can be perpetrated by “omission” only if a perpetrator failed to perform an act when he had a duty to do so.

⁶⁴ Only the 2004 amendments to the Criminal law have explicitly introduced commanders’ liability for crimes perpetrated by their subordinates, and of which they “should have known“, Article 167 a, paragraph 2.

⁶⁵ The criminal proceedings in the Zagreb County Court against defendant Emil Črnčec *et al.* (all members of the Croatian Army), for the war crime against prisoners of war (members of the Republic of Srpska Army), committed in the villages of Mlinište and Halapići, Bosnia and Herzegovina.

subordinates, as defined in international law.⁶⁶ The first instance decision (confirmed in the appellate procedure) which declared Branimir Glavaš *et al.* guilty of war crimes committed against Serb civilians in Osijek, followed the mixed concept of command responsibility, but in this case, with regard to the command hierarchy.⁶⁷

The following criminal proceedings, which we monitored in several county courts, have either in indictments or judgements also touched upon the issue of defendants' liability via command responsibility:

- Criminal procedure against defendant Čedo Jović, which was repeatedly, for the third time, held in the Osijek County Court, for the crime in Dalj, concluded with a non-final and non-conclusive judgement sentencing the defendant to five years in prison. In his capacity of the actual commander of a military police unit of the so-called Republic of Srpska Krajina, he was found guilty of knowing that, in the period from the end of December 1993 to June 1995, his subordinates were ill-treating non-Serb members of a manual labour platoon, and of failing to take measures to punish the perpetrators – in fact, of consenting to their subsequent unlawful acts (beating to death of one of the injured persons, Antun Kundić, and beating of another five persons). During the proceedings it was important to establish whether he had effective control over the military police unit. It is less important, in our opinion, whether defendant Jović was formally a commander. The court of first instance concluded that Jović was not a formal commander, but that he was *de facto* issuing orders to the military police. It based its conclusion primarily on witness testimonies given by military policemen who were referring to Jović as the “main guy” but had never heard him issue orders. Further evidence proved beyond doubt that Jović reported the death of Kundić to his superiors. The inquest and autopsy were done straight away. If the defendant had indeed been the military police commander, it is certain that he could have put the perpetrators in detention. However, the defendant claimed that he wasn't their commander, but merely a security officer, while only a brigade commander could have punished the perpetrators. Immediately after the incident nobody was prosecuted for Kundić's

⁶⁶ The then judicial practice considered *de jure* position of defendants *tempore criminis*, without taking into account their *de facto* control and effective command over subordinates; for example, the sentencing judgement for a crime committed in Šodolovci and Koprivna, upheld in the appellate procedure and rendered in a trial led in the Osijek County Court against defendant Stojan Živković *et al.*

⁶⁷ In the criminal proceedings against Branimir Glavaš *et al.* the Council has, consistently following international law doctrine, found Branimir Glavaš criminally responsible on the basis of his **effective command**, i.e. actual control over his subordinates (members of the Protection squad).

In the criminal proceedings against Rahim Ademi and Mirko Norac, instead of relying on the term “effective control“, the Chamber reasoned that a commander cannot be held criminally responsible unless he possesses both formal and actual commanding authority and power in the full and necessary capacity, and this is considered a prerequisite for taking effective measures to prevent and punish unlawful acts committed by his subordinates.

In terms of the degree of guilt (mens rea or criminal consciousness) the Chamber determined that the existence of a defendant's actual knowledge is necessary for finding him criminally liable. Therefore, command responsibility can exist only if a commander knew of unlawful acts and did not do anything to prevent or stop or punish them. Also, knowledge of just one unlawful killing of civilians suffices because after gaining such information the commander should have taken adequate measures to prevent such acts from repeating (criminal proceedings against Rahim Ademi and Mirko Norac).

death. In 2008 a final and conclusive judgement declared direct perpetrators Novak Simić, Miodrag Kikanović and Radovan Krstinić guilty of committing a war crime against civilians. Based on this decision their commander, Čedo Jović, was subsequently found guilty in a non-final and non-conclusive judgement. Simić was sentenced to 10 years in prison, Kikanović received 6 years and 6 months, and Krstinić 5 years.

- Criminal proceedings against defendants Zlatko Jušić and Ibrahim Jušić, held in the Rijeka County Court for the crime committed in Velika Kladuša, concluded with the acquittal in relation to the first defendant, and with conviction in relation to the second defendant. The judgement became final and conclusive in the Supreme Court decision of September 2010. Zlatko Jušić was declared not guilty of charges listed in the indictment concerning a quasi-command responsibility for commission, that is, that he planned and organized unlawful detention of civilians, their physical and psychological abuse and inhuman treatment, forcing them to work, and serve in the army of the so-called Autonomous Region of the Western Bosnia. Precisely, he was charged for participating in the work of the government at the time the order, personally signed by him, was made, and based on which civilians were taken to camps and collective centres where they suffered from inhuman treatment. The court established that civilians had been taken to camps even prior to that and beyond doubt before the mentioned order was passed. The Supreme Court decision, which upheld the first instance judgement of the Rijeka County Court, established that in order to determine that criminal liability of the first defendant cannot be proved, it is crucial to determine that the authorities of the Autonomous Region of the Western Bosnia (ARWB) functioned “parallelly”. The exclusive, absolute power in ARWB was held by its president Fikret Abdić. The first defendant, in his capacity as president of the technocratic government, did not know of isolation, inhuman treatment and abuse of civilians. The second defendant Ibrahim Jušić, *tempore criminis* the Head of Department for Prevention of Crime of the Public Security Unit and the Head of State Security of the Autonomous Region of Western Bosnia, was found guilty on the basis of personal (individual) responsibility as a direct perpetrator, and on the basis of command responsibility in a wider sense (quasi-command responsibility) for issuing orders for abuse of civilians.
- After repeating the trial, the War Crimes Council of the Slavonski Brod County Court in June 2011 rendered a verdict which entirely upheld the 1993 judgement of the Požega District Court declaring Janko Radmanović and Radisav Stojanović guilty of war crimes against humanity and international humanitarian law, and war crimes against civilians, for issuing orders for indiscriminate shelling of Slavonski Brod. The defendants were convicted based on quasi-command responsibility (commission).
- The non-final and non-conclusive judgement of the Bjelovar County Court of May 2011 acquitted defendants Ivan Husnjak and Goran Sokol of war crime charges for omission. The Council found that the members of Unit A of Battalion II of Brigade 132 of the Croatian Army “R” had a type of dependent relationship with defendant Ivan Husnjak as a commander of Battalion II and defendant Goran Sokol as a commander deputy of the same unit. The prosecution charges accusing defendants

of knowing about unlawful acts, yet doing nothing to prevent and punish them, were considered as “unclearly and unspecifically formulating command responsibility”. By explaining its reasons for the acquittal, the Council reasoned that evidence did not point to the conclusion that defendants knew (actual knowledge) that members of their formation were about to commit a crime, that is, that they were preparing to commit a crime. The Council also held that it was not proven that they had any knowledge of this at the time when the crime was committed, that is, in the afternoon hours of the day in question, but that they received the information about the committed arson and possible perpetrators the following day. The Council analysed the situation where the commander did not have the information that his subordinates were preparing to commit a crime, and where he should have known (constructive knowledge) and should have taken necessary and reasonable measures to prevent the crime (the defendant issued three orders in which he prohibited the destruction of residential buildings; in the order referring to the incident in question and after acquiring knowledge about the arson of villages, he asked his subordinates for a report) and therefore the court decided that defendants had taken reasonable measures to prevent the crime, although in this particular case the crime eventually did occur. When considering the elements of command responsibility established by international law, the Council reasoned that they were not cumulatively met and thus acquitted the defendants.

For all the reasons mentioned above, we propose that during investigative proceedings and preparation of indictments, the Office of the State Attorney makes more effort to define and establish criminal liability of persons who, as military or superior civilian officers, had a duty to guarantee security and protection of civilians and war prisoners in their areas of responsibility, in which their subordinates committed war crimes. Based on the fact that key command positions within the military and political hierarchy were *tempore criminali* occupied by for instance: Vladimir Šeks⁶⁸, Ivan Vekić⁶⁹, Ivan Jarnjak⁷⁰, Davor Domazet Lošo⁷¹, Mate Laušić⁷², Miroslav

⁶⁸ At the time of the commission of the crime against Osijek civilians in 1991, Vladimir Šeks had an office on the first floor of the People's Defence Secretariat building, while the civilians were tortured and killed in the garages located in the yard of the same building.

⁶⁹ At the time of the commission of the crimes in Pakračka Poljana and Zagrebački Velesajam (from 8 October to mid-December 1991) Ivan Vekić held a function in the Croatian Ministry of Interior (31 July 1991 to 15 April 1992) and as such was superior to defendant Tomislav Merčep, the then advisor in the Ministry of the Interior and commander in the Reserve Unit of the Ministry of the Interior.

⁷⁰ Ivan Jarnjak served as a deputy in the Ministry of the Interior at the time of the commission of the crimes in Pakračka Poljana and Zagrebački Velesajam, and in the period from 15 April 1992 to 16 December 1996 he served as the Minister of Interior, during which period the Medak pocket and the military operation “Storm” crimes were committed. Members of the Special Police Force of the Ministry of Interior took part in both of these.

⁷¹ Davor Domazet Lošo was an envoy of the Head of the General Staff of the Croatian Army during operation “Pocket 1993” with commanding authority and *de facto* led the whole operation in which numerous crimes were committed against the civilian population and prisoners of war.

⁷² Mate Laušić was the Head of the Military Police Headquarters in the Croatian Armed Forces from 1992 to 2002, and his subordinates committed war crimes against civilians and war prisoners in the Lora prison, Split, in the period from March to September 1992, and in the Kuline prison, Šibenik, in the period from May to July 1993.

Tuđman⁷³, Jure Radić⁷⁴, we think it needs to be investigated whether the above mentioned persons had an actual ability to prevent or punish their subordinates – direct perpetrators of crimes. Without establishing criminal responsibility of persons in the highest military and political positions for failing to prevent and punish their subordinates for committing war crimes, there cannot be an absolute and wholesome catharsis in the society which should bear responsibility for crimes committed in its name.

⁷³ Miroslav Tuđman served as the Director of the Croatian Intelligence Service from 1993 to 1998, at the time of the commission of the crimes in the military operation “Storm“, other crimes committed in the same period all over Croatia, and crimes committed by the Croatian army in Bosnia and Herzegovina. At the end of 1996 and beginning of 1997, the intelligence community coordinated the transport of corpses of Serb civilians (killed in the night between 11 and 12 December 1991 in Paulin Dvor near Osijek by members of the Croatian Army), from the primary locality (military warehouse by Čepin) to the secondary locality (Rizvanuša by Gospić), in order to cover up the crimes. Miroslav Tuđman held the most important position in the central service of the intelligence community (at the same time the main executive service of the Office of the National Security), which was tasked to unite, analyze and evaluate data obtained through direct operational work or received by other members of intelligence community. In the first instance judgement against Ante Gotovina *et al.* the ICTY found that Miroslav Tuđman was one of the members of the joint criminal enterprise the purpose of which was to permanently remove the ethnic Serb population from the Krajina region.

⁷⁴ Jure Radić served as a Minister of Reconstruction and Development from October 1994 to May 1999 and was a close assistant to the then Croatian president Franjo Tuđman. According to the facts established by the ICTY in the first instance judgement against Ante Gotovina *et al.* he was a member of the joint criminal enterprise the purpose of which was to permanently remove the ethnic Serb population from the Krajina region. With regard to the function which he *tempore criminis* held, he significantly contributed to the prevention of return of ethnic Serb refugees, taking away their property (Law on Temporary Take-Over and Administration of Specified Property, Official Gazette 73/1995), as well as to the ethnic engineering and populating the Krajina region with ethnic Croats.

MONITORED TRIALS IN 2011

New indictments

During 2011, state attorney's offices laid indictments against 29 persons (18 members of Croatian and 11 members of Serb formations) in relation to war crimes. Only against one member of Croatian formations the indictment was laid in his absence. On the other hand, almost all accused members of Serb formations are unavailable to Croatian judicial bodies. Namely, out of 11 defendants, only two indictments were laid in their presence.⁷⁵

Among the crimes for which indictments were laid during 2011, we definitely need to stress those which were for more than a decade subject of interest for international organizations and domestic organizations dealing with human rights protection because of the number of victims, the severity of crime and its systematic approach in committing the crime.

a) *Indictment against Tomislav Merčep*

At the beginning of June 2011, indictment was laid against Tomislav Merčep. He is charged that, as commander of the MUP reserve unit stationed in Pakračka Poljana and at the Zagreb Fair and as adviser to the Croatian MUP, he personally issued orders to have civilians unlawfully confined, tortured and killed in the period from October to December 1991. Although he knew that his subordinates, with no authority, were confining civilians, plundering them, mistreating, torturing and killing them, he failed to prevent such unlawful actions. Hence in the area of Kutina, Pakrac and Zagreb, his subordinates unlawfully confined 52 persons, out of which number 43 persons were killed, three went missing whereas the remaining persons survived the torture and abuse inflicted upon them;

⁷⁵ Defendants who are members of Croatian formations:

- Veljko Marić – *in absentia* (crime in Grbišno Polje);
- Željko Maglov, Tvrtko Pašalić, Damir Boršić and Milorad Paić (crime in Kuline);
- Tomislav Merčep (crime in Kutina, Pakrac and Zagreb);
- Tihomir Šavorić, Ivica Krklec and Alen Toplak (crime in Mrkonjić Grad);
- Stjepan Klarić, Dražen Pavlović, Viktor Ivančan, Željko Živec and Goran Štrukelj (crime in Kerestinec);
- Ante Babac and Marin Jakovljević (crime in Nos Kalik);
- Vladimir Milanković and Drago Bošnjak (crime in Sisak).

Defendants who are members of Serb formations:

- Aleksandar Vasiljević – *in absentia* and Miroslav Živanović – *in absentia* (crime in detention camps);
- Milan Marinković, Jovan Jakovljević – *in absentia*, Dragan Rakanović – *in absentia*, Milenko Mihajlović – *in absentia* and Jovica Vučenović – *in absentia* (crime in Borovo Selo);
- Marko Bolić (crime in Barilović);
- Mirko Korelije – *in absentia*, Miroslav Peškirić – *in absentia* and Ranko Šimulija – *in absentia* (crime in Miočinovići).

The crimes with which Tomislav Merčep was charged were subject of investigation by Hague investigators. The case was transferred from the ICTY to Croatia as a „Category 2” case. However, the question is whether the main hearing will be conducted in this trial because the defendant’s capacity to stand trial is questionable due to his poor health condition.

b) Crimes in Sisak

An indictment was issued in December against Vladimir Milanković, commander of police forces in broader area of Sisak and Banovina and deputy head of Sisak Police Administration, and Drago Bošnjak, member of special unit “Vukovi” with the Sisak Police Administration. They were charged with violent entrances into houses and apartments, unlawful searches and attacks, as well as unlawful abuse of a large number of civilians of Serb ethnicity, whereupon a total of 24 civilians were killed.

Investigation for crimes in Sisak began in June 2011. It was also conducted against Đuro Brodarac who, at the incriminating time, performed duties of wartime Head of Sisak Police Administration, Head of Command HQ for the area of Banija and Kordun and member of Regional Crisis HQ for Sisak and Banija. In July 2011 Brodarac passed away and criminal proceedings against him were suspended.

No sooner than in September 2010 was the investigation of these crimes transferred to the Osijek County State Attorney’s Office because nothing had been done in Sisak to reveal their perpetrators.

c) Crimes in detention camps

An indictment was laid in April 2011 against Aleksandar Vasiljević, the former Head of the Security Directorate of the Federal People’s Defence Secretariat, and against Miroslav Živanović, lieutenant-colonel of the JNA and member of the Security Directorate. They were charged with crimes committed in detention camps at the territory of the Republic of Serbia (Begejci, Stajičevo, Sremska Mitrovica and Niš) and of the Republic of Croatia (Stara Gradiška) against Croatian civilians and prisoners of war. The crimes were committed against a large number of detainees and prisoners of war who sustained severe physical injuries, 19 persons were killed and several women were systematically raped and sexually abused.

Bearing in mind that the defendants are residing in the Republic of Serbia, actual prosecution of the defendants, as well as conduct of an investigation against direct perpetrators, will depend on cooperation between Croatian and Serbian prosecution offices, i.e. on the assessment of the Serbian prosecution office whether the indictment laid by the Osijek ŽDO is well-founded.

Trials monitored at county courts

During 2011, main hearings were scheduled in 39 criminal proceedings at county courts – 32 against members of Serb and 7 against members of Croatian formations. In those trials 84 persons were charged - 60 members of Serb and 24 members of Croatian formations. Hearings were held in 28 criminal pro-

ceedings. Although scheduled, hearings did not take place in 11 criminal cases (against 19 defendants), mostly due to unavailability of defendants, in relation to whom no decision on trial *in absentia* was passed. Defendants in those cases mostly reside in the Republic of Serbia.

In 28 trials in which main hearings were conducted, 65 persons were charged – 41 members of Serb and 24 members of Croatian formations.

Out of 41 charged members of Serb formations, 24 did not attend the hearings, thus hearings were conducted in their absence. It involves 7 criminal proceedings which were completed (4 cases – 19 defendants), partially conducted (2 cases – two defendants) or proceedings in those cases are about to be reopened pursuant to requests by the State Attorney's Office (1 case – 2 defendants) or trials are being conducted in defendants' absence.⁷⁶ Out of 24 charged members of Croatian formations, only one hearing against one of them was conducted in his absence.⁷⁷

During 2011, county courts rendered first-instance verdicts in 17 trials which included a total of 36 defendants - 19 members of Croatian and 17 members of Serb formations.

14 defendants were acquitted by first-instance verdicts – 11 members of Croatian and 3 members of Serb formations (one of them was acquitted *in absentia*).

21 defendants received non-final convicting verdicts (verdicts before appeal) – 14 members of Serb formations (5 *in absentia*, out of whom two defendants were sentenced in reopened trials pursuant to a request by the State Attorney's Office) and 7 members of Croatian formations.

Charges were rejected in relation to one accused member of Croatian formations.

Main hearings were scheduled at 13 county courts. They were conducted at 10 courts (in Sisak, Karlovac, Slavonski Brod, Bjelovar, Zagreb, Zadar, Šibenik, Rijeka, Osijek and Vukovar). Although scheduled in certain cases, main hearings did not take place at county courts in Dubrovnik, Split and Varaždin. Thus, no hearings took place in war crimes cases at the Split County Court for the second year in a row although it has the status of one of four "specialized" courts.

⁷⁶ Hearings were conducted or are being conducted in the absence of the following defendants:

- Miloš Stanimirović, Stevan Srdić, Dušan Stupar, Boško Miljković, Dragan Sedlić, Branislav Jerković, Jovo Janjić, Milenko Stojanović, Dušan Dobrić, Đuro Dobrić, Jovan Miljković, Katica Maljković (proceedings were discontinued due to her death in 2011), Nikola Tintor, Željko Krnjajić and Radoslav Stanimirović (crime in Tovarnik);

- Nebojša Baljak and Stevo Ivanišević (crime in Ravni Kotari II);

- Stojan Letica (crime in Novo Selište);

- Radoslav Čubrilo (crime in Lovinac);

- Dubravko Čavić (crime in villages along Una river near Hrvatska Kostajnica);

- Davor Tošić (crime in Kruševo);

- Janko Radmanović and Radisav Stojanović (crime by shelling of Slavonski Brod), which was reopened pursuant to the request by the State Attorney's Office.

⁷⁷ Hearing was conducted in the absence of defendant Igor Beneta (crime in Grubori).

Out of 28 trials in which main hearings were conducted during 2011, 16 are new trials, while even 12 trials were repeated (42.8%).

In two trials the fourth (third repeated) hearing took place after the VSRH quashed verdicts by first-instance courts on three occasions.⁷⁸

In six trials main hearings were conducted for the third time because the VSRH quashed verdicts by first-instance courts on two occasions.⁷⁹

Monitored sessions at the Croatian Supreme Court

During 2011, the VSRH Appeals Chamber held sessions in 13 criminal cases (in relation to 23 defendants).

In relation to 9 defendants (4 members of Croatian and 5 members of Serb formations) the VSRH quashed the first-instance convicting verdicts and remanded the cases to first-instance courts for retrial.

In relation to 6 defendants (3 members of Croatian and 3 members of Serb formations) the VSRH upheld the first-instance acquittals.⁸⁰

In relation to 3 defendants (two members of Croatian and one member of Serb formations) the VSRH upheld the first-instance convicting verdict; in relation to two defendants (one member of Croatian and one member of Serb formations) first-instance convicting verdicts were modified in the decision on sentence and defendants received sentences which were lower than the ones rendered by the first-instance verdicts).⁸¹

In relation to one defendant (member of Croatian formations) the VSRH upheld the first-instance verdict rejecting the charge.⁸²

You can find more details on proceedings before county courts and before the VSRH in *Appendixes – Table Overviews* at the end of this *Report*.

⁷⁸ It concerns trials against defendant Petar Mamula (crime in Baranja) and against defendant Luka Markešić *et al.* (crime in Bjelovar).

⁷⁹ It concerns trials defendant Čedo Jović (crime in Dalj IV), defendant Milan Jurjević *et al.* (crime in Kruševo), defendant Radoslav Čubrilo (crime in Lovinac), defendant Mićo Cekinović (crime in Slunj and surrounding villages), defendant Rade Miljević (crime on Pogledić hill near Glina) and defendant Enes Viteškić (crime in Paulin Dvor).

⁸⁰ The following persons received final acquitting verdicts:

- members of Croatian formations Damir Kufner, Pavao Vančaš and Antun Ivezić (crime in Marino Selo);
- members of Serb formations Milan Jurjević and Davor Tošić (crime in Kruševo) and Boško Surla (crime in Tenja).

⁸¹ The following persons received final convicting verdicts:

- members of Croatian formations: Tomica Poletto to 15 and Željko Tutić to 12 years in prison (crime in Marino Selo); Božidar Vukušić to 8 years in prison (crime in Dragišići).
- members of Serb formations: Dušan Zinajić to 4 years (crime in Borovo Naselje) and Bogdan Kuzmić to 5 years and 6 months in prison (crime in Vukovar hospital).

⁸² Charges against Davor Šimić were rejected by a final verdict (crime in Marino Selo).

OPINIONS ON INDIVIDUAL TRIALS

Trial against Milenko Vidak, charged with a war crime against civilians⁸³

Sisak County Court

Criminal offence: war crime against civilians under Article 120, paragraph 1 of the OKZRH

Defendant: Milenko Vidak

War Crimes Council (panel): judge Snježana Mrkoci, Council President, judges Predrag Jovanić and Alenka Lešić, Council Members⁸⁴

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

Defence: Domagoj Rupčić, lawyer practising in Sisak, court-appointed defence counsel

Opinion

On 8 November 2010 the main hearing began before the Sisak County Court in the trial against Milenko Vidak charged that as member of illegal armed formation of the so-called “Republic of Srpska Krajina” on 29 August 1993 in Sunjska Greda while observing the positions of National Guard and Croatian Police members, hidden in a small forest he noticed civilian Stjepan Sučić. Once the civilian came near him, he fired a burst fire and killed him instantly.

On 20 December 2010, the verdict was pronounced in which the defendant was found guilty as charged for the commission of war crime against civilians under Article 120, paragraph 1 of the OKZRH. He was sentenced to eight years in prison.⁸⁵

On the basis of an international arrest warrant, the defendant was arrested in the territory of the Republic of Turkey in the Trabzon Province of the Black Sea Region. The decision on his extradition to Croatia for murder and not for war crime was made by the Trabzon Court for Serious Crimes. This decision was made pursuant to international criminal justice assistance and was issued on 4 August 2009. In the quoted decision, it was explicitly stated that the defendant was extradited for murder, not for war crime.⁸⁶

⁸³ Jelena Đokić Jović monitored this trial and reported thereof.

⁸⁴ Predrag Jovanić and Alenka Lešić are judges from the civil department of the Sisak County Court.

⁸⁵ On 12 July 2011, the VSRH's Appeals Chamber quashed the Sisak County Court's first instance verdict due to essential violation of criminal procedure provisions and remanded the case back to the Court for retrial.

⁸⁶ Namely, defendant Milenko Vidak was arrested on the basis of an international arrest warrant issued in the criminal case No. Kio-36/99, in which he was suspected of committing a murder specified under Article 90 of the KZRH. In this criminal proceedings

On 17 September 2009, the Government of the Republic of Turkey issued a decision in which it granted the extradition request by the Republic of Croatia with the purpose to proceed with criminal proceedings against the extradited person because of “a war crime against civilians committed by murder”.

By taking into consideration the contents of the provision of Article 18 of the Criminal Code of the Republic of Turkey which explicitly stipulates that decision on permissibility of extradition to the applicant country is made by the competent court, whereby the execution of that decision is within the competence of the Government, and that the Government’s decision must not be contrary to the court’s decision, it seems that the procedural presumption for allowing the prosecution did not exist during the entire trial conducted in the Republic of Croatia.

During the presentation of evidence, the court refused to obtain documentation from the Republic of Turkey related to the defendant’s extradition to the Republic of Croatia. It would have been evident from this documentation whether the defendant was extradited due to criminal proceedings for the crime specified under Article 120, paragraph 1 of the OKZRH. Explaining its decision, the court stated that the relevant documentation concerning the extradition already exists in the case file.⁸⁷

Namely, the applicant country is authorised to prosecute or punish an extradited person only for the crimes in respect of which the extradition was approved. In this specific case, it is evident from the Decision of the Court in Trabzon that the defendant was extradited for one criminal offence only, and the decision on extradition was consummated by issuing a first-instance (non-final) conviction in the criminal case No. K-24/10 in which the extradited person was sentenced for murder by the first-instance verdict. For that reason, the specialty rule specified in Article 14 of the European Convention on Extradition was also violated.⁸⁸

No approval by the competent authority had been obtained until the conclusion of the main hearing. The trial is currently in the first-instance decision-making phase. In our opinion, in accordance with Article 353, item 4 of the Criminal Procedure Act, the trial should have been ended with a judgement of refusal.

conducted by the Sisak County Court and registered under case file No. K-24/10, the Court rendered in the meantime a first instance convicting verdict (non-final).

⁸⁷ The verdict of the Sisak County Court, No. K-14/10 of 20 December 2010, page 3.

⁸⁸ The European Convention on Extradition dated 13 December 1957, Additional Protocol to the European Convention on Extradition of 15 October 1975 and the Second Additional Protocol to the European Convention on Extradition of 17 March 1978, published in the “Official Gazette – International agreements” No. 14/1994, entered into force in the Republic of Croatia on 25 April 1995.

Reopened trial against defendant Nikola Munjes, charged with a war crime against civilians ⁸⁹

Zadar County Court

Criminal offence: war crime against civilians under Article 120, paragraph 1 of the OKZRH

Defendant: Nikola Munjes, extradited from Montenegro, held in the Zadar Prison detention facility since 20 October 2010

War Crimes Council (panel): judge Boris Radman, Council President, judges Dijana Grancarić and Ante Anić, Council Members

Prosecution: Radovan Marjanović, Zadar County Deputy State's Attorney

Defence: Slaven Dmitrović, lawyer practising in Zadar

Opinion after the conducted reopened trial

Following the extradition of Nikola Munjes from Montenegro, who had previously been sentenced *in absentia*, the Zadar County Court reopened the trial.

The Zadar County Court rendered a verdict on 4 February 2011 in which it was decided that the previous verdict rendered by that Court in relation to defendant Nikola Munjes, dated 9 October 1995, would be fully upheld. The prison sentence in the duration of 9 years rendered against the defendant included the time he had spent in the extradition detention and in the Zadar Prison detention facility since 23 March 2010.

During the renewed trial, the Council established the same facts as it did in the first trial and therefore it fully upheld its previous verdict, including the sentence pronounced in that trial.

Course of the proceedings

On 9 October 1995 the Zadar County Court rendered a verdict which found defendant Munjes guilty and sentenced him *in absentia* to 9 years in prison. The Court found that on 22 September 1991 in Perušić near Benkovac, as a member of militia of the so-called „Republic of Srpska Krajina” – who followed the great-Serbian policy on the temporarily occupied territory of Croatia and who, together with several other members of the same militia, threatened and physically abused inhabitants of Croat ethnicity – during a chance meeting with Duje Pešut who was, together with Grgo Pešut, brought to Benkovac militia station under suspicion that he was collaborating with the Croatian Army, the defendant, totally unprovoked, started to hit Duje Pešut with his legs and a rifle stock. Then he bit Mr. Pešut's throat, telling him that he was going to drink ustashi blood and then he cut the victim's throat with a rifle bayonet, drank his blood and continued to hit his head with the rifle stock. When Grgo

⁸⁹ Maja Kovačević Bošković and Martina Klekar monitored the trial and reported thereof.

Pešut objected to such treatment, saying that he was going to kill a righteous man, the defendant replied to Grgo Pešut “that the ustashi and snakes can only be destroyed like that”. Then, one member of the same group hit Grgo Pešut in the chest with a rifle barrel. Thereby, having violated the rules of the international law during an armed conflict by personally attacking individual civilians, torturing them, inhumanely treating them and by applying measures of terror against civilians, the defendant committed a criminal offence against humanity and international law - war crime against civilians under Article 120, paragraph 1 of the OKZRH.

On 6 November 1995, the aforementioned verdict became final and an international arrest warrant was issued after defendant Munjes since he was unavailable to Croatian state bodies. On 23 March 2010, the defendant was arrested in the Republic of Montenegro and placed in extradition detention pursuant to a decision of the Podgorica Higher Court. Pursuant to a decision of the Ministry of Justice of the Republic of Montenegro dated 28 September 2010, the defendant was extradited to Croatia on 20 October 2010 in order to be transferred to the competent court for the purpose of serving a prison sentence. On 21 October 2010, the defendant filed a request for reopening of subject criminal proceedings. That request was granted by a decision of the Zadar County Court dated 9 November 2010. In a decision dated 12 November 2010, the Zadar County Court suspended the prison sentence served by defendant Munjes and put him under detention.

The Court based its verdict of 4 February 2011 on witness testimonies of the injured persons, Duje Pešut and Grgo Pešut, and on the witness testimony of Ante Pešut and did not accept the defendant’s defence.

The Court reached a conclusion that the incriminating event took place precisely on the incriminating day - 22 September 1991 – on the basis of harmonized witness testimonies provided by Duje Pešut and Grgo Pešut who stated that, on one Sunday at the end of September, they were working on a village road, after which, in the afternoon hours, the incriminating event took place. That the event actually took place on that day is also evident from the fact that 22 September 1991 was indeed Sunday and it also follows from the witness testimony of Ante Pešut.

On the testimonies of the aforementioned witnesses the Court also based its conclusion that a group of uniformed members of “SAO Krajina Militia”, among whom was the defendant, intercepted Duje Pešut on the road in the afternoon hours. After that, the uniformed group split in such a manner that one part of the group took Duje Pešut to a military vehicle, while the other part of the group, which included the defendant, went to Grgo Pešut’s house. Grgo Pešut was taken out of the house and brought to the same military vehicle and then both injured persons were driven to the Benkovac police station. The Court established that the defendant was indeed a member of the aforementioned group, which acted as described above on the incriminating day, on the basis of witness testimonies by Ante and Duje Pešut, but also indirectly pursuant to conducted identification process by witness Ante Pešut. The Court established that Ante Pešut saw precisely the defendant among the aforementioned group on the incriminating day on the basis of the fact that Pešut knew the defendant from before and,

above all, that he identified the defendant after twenty years among five similar persons. Witness Duje Pešut did not know the defendant, but only saw him on two occasions – on 16 September 1991 and on 22 September 1991. Duje Pešut learned that the person in question was defendant Nikola Munjes, member of the “SAO Krajina Militia”, from his brother Ante Pešut, after he had described that person to him. Apart from that, he had also heard the name Nikola Munjes from members of the “SAO Krajina Militia” - Jugoslav Novković, Duško Bukarica and Dragiša Pupovac, when he inquired about the person who had tortured him.

The Court did not deem as relevant the fact that, during the identification process, Duje Pešut and Grgo Pešut failed to identify the defendant with an explanation that almost twenty years have passed since the critical event and that both injured persons were beaten on that occasion and were not allowed to look at their attackers.

Taking into account all of the above-mentioned, the Court did not accept the defence presented by the defendant in which he denied that he had participated in subject incriminations, assessing that his defence was designed and oriented exclusively towards avoiding criminal responsibility.

On the basis of harmonized witness testimonies provided by Duje Pešut and Grgo Pešut, substantiated by the witness testimony of Ante Pešut by hearsay, the Court reached a conclusion that the facts contained in the description of the criminal offence with which Nikola Munjes was charged in the indictment were proven in their entirety.

In the enacting terms of the verdict, the Court stated that it was proven that the defendant acted with direct pre-meditation because of which the Court, after the conducted renewed criminal proceedings, pursuant to the provision of Article 411, paragraph 3 of the ZKP, decided to fully uphold the previous verdict of the same Court dated 9 October 1995. While explaining the decision on pronounced sentence, the Court stated that, since the factual description remained the same as in the previous verdict and since the previous verdict was fully upheld, it was necessary to confirm the prison sentence in the duration of nine years, rendered in the previous verdict, as well. According to the standpoint of this Court, bearing in mind the presence of extenuating circumstances (the defendant's youth at the time of commission of the offence, with no prior convictions) and aggravating circumstances (persistence and determination in the commission of the offence, ruthlessness, hatred, extreme lack of sympathy, the fact that Duje Pešut's health has deteriorated and fear that he suffered), along with the severity of the criminal offence itself, danger that the offence presents to the society and the minimum and maximum stipulated sentences, the pronounced sentence was fully justified.

Trial against Čedo Jović, charged with a war crime against civilians⁹⁰

Osijek County Court

Criminal offence: war crime against civilians under Article 120, paragraph 1 of the OKZRH in conjunction with Article 28 of the same Act

Defendant: Čedo Jović

War Crimes Council (panel): judge Darko Krušlin, Council President, judges Katica Krajnović and Ante Kvesić, Council Members

Prosecution: Dragan Poljak, Osijek County Deputy State's Attorney

Defence: Tomislav Filaković, lawyer practising in Osijek

Opinion following the conclusion of the third (second repeated) first instance proceedings

Even after the third (second repeated) trial, the Osijek County Court's War Crimes Council found defendant Čedo Jović guilty of committing a war crime against civilians under Article 120, paragraph 1 of the OKZRH, in conjunction with Article 28 of the same Act, and sentenced him to 5 years in prison.

The Verdict pronounced on 15 March 2011 found defendant Jović guilty that, with the rank of a captain, as actual commander of a military police unit of the so-called RSK Army's 35th Slavonija Brigade, in Dalj and surrounding area, from the end of December 1993 until June 1995, although he knew that his subordinate military police commander Novak Simić, military policemen Miodrag Kikanović and Radovan Krstinić and other unidentified military policemen were repeatedly torturing non-Serb members of the so-called manual labour platoon, he failed to take any action within his powers to punish the perpetrators and to prevent further unlawful conduct. Thus, by accepting the continuation of their impermissible actions, he agreed to the consequences: thus Simić, Kikanović and Krstinić were beating Antun Kundić, inflicting him numerous injuries because of which he died soon afterwards the torture and they also physically tortured five more civilians.

Defendant Jović is held in custody as of 7 July 2008. At the pronouncement of the verdict, his detention was extended.

In this court case, the VSRH quashed two first-instance verdicts rendered before. Both of the mentioned verdicts found Jović guilty and sentenced him to 5 years in prison: the first one was quashed for formal reasons (violation of the provisions of criminal procedure), while the second one was quashed due to erroneous and incomplete establishment of facts.

⁹⁰ Mladen Stojanović monitored this trial and reported thereof.

In the VSRH's decision which quashed the second verdict and remanded the case back to the first-instance court for a third retrial, the VSRH ordered the first-instance court to adduce evidence on the basis of which it would be established who in the military formation had the authority to issue commands to the military police unit (military police platoon's commander and/or commander of the entire military formation and/or security body commander); whether the defendant, in addition to the indisputable fact that he was a security officer, was formally a superior commander to the military police (and in this specific case this is not really of crucial importance); was he a *de facto commander*; did he take any action after the event of 3 May 1995 when Antun Kundić was killed.

With this in mind, the first-instance court was ordered to hear a competent person who is a military organisation expert familiar with the commanding system over the military police in the former JNA. The court was also requested to gather information whether any criminal prosecution was instigated in respect of Antun Kundić's death and was the then-commander of the Dalj Police Station relieved of his duties due to the omission to take action in this particular case. In addition, the court had to collect data on the formation organisation of the 35th Slavonija Brigade and to take testimonies from several witnesses regarding the defendant's position in the army, his conduct after the event on 3 May 1995, as well as to examine which person initiated pre-investigation activities in respect of this event.

As an expert-witness the court heard Slavko Kit, a retired HV colonel who used to be a JNA officer until 1991. However, the defence was of the opinion that his testimony contained inconsistent statements and therefore proposed, as it had been the case in the previous main hearings, to take deposition from another competent witness - a retired general Imra Agotić, but the court rejected this proposal by the defence.

Furthermore, competent institutions provided the court with information that no person had been criminally prosecuted for the killing of Antun Kundić.

Considering the defendant's position in the brigade and his conduct after the killing of Antun Kundić, the court also heard, among others, Dušan Grahovac (security officer, direct superior to defendant Jović at the critical time). However, his deposition in which he stated that the defendant briefed him on the event and that the defendant took necessary measures, the Court assessed as unconvincing and in contradiction with other presented evidence and directed to be in favour of the defendant. The court concluded that the defendant did not take necessary measures to sanction the perpetrators because he did not report the names of the persons responsible for Kundić's death despite the fact that he knew this.

Unlike the prosecution and the court's establishment, the defence deemed that manual labour platoon members could not have a civilian status because they were receiving mobilisation invitations and had a formation position within the brigade, that the defendant had neither formal nor actual commanding powers over military police members and that the witnesses, who were providing information on the defendant's superior role over military police members, formed their conclusions on the basis of village hearsay, and that none of them actually saw the defendant issuing orders to any of the military police members.

In the opinion following the conclusion of the second (first repeated) trial, we pointed out at the possibility that the VSRH quashes the first-instance verdict, particularly having in mind numerous evidence proposed by the defence which the first-instance court's council rejected to present at that time. Although in the course of the third trial the first-instance court carried out the majority of evidence which had been indicated at by the VSRH or which was proposed by the defence (but the proposal to hear the expert-witness Imra Agotić was not accepted), it remains uncertain whether the VSRH will be of the opinion that facts were established correctly and completely.

Both formal omissions which were made during the first trial and erroneous and incomplete establishment of facts in the second trial have extended the length of the mentioned proceedings. During that time, the defendant has been held in custody. If the VSRH quashes this last first-instance verdict and remands the case for retrial the fourth time, the maximum period under which the defendant may be kept in custody will most likely expire.

Trial against Goran Amanović, charged with a war crime against civilians⁹¹

Šibenik County Court

Criminal offence: war crime against civilians under Article 120, paragraph 1 of the OKZRH

Defendant: Goran Amanović

War Crimes Council (panel): judge Nives Nikolac, Council President, judges Sanibor Vuletin and Branko Ivić, Council Members

Prosecution: Emilio Kalabrić, Šibenik County Deputy State's Attorney

Defence: Mladen Klarić, lawyer practising in Šibenik

Opinion

On 31 January 2011 the main hearing began at the Šibenik County Court in the trial against Goran Amanović who was extradited to Croatia from Bosnia and Herzegovina. The defendant was indicted that he committed a war crime against civilians under Article 120, paragraph 1 of the OKZRH in the villages Suknovci and Oklaj in the Promina area.⁹²

Having concluded the main hearing on 20 May 2011, the Court acquitted the defendant of the charge that he committed the crime as he was charged in the indictment.

During the presentation of evidence, the court presented all evidence available to it. The War Crimes Council authorized its President to carry out identification of the defendant by three witnesses in the premises of Šibenik-Knin Police Administration, although such investigative actions are more typical for investigation proceedings and even for re-investigation activities when police authorities carry them out on the basis of the state attorney's order.

Having assessed all presented evidence and the defendant's defence, the court found that it could not be beyond reasonable doubt established that defendant Goran Amanović was the perpetrator of the crimes that he had been charged with and which constituted an extended criminal offence of war crime against civilians. It decided so because "none of the heard witnesses recognized defendant Goran Amanović as the perpetrator of the mentioned crime", as was stated in the explanation of the first-instance verdict.⁹³

⁹¹ Jelena Đokić Jović monitored this trial and reported thereof.

⁹² The ŽDO Šibenik's indictment laid on 27 December 2010 charges the defendant that, as member of Serb paramilitary units in Suknovci and Oklaj from the end of 1991 until 1994 at the then-temporarily-occupied Promina Municipality area, contrary to the international law rules, he physically abused and beat elderly civilians of Croatian ethnicity, causing the death of one elderly man by sustained injuries. He is also charged with rape of one elderly female civilian, attempted rape of one woman and with threatening, intimidating and terrorising civilians and plundering their property.

⁹³ The Šibenik County Court's Verdict No. K-44/2010 of 20 May 2011, page 10.

However, the court found it indisputable, as it was unambiguously established during the presentation of evidence, that the criminal offences which form the *corpus* of an extended war crime in fact occurred and that they were committed to the detriment of civilians, local female and male residents of Suknovci and Oklaj villages in the Promina area, who were mentioned individually in the indictment issued by the Šibenik County State Attorney's Office.

The court took into consideration the fact that the trial was conducted against presumable crime perpetrator. Because of presumption of the defendant's innocence, it decided to resolve unclear situations in a manner which is more favourable to the defendant. In this specific case, the court rested its acquittal on the principle "*in dubio pro reo*" (when in doubt, the court must decide in favour of the defendant) which presents one of the elements of presumption of innocence of the accused.

Trial against Ivan Husnjak and Goran Sokol, charged with a war crime against civilians⁹⁴

Bjelovar County Court

Criminal offence: war crime against civilians under Article 120, paragraph 1 of the OKZRH in conjunction with Article 28, paragraph 2 of the same Act

Defendants: Ivan Husnjak and Goran Sokol

War Crimes Council (panel): judge Sandra Hančić, Council President, judges Mladen Piškorec and Ivanka Šarko, Council Members

Prosecution: Branka Merzić, Bjelovar County State Attorney

Defence: Marko Dumančić, lawyer practising in Osijek representing the 1st defendant; Zdravko Dumančić, lawyer practising in Osijek representing the 2nd defendant

Opinion following the conclusion of the first instance trial

On 24 May 2011, the Bjelovar County Court rendered the first instance verdict (verdict-before-appeal) No. K-9/09 and acquitted Ivan Husnjak and Goran Sokol of the charge that they committed a war crime against civilians, as indicted by the Bjelovar ŽDO.

This trial is rather interesting because Croatian Army (HV) officers were charged on the basis of command responsibility⁹⁵ with committing a war crime against civilians, but the mentioned crime did not include any victims. Instead, the crime included a large-scale destruction of private property which is not justifiable by military needs. The Basic Criminal Law Act of the Republic of Croatia (the OKZRH) was in force when the crime was committed and therefore it was applied in respect of the mentioned command responsibility.

The indictment No. K-DO-6/06 of 23 September 2008 issued by the Bjelovar ŽDO does not contain full information about injured parties. The quoted Indictment contains only numbers of the houses set on fire in Pušina and Slatinski Drenovac. Names of their owners are not mentioned. For that reason, this indictment is imprecise. At the last trial hearing, the mentioned indictment was made more precise by entering the names of two injured parties who contacted the Bjelovar ŽDO having learned from the media that this trial was underway. As already mentioned, owners and complete addresses of their burned/damaged property were not stated in the indictment, but only the house numbers. Moreover, on page 3 of the indictment the ŽDO mentioned 43 facilities. Before that, it mentioned 17 facilities in Pušina, 19 in Slatinski Drenovac, the Orthodox church tower and the hunter's lodge. Hence, a total of 38 facilities.

⁹⁴ Veselinka Kastratović and Milena Čalić Jelić monitored this trial and reported thereof.

⁹⁵ Article 120, paragraph 1 of the OKZRH in conjunction with Article 28, paragraph 2 of the same Act.

The War Crimes Council of the Bjelovar County Court established in the verdict that **arson in Pušina and Slatinski Drenovac was performed on 1 February 1992**, after the cleansing action. This cleansing action (in the surrounding area of the mentioned villages) was carried out between 08.00 and 13.00 hours by members of “A” Company and the reconnaissance platoon of the 2nd Company under the 132nd HV “R” Brigade. The Council established that arson occurred in the afternoon hours when the mentioned “A” Company was returning to the hunters’ lodge in Jankovac. It also established that the defendants, together with soldiers subordinated to them, were not present in the mentioned villages at the critical time.

The Council found that arson of property committed in the course of an armed conflict represents a large-scale destruction of property that could not be justified by military needs. Thus, it **represents a war crime against civilians - criminal offence under Article 120, paragraph 1 of the OKZRH**. When the perpetrators act in the aforementioned manner, they act contrary to the provision of Article 53 of the Geneva Convention relative to the Protection of Civilian Persons.

In the quoted verdict, the Council was of the opinion that the war crime which had been committed by omission (non-doing) was “explicitly regulated by the international criminal law and, in particular, by the 1949 Geneva Conventions together with their additional protocols issued in 1977”⁹⁶. For that reason, in its explanation of the acquitting verdict, the Council analysed the provision of Article 86 of the Protocol I additional to the Geneva Conventions in respect of conduct performed by both defendants. The Council established that members of “A” Company of the 2nd Battalion under the 132nd HV “R” Brigade were under certain subordination in relation to defendant Ivan Husnjak being the commander of the 2nd Battalion and to defendant Goran Sokol being the deputy commander of that company. Prosecution’s accusation that the defendants were aware of unlawful actions going on in the field but failed to take any action to prevent and punish such unlawful actions, the Council found to be “an unclear and unspecified formulation of command responsibility”.⁹⁷

Explaining the acquittal, the Council stated that not a single presented evidence lead to a conclusion that the defendants knew that their unit members would commit a crime, i.e. that they were preparing to do it. Moreover, the Court also considers unproven that the defendants had knowledge about the crime at the time when it was committed (i.e. in the afternoon hours), and it considers that the defendants learned about the committed arson and possible perpetrators the following day.

The Council also analysed the situation in which the commander had no knowledge that his subordinates were preparing to commit a crime, but he should have known it and should have taken necessary and reasonable measures to prevent it. It is evident from the depositions provided by the witnesses and by the defendants themselves, in view of Zlatko Mesić’s report of 31 December 1991, that the battalion’s reconnaissance unit members had previously compromised themselves by excessive alcohol consumption, disturbance of public order and commission of certain criminal offences.

⁹⁶ The verdict of the Bjelovar County Court’s War Crimes Council, No. K-9/09 of 24 May 2011, page 16, section 2.

⁹⁷ The Verdict of the Bjelovar County Court’s War Crimes Council, No. K-9/09 of 24 May 2011, page 16, section 4.

In respect of defendant Ivan Husnjak, the Council founded its decision on the fact that he issued three orders (15 December 1991, 18 December 1991 and 31 January 1992) in which he prohibited destruction of housing facilities. In the order relating to this specific event, “the 1st defendant issued an order to unit commanders to brief all soldiers about the meaning of the task as well as the need for order and discipline”⁹⁸. Having analysed presented personal evidence, the Council stated witness depositions which made a mention of commands issued in October 1991 that contained instructions on the treatment of prisoners, material and technical means and civilians in line with all conventions which were in force. In addition, it was stated that unlawful actions performed before the critical event had already been investigated and that some members of the 132nd HV Brigade had been prosecuted. The Council found indisputable that defendant Ivan Husnjak, upon learning about the village being set on fire, requested from his subordinate commanders to submit reports on the event. From the analysis of presented evidence, the court concluded that the defendants took reasonable measures to prevent the crime, although, in this particular case it did occur.

As regards the defendants, the Council established that **there was no guilt on the part of commanders, “not even the mildest form of negligence in relation to the crime and there was no causal connection with the crime between the actions of the 1st defendant as commander and the 2nd defendant as his deputy.”**⁹⁹

Furthermore, the Council found that non-establishing the names of perpetrators of criminal offence may only represent “a separate criminal offence of non-reporting a crime or a possible criminal offence of aiding and abetting the perpetrator following the crime in respect of which, in accordance with general provisions, the statute of limitations for criminal prosecution had set it.”¹⁰⁰

The Bjelovar ŽDO filed an appeal against the acquittal. Therefore, it will be interesting to see whether the Supreme Court will accept the reasons for acquittal in respect of both defendants. Namely, the Council in its verdict did not separately assess the scope of command authority as regards both defendants, particularly as regards defendant Goran Sokol as deputy commander of the 2nd Company under the 132nd HV “R” Brigade. In the trial concluded with the final judgment against defendants Rahim Ademi and Mirko Norac¹⁰¹, the VSRH accepted the first-instance court’s opinion that absence of command authority and power represents absence of criminal liability of the defendants - as was the case with defendant Goran Sokol, and the Bjelovar County Court’s War Crimes Council did not engage itself into determining this. If we follow the logic of the trial completed with a final judgment for the crimes in Medak Pocket, in that case a deputy commander (under the rules of the former JNA but also under HV rules) has a different description of duties, powers and obligations and he is not included, as is the case with the commander, in the zone of criminal responsibility. In respect of defendant Ivan

⁹⁸ The Verdict of the Bjelovar County Court’s War Crimes Council, No. K-9/09 of 24 May 2011, page 18, section 2.

⁹⁹ The Verdict of the Bjelovar County Court’s War Crimes Council, No. K-9/09 of 24 May 2011, page 19, section 5.

¹⁰⁰ The verdict of the Bjelovar County Court’s War Crimes Council (No. K-9/09 of 24 May 2011), page 19, section 5.

¹⁰¹ The verdict of the Zagreb County Court’s War Crimes Council (No. II K-rz 1/06 of 30 May 2008).

Husnjak's acquittal, the question remains whether the War Crimes Council prematurely concluded that the defendant acted in accordance with the provision of Article 86 of the Protocol I Additional to the Geneva Conventions, by viewing Mirko Koić's witness deposition (commander of "A" Company of the 2nd Battalion under the 132nd HV "R" Brigade) which he provided during the investigation. The witness then said that he wrote a report on 3 February 1992, which he still supports and in which he provided the names of his company members who were setting houses on fire in Pušina, but defendant Ivan Husnjak and none of his superiors failed to initiate any action against these persons. This court verdict reopens the question of applicability and scope of command responsibility in national law.

About the trial

The indictment NO K-DO-6/06 of 23 September 2008 issued by the Bjelovar ŽDO charges the defendants that they – the 1st defendant Husnjak as commander of the 2nd battalion of the 132nd HV "R" brigade and the 2nd defendant Sokol as deputy commander – failed to take on 1 February 1992 any action to prevent and punish unlawful conducts of their subordinates. The Indictment alleges events preceding the aforementioned incrimination event. Previously, on 18 December 1991 the HV forces freed the wider Orahovica area and villages under Papuk mountain. In particular, the special police forces from Osijek and police station Orahovica took control over the mentioned area. Following to that, on 31 January 1991 the defendant Husnjak ordered a cleansing of occupied villages Pušina and Slatinski Drenovac. During that cleansing operation several unidentified members – subordinates to the defendants – began with setting fire to abandoned Serb-ethnicity people's houses that entered later because of such actions into a conflict with members of the special police and of the police who attempted without success to prevent them. Thus, the Indictment charges the 1st and the 2nd defendant that, although aware of unlawful actions going on, they failed to take any action and therefore agreed to continued actions by their subordinates and consequences thereof. As alleged in the Indictment, the consequences included 17 destroyed houses in Pušina caused by the arson attack, the Orthodox church damaged by fire shots, 19 houses set on fire in Slatinski Drenovac including the hunters' lodge between Pušina and Slatinski Drenovac.

Both defendants had their defence counsels. They pleaded not guilty in respect of the allegations contained in the indictment.

The trial began in March 2010 and a total of 5 main trial hearings were held. Due to a recess of almost a year, the trial started anew on 23 May 2011 before the same Council. That Council, however, failed to provide any explanation to the parties in the trial in respect of non-scheduling the hearings.

During the presentation of evidence, 17 witnesses and 2 injured parties were heard. They learned from the newspaper about the trial going on and contacted the Bjelovar ŽDO.

The Court file contains: original record of event, inspection record file, report to the special unit commander addressed at Zdenko Minarik and Miroslav Buneta, command No. 24-1/92 of 31 January 1992 signed by defendant Ivan Husnjak.

Reopened trial against Janko Radmanović and Radisav Stojanović, previously sentenced in absentia for committing a war crime against civilians¹⁰²

Slavonski Brod County Court

Criminal offence: war crime against civilians under Article 120, paragraph 1 of the OKZRH

Defendants: Janko Radmanović and Radisav Stojanović

War Crimes Council: judge Jadranka Đaković, Council President, judges Mirko Svirčević and Zlatko Pirc, Council Members

Prosecution: Stjepan Haramustek, Slavonski Brod Deputy County State's Attorney

Defence: lawyer Ivanka Dugandžić representing the first defendant; lawyer Tomislav Skutari representing the second defendant

Opinion after the conducted reopened trial

On 1 June 2011, after the conducted renewed trial, the War Crimes Council of the Slavonski Brod County Court pronounced a verdict which fully upheld the verdict rendered by the Požega District Court dated 25 October 1993 which found Janko Radmanović and Radisav Stojanović guilty of committing a criminal offence against humanity and international law of war - war crime against civilians and they were sentenced to 15 (fifteen) years in prison each.

Both proceedings (before the Požega District Court and the renewed trial before the Slavonski Brod County Court) were conducted and verdicts were pronounced in the defendants' absence because they were unavailable to Croatian judiciary since 9 December 1991 when they were exchanged as prisoners of war.

Although the proceedings were renewed after the Požega County State Attorney's Office requested so because of presentation of new facts or submission of new evidence on behalf of the convicts, the Council of the Slavonski Brod County Court, after the conducted main hearing, established the same facts as the Požega District Court had done.

We are of the opinion that the evidence presented in the renewed proceedings was not new by its nature and content as to grant the renewal in the first place. However, it remains to be seen what standpoint the VSRH will assume in a decision it will pass during the appellate procedure.

Bearing in mind that the previous verdict was fully upheld, the Court also upheld the 15-year prison sentences pronounced in the previous verdict. However, by looking at the court practice, we are of the

¹⁰² Miren Špek and Veselinka Kastratović monitored the trial and reported thereof.

opinion that the pronounced sentences are too long. In many war crimes proceedings which resulted in deaths, the perpetrators received (significantly) shorter prison sentences.

Course of the proceedings

In the verdict of the Požega District Court from 1993, Radmanović and Stojanović were found guilty because, as commanders of the “Ivan Senjug-Ujak” military barracks in Slavonski Brod, on 15 and 16 September 1991 they issued orders to open fire from all available weapons on certain parts of the city regardless of the activities performed by the regular Croatian forces. Their subordinate officers and soldiers carried those orders so that they destroyed and damaged a large number of facilities¹⁰³ by firing from all available weapons, on which occasion civilian Ivan Babić sustained a severe physical injury, while Marica Miloš, Konstantin Bašić, Marijan Kovačević and Drago Vidaković sustained light physical injuries. Thus, they were found guilty of ordering a non-selective attack aimed at civilians that led to unlawful large scale destruction of property. On 4 May 1995, the VSRH denied the defendants’ appeals as unsubstantiated and upheld the verdict rendered by the Požega District Court.

Based on a request for renewal of the proceedings filed by the Požega County State Attorney’s Office, on 2 February 2010 the Extra-trial Chamber of the Slavonski Brod County Court passed a decision which allowed the renewal of criminal proceedings.

Since the convicts were still unavailable to the Croatian judicial bodies, the request was filed on the basis of Article 501, paragraph 1, item 3 of the ZKP (if new facts or new evidence are presented which alone or in relation to previous evidence appear likely to lead to the acquittal of the person who was convicted or to his conviction on the basis of a more lenient criminal law provision).

It was stated in the request that the defendant Radmanović forwarded letters to the DORH and the Slavonski Brod County Court on several occasions. Thus, in a submission dated 1 September 2007, he proposed the hearing of injured persons, as well as those witnesses for whom it was unclear whether they had been questioned during the criminal proceedings. Namely, in the verdict of the Požega County State it was stated that a large number of witnesses had been heard, but it remained unclear whether injured persons were heard as witnesses, as well as Dr. Jozo Meter and Franjo Piplović.

Three witnesses were heard before the War Crimes Council of the Slavonski Brod County Court: Jozo Meter – President of the War-time Presidency of the former Slavonski Brod Municipality, Frano Piplović – President of the Crisis Headquarters and Ivo Petrić – Defence Commander of the former Municipality.

From the testimonies of the aforementioned witnesses it is evident that defence preparations were ongoing. Because of the order issued by the Supreme Commander of the Croatian Armed Forces about blocking the military barracks, JNA officers and soldiers were being called upon to surrender peacefully.

¹⁰³ “Ivana-Brlić Mažuranić” Memory Home, supermarkets “Vesna” and “Bambi”, hotels “Park” and “Brod”, “Klasije” Sports Hall, primary school “Mika Babić”, kindergarten “Pčelica”, “Plavo polje” hospital, the Basilian Convent, the Catholic church of the Saint Nikola Tavelić.

Negotiations were also taking place between representatives of municipal authorities and ZNG on one side and the garrison commanders on the other. Due to specific location of the military barracks, control checkpoints were set up in its vicinity. Thus an attempt was made to prevent possible JNA movements in the direction of the city.

According to witness testimony of Ivo Petrić, he entered the military barracks together with Josip Dokuzović, the-then Culture Commissioner. Inside the barracks perimeter they saw organized circular defence, adapted to the barracks configuration. They saw an abundance of weapons, cases, shell boxes. Weapons barrels were soot-stained.

All other pieces of evidence were read, with the consent of parties to the proceedings: minutes containing 116 witness testimonies, defendants' defences provided before the investigating judge of the Požega District Court in 1991,¹⁰⁴ minutes containing witness testimonies by the injured persons, finding and opinion of a court-appointed expert about the injuries sustained by the injured persons, minutes on the crime scene investigation made on 17 September 1991, proposal for de-blocking of the Slavonski Brod commanding garrison facility dated 15 September 1991, letter from the Slavonski Brod Municipality Assembly's Crisis Headquarters dated 15 September 1991, excerpt from the Bukovlje guards' log, minutes on damage investigation on the facilities in Gupčeva Street dated 18 September 1991, an overview of war damages caused in the period between 15/16 September and 15 November 1991, letter from the Commission for the Assessment of War Damage dated 29 September 1993, letter from the District Court dated 29 September 1993 and a letter from the Medical Centre dated 12 October 1993. An insight was made into photographic documentation, the photocopy of an article in Brodski list daily, the city plan. A video recording was presented which contained footage of the subject events.

During the main hearing, the Council President presented the content of the statements provided by two persons that were forwarded to the Court by the convicts, as well as the content of submissions and letters from convict Radmanović. The enacting terms of the verdict failed to specify whose statements were those or what was the content of the letter by defendant Radmanović.

Out of all presented material pieces of evidence, the Council did not accept only the testimonies provided by JNA soldiers who were at the "Ivan Senjug-Ujak" military barracks at the critical time. The Council did not accept the defendants' defences in which they claimed that they had defended the barracks from the attack by the Croatian armed forces, that they had believed in peaceful conflict resolution and that they had had no intention to shoot. The Court did not accept the aforementioned testimonies because they were contrary to the testimonies of citizens questioned as witnesses and material evidence on large scale damage that had occurred.

The Council reached a conclusion that it was a destructive and pre-meditated action on the part of members of JNA armed forces which cannot be justified under any circumstances and which were

¹⁰⁴ Although the Council forwarded a request to the Republic of Serbia asking for the defendants to be questioned, it did not happen.

performed upon the defendants' order. Such actions hit the city of Slavonski Brod and its civilian population.

The Council assessed as a particularly extenuating circumstance the letter by Janko Radmanović titled „Proposal for de-blocking” which he forwarded on 15 September 1991 to local civilian and military authorities. In that letter he threatened with “retaliation” by the JNA Tuzla Corps unless the attacks by the Croatian forces stopped.

The Court fully accepted the standpoint of the Požega District Court, thus it did not accept the defendants' defence which claimed that the defendants' actions were not premeditated. According to the Court's standpoint, they acted with premeditation because they were aware that their actions (order) or a lack thereof (a lack of prohibition) may lead to prohibited consequences, to the occurrence of which they consented.

The only evidence motion that both Councils rejected as irrelevant was a proposal by the defence to perform ballistic expertise in order to determine the intensity of devastation of Slavonski Brod by the missiles fired from Bosnia. The evidence motion was rejected with an explanation that it had been established with other presented pieces of evidence.

Although the verdict of the Slavonski Brod County Court failed to state other aggravating and extenuating circumstances, by fully upholding the previous verdict, the Court accepted the assessment of the Požega District Court which, when deliberating the sentence, took into account the situation and time in which the event took place (the disintegration of a country, disintegration of its armed forces, non-acceptance of newly occurred changes, desire to maintain the existing situation), the aggravating circumstances: faith in the power and force of the JNA and its indestructibility, self-confidence and aggressiveness and the extenuating circumstances: both defendants were citizens of Slavonski Brod, they offered and accepted the request for surrender because of which they were relieved of their duties.

The third (second repeated) trial against Milan Jurjević and Davor Tošić, charged with a war crime against civilians¹⁰⁵

Zadar County Court

Criminal offence: war crime against civilians under Article 120, paragraph 1 of the OKZ RH

Defendants: Milan Jurjević and Davor Tošić

War Crimes Council: judge Enka Moković, Council President; judges Antun Klišmanić and Dijana Grancarić, Council Members

Prosecution: Radovan Marjanović, Zadar County Deputy State's Attorney

Defence: lawyer Ivica Ivanić representing Milan Jurjević; lawyer Rikard Perković representing Davor Tošić

Opinion

On 8 June 2011, after the conducted third (second repeated) trial, the War Crimes Council of the Zadar County Court presided over by judge Enka Moković pronounced a verdict which acquitted the first defendant Milan Jurjević and the second defendant Davor Tošić of charges that they committed a war crime against civilians.

Milan Jurjević was tried in his presence, while Davor Tošić was tried *in absentia*.

We are of the opinion that the repeated trial was conducted correctly, in compliance with legal regulations. After the Zadar County Court pronounced the acquitting verdict, these long-lasting criminal proceedings were finally brought to an end. The standpoint of the first-instance court was also upheld by the verdict of the VSRH dated 16 November 2011 in which it was stated that the Zadar County Court provided clear and detailed reasons for its decision. Thus the acquitting verdict became final.

Course of the proceedings

The indictment issued by the Zadar ŽDO on 18 June 1997 charged the defendants that on 19 December 1991 in Kruševo, in the area called Karamarkuša, during an armed conflict between the former Yugoslav Army and Serb paramilitary formations and the Croatian armed forces, as members of the so-called 4th light Obrovac Brigade of the so-called RSK Army, they killed Mile Brkić by shots fired from firearms in such a manner that the second defendant Davor Tošić fired several shots at Mile Brkić. When the injured person fell to the ground and started to yell and scream for help, the first defendant Jurjević fired three more shots from his semi-automatic rifle into Mile Brkić, as a result of which he died on the spot. Afterwards, they left the crime scene in a truck leaving the dead body behind

After the conducted first-instance proceedings, the acquitting verdict was pronounced on 1 December 1997. The Court deemed that it was not proven during the proceedings that the defendants commit-

¹⁰⁵ Martina Klekar and Maja Kovačević Bošković monitored the trial and reported thereof.

ted the criminal offence with which they were charged. Heard witnesses did not provide an insight into whether the defendant Jurjević participated in the killing of the injured person Mile Brkić. The Court concluded, by invoking the findings of a psychiatric expert, that the defendant Jurjević was an immature person who was not able to realistically and objectively see the consequences and severity of the testimony he had provided during the investigation in which he had confessed the commission of the offence. His confession did not fit with the finding and the opinion of the expert pathologist about the position of the injured person at the moment when he sustained the injuries.

The Prosecution lodged an appeal against the aforementioned and it was upheld by the VSRH decision dated 13 September 2000, the verdict was quashed and the case was reversed to the first-instance court for a retrial. In the explanation of the decision it was stated that it was not possible to accept the standpoint expressed by the first-instance court that Jurjević's defence provided during the investigation was brought into question by the results of the expertise performed by a neuro-psychiatrist and a pathologist and that the Zadar County Court failed to perform a comprehensive analysis of the defendant's defence provided during the investigation when he confessed the commission of the offence.

On 15 September 2005, after the conducted repeated trial, the War Crimes Council of the Zadar County Court rendered a verdict which found defendants Jurjević and Tošić guilty as charged. Jurjević was sentenced to 4 years in prison, while Tošić received 15 years.

The defendants' lawyers and the State Attorney's Office both lodged appeals against this verdict. On 14 March 2007 the VSRH upheld the defendants' appeals and reversed the case for a retrial. Before considering the defendants' appeals, the VSRH found that the first-instance court made an essential violation of the criminal procedure provisions in the challenged verdict. Namely, the first-instance court heard police officer Mirko Lukić as a witness in relation to the informative talk he performed with the-then suspect Milan Jurjević. Apart from that, the VSRH deemed that the convicting verdict was based exclusively on Milan Jurjević's defence provided during the investigation procedure and ordered the first-instance court to try to find in the repeated proceedings persons who were present at the incriminating event, as well as persons who might have certain information about the event.

The third (second repeated) trial commenced in May 2010 and it lasted until June 2011. Numerous material and personal evidence was presented, including findings and opinions of the court-appointed ballistics and weapons expert and expert pathologist. Approximately 30 testimonies from already heard witnesses were read with the consent of parties to the proceedings. None of heard witnesses charged the defendants. Although defendant Jurjević confessed during the investigation to have committed the criminal offence, in the defence presented at the main hearing he denied the commission with an explanation that the confession he provided during the investigation was the result of fear and that he was going through a difficult state of mind. The Court gave credibility to the witness testimony of Mirko Lukić, a police officer who performed the informative talk with the defendant. In his testimony, witness Lukić claimed that defendant Jurjević was not coerced into providing his confession. Still, the first-instance court did not consider the confession provided before the investigating judge

to be well-founded. According to the standpoint of the first-instance court, Jurjević's defence and his confession were neither detailed enough nor did they describe the circumstances of the incriminating event, bearing in mind the conducted crime-scene investigation from May 2010 as well as the ballistic expert's finding and opinion. Not a single witness testimony confirmed them. The claim by defendant Jurjević, that the deceased Mile Brkić was shot at from a semi-automatic rifle and then also from a gun, was challenged with the ballistic expert's finding and opinion and the pathologist. It was established that the shells discovered during the crime-scene investigation conducted on 11 May 2010 belonged to an automatic rifle, not to a semi-automatic one. There were no injuries on the deceased person's skull and no shells belonging to a gun were found during the crime-scene investigation. According to the harmonized opinions of the experts based on material evidence, at the moment the deceased Mile Brkić was shot at, he faced the source of shooting, not backwards as defendant Jurjević claimed during the investigation. According to the standpoint of the first-instance court, other claims by defendant Jurjević provided during the investigation were not confirmed, either. Although he claimed that he had committed the incriminating offence as a member of the so-called 4th light Obrovac Brigade of the so-called RSK Army, it was established from the testimony of the heard witness that on 19 December 1991, when the incriminating offence was committed, the subject Brigade was not even established and, furthermore, defendant Milan Jurjević was not even member of that formation as stated in the indictment, while defendant Tošić was its member but only after 1992.

According to the standpoint of the first-instance court, the aforementioned facts disputed defendant Jurjević's confession provided during the investigation procedure and resulted in the adoption of an acquitting verdict.

Trial against Jablan Kejić, charged with a war crime against prisoners of war¹⁰⁶

Sisak County Court

Criminal offence: war crime against prisoners of war under Article 122 of the OKZRH

Defendant: Jablan Kejić, detained

War Crimes Council (panel): judge Snježana Mrkoci, Council President, judges Predrag Jovanić and Višnja Vukić, Council Members

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

Defence: Zorko Konstanjšek, lawyer practising in Sisak

Opinion

On 5 September 2011, the Sisak County Court's War Crimes Council found Jablan Kejić guilty for war crime against prisoners of war under Article 122 of the OKZRH. He received a prison sentence in the duration of 7 (seven) years.

He was found guilty because, as a member of armed unit of the so-called SAO Krajina, on 27 July 1991 he captured wounded member of the Croatian Ministry of Internal Affairs Šefik Pezerović in Dušan Vinčić's barn in the village of Kuljani, tied his arms with a belt, took him to the village of Kirišnica, beat him up and kicked his head and body. Then, he took the injured party with his arms tied up at his back to the school in Jovac where several villagers gathered including Mirko Ćurčija, Milenko Milković and Momčilo Buinac who were also members of the Territorial Defence of the so-called SAO Krajina. Together with defendant Jablan Kejić they were beating and kicking Šefik Pezerović's head and body. Following his attempt to run away, they tied him up with wire and continued beating him and then they put him in a trunk of "Zastava 101" vehicle tied up like that and took him to Ćore (Ćoriće), Šakanlije and Lotine. They stopped in the aforementioned places where they were beating and kicking Šefik Pezerović again, inflicting him injuries of which he died. Then, they left his dead body at a meadow near Zrin.

Separation of proceedings

In the indictment No. K-DO-37/10 of 13 December 2010 issued by the Sisak ŽDO, Jablan Kejić, Mirko Ćurčija, Milenko Milković and Momčilo Buinac were charged with the commission of described war crime. Bearing in mind the fact that all defendants, except Jablan Kejić, are unavailable to Croatian judiciary, the court decided to separate the proceedings in respect of available Kejić. Defendant Kejić expressed no objection against this separation. Additional factors that influenced the decision

¹⁰⁶ Milena Čalić Jelić monitored this trial and reported thereof.

on separation were: the defendant's detention status, the need to increase efficiency of completing the trial in his case, but also non-fulfilling of presumptions that other defendants would be tried in their absence because no international arrest warrant had been issued against them during the previous trial.

The issue of how quickly was resolved the detention case

The defendant was arrested on 13 October 2010. He was put in custody due to danger of escape and particularly grave circumstances of crime commission. The indictment was laid on 13 December 2010. The main hearing commenced on 14 April 2011 and lasted for five months. In total, six trial hearings were held, 14 witnesses including an expert pathologist were heard and the case file's material documentation was examined. Unlike the main hearing which was carried out within a reasonable time-frame, four months elapsed from the day the indictment was laid until the first trial hearing.

Presentation of evidence

The entire trial, although initiated only in 2010 before the court well-experienced in war crimes prosecution, contained procedural irregularities in taking depositions during the investigation. Certain witness depositions provided during the investigation proceedings could not have been used in the trial because the minutes on interrogations were signed by court advisors. In accordance with ZKP provisions, they had the authority to prepare the implementation of certain investigative activities, take statements and proposals by parties and independently take certain investigating activities entrusted to them by the investigative judge. At the latest forty eight hours after the activity was undertaken, the investigative judge must verify the minutes on such activities, and in this particular trial this was not the case.

In addition, we noticed during our monitoring that the defendant's understanding of the indictment, the court proceedings and his procedural position were very questionable. Namely, the defendant is an illiterate person without any professional qualification.

During the presentation of evidence, having heard 14 witnesses and carrying out examination of material documentation, the Council decided not to hear certain witnesses again and not to summon four more witnesses whose residence addresses in Serbia could not have been determined. The Council was of the opinion that presentation of the aforementioned evidence was not necessary and that the facts, about which the witnesses were to be heard, were sufficiently established.

The defendant denied that he was beating the injured party and participation in bringing him away from Jovac in the direction of a meadow near Zrin.

During the trial, the court did not establish the exact cause of Šefik Pezerović's death, whose body was exhumed in 2000. The expert pathologist stated in his finding and opinion that the injured party was found in a barn in the village of Kuljani already wounded in the head and arm. For that reason, the fact that the injured party was killed from firearms was omitted from the indictment. Instead, it was stated that he passed away due to injuries caused by the beating.

It is indisputable that defendant Kejić took the injured party from Kuljani to other villages. Only one witness mentioned in his testimony the names of persons (by mentioning all defendants) who were severely abusing the imprisoned and wounded soldier. The Court gave credence to this witness' deposition. Other witnesses confirmed that injured party Šefik Pezerović was captured, taken around and abused in the mentioned villages.

Decision on sentence

The court assessed as extenuating circumstances the defendant's family situation, the fact that at the time of crime commission he was a relatively young person (25 years) and that he acted *tempore acti* together with other persons and for that reason not the entire criminal quantity was imputed to him. The court assessed as aggravating circumstances the maximum level of guilt (direct intention), violation of the most protected value (human life) and previous criminal record (in the period from 2007 to 2010 he had been sentenced for crime).

Fourth (third repeated) trial against Luka Markešić, Zdenko Radić, Zoran Maras and Ivan Orlović, charged with a war crime against prisoners of war and a war crime against civilians¹⁰⁷

Zagreb County Court

Criminal offence: war crime against prisoners of war under Article 122 of the OKZRH in conjunction with Article 22 of the same Act and war crime against civilians under Article 120, paragraph 1 of the OKZRH in conjunction with Article 22 of the same Act

Defendants: Luka Markešić, Zdenko Radić, Zoran Maras and Ivan Orlović

War Crimes Council (panel): judge Željko Horvatović, Council President, judges Marijan Garac and Zdravko Majerović, Council Members

Prosecution: Jurica Ilić, Zagreb County Deputy State's Attorney

Defence: lawyer Gordana Grubeša representing defendant Markešić; lawyer Marijan Ramušćak representing defendant Radić; lawyer Zorislav Krivačić and lawyer Ana Marija Gospočić representing defendant Maras; lawyer Rajko Rudnički representing defendant Orlović

Opinion following the conclusion of the fourth (third repeated) first-instance trial

On 17 November 2011, the Zagreb County Court's War Crimes Council rendered a first-instance (non-final) verdict No. K-rz-4/11. Pursuant to the provision of Article 354 of the ZKP, it acquitted Luka Markešić, Zdenko Radić, Zoran Maras and Ivan Orlović of charges that they committed a war crime against prisoners of war under Article 122 of the OKZRH and a war crime against civilians stated in Article 120, paragraph 1 of the OKZRH, both in conjunction with Article 22 of the same Act.

This acquittal was expected and it was the only possible outcome because of Varaždin County State Attorney's Office made a mistake by amending the indictment against the aforementioned defendants. In the amended indictment, the crime with which the defendants were charged was not war crime. In other words, it was not described how the defendants were aiding and abetting the commission of war crime against prisoners of war and against one civilian.

The trial is rather interesting for several reasons:

- six prisoners of war were killed and one civilian was severely wounded; they were taken out of the Bjelovar Police Administration's detention facility;
- despite attempts to investigate exactly what happened and who were the perpetrators immediately after the commission of the crime, threats were made to Koprivnica Police Administration police officers who were involved in police investigation; these threats suspended pre-investigation activities until 2001 and thus the crime was investigated again not sooner than ten years after its commission;

¹⁰⁷ Maja Kovačević Bošković and Veselinka Kastratović monitored the trial and reported thereof.

- much of the material evidence collected by the police somehow disappeared between Bjelovar, Koprivnica and Zagreb;
- after the autopsy and identification, victims' bodies were handed over to an unidentified undertaker and for that reason the place where victims were buried is unknown.

Despite the efforts made to instigate criminal proceedings for several years and unsuccessful attempt to bring the charges, the fact is that this crime remained insufficiently investigated because of which the perpetrators have remained unpunished. In the course of many years, the defendants were acquitted two times on the basis of a first-instance verdict and convicted once by a first-instance verdict. On the basis of the last first-instance verdict, they were acquitted again because the court was of the opinion that the offence they were charged with was not a criminal offence.

During the trial, when observing the presented evidence, it became completely clear that in this specific case we were not talking about an individual excess. The injured parties, war prisoners who were detained after liberation of the military barracks, as well as civilian Savo Kovač arrested in his apartment on 2 October 1991, were taken to the Bjelovar Police Administration's detention facility. They were all put together in the same room and listed. On that critical evening when the crime was committed, one or two persons came in with a list to pick up the injured parties and take them away in a vehicle used by the Bjelovar Police Administration. According to the statement provided by civilian Savo Kovač who was the only person who survived the firing squad execution, four persons in uniforms wearing balaclavas were shooting at the injured parties. Therefore it is quite clear that it was known about the detainees, and that their bringing away, killing them and inflicting serious wounds to one person was not a random act by unidentified perpetrators. Unfortunately, this premeditated crime is still remained unpunished. It was not been even established who ordered the crime. It was not investigated why the prisoners of war (soldiers or reservists) were detained in the Bjelovar Police Administration's detention facilities, or why and how it was possible to detain a civilian without any warrant and keep him in detention for more than 24 hours. One can only hope that the state attorney's office will continue investigating this case, perhaps already as part of the investigation conducted against the Bjelovar crisis headquarters war president J.Š. due to reasonable suspicion that he ordered execution of three prisoners after the entry of Croatian military and police formations in the Bjelovar military barracks.

The trial overview

The criminal proceedings against the aforementioned defendants have been ongoing for more than ten years. The quoted first-instance verdict was rendered at the fourth (third repeated) trial. The Bjelovar ŽDO laid charges in 2001 against the mentioned defendants for co-perpetration in the commission of war crime against prisoners of war and for war crime against civilians.

As a result of the trial conducted in 2001 before the Bjelovar County Court, the first-instance acquitting verdict was rendered. The Supreme Court of the Republic of Croatia quashed that verdict in 2004

due to erroneous and incomplete establishment of facts and ordered the court to carry out a new trial before a completely changed composition of the court council.

The case was transferred to the Varaždin County Court which rendered the acquittal on 28 February 2005. The VSRH Appeals Chamber quashed that verdict on 14 February 2007 due to erroneous and incomplete establishment of facts and instructed the first-instance court to repeat the trial and, following the repeated presentation of evidence and its evaluation, to assess whether the defendants were co-perpetrators or whether “they – with their indisputably determined actions – aided and abetted direct crime perpetrators to commit crimes more easily”.¹⁰⁸

On 27 November 2007, the Varaždin ŽDO amended the indictment. With this amendment, the defendants were charged that “based on a previous agreement aiming to enable the perpetrators to kill war prisoners and civilian Savo Kovač, ... in the night between 3 and 4 October 1991 they came to the police administration building and took the keys from the head of the shift operation duty Tihomir Wagner. All defendants knew that the war prisoners and civilian Savo Kovač would be taken out of the building to a convenient place where they would be killed, and so unidentified persons took the war prisoners and civilian Savo Kovač out of the building and put them into a delivery vehicle... they were then brought to Česma woods near Mali Korenov and shot by multiple shots by individual and burst firing ... thus inflicting Radovan Barberić, Zdravko Dokman, Radovan Gredeljević, Ivan Hojsak, Boško Radonjić and one more unidentified person numerous gunshot wounds to their heads, bodies and limbs that caused their immediate deaths, whereas civilian Savo Kovač survived although he sustained serious bodily harm, i.e a shot-through wound on the left side of his face and on the right lower leg,... therefore, the defendants aided and abetted other persons with premeditation, thus violating the international law rules at the time of armed conflict, to kill war prisoners and attack a civilian causing him serious bodily harm...”.

The Varaždin County Court’s War Crimes Council rendered the first-instance (not final) verdict of conviction on 21 December 2007.¹⁰⁹ The first instance court accepted the factual description contained in the indictment. It was of the opinion that the incriminating actions by the defendants represent aiding and abetting actions within the meaning of Article 22 of the OKZRH, because they enabled unknown perpetrators to take injured persons out of the detention facilities and to transport them to the place where they executed them and thus, “...with the incriminating actions, the defendants created favourable preconditions for unidentified perpetrators to commit war crimes against the injured persons”.¹¹⁰ In respect of the quoted verdict, appeals were lodged by all defendants and by the Varaždin County State Attorney’s Office, but only concerning the decision on sentence for all defendants.

¹⁰⁸ The VSRH Appeals Chamber decision No. I Kž-581/05 of 14 February 2005, page 4.

¹⁰⁹ In the first-instance verdict No. V.K. 11/07 of 21 December 2007 issued by the Varaždin County Court’s War Crimes Council, defendant Luka Markešić was sentenced to a joint prison sentence in the duration of 4 years, while defendants Zdenko Radić, Zoran Maras and Ivan Orlović were sentenced to joint prison sentences in the duration of 3 years each.

¹¹⁰ Page 27 of the first-instance verdict No. V.K. 11/07 of 21 December 2007 issued by the Varaždin County Court’s War Crimes Council.

The VSRH's Appeals Chamber issued the decision No. I Kž-336/08 of 1 February 2011 in which it accepted the defendants' appeals and quashed the quoted first-instance verdict due to essential violation of the criminal procedure provisions under Article 367, paragraph 1, item 11 of the ZKP, i.e., "enacting terms of the verdict were contrary to the reasons which were unclear and contradictory themselves".¹¹¹ The Council was of the opinion that in the defendants' described actions "there is no criminal offence – aiding and abetting in a war crime against war prisoners ...and aiding and abetting in a war crime against civilians, as charged... because the defendants' criminal activity as it had been described, which is reduced basically only to taking the keys of the basement facilities where injured persons were placed, does not contain by itself objective elements of the mentioned crimes"... On the other hand, the disputed verdict also has no mention of the reasons on crucial facts in respect of the previous agreement incriminated to the defendants, because it contains no explanation what this agreement was about,....¹¹² Considering the fact that the Varaždin ŽDO lodged an appeal only in respect of the decision on sentence, the VSRH Appeals Chamber ordered the first-instance court to repeat the trial and to "primarily remove the violations which this Decision had indicated at, by taking into account that the verdict may not be amended to the detriment of the defendants (Article 381 of the ZKP)".¹¹³

The Chief State Attorney of the Republic of Croatia provided on 20 May 2011 his consent to transfer local jurisdiction over this case to the Zagreb County Court, in accordance with the provision of Article 12 of the Act on the Application of the ICTY Statute.

The Zagreb County Court's War Crimes Council presented all personal and material evidence in the repeated trial, but because of the mistake made when indicting, this court was in a situation that it could not discuss the merits but could only apply the provision of Article 354, item 1 of the ZKP and render an acquittal because the offence that the defendants were accused of was not a criminal offence.

¹¹¹ The VSRH's Appeal Chamber decision No. I Kž – 336/08 of 1 February 2011, page 3.

¹¹² The VSRH's Appeal Chamber decision No. I Kž – 336/08 of 1 February 2011, page 3.

¹¹³ Prohibition *reformatio in peius*.

Press-release in respect of the trial for the crime in Ribarska Koliba in Marino Selo Osijek¹¹⁴

On 13 June 2011, the Osijek County Court concluded the repeated first-instance trial against six Croatian Army (HV) members of the 76th Battalion's Military Police Platoon, indicted with the commission of a war crime against civilians under Article 120, paragraph 1 of the OKZRH, in Marino Selo in the "Ribarska Koliba" [Fisherman's Lodge] motel (hereinafter: Ribarska Koliba).

In November 1991, 24 inhabitants of the villages of Kip and Klisa were apprehended and detained in Ribarska Koliba which was used at the time as the 76th Pakrac Battalion intervention platoon's base. Seventeen victims were tortured, abused and humiliated in the worst possible manner. Fifteen of them were eventually killed by firearms, while two persons died as a result of torture and inhumane treatment. Bodies of six victims were found, while mortal remains of other persons are still searched for.

In the first-instance (not final) verdict, three defendants were acquitted of charges that they committed a war crime against civilians. During the trial, after legal qualification of the indictment was changed, the court rejected charges against the 2nd defendant that he committed a criminal offence of unlawful incarceration because the statute of limitation for criminal prosecution had set in. Two defendants were found guilty of committing a war crime against civilians and received prison sentences in the duration of 12 and 15 years, respectively.

Pronouncement of the first-instance verdict stirred up many questions. The prosecutor's appeal was announced and the VSRH is expected to provide its opinion. Unfortunately, in the repeated trial, the evidence procedure was restricted by the VSRH's standpoint regarding the validity of evidence collected by ICTY Prosecutor's Office investigators. Our war crime trials monitoring team has been repeatedly warning in its reports that, because of such VSRH's decision, problems would surface in further war crimes trials. This will happen in cases in which evidence appears that was collected by the ICTY Prosecutor's Office, specified under categories 2 and 3 and transferred by the ICTY to our judiciary.

Criminal prosecution was initiated only after the ICTY Prosecutor's Office transferred the evidence material to the State Attorney's Office of the RC. More precisely, it involved statements provided by three witnesses who were detained in Ribarska Koliba in Marino Selo, even though the criminal report and certain pre-investigation activities had been carried out immediately after the event. Such evidence, partially upheld by the repeated testimonies, as well as the presented material evidence, constituted the basis for the convicting verdict rendered by the Požega County Court in March 2009. However, on the basis of the defendant's appeal, the VSRH quashed this verdict for procedural reasons and remanded the case for a retrial. The VSRH's Appeals Chamber deemed that the first-instance verdict was based on illegally obtained evidence – records with depositions from survived victims from Marino Selo pro-

¹¹⁴ Centre for Peace, Nonviolence and Human Rights-Osijek, *Documenta* and Civic Committee for Human Rights signed and published this opinion on 20 July 2011, only a few days after the first-instance verdict was rendered. On 22 November 2011, the VSRH confirmed the Osijek County Court's verdict in its entirety.

vided to ICTY Prosecutor's Office investigators. The VSRH delegated the repeated trial to the Osijek County Court.

Amendments to the Act on the Application of the Statute of the ICC were adopted in May 2011. The Act was amended so as to allow use of evidence collected by ICTY bodies in criminal proceedings carried out in Croatia. For that reason, the Osijek ŽDO proposed to present evidence, which was previously assessed as illegal, but the War Crimes Council of the Osijek County Court rejected this proposal by invoking the VSRH's decision.

This trial for war crimes against civilians committed in Ribarska Koliba in Marino Selo raised many dilemmas with regard to: use of evidence collected by ICTY investigators in trials before national courts; preparedness of witnesses to testify without any fear of condemnation or retaliation in small places where they live; protection of witnesses/survived victims; and continued non-identification of crime perpetrators who are still mentioned only by their nicknames in investigations and trials.





Witness depositions sound almost unbelievably that they [the witnesses] had no knowledge about the existence of detained civilians in Ribarska Koliba in Marino Selo. Pakrac, Lipik and surrounding villages because they are situated in such a small area that people know one another very well and thus taking away several civilians from a village cannot remain unnoticed. Besides, the day when civilians were finally taken out of Ribarska Koliba basement (24 November 1991), they remained on that location which was used as the Military Police base. Civilians have nothing to do in such a base. Stories by Military Police members from Bjelovar that they saw certain civilians, including two women, but did not know what they were doing there are unconvincing. Equally unconvincing are stories that people learned about torture, abuse and killing of detained persons from newspaper articles. Unfortunately, even 20 years after the critical event, witnesses are actually killing the victims once again with their depositions claiming to have no knowledge about the victims. It is up to the court to justly explain its verdict, particularly in respect of the section where it assesses the presented evidence, especially personal evidence where the majority of discrepancies in witness depositions could be found when compared to the depositions presented during the investigation and during the first trial. This in particular applies to the role of the first defendant who was indicted as the actual (*de facto*) commander of the aforementioned military police platoon.

Judicial procedure gave no answer to the question: who was commander of the Military Police Platoon attached to the 76th HV Independent Battalion at the incriminating time of the event in November 1991? Members of that platoon certainly did not arbitrarily determine their tasks and it is also questionable how they procured firearms, who sent them to check point, who supplied them with food, ammunition and other military equipment, to whom were they submitting their reports. Finally, why did they take detained persons to Marino Selo and to whom did they surrender the detained persons there? Such a serious crime has been brought to absurd, although the Požega ŽDO made serious efforts in putting together pieces of the indictment.

By observing the entire trial, an attentive observer can clearly see that people knew about the crime in Marino Selo already at the moment when military policemen from Daruvar went to Kip and learned that civilians were taken away from the village, when civil police in Daruvar apprehended a military unit member from Marino Selo who confirmed that houses in Kip had been searched and that civilians had been taken to Marino Selo, when a Daruvar inhabitant reported the taking-away of her father and brother. People knew about the crime also when three detained persons showing visible signs of torture were taken out of the basement in Ribarska Koliba to Daruvar. People also knew about the crime after four survived civilians were finally released from Ribarska Koliba in Marino Selo and when they arrived to their villages. Official reports were written about the aforementioned events. Unfortunately, nothing was done that could have prevented the commission of the crime or at least render possible efficient prosecution of its perpetrators.

The question remains: what about the victims and their dignity? What was the reason that judiciary did not initiate a timely investigation? Why it was waited for the ICTY to investigate crimes which took place on the territory of the Republic of Croatia? The VSRH's decision to assess evidence collected by ICTY Prosecutor's Office as illegal merely represents a follow-up to a sad story, but this time it was wrapped up in the form of interpretation of one Article from the Act which had been amended in the meantime. The form had been satisfied with the conviction rendered against two defendants. The same also applied to the crimes committed in Paulin Dvor, the Medak Pocket and on the Korana Bridge - someone got sentenced, after all. At present, nobody is mentioning new investigations and finding other perpetrators. Therefore, we ask the DORH to initiate a new investigation and we expect from the VSRH to apply the amended act which renders it possible to use evidence of survived persons in this criminal proceedings.





Trials in which first instance verdicts were rendered by county courts in 2011

	Case	Criminal offence / Court / Council	
1	<p>CRIME IN PERUŠIĆ</p> <p>After defendant Nikola Munjes was extradited from Monte Negro, the trial against him was reopened at the Zadar County Court.</p> <p>On 4 February 2011, he was sentenced to 9 years in prison by a first-instance (non-final) verdict, thus upholding the verdict of 9 October 1995 rendered by the same court when he was sentenced <i>in absentia</i> and received the same punishment.</p> <p><i>The VSRH Appeals Chamber held its session on 9 November 2011. We are not familiar with its decision.</i></p>	<p>War crime against civilians</p> <p>Zadar County Court</p> <p>War Crimes Council: judge Boris Radman, Council President; judges Dijana Grancarić and Ante Anić, Council Members</p>	
2	<p>CRIME IN DALJ IV</p> <p>After the VSRH quashed two times the convictions rendered by the Osijek County Court in which the defendant was found guilty and sentenced to 5 years in prison, and after the third (second repeated) trial, the Osijek County Court's War Crimes Council on 15 March 2011 found the defendant guilty again and sentenced him to 5 years in prison.</p>	<p>War crime against civilians</p> <p>Osijek County Court</p> <p>War Crimes Council in the third (second repeated) trial: judge Darko Krušlin, Council President; judges Ante Kvesić and Katica Krajnović, Council Members</p>	
3	<p>CRIME IN BARANJA</p> <p>After the fourth (third repeated) trial, the Osijek County Courts' War Crimes Council on 23 March 2011 found defendant Petar Mamula guilty and sentenced him to 3 years and 6 months in prison.</p> <p>The VSRH Appeals Chamber held its session on 12 October 2011. The VSRH quashed for the fourth time the first-instance conviction rendered by the Osijek County Court.</p> <p>In the previous three trials, he was sentenced to 5 years and 6 months in the first trial, and to 4 years and 10 months in the second and the third trial, respectively.</p>	<p>War crime against civilians</p> <p>Osijek County Court</p> <p>War Crimes Council: judge Zvonko Vrban, Council President; judges Ružica Šamota and Dubravka Vučetić, Council Members</p> <p>Zločin u Baranji Nakon provedenog četvrtog (trećeg ponovljenog) postupka Vijeće za ratne zločine Županijskog suda u Osijeku proglasilo je 23. ožujka 2011. optuženog Petra Mamulu krivim i osudilo ga na kaznu zatvora u trajanju od 3 godine i 6 mjeseci.</p>	
4	<p>CRIME IN SUKNOVCI AND OKLAJ</p> <p>After the main hearing, which began on 31 January 2011, the Šibenik County Court's War Crimes Council rendered the verdict on 20 May 2011, in which the defendant was acquitted.</p>	<p>War crime against civilians</p> <p>Šibenik County Court</p> <p>War Crimes Council: judge Nives Nikolac, Council President; judges Sanibor Vuletin and Branko Ivić, Council Members</p>	

TRIALS BEFORE CROATIAN COUNTY COURTS IN 2011






	Indictment No. / ŽDO ⁴	Defendants	Names of victims
→	<p>Indictment No. KT-9/95 of 27 June 1995 issued by the Zadar District State Attorney's Office</p> <p>Prosecution: Radovan Marjanović, Zadar County Deputy State's Attorney</p>	<p>Nikola Munjes</p> <p>Member of Serb formations</p> <p>Extradited from Monte Negro and kept in the Zadar prison custody as of 20 October 2010.</p>	<p>Victims - maltreated: Duje Pešut and Grgo Pešut</p>
→	<p>Indictment No. K-DO-52/08 of 4 November 2008 issued by the Osijek ŽDO, amended (specified) on 31 March 2009 and at the hearing held on 15 March 2011.</p> <p>Prosecution: Dragan Poljak, Osijek County Deputy State's Attorney</p>	<p>Čedo Jović</p> <p>Member of Serb formations</p> <p>In detention as of 7 July 2008</p>	<p>Victims:</p> <ul style="list-style-type: none"> - killed: Antun Kundić - physically abused: Ivan Horvat, Ivan Bodza, Karol Kremerenski, Josip Ledenčan and Emerik Hudik
→	<p>Indictment No. KT-136/94 of 3 April 2001 issued by the Osijek ŽDO, amended on 14 March 2002, 4 May 2006 and 23 March 2011.</p> <p>Prosecution: Miroslav Dasović, Osijek County Deputy State's Attorney</p>	<p>Petar Mamula</p> <p>Member of Serb formations</p> <p>Spent time in detention from 6 October 2000 until 7 May 2003.</p> <p>Attends the trial undetained</p>	<p>Victims:</p> <ul style="list-style-type: none"> - maltreated: Antun Knežević, Veljko Salonja and Jovan Narandža <p><i>- the amended indictment of 23 March 2011 no longer charges the defendant with maltreatment of Veljko Salonja and Jovan Narandža</i></p>
→	<p>Indictment No. K-DO-30/06 of 27 December 2010 issued by the Šibenik ŽDO.</p> <p>Prosecution: Emilio Kalabrić, Šibenik County Deputy State's Attorney</p>	<p>Goran Amanović</p> <p>Member of Serb formations</p> <p>Spent time in detention of the Šibenik prison. Extradited from Bosnia and Herzegovina to Croatia.</p>	<p>Victims:</p> <ul style="list-style-type: none"> - died from injuries sustained during brutal beating: Krsto Cota - rape victim: female person (we do not mention her name) - attempted rape victim: female person (we do not mention her name) - maltreated: Stanko Bara

⁴ Translator's note: the County State Attorney's Office (hereinafter: the ŽDO)

	Case	Criminal offence / Court / Council	
5	<p>ARSON IN THE VILLAGES OF PUŠINA AND SLATINSKI DRENOVAC</p> <p>On 24 May 2011, the Bjelovar County Court's War Crimes Council pronounced the first-instance verdict in which the defendants were acquitted.</p>	<p>War crime against civilians</p> <p>Bjelovar County Court</p> <p>War Crimes Council: judge Sandra Hančić, Council President; judges Mladen Piškorec and Ivanka Šarko, Council Members</p>	
6	<p>SLAVONSKI BROD SHELLING CRIME</p> <p>Reopened trial, on the basis of the request for reopening submitted by the State Attorney's Office, was conducted in absence of the accused persons.</p> <p>On 1 June 2011, the verdict was pronounced which left in force the previous verdict rendered by the Požega District Court on 25 October 1993 in which the defendants were found guilty and sentenced to 15 years in prison each.</p>	<p>War crime against civilians</p> <p>Slavonski Brod County Court</p> <p>War Crimes Council: judge Jadranka Đaković, Council President; judges Mirko Svirčević and Zlatko Pirc, Council Members</p>	
7	<p>CRIME IN KRUŠEVO</p> <p>After the third (second repeated) trial, the Zadar County Court's War Crimes Council pronounced its verdict on 8 June 2011 in which it acquitted the defendants.</p> <p>On 16 November 2011, the VSRH Appeals Chamber upheld the acquittal.</p> <p><i>Previously, the VSRH quashed two times the first-instance verdicts. In 2000, it quashed the acquittal rendered on 1 December 1997, and in 2007 it also quashed the verdict by which the first-instance court, on 15 September 2005 found the defendants guilty and sentenced defendant Jurjević to 4 years, and defendant Tošić to 15 years in prison, respectively.</i></p>	<p>War crime against civilians</p> <p>Zadar County Court</p> <p>War Crimes Council: judge Enka Moković, Council President; judges Boris Babić and Dijana Grancarić, Council Members</p>	
8	<p>CRIME IN MARINO SELO</p> <p>After the repeated trial, on 13 June 2011, the verdict was pronounced in which defendants Poletto and Tutić were found guilty. Poletto was sentenced to 15 and Tutić to 12 years in prison. Defendants Kufner, Vančaš and Ivezic were acquitted, whereas the charge was rejected in respect of defendant Šimić.</p> <p>On 22 November 2011, the VSRH upheld in its entirety the verdict rendered by the Osijek County Court.</p> <p><i>Previously, the VSRH quashed the Požega County Court's War Crimes Council verdict dated 13 March 2009 in which the defendants were found guilty and sentenced to prison, as follows: Kufner 4 years and 6 months, Šimić 1 year, Vančaš 3 years, Poletto 16 years, Tutić 12 years and Ivezic 10 years. Afterwards, the trial was transferred to the Osijek County Court.</i></p>	<p>War crime against civilians</p> <p>Osijek County Court</p> <p>War Crimes Council: judge Zvonko Vrban, Council President; judges Miroslav Rožac and Darko Krušlin, Council Members</p>	

TRIALS BEFORE CROATIAN COUNTY COURTS IN 2011

	Indictment No. / ŽDO ¹	Defendants	Names of victims
→	<p>Indictment No. K-DO-6/06 of 23 September 2008 issued by the Bjelovar ŽDO</p> <p>Prosecution: Branka Merzić, Bjelovar County State's Attorney</p>	<p>Ivan Husnjak and Goran Sokol</p> <p>Members of Croatian formations</p> <p>Attended the trial undetained</p>	<p>Injured parties – owners and possessors of destroyed facilities:</p> <ul style="list-style-type: none"> - 17 houses destroyed and the Orthodox Church tower were damaged in the village of Pušina; - 19 houses destroyed in Slatinski Drenovac; - destroyed hunter's lodge between Pušina and Slatinski Drenovac
→	<p>Indictment No. KT-72/91 of 6 December 1991 issued by the Požega District Public Prosecution, amended at the main hearing held on 25 October 1993 – presently No. K-DO-8/10 of the Slavonski Brod ŽDO</p> <p>Prosecution: Stjepan Haramustek, Slavonski Brod County Deputy State's Attorney</p>	<p>Janko Radmanović and Radisav Stojanović</p> <p>Members of Serb formations</p> <p>Tried <i>in absentia</i></p>	<p>Victims:</p> <ul style="list-style-type: none"> - sustained severe physical injuries: Ivan Babić - sustained light physical injuries: Marica Miloš, Konstantin Bašić, Marija Kovačević and Drago Vidaković
→	<p>Indictment No. KT-266/97 of 18 June 1997 issued by the Zadar ŽDO</p> <p>Prosecution: Radoslav Marjanović, Zadar County Deputy State's Attorney</p>	<p>Milan Jurjević and Davor Tošić</p> <p>Members of Serb formations</p> <p>Defendant Jurjević attended the trial undetained, while defendant Tošić is a fugitive and thus was tried <i>in absentia</i></p>	<p>Victim – killed: Mile Brkić</p>
→	<p>Indictment No. K-DO-48/10 of 28 June 2010 issued by the Osijek ŽDO, amended on 31 May 2011.</p> <p>Prosecution: Zlatko Bučević, Osijek County Deputy State's Attorney and Božena Jurković, Slavonski Brod County Deputy State's Attorney</p>	<p>Damir Kufner, Davor Šimić, Pavao Vančaš, Tomica Poletto, Željko Tutić and Antun Ivezic</p> <p>Members of Croatian formations</p> <p>Defendants Damir Kufner, Davor Šimić and Pavao Vančaš attended the trial undetained. Defendants Tomica Poletto, Željko Tutić and Antun Ivezic spent time in detention. Detention against Ivezic was vacated after the pronouncement of the verdict.</p>	<p>Victims:</p> <ul style="list-style-type: none"> - maltreated and tortured: Branko Stanković, Mijo and Jovo Krajnović (villagers from Kip); Milka Bunčić, Jeka Žestić and Nikola Ivanović (villagers from Klisa) - maltreated, tortured and killed: Pero Novković, Mijo Danojević, Goko Gojković, Savo Gojković, Branko Bunčić, Nikola Gojković, Mijo Gojković, Filip Gojković, Jovo Popović – Tein, Petar Popović, Nikola Krajnović, Milan Popović (villagers from Kip); Jovo Žestić, Jovo Popović Simin, Slobodan Kukić, Rade Gojković, Savo Maksimović, Josip Cicvara (villagers from Klisa)

	Case	Criminal offence / Court / Council	
9	<p>CRIME IN ZRIN</p> <p>On 5 September 2011, the Sisak County Court's War Crimes Council found defendant Jablan Kejić guilty and sentenced him to 7 years in prison.</p> <p>Previously, the trial against defendant Kejić was separated from the trial against unavailable defendants Mirko Čurčija, Milenko Milković and Momčilo Buinac.</p>	<p>War crime against war prisoners</p> <p>Sisak County Court</p> <p>War Crimes Council: judge Snježana Mrkoci, Council President; judges Predrag Jovanić and Višnja Vukić, Council Members</p>	
10	<p>CRIME IN FRKAŠIĆ II</p> <p>After the repeated trial, on 8 September 2011 the defendant was found guilty. He was sentenced to 7 years in prison.</p> <p><i>Previously, on 11 May 2011 the VSRH quashed for procedural reasons the Gospić County Court's War Crimes Council's verdict of 25 February 2010 in which the defendant was sentenced to 7 years in prison.</i></p>	<p>War crime against war prisoners</p> <p>Karlovac County Court – Office in Gospić</p> <p>War Crimes Council: judge Dušan Šporčić, Council President, judges Dubravka Rudelić and Matilda Rukavina, Council Members</p>	
11	<p>CRIME IN LOVINAC</p> <p>After the third (second repeated) trial, the verdict was pronounced on 18 October 2011, in which defendant Radoslav Čubrilo was found guilty in his absence and sentenced to 15 years in prison.</p> <p><i>Initially, the trial was conducted against five defendants. However, the Rijeka ŽDO dropped charges against four defendants (Milorad Čubrilo, Milorad Žegarac, Petar Hajduković and Gojko Mrkajlo).</i></p>	<p>War crime against civilians</p> <p>Rijeka County Court</p> <p>War Crimes Council: judge Jadranka Kovačić, Council President; judges Nasta Mijatović and Srebrenka Šantić, Council Members</p>	
12	<p>CRIME IN MLINIŠTE</p> <p>On 24 October 2011, the Zagreb County Court's War Crimes Council rendered a verdict in which five defendants were found guilty. Tihomir Šavorić and Nenad Jurinec were each sentenced to 6 and Antun Novačić to 5 years in prison respectively for committing the crime. Robert Precehtjel and Robert Berak were each sentenced to 2 years in prison for aiding and abetting commission of the crime.</p> <p>The 1st defendant Emil Črnčec and the 6th defendant Goran Gaća were acquitted of charges.</p>	<p>War crime against war prisoners</p> <p>Zagreb County Court</p> <p>War Crimes Council: judge Marijan Garac, Council President; judges Rajka Tomerlin Almer and Zdravko Majerović, Council Members</p>	
13	<p>CRIME IN THE VILLAGES ALONG THE UNA RIVER NEAR HRVATSKA KOSTAJNICA</p> <p>After the repeated trial, on 8 November 2011, the defendants were found guilty and sentenced as follows: Pero Đermanović to 9, Dubravko Čavić to 7 and Ljubiša Čavić to 2 years in prison.</p>	<p>War crime against civilians</p> <p>Zagreb County Court</p> <p>War Crimes Council: judge Zdravko Majerović, Council President; judges Željko Horvatović and Tomislav Juriša, Council Members</p>	

TRIALS BEFORE CROATIAN COUNTY COURTS IN 2011



	Indictment No. / ŽDO ¹	Defendants	Names of victims
→	<p>Indictment No. K-DO-37/10 of 13 December 2010 issued by the Sisak ŽDO</p> <p>Prosecution: Marijan Zgurić, Sisak County Deputy State's Attorney</p>	<p>Jablan Kejić</p> <p>Member of Serb formations</p> <p>In detention</p>	<p>Victim - killed: Šefik Pezerović</p>
→	<p>Indictment No. K-DO-13/08 of 9 March 2009 issued by the Gospić ŽDO</p> <p>Prosecution: Željko Brkljačić, Gospić County Deputy State's Attorney</p>	<p>Goran Zjačić</p> <p>Member of Serb formations</p> <p>In detention as of 28 September 2008.</p>	<p>Victims: - physically abused: Johannes Tilder, Ivan Čaić, Ivan Dadić (HV members); Marko Tomić (HVO member); Kadir Bećirspahić (BiH Army member)</p>
→	<p>Indictment No. K-DO-53/06 issued by the Rijeka ŽDO, amended at the main hearing held on 17 September 2006</p> <p>Prosecution: Darko Karlović, Rijeka County Deputy State's Attorney</p>	<p>Radoslav Čubrilo</p> <p>Member of Serb formations</p> <p>Unavailable to Croatian authorities. Tried <i>in absentia</i>.</p>	<p>Victims - killed: Kata Šarić, Stjepan Katalinić, Jure Sekulić, Marko Pavičić, Ivan Ivezić, Martin Šarić, Milan Sekulić</p>
→	<p>Indictment No. K-DO-287/09 of 18 June 2010 issued by the Zagreb ŽDO</p> <p>Prosecution: Jurica Ilić, Zagreb County Deputy State's Attorney</p>	<p>Emil Črnčec, Tihomir Šavorić, Antun Novačić, Robert Precehtjel, Nenad Jurinec, Goran Gaća and Robert Berak</p> <p>Members of Croatian formations</p> <p>In detention as of 28 October 2009. Detention was extended in respect of Šavorić, Jurinec and Novačić who received first-instance sentences.</p> <p>Detention was vacated after the pronouncement of the verdict against Precehtjel and Berak as well as against Črnčec and Gaća who received first-instance acquittals.</p>	<p>Victims (killed): Radoslav Lakić, Pero Vidović, Petar Jotanović, Dragoslav Mutić, Borislav Vukić and one unidentified male person</p>
→	<p>Indictment No. K-DO-10/09 of 5 November 2009 issued by the Sisak ŽDO</p> <p>Prosecution: Robert Petrovečki, Zagreb County Deputy State's Attorney</p>	<p>Pero Đermanović, Dubravko Čavić and Ljubiša Čavić</p> <p>Members of Serb formations</p> <p>Defendant Pero Đermanović is detained, defendant Dubravko Čavić is unavailable and thus is tried in his absence, whereas defendant Ljubiša Čavić attended the repeated trial undetained. He spent time in detention during the first trial.</p>	<p>Victims: - unlawfully detained, tortured and killed: Vladimir Letić - burned houses: belonging to Stevo Karanović and Ivo Karanović - intimidated: Danica Devedžija</p>

	Case	Criminal offence / Court / Council	
14	<p>CRIME IN BJELOVAR</p> <p>After the fourth (third repeated) trial, the Zagreb County Court's War Crimes Council pronounced on 17 November 2011 the verdict in which the defendants were acquitted.</p> <p><i>The VSRH quashed two times the acquittals rendered by the county courts in Bjelovar and Varaždin. Then, on 1 February 2011 it quashed the verdict of 21 December 2007 rendered by the Varaždin County Court in which the defendants were found guilty and received the following sentences (joint prison terms): defendant Luka Markešić to 4 years and defendants Zdenko Radić, Zoran Maras and Ivan Orlović to 3 years each. The case was transferred then to the Zagreb County Court.</i></p>	<p>War crime against war prisoners and war crime against civilians</p> <p>Zagreb County Court</p> <p>War Crimes Council: judge Željko Horvatić, Council President, judges Marijan Garac and Zdravko Majerović, Council Members</p>	←
15	<p>CRIME IN NOVO SELIŠTE</p> <p>On 9 December 2011, the first instance verdict was pronounced in which defendant Letica was found guilty in his absence and sentenced to 9 years in prison.</p>	<p>War crime against civilians</p> <p>Sisak County Court</p> <p>War Crimes Council: judge Melita Avedić, Council President; judges Željko Mlinarić and Ljubica Rendulić Holzer, Council Members</p>	←
16	<p>CRIME IN SLUNJ AND SURROUNDING VILLAGES</p> <p>After the third (second repeated) trial, the Rijeka County Court's War Crimes Council on 23 December 2011 found the defendant guilty and sentenced him to 4 years in prison.</p> <p><i>Previously, the VSRH quashed two times the verdicts rendered by the Karlovac County Court in which the defendant was sentenced to one and four years in prison, respectively.</i></p> <p><i>The main hearing in the third (second repeated) trial began on 2 March 2011 at the Karlovac County Court - Office in Gospić. However, the case was transferred later to the Rijeka County Court.</i></p>	<p>War crime against civilians</p> <p>Karlovac County Court – Office in Gospić</p> <p>War Crimes Council: judge Dušan Šporčić, Council President; judges Dubravka Rudelić and Milka Vraneš, Council Members</p> <p>Rijeka County Court</p> <p>War Crimes Council: judge Ika Šarić, Council President; judges Zoran Sršen and Valentin Ivanetić, Council Members</p>	←
17	<p>CRIME IN DALJ</p> <p>On 27 December 2011 the Osijek County Court's War Crimes Council found the defendant guilty and sentenced him to a joint prison sentence in the duration of 1 year and 10 months.</p> <p>The main hearing began on 12 September 2006. Since the trial often took longer recesses, the hearing had to start anew on several occasions.</p> <p>Thus, the hearings were not held from December 2007 until 8 May 2009, and then from May 2009 until June 2011.</p>	<p>War crime against civilians and war crime against war prisoners</p> <p>Osijek County Court</p> <p>War Crimes Council: judge Krunoslav Barkić, Council President; judges Zvonko Vekić and Ružica Šamota, Council Members</p>	←

TRIALS BEFORE CROATIAN COUNTY COURTS IN 2011

	Indictment No. / ŽDO ¹	Defendants	Names of victims
→	<p>Indictment No. K-DO-57/01 of 25 September 2001 issued by the Bjelovar ŽDO, amended by a memo No. K-DO-27/04 of 23 February 2005 issued by the Varaždin ŽDO, and at the main hearing held on 27 November 2007.</p> <p>Prosecution: Jurica Ilić, Zagreb County Deputy State's Attorney</p>	<p>Luka Markešić, Zdenko Radić, Zoran Maras and Ivan Orlović</p> <p>Members of Croatian formations</p> <p>Attend the trial undetained</p>	<p>Victims:</p> <ul style="list-style-type: none"> - killed: Radovan Berbetović, Zdravko Dokman, Radovan Gredeljević, Ivan Hojsak, Boško Radonjić and one unidentified person - survived: Savo Kovač
→	<p>Indictment No. K-DO-44/06 of 26 November 2008 issued by the Sisak ŽDO</p> <p>Prosecution: Sonja Rapić, Sisak County Deputy State's Attorney</p>	<p>Stojan Letica</p> <p>Member of Serb formations</p> <p>Unavailable to the judiciary of the Republic of Croatia. The VSRH issued a decision on 1 December 2010 according to which the defendant would be tried <i>in absentia</i>.</p>	<p>Victim - killed: Stjepan Šubić</p>
→	<p>Indictment No. KT-36/95 of 30 July 2009 issued by the Karlovac ŽDO, amended at the main hearing on 4 May 2010, and at the main hearing held on 4 October 2011.</p> <p>Prosecution: Doris Hrast, Rijeka County Deputy State's Attorney</p>	<p>Miće Cekinović</p> <p>Member of Serb formations, commander of TO Primišlje</p> <p>The defendant is in detention as of 6 July 2009.</p>	<p>Victims:</p> <ul style="list-style-type: none"> - killed: Pavo Ivšić - maltreated and unlawfully detained: Tomo Kos and Mile Kos - expelled: the majority of inhabitants of Croatian ethnicity - burned houses belonging to: Pavo and Ruda Ivšić - burned hayloft belonging to: Danijel Mrdušan
→	<p>Indictment No. KT-103/94 of 9 July 2004 issued by the Osijek ŽDO</p> <p>Prosecution: Zlatko Bučević, Osijek County Deputy State's Attorney</p>	<p>Željko Čizmić</p> <p>Member of Serb formations</p> <p>Attends the trial undetained</p>	<p>Victims: – according to the indictment of 9 July 2004:</p> <ul style="list-style-type: none"> - beaten: Damir Buljević, Stipo Sušić, Filip Danko, Tomislav Hajduković, Marko Andabak, Ištvan Bačko, Slavko Palinkaš, Tomislav Kilić, Goran Šlinger, Vlatko Nikolić, Imra Moger - seized belongings: Ištvan Bačko <p>Victims: – according to the indictment of 14 December. prosinca 2011:</p> <ul style="list-style-type: none"> - Goran Šlinger and Vlatko Nikolić



Trials with ongoing main hearings

	Case	Criminal offence / Court / Council	Indictment No. / ŽDO ²	
1	<p>CRIME IN LOVAS</p> <p>The trial is ongoing.</p>	<p>War crime against civilians</p> <p>Vukovar County Court</p> <p>War Crimes Council: judge Jadranka Kurbel, Council President; judges Berislav Matanović and Željko Marin, Council Members</p>	<p>Indictments: No. KT-265/92 of 19 December 1994 issued by the Osijek ŽDO and No. DO-44/04 of 1 October 2004 issued by the Vukovar ŽDO, merged into a single indictment No. K-DO-39/00 which was amended in respect of defendant Ilija Vorkapić on 4 November 2011.</p> <p>Prosecution: Vlatko Miljković, Vukovar County Deputy State's Attorney</p>	
2	<p>CRIME IN KARLOVAC</p> <p>The trial is ongoing. The main hearing began on 17 December 2010.</p>	<p>War crime against civilians</p> <p>Zagreb County Court</p> <p>War Crimes Council: judge Ivan Turudić, Council President; judges Lidija Vidjak and Ratko Šćekić, Council Members</p>	<p>Indictment No. K-DO-188/10 of 22 November 2010 issued by the Zagreb ŽDO.</p> <p>Prosecution: Jurica Ilić, Zagreb County Deputy State's Attorney</p>	

⁴ Translator's note: the County State Attorney's Office (hereinafter: the ŽDO)





TRIALS BEFORE CROATIAN COUNTY COURTS IN 2011

Defendants	Names of victims
<p>Ilija Vorkapić</p> <p>Member of Serb formations</p> <p>Attends the trial undetained.</p> <p><i>On 29 April 2009, the trial in respect of present defendants (Ilija Vorkapić and Milan Tepavac) was separated from the trial against the defendants who are unavailable to Croatian state authority bodies (Ljuban Devetak, Milan Devčić, Milenko Rudić, Željko Krnjajić, Slobodan Zoraja, Željko Brajković, Ilija Kresojević, Milan Rendulić, Obrad Tepavac, Zoran Tepavac, Milan Radojčić, Milan Vorkapić, Dušan Grković and Đuro Prodanović).</i></p> <p>In December 2010, the Tepavac case was separated from the Vorkapić case due to the incapability of defendant Tepavac to stand trial.</p> <p><i>The amended indictment charges defendant Vorkapić with a war crime against civilians and no longer with genocide as was the case before the mentioned amendment.</i></p>	<p>Victims:</p> <ul style="list-style-type: none"> - 24 persons killed in a minefield: 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 Pavličić, Darko Pavličić, Darko Sokolović, Zlatko Božić, Ivan Vidić, Antun Panjek, Zlatko Panjek - 45 persons killed on 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 Krizmanić, 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 who sustained severe physical injuries in a minefield: Marko Filić, Emanuel Filić, Stjepan Peulić, Josip Sabljak, Stanislav Franković, Milko Keser, Ivica Mujić, Ljubo Solaković, Milan Radmilović, Zlatko Toma, Josip Gešnja, Mato Kraljević, Petar Vuleta, Lovro Geistener, Dragan Sabljak - 18 persons who sustained severe physical injuries due to maltreatment: 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
<p>Željko Gojak</p> <p>Member of Croatian formations</p> <p>In detention</p>	<p>Victims</p> <ul style="list-style-type: none"> - killed: Marko Roknić, minor Danijela Roknić and Dragica Ninković

	Case	Criminal offence / Court / Council	Indictment No. / ŽDO ²	
3	<p>CRIME IN TOVARNIK</p> <p>The trial is ongoing. The main hearing began on 13 April 2010.</p>	<p>Genocide and war crime against civilians</p> <p>Vukovar County Court</p> <p>War Crimes Council: judge Nikola Bešenski, Council President; judges Nevenka Žeko and Zlata Sotirov, Council Members</p>	<p>Indictment No. DO-K-34/00 of 1 February 2001 issued by the Vukovar ŽDO</p> <p>Prosecution: Miroslav Šarić, Vukovar County Deputy State's Attorney</p>	
4	<p>CRIME ON THE POGLEDIĆ HILL NEAR GLINA</p> <p>The third (second repeated) trial is ongoing before the Sisak County Court's War Crimes Council.</p> <p>The last hearing was held on 5 April 2011 and therefore the hearing will have to start anew.</p> <p><i>Previously the VSRH quashed two times the convictions rendered by the Sisak County Court in which the defendant was sentenced to 14 and 12 years in prison, respectively.</i></p>	<p>War crime against war prisoners</p> <p>Sisak County Court</p> <p>War Crimes Council: judge Melita Avedić, Council President; judges Alenka Lešić and Željko Mlinarić, Council Members</p>	<p>Indictment No. K-DO-03/06 of 4 September 2006 issued by the Sisak ŽDO, amended at the main hearing held on 9 May 2007.</p> <p>Prosecution: Marijan Zgurić, Sisak County Deputy State's Attorney</p>	




TRIALS BEFORE CROATIAN COUNTY COURTS IN 2011

Defendants	Names of victims
<p>Miloš Stanimirović, Stevan Srdić, Dušan Stupar, Boško Miljković, Dragan Sedlić, Branislav Jerković, Jovo Janjić, Milenko Stojanović, Dušan Dobrić, Đjuro Dobrić, Jovan Miljković, Nikola Tintor, Željko Krnjajić and Radoslav Stanimirović</p> <p>Members of Serb formations</p> <p>All defendants are unavailable to the Croatian judiciary and thus are tried <i>in absentia</i>.</p> <p><i>Present defendants Milenko Stupar, Strahinja Ergić, Dragoljub Trifunović, Đorđe Miljković, Mićo Maljković and Janko Ostojić were tried before. Stupar, Ergić, Trifunović and Maljković were acquitted. Charges against Ostojić were rejected and Đorđe Miljković was sentenced to 3 years in prison. Later on, after arrest, Aleksandar Trifunović was also tried but, during the main hearing, after his release from detention, he fled from Croatia.</i></p> <p><i>The trial was discontinued in respect of defendants Jovan Medić and Božo Rudić because of their deaths.</i></p> <p><i>At the hearing held on 11 February 2011, Council President informed the parties and the audience that trial against defendant Katica Maljković was discontinued due to her death.</i></p>	<p>Victims (according to the indictment, in respect of 24 defendants):</p> <ul style="list-style-type: none"> - killed: Ruža Jurić, Ivan Jurić, Željko Vrančić, Antun Šimunić, Berislava Šimunić, Danijel Marinković, Mato Ćuk, Marijan Mioković, Rudolf Rapp, Ivan Zelić, Stjepan Matić, Stipo Kovačević, ? Bilić, an unidentified male person, Karlo Grbešić, Anto Markanović, Marko Bošnjak, Ivo Maleševac, Đuro Grgić, Marin Mioković, Branko Salajić, Tomo Glibo, Filomena Glibo, Ivan Burik, Pavao Vrančić, Ilija Džambo, Krešo Puljić, Mato Čulić, Vojko Selak; - tortured: Mirko Markutović, Živan Markutović, Andrija Jurić, Tomislav Grgić, Stjepan Marinković, Pavo Donković, Božo Grbešić, Žarko Grbešić, Dragan Hajduk, Stjepan Glibo, Branko Šimunić, Ratko Dovičin, Marin Mitrović, Marijan Matijević; - expelled: Ilija Šimunić, Tomislav Grgić and his mother, Jozo Beljo and his family, Vlatko Glavašić, Ivan Palijan's family, Ivo Đurić, Juro Beljo, Mato Ćuk, Mijo Siketić's family, Andrija Jurić, Stipo Glibo, Vjekoslav Mioković, Josip Đurčinović, Martin Djurčinović, Marija Topić, Marica Grgić, Đuro Grgić, Ivan Zelić, Stjepan Matić, Dragan Hajduk, Mijo Petković; - forced to labour: Mijo Siketić, Mile Ivančić (wounded), Stipo Kovačević, Bilić, one unidentified person, Martin Habčak; - burned houses: Marin Šijaković, Vlatko Glavašić, Rudolf Rapp, Dragan Hajduk; - maltreated: Marija Palijan, Tanja Palijan, Martin Habčak, Adam Čurčinović
<p>Rade Miljević</p> <p>Member of Serb formations</p> <p>Spent time in detention as of 10 March 2006. His detention was vacated in December 2010 because the maximum detention period had expired.</p>	<p>Victims</p> <ul style="list-style-type: none"> - killed civilians: Janko Kaurić, Milan Litrić, Borislav Litrić and Ante Žužić

	Case	Criminal offence / Court / Council	Indictment No. / ŽDO ²	
5	<p>CRIME IN RAVNI KOTARI II</p> <p>The last hearing was held in March 2011 and therefore the main hearing will have to start anew.</p>	<p>War crime against civilians</p> <p>Zadar County Court</p> <p>War Crimes Council: judge Marijan Bitanga, Council President; judges Dijana Grancarić and Vladimir Mikolčević, Council Members</p>	<p>Indictment No. K-DO-51/07 of 14 September 2009 issued by the Zadar ŽDO</p> <p>Prosecution: Slobodan Denona, Zadar County Deputy State's Attorney</p>	
6	<p>CRIME IN BERAK</p> <p>The trial is ongoing. The main hearing began on 3 November 2011.</p>	<p>War crime against civilians</p> <p>Vukovar County Court</p> <p>War Crimes Council: judge Nikola Bešenski, Council President; judges Milan Kojić and Irena Lenić, Council Members</p>	<p>Indictment No. K-DO-42/01 of 5 April 2006 issued by the Vukovar ŽDO, specified in respect of the defendant by a memo No. K-DO-42/01 of 12 October 2011.</p> <p>Prosecution: Vlatko Miljković, Vukovar County Deputy State's Attorney</p>	
7	<p>CRIME IN ŠKABRNJA</p> <p>The main hearing in the reopened trial is ongoing.</p> <p>Defendant Petrov was extradited to Croatia from Germany. The trial re-opening was permitted because the defendant was sentenced in his absence to 20 years in prison by the Zadar County Court in 1995. Back then, the trial was conducted against Goran Opačić and 25 other defendants and Petrov was among them as the 14th defendant.</p>	<p>War crime against civilians</p> <p>Zadar County Court</p> <p>War Crimes Council: judge Boris Balić, Council President; judges Vladimir Mikolčević and Boris Radman, Council Members</p>	<p>Indictment No. KT-41/92 of 22 August 1994 issued by the Zadar ŽDO, modified on 20 September 2011.</p> <p>Prosecution: Sobodan Denona, Zadar County Deputy State's Attorney</p>	
8	<p>CRIME IN PODVOŽIĆ</p> <p>The trial is ongoing. It began on 5 September 2011.</p>	<p>War crime against civilians</p> <p>Karlovac County Court</p> <p>War Crimes Council: judge Ante Ujević, Council President; judges Alenka Laptalo and Denis Pancirov, Council Members</p>	<p>Indictment No. K-DO-33/10 of 18 April 2011 issued by the Karlovac ŽDO</p> <p>Prosecution: Gordana Križanić, Karlovac County Deputy State's Attorney</p>	

TRIALS BEFORE CROATIAN COUNTY COURTS IN 2011






	Defendants	Names of victims
→	<p>Nebojša Baljak and Stevo Ivanišević</p> <p>Members of Serb formations</p> <p>Residence of both defendants is unknown and they are unavailable to Croatian state authority bodies</p>	<p>Victims</p> <p>– intimidated, sustained physical injuries: Zvonko Zelić, Bore Zelić, Mile Zelić, Ivan Paić, Stoja Paić</p>
→	<p>Milorad Momić</p> <p>Member of Serb formations</p> <p>The defendant is in detention. He was extradited from France on 2 September 2011.</p>	<p>Victims:</p> <p>- killed: Kata Garvanović; - beaten: Anđa Rušnov, Danica Rušnov, Mara Kujundžić</p>
→	<p>Renato Petrov</p> <p>Member of Serb formations</p> <p>On the basis of Interpol arrest warrant, he was arrested in Dusseldorf at the beginning of April 2011, and at the beginning of July 2011 he was extradited to the Republic of Croatia.</p>	<p>Victims:</p> <p>- 43 persons killed from firearms; one female person run over by a tank</p> <p>- defendant Petrov is charged with killing one elderly male person by shooting him from a handgun.</p>
→	<p>Marko Bolić</p> <p>Member of Serb formations</p> <p>In detention</p>	<p>Victims</p> <p>- killed: Marijan Jakšić and Darko Tuškan</p>

	Case	Criminal offence / Court / Council	Indictment No. / ŽDO ²	
9	<p>CRIME IN PAULIN DVOR</p> <p>The third (second repeated) trial is ongoing. The main hearing began on 19 September 2011.</p> <p>After the first-instance trial held in April 2004, Nikola Ivanković was found guilty and sentenced to 12 years in prison, while Enes Viteškić was acquitted.</p> <p>Later, on 10 May 2005, the VSRH modified the first-instance verdict in respect of defendant Ivanković and sentenced him to 15 years in prison, while in respect of defendant Viteškić it quashed the first-instance verdict and remanded the case for retrial.</p> <p>After the conclusion of the repeated first-instance trial, on 29 January 2007 defendant Viteškić was acquitted again. However, in 2010 the VSRH again quashed the Osijek County Court's verdict and remanded the case for a retrial before a completely changed composition of the council.</p>	<p>War crime against civilians</p> <p>Osijek County Court</p> <p>War Crimes Council: judge Darko Krušlin, Council President; judges Mario Kovač and Damir Krahulec, Council Members</p>	<p>Indictment No. K-DO-68/2002 of 12 March 2003 issued by the Osijek ŽDO, partially amended at the trial hearing held on 5 April 2004.</p> <p>Prosecution: Miroslav Dasović, Osijek County Deputy State's Attorney</p>	
10	<p>CRIME IN GRUBORI</p> <p>The main hearing began on 24 November 2011.</p>	<p>War crime against civilians</p> <p>Zagreb County Court</p> <p>War Crimes Council: judge Zdravko Majerović, Council President; judges Mirko Klinžić and Marijan Garac, Council Members</p>	<p>Indictment No. K-DO-358/09 of 15 December 2010 issued by the Zagreb ŽDO</p> <p>Prosecution: Robert Petrovečki, Zagreb County Deputy State's Attorney</p>	
11	<p>CRIME IN KORENICA</p> <p>The main hearing in the repeated trial is ongoing. It began on 25 October 2011.</p> <p><i>Previously, the VSRH quashed the Rijeka County Court's verdict in which the defendants were found guilty and sentenced to 4 years (defendant Šuput), i.e. 3 years and 6 months in prison (defendant Panić).</i></p>	<p>War crime against civilians</p> <p>Rijeka County Court</p> <p>War Crimes Council: judge Jasenka Kovačić, Council President; judges Dina Brusić and Ksenija Zorc, Council Members</p>	<p>Indictment No. K-DO-24/06 of 31 January 2007 issued by the Gospić ŽDO, amended by the Rijeka ŽDO on 2 October 2008.</p> <p>Prosecution: Darko Karlović, Rijeka County Deputy State's Attorney</p>	

TRIALS BEFORE CROATIAN COUNTY COURTS IN 2011

	Defendants	Names of victims
→	<p>Enes Viteškić</p> <p>Member of Croatian formations</p> <p>Attends the trial undetained He spent time in detention during the first-instance trial – until he received the first acquittal.</p>	<p>Victims (killed): Milan Labus, Spasoja Milović, Boja Grubišić, Božidar Sudžuković, Bosiljka Katić, Dragutin Kečkeš, Boško Jelić, Milan Katić, Dmtar Katić, Draginja Katić, Vukašin Medić, Darinka Vujnović, Anđa Jelić, Milica Milović, Petar Katić, Jovan Gavrić, Milena Rodić, Marija Sudžuković</p>
→	<p>Frane Drljo, Božo Krajina and Igor Beneta</p> <p>Defendants Drljo and Krajina are in detention. Defendant Beneta was a fugitive, thus a decision to try him in his absence was issued. In November 2011, it was announced that his dead body was found and that he committed a suicide. Trial against him is still not discontinued.</p>	<p>Victims - killed: Milica Grubor, Marija Grubor, Jovo Grubor, Jovan Grubor of late Damjan, Miloš Grubor and Đuro Karanović</p>
→	<p>Željko Šuput and Milan Panić</p> <p>Members of Serb formations</p> <p>Defendants Željko Šuput and Milan Panić attend the repeated trial undetained.</p>	<p>Victims: - unlawfully detained: Nikola Nikolić, Mile Lukač and Perica Bičanić</p>

Trials in which main hearings were scheduled but not held mostly because defendants were unavailable, and in respect of which no decisions were made to try them in their absence

	Case	Criminal offence / Court / Council	
1	<p>CRIME AT VELEPROMET</p> <p>The defendant received the summons in the Republic of Serbia to attend the main hearing scheduled for 31 October 2011, but he did not respond to the summons. The hearing was postponed.</p>	<p>War crime against civilians</p> <p>Vukovar County Court</p> <p>War Crimes Council: judge Nikola Bešenski, Council President</p>	
2	<p>CRIME AT VELEPROMET</p> <p>On several occasions, the defendant did not respond to the summons for the main hearing (22 September 2010, 28 March and 28 October 2011). The hearing was postponed.</p>	<p>War crime against civilians</p> <p>Vukovar County Court</p> <p>War Crimes Council: judge Slavko Teofilović, Council President</p>	
3	<p>CRIME AT VELEPROMET</p> <p>On 29 March and 28 October 2011 the defendant did not respond to the summons and therefore the hearing was not held.</p>	<p>War crime against civilians</p> <p>Vukovar County Court</p> <p>War Crimes Council: judge Nikola Bešenski, Council President</p>	
4	<p>CRIME IN PETROVCI</p> <p>The hearing did not begin on 10 October 2011 because the defendant did not appear before the court. According to his defence counsel, the defendant suffered from a serious mental and physical condition. Allegedly, he died in the meantime, but nevertheless the trial has not been discontinued yet.</p>	<p>War crime against civilians</p> <p>Vukovar County Court</p> <p>War Crimes Council: judge Nikola Bešenski, Council President; judges Slavko Teofilović and Željko Marin, Council Members</p>	
5	<p>CRIME IN ĆELIJE</p> <p>On 14 June 2011, the hearing was postponed.</p> <p>On 20 December 2011, the trial against the defendant was discontinued. It was stated in the decision on discontinuation of the proceedings that the Vukovar ŽDO dropped charges because it received a notarised copy of the verdict issued by the Belgrade Higher Court with the clause claiming it to be a final judgement and that it withdrew from a criminal prosecution in order to avoid violation of the principle „<i>ne bis in idem</i>“.</p> <p>According to the verdict rendered by the Belgrade Higher Court and upheld by the Belgrade Appeals Court, the defendant was sentenced by a final judgement to 12 years in prison.</p>	<p>War crime against wounded and sick persons</p> <p>Vukovar County Court</p> <p>War Crimes Council: judge Nikola Bešenski, Council President</p>	

TRIALS BEFORE CROATIAN COUNTY COURTS IN 2011




	Indictment No. / ŽDO ³	Defendants	Names of victims
→	<p>Indictment No. DO-K-12/99 of 5 May 2003 issued by the Vukovar ŽDO.</p> <p>Prosecution: Miroslav Šarić, Vukovar County Deputy State's Attorney</p>	<p>Petar Rašić</p> <p>Member of Serb formations</p> <p>Unavailable to Croatian judiciary</p>	<p>Victim (beaten and maltreated): Zvonimir Ivanišević</p>
→	<p>Indictment No. K-DO-11/04 of 29 September 2006 issued by the Vukovar ŽDO</p> <p>Prosecution: Vlatko Miljković, Vukovar County Deputy State's Attorney</p>	<p>Savan Dakić</p> <p>Member of Serb formations</p> <p>Orderly receives summons, resides in Serbia at the address which the court is familiar with, but he does not respond to the summons.</p>	<p>Victims - killed: Ivan Ravlić</p>
→	<p>Indictment No. K-DO-45/04 of 12 February 2007 issued by the Vukovar ŽDO</p> <p>Prosecution: Vlatko Miljković, Vukovar County Deputy State's Attorney</p>	<p>Jovan Radan</p> <p>Member of Serb formations</p> <p>Orderly receives summons, resides in Serbia at the address which the court is familiar with, but he does not respond to the summons.</p>	<p>Victims - killed: Daut Ziberi</p>
→	<p>Indictment No. K-DO-15/05 of 4 September 2007 issued by the Vukovar ŽDO, amended in respect of defendant Vujić on 11 July 2011 after the separation of the proceedings</p> <p>Prosecution: Vlatko Miljković, Vukovar County Deputy State's Attorney</p>	<p>Željko Vujić</p> <p>Member of Serb formations</p> <p>Allegedly, died at the end of 2011.</p>	<p>Victims - physically abused: Irinej Nadord, Željko Varga, Jaroslav Pap, Marijan Pap, Nikola Pap and Miroslav Pavlović</p>
→	<p>Indictment No. K-DO-15/02 of 5 March 2003 issued by the Vukovar ŽDO</p> <p>Prosecution: Miroslav Šarić, Vukovar County Deputy State's Attorney</p>	<p>Darko Radivoj</p> <p>Member of Serb formations</p> <p>Serving the sentence in the Republic of Serbia.</p>	<p>Victim: detained Croatian soldier Marijan Pleteš, killed</p>

⁴ Translator's note: the County State Attorney's Office (hereinafter: the ŽDO)

	Case	Criminal offence / Court / Council	
6	<p>CRIME IN TOVARNIK</p> <p>On 28 October 2011, the defendant did not respond to the summons and therefore the hearing was not held.</p>	<p>War crime against civilians</p> <p>Vukovar County Court</p> <p>War Crimes Council: judge Slavko Teofilović, Council President</p>	←
7	<p>CRIME IN THE VUKOVAR SURROUNDING</p> <p>On 28 October 2011, the defendant did not respond to the summons and therefore the hearing was not held.</p>	<p>War crime against civilians</p> <p>Vukovar County Court</p> <p>War Crimes Council: judge Slavko Teofilović, Council President</p>	←
8	<p>CRIME IN BAĆIN</p> <p>The main hearing, which was scheduled for 26 January 2011, did not begin at the Sisak County Court because eight defendants were absent. The court file was then forwarded to the extra-trial council to decide on a trial in absentia.</p> <p>Then, the case was transferred to the Rijeka County Court.</p>	<p>War crime against civilians</p> <p>Sisak County Court</p> <p>War Crimes Council: judge Snježana Mrkoci, Council President; judges Ljubica Balder and Željko Mlinarić, Council Members</p> <p>Rijeka County Court</p> <p>War Crimes Council: judge Ika Šarić, Council President</p>	←






TRIALS BEFORE CROATIAN COUNTY COURTS IN 2011

	Indictment No. / ŽDO ³	Defendants	Names of victims
→	<p>Indictment No. DO-K-34/00 of 1 February 2001 issued by the Vukovar ŽDO, after the separation of the trial it was amended in respect of defendant Aleksandar Trifunović on 29 March 2006.</p> <p>Prosecution: Miroslav Šarić, Vukovar County Deputy State's Attorney</p>	<p>Aleksandar Trifunović</p> <p>Member of Serb formations</p> <p>Defendant resides in the Republic of Serbia and orderly receives summons but does not respond to them.</p> <p><i>Trifunović was kept in custody and was present in the trial. However, the Vukovar County Court accepted registration of his property (a house) to serve as a guarantee for the defendant's presence during the trial and thus it vacated his detention. The Supreme Court quashed the decision on guarantee and on vacating detention but, prior to that, the defendant fled from the Republic of Croatia. An international arrest warrant was issued against him.</i></p>	<p>Victims:</p> <p>- killed: Đuro Grgić, Mato Živić, Željko Vrančić, Đuro Miklošević, Marko Šijaković, Đuka Došen, Ivan Zelić, Josip Šarčević, Miroslav Zelenika, Ruža Ivković, Stepan Kovačić, Jelka Krnić, Jozo Šišić, Ivan Adamović, Danijel Perković, Karlo Grbešić, Danijel Marinković, Marko Bošnjak, Ivan Đankić, Vojislav Selak, Filomena Glibo, Ante Markanović, Marijan Mioković, Mato Balić, Mladenka Kuzmić, Franjo Kuzmić, Danica Milosavljević, Antun Šimunić, Đuro Carić, Manda Živić, Janko Budim, Krešimir Puljić, Đuro Filić, Ilija Džambo, Ivan Maloševac, Mato Čurić, Ivo Penava, Berislav Šimunić, Petar Bilić, Stipo Matić, Adam Popović, don Ivan Burik, Rudolf Rapp, Ivan Jurić, Ruža Jurić, Janja Jurić and six more unidentified persons.</p> <p>- forced to labour: Martin Habčak</p>
→	<p>Indictment No. K-DO-29/02 of 30 April 2003 issued by the Vukovar ŽDO</p> <p>Prosecution: Vlatko Miljković, Vukovar County Deputy State's Attorney</p>	<p>Radivoje Ivković</p> <p>Member of Serb formations</p> <p>Unavailable. Attempts to orderly summon him were unsuccessful.</p>	<p>Victim (raped): one female person</p>
→	<p>Indictment No. KT-89/94 of 29 October 2010 issued by the Sisak ŽDO</p> <p>Prosecution: Stipe Vrdoljak, Sisak County State Attorney</p>	<p>Branko Dmitrović, Slobodan Borojević, Milinko Janjetović, Momčilo Kovačević, Stevo Radunović, Veljko Radunović, Katica Pekić, Marin Krivošić and Stevan Dodoš</p> <p>Members of Serb formations</p> <p>The 8th defendant Marin Krivošić is the only defendant available to the court. He was extradited from Monte Negro and currently spends time in detention.</p>	<p>Victims</p> <p>- killed: Antun Švračić, Marija Švračić, Josip Antolović, Marija Batinović, Nikola Lončarić, Soka Pezo, Mijo Čović, Ana Ferić, Stjepan Sabljar, Terezija Kramarić, Filip Jukić, Antun Đjukić, Marija Đjukić, Ana Dikulić, Mijo Krnić, Antun Mucavac, Katarina Vladić, Marija Milašinović, Marija Jukić, Marija Šestić, Antun Krivaić, Ana Tepić, Veronika Jukić, Soka Volarević, Kata Lončar, Marija Antolović, Katarina Alavančić, Kata Ferić, Juraj Ferić, Terezija Alavančić, Barbara Kropf, Ana Piktija, Pavao Kropf, Ruža Dikulić, Veronika Stanković, Ivan Kulišić, Sofija Dikulić – all from Hrvatska Dubica; Ana Blinja, Andrija Likić, Ana Lončar, Josip Blinja, Kata Blinja – all from Cerovljani; Mara Čorić from Predor and thirteen other still unidentified persons.</p>

	Case	Criminal offence / Court / Council	
9	<p>CRIME IN ČANAK</p> <p>The main hearing was scheduled for November 2010 and January 2011. The defendant was repeatedly failing to appear before the court and therefore the main hearing had to be postponed.</p>	<p>War crime against civilians</p> <p>Gospić County Court</p>	
10	<p>CRIME BY THE SO-CALLED PERUČA GROUP</p> <p>The main hearing was scheduled for 19 April 2011 but it did not begin because the defendant did not appear before the court.</p> <p><i>Previously, on 28 April 2009 the VSRH quashed the Split County Court's verdict of 9 June 2008. With this verdict in the reopened trial, the Sisak County Court's verdict of 26 May 1997 was left in force (it was upheld with the VSRH's verdict of 1 June 2000) – in which the defendant was found guilty and sentenced to 20 years in prison.</i></p>	<p>War crime against civilians and war crime against war prisoners</p> <p>Split County Court</p>	
11	<p>CRIME IN THE DUBROVNIK SURROUNDING</p> <p>The hearing was scheduled for 20 September but was not held because the defendant failed to appear before the court.</p>	<p>War crime against civilians</p> <p>Dubrovnik County Court</p>	

TRIALS BEFORE CROATIAN COUNTY COURTS IN 2011





	Indictment No. / ŽDO ³	Defendants	Names of victims
→	<p>Indictment No. KT-23/97 of 16 October 2009 issued by the Gospić ŽDO</p> <p>Prosecution: Pavao Rukavina, acting Gospić County State Attorney</p>	<p>Željko Žakula</p> <p>Member of Serb formations</p> <p>Resides in the Republic of Serbia. Unavailable to Croatian judiciary.</p>	<p>Victim</p> <p>- killed: Blaž Grbac</p>
→	<p>Indictment No. KT-121/95, excerpt of the same filed under No. K-DO-50/06</p> <p>Prosecution: Michele Squicciarino, Split County Deputy State's Attorney</p>	<p>Mitar Arambašić</p> <p>Member of Serb formations</p> <p>Spent time in extradition detention from 5 September 2002 until 25 January 2006. He spent time serving the sentence from 26 January 2006 until 17 May 2006. Spent time in detention from 18 May 2006 until the pronouncement of the VSRH's decision in April 2009.</p> <p>The defendant did not respond to the summons. He resides in Canada where he sought asylum.</p>	<p>Victims:</p> <p>- killed civilians: Luca Cvitković, Jozo Budić, Ivan Vidosavljević, Pava Glavinić, Mara Vardić, Petar Kurdić, Iva Cvitković, Iva Mihaljević, Blaž Cvitković, Iva Cvitković (wife Blaža), Ivan Knezović, Milica Jukić, Iva Jukić, Ana Jukić, Marijan Bešlić and Filip Bešlić</p> <p>- killed war prisoners: Ivica Grubač, Bogoslav Lukić and Kažimir Abramović</p>
→	<p>Indictment issued by the Dubrovnik ŽDO on 29 January 2008.</p>	<p>Marko Grandov</p> <p>Member of Montenegrin formations</p> <p>Unavailable to Croatian judiciary</p>	

	Case	Criminal offence / Court	
1	<p>CRIME IN DRAGIŠĆI</p> <p>The VSRH partially accepted the defendant's appeal. It modified the Šibenik County Court's verdict in which defendant Vukušić was sentenced to 9 years in prison and sentenced him to 8 years in prison.</p>	<p>War crime against civilians</p> <p>The VSRH Appeals Chamber held its session on 19 January 2011</p>	
2	<p>CRIME IN TENJA</p> <p>The VSRH rejected the state attorney's appeal and upheld the Osijek County Court's verdict of 4 July 2008 in which Boško Surla was acquitted of charges.</p>	<p>War crime against war prisoners</p> <p>The VSRH Appeals Chamber held its session on 25 January 2011</p>	
3	<p>CRIME IN BJELOVAR</p> <p>The VSRH quashed the Varaždin County Court's verdict of 21 December 2007 in which, following the third (second repeated) trial, the defendants were found guilty and sentenced to the following prison sentences: defendant Markešić to 4 years and other defendants (Radić, Maras and Orlović) to 3 years in prison each.</p> <p><i>Later on the fourth (third repeated) trial was conducted at the Zagreb County Court. In that trial held on 18 November 2011 the defendants were acquitted of charges.</i></p>	<p>War crime against war prisoners and war crime against civilians</p> <p>The VSRH Appeals Chamber held its session on 1 February 2011</p>	
4	<p>CRIME IN BOROVO NASELJE</p> <p>The VSRH upheld the Vukovar County Court War Crime Council's verdict in which, on 12 June 2009, the defendant was found guilty and sentenced to 4 years in prison.</p>	<p>War crime against civilians</p>	
5	<p>CRIME IN THE VUKOVAR HOSPITAL</p> <p>The VSRH partially accepted the appeal by the defendant's defence counsel and it modified the Vukovar County Court's verdict of 15 July 2010 in which defendant Kuzmić was sentenced in his absence to 7 years in prison, and it sentenced him instead to 5 years and 6 months.</p>	<p>War crime against civilians</p> <p>The VSRH Appeals Chamber held its session on 21 April 2011</p>	

CHAMBERS' SESSIONS REGARDING WAR CRIME TRIALS IN 2011





	Indictment No. / ŽDO ⁴	Defendants	Names of victims
→	<p>Indictment No. K-DO-16/10 of 15 July 2010 issued by the Šibenik ŽDO</p> <p>Prosecution: Emilijo Kalabrić, Šibenik County Deputy State's Attorney</p>	<p>Božidar Vukušić Member of Croatian formations In detention as of 17 June 2010</p>	<p>Victim - killed: Jovan Ergić</p>
→	<p>Indictment No. K-DO-38/2007 of 14 January 2008 issued by the Osijek ŽDO</p> <p>Prosecution: Zlatko Bučević, Osijek County Deputy State's Attorney</p>	<p>Boško Surla Member of Serb formations</p> <p>Defendant Boško Surla spent time in detention from 15 May 2007 until the pronouncement of his acquittal, 13 months in total.</p>	<p>Victims:</p> <p>- killed civilians: Ivan Valentić, Marija Cerenko, Ana Horvat, Katica Kiš, Pero Mamić, Josip Medved, Josip Penić, Evica Penić, Josip Prodanović, Vladimir Valentić, Franjo Burča and Mato Nađ</p> <p>- detained civilians: Zoran Bertanjoli, family Vuko, Ivka and Mato Krajina, Drago Balog and Rozalija Varga</p> <p>- killed war prisoners: Ivica Lovrić, Franjo Ciraki, Miroslav Varga and Ivan Vadjla</p>
→	<p>Indictment No. K-DO-57/01 of 25 September 2001 issued by the Bjelovar ŽDO, amended by a memo No. K-DO-27/04 of 23 February 2005 issued by the Varaždin ŽDO, and at the main hearing held on 27 November 2007</p>	<p>Luka Markešić, Zdenko Radić, Zoran Maras and Ivan Orlović Members of Croatian formations</p> <p>Attend the trial undetained</p>	<p>Victims:</p> <p>- killed: Radovan Berbetović, Zdravko Dokman, Radovan Gredeljević, Ivan Hojsak, Boško Radonjić and one unidentified person</p> <p>- survived: Savo Kovač</p>
→	<p>Indictment No. K-DO-5/06 of 29 December 2006 issued by the Vukovar ŽDO, amended on 9 June 2009.</p> <p>Prosecution: Vlatko Miljković, Vukovar County Deputy State's Attorney</p>	<p>Dušan Zinajić Member of Serb formations</p> <p>Attended the trial undetained</p>	<p>Victim (wounded): Tomislav Kovačić</p>
→	<p>Indictment No. DO-K-12/98 of 19 March 2001 issued by the Vukovar ŽDO, amended by a memo of 6 July 2010.</p> <p>Prosecution: Vlatko Miljković, Vukovar County Deputy State's Attorney</p>	<p>Bogdan Kuzmić Member of Serb formations</p> <p>Fugitive, tried <i>in absentia</i></p>	<p>Victims – unlawfully detained and later killed in an unidentified manner: Marko Mandić, Tomislav Hegeduš, Stanko Duvnjak, Branko Lukenda and Martin Došen – <i>in the amended indictment of 6 July 2010 the defendant is no longer charged with separating and killing Stanko Duvnjak and Martin Došen</i></p>

⁴ Translator's note: the County State Attorney's Office (hereinafter: the ŽDO)

	Case	Criminal offence / Court	
6	<p>CRIME IN FRKAŠIĆ II</p> <p>Due to essential violation of the provisions of the Criminal Procedure Act, the VSRH Council quashed the Gospić County Court War Crimes Council's verdict of 25 February 2010 in which the defendant was found guilty and sentenced to 7 years in prison.</p> <p><i>After the repeated trial, on 7 September 2011 the defendant was found guilty. He was sentenced to 7 years in prison.</i></p>	<p>War crime against war prisoners</p> <p>The VSRH Appeals Chamber should have held its session on 11 May 2011. However, the session was not held because the first-instance verdict was quashed for procedural reasons.</p>	
7	<p>CRIME IN KORENICA</p> <p>The VSRH accepted on 8 June 2011 the defendants' appeals. Accordingly, it quashed the Rijeka County Court's verdict in which the defendants were found guilty and sentenced to the following prison sentences: defendant Šuput to 4 years and defendant Panić to 3 years and 6 months. The case was remanded to the Rijeka County Court for a retrial.</p> <p>The repeated trial is ongoing.</p>	<p>War crime against war prisoners</p> <p>The VSRH Appeals Chamber held its session on 8 June 2011</p>	
8	<p>CRIME IN SUNJSKA GREDA</p> <p>The VSRH Appeals Chamber quashed the Sisak County Court's first-instance verdict due to essential violation of the criminal procedure provisions. In the quashed verdict issued on 20 December 2010, the defendant was found guilty and sentenced to 8 years in prison.</p>	<p>War crime against civilians</p> <p>The VSRH Appeals Chamber held its session on 12 July 2011</p>	
9	<p>CRIME ON THE KORANA BRIDGE</p> <p>In the third (second repeated) trial, the Karlovac County Court acquitted defendant Hrastov for the third time.</p> <p>Deciding on the prosecution's appeal, the VSRH Appeals Chamber decided in September 2008 to hold a hearing at the VSRH.</p> <p>After the conducted hearing, Hrastov was found guilty and sentenced to 8 years in prison.</p> <p>Deciding on the defendant's appeal, the VSRH's Council in November 2009 modified the verdict in the section on sentence and sentenced the defendant with a final judgement to 7 years in prison.</p> <p>However, the Constitutional Court of the Republic of Croatia quashed the acquittals rendered by the Croatian Supreme Court and remanded the case to the Supreme Court for retrial.</p> <p>The VSRH's public session was held on 5 October 2011.</p> <p>The VSRH decided to hold the hearing itself. The hearing was scheduled for 30 and 31 January and 2 February 2012.</p>	<p>Unlawful killing and wounding the enemy</p> <p>The VSRH Appeals Chamber held its session on 5 October 2011</p>	

CHAMBERS' SESSIONS REGARDING WAR CRIME TRIALS IN 2011

	Indictment No. / ŽDO ⁴	Defendants	Names of victims
→	<p>Indictment No. K-DO-13/08 of 9 March 2009 issued by the Gospić ŽDO.</p> <p>Prosecution: Željko Brkljačić, Gospić County Deputy State's Attorney</p>	<p>Goran Zjačić Member of Serb formations</p> <p>In detention as of 28 September 2008</p>	<p>Victims: - physically abused (according to the indictment and the verdict): Johannes Tilder, Ivan Čaić, Ivan Dadić (HV members); Marko Tomić (HVO member); Kadir Bećirspahić (BiH Army member)</p>
→	<p>Indictment No. K-DO-24/06 of 31 January 2007 issued by the Gospić ŽDO, amended by the Rijeka ŽDO on 2 October 2008.</p> <p>Prosecution: Darko Karlović, Rijeka County Deputy State's Attorney</p>	<p>Željko Šuput and Milan Panić Members of Serb formations</p> <p>Attend the trial undetained. They spent time in detention during the first-instance trial.</p>	<p>Victims - maltreated: Mile Lukač, Perica Bičanić and Nikola Nikolić</p>
→	<p>Indictment No. K-DO-36/08 of 20 September 2010 issued by the Sisak ŽDO.</p> <p>Prosecution: Ivan Petrkač, Sisak County Deputy State's Attorney</p>	<p>Milenko Vidak Member of Serb formations In detention</p>	<p>Victim - killed: Stjepan Sučić</p>
→	<p>Indictment No. KT-48/91 of 25 May 1991 issued by the Karlovac ŽDO, last time amended on 6 March 2007.</p> <p>Prosecution: Ljubica Fikuš-Šumonja, Kalrovac County Deputy State's Attorney</p>	<p>Mihajlo Hrastov Member of Croatian formations Not detained</p>	<p>Victims: - killed: Jovan Sipić, Božo Kozlina, Nebojša Popović, Milić Šavić, Milenko Lukač, Nikola Babić, Slobodan Milovanović, Svetozar Gojković, Miloš Srđić, Zoran Komadina, Mile Babić, Vaso Bižić and Mile Peurača - wounded: Duško Mrkić, Svetozar Šarac, Nebojša Jasnić and Branko Madarac</p>

	Case	Criminal offence / Court	
10	<p>CRIME IN BARANJA</p> <p>The VSRH quashed the verdict in which, following the fourth (third repeated) trial, the Osijek County Court's War Crimes Council sentenced Petar Mamula on 23 March 2011 to 3 years and 6 months in prison. The case was remanded to the Osijek County Court for the fifth trial.</p>	<p>War crime against civilians</p> <p>The VSRH Appeals Chamber held its session on 12 October 2011</p>	
11	<p>CRIME IN PERUŠIĆ</p> <p>On 4 February 2011, the Zadar County Court sentenced defendant Nikola Munjes by the first-instance verdict to 9 years in prison, and thus the verdict rendered on 9 October 1995 by the same court in which he was sentenced in absentia to 9 years in prison was therefore upheld.</p> <p>We are not familiar with the VSRH's decision.</p>	<p>War crime against civilians</p> <p>Zadar County Court</p> <p>The VSRH Appeals Chamber held its session on 9 November 2011</p>	
12	<p>CRIME IN KRUŠEVO</p> <p>The VSRH's Appeals Council upheld the Zadar County Court War Crimes Council's verdict of 7 June 2011 in which, following the third (second repeated) trial, the defendants were acquitted of charges.</p> <p><i>Previously, the VSRH quashed two times the first-instance verdicts. In 2000, it quashed the acquittal rendered on 1 December 1997. In 2007, it quashed the verdict of the first-instance court rendered on 15 September 2005 in which it found the defendants guilty sentencing defendant Jurjević to 4 years and defendant Tošić to 15 years in prison.</i></p>	<p>War crime against civilians</p> <p>The VSRH Appeals Chamber held its session on 16 November 2011</p>	
13	<p>CRIME IN MARINO SELO</p> <p>On 13 June 2011, the Osijek County Court pronounced a verdict, following the repeated trial, in which Poletto and Tutić were found guilty. Poletto was sentenced to 15 and Tutić to 12 years in prison. Kufner, Vančaš and Ivezić were acquitted of charges, whereas the charges against Šimić were rejected.</p> <p>The VSRH upheld the Osijek County Court's verdict in its entirety.</p>	<p>War crime against civilians</p> <p>The VSRH Appeals Chamber held its session on 22 November 2011</p>	

CHAMBERS' SESSIONS REGARDING WAR CRIME TRIALS IN 2011

	Indictment No. / ŽDO ⁴	Defendants	Names of victims
→	<p>Indictment No. KT-136/94 of 3 April 2001 issued by the Osijek ŽDO, amended on 14 March 2002, 4 May 2006 and 23 March 2011.</p> <p>Prosecution: Miroslav Dasović, Osijek County Deputy State's Attorney</p>	<p>Petar Mamula</p> <p>Member of Serb formations</p> <p>Spent time in detention from 6 October 2000 until 7 May 2003.</p> <p>Currently, attends the trial undetained</p>	<p>Victims: - maltreated: Antun Knežević</p>
→	<p>Indictment No. KT-9/95 of 27 June 1995 issued by the Zadar District State Attorney's Office.</p> <p>Prosecution: Radovan Marjanović, Zadar County Deputy State's Attorney</p>	<p>Nikola Munjes</p> <p>Member of Serb formations</p> <p>In Zadar prison detention as of 20 October 2010</p>	<p>Victims - maltreated: Duje Pešut and Grgo Pešut</p>
→	<p>Indictment No. KT-266/97 of 18 June 1997 issued by the Zadar ŽDO.</p> <p>Prosecution: Radoslav Marjanović, Zadar County Deputy State's Attorney</p>	<p>Milan Jurjević and Davor Tošić</p> <p>Members of Serb formations</p> <p>Defendant Jurjević attended the trial undetained, whereas defendant Tošić was a fugitive and thus was tried <i>in absentia</i></p>	<p>Victim - killed: Mile Brkić</p>
→	<p>Indictment No. K-DO-48/10 of 28 June 2010 issued by the Osijek ŽDO, amended on 31 May 2011.</p> <p>Prosecution: Zlatko Bučević, Osijek County Deputy State's Attorney and Božena Jurković, Slavonski Brod County Deputy State's Attorney</p>	<p>Damir Kufner, Davor Šimić, Pavao Vančaš, Tomica Poletto, Željko Tutić and Antun Ivezić</p> <p>Members of Croatian formations</p> <p>Defendants Tomica Poletto and Željko Tutić are in detention.</p>	<p>Victims: - maltreated and tortured: Branko Stanković, Mijo and Jovo Krajnović (villagers from Kip); Milka Bunčić, Jeka Žestić and Nikola Ivanović (villagers from Klisa) - maltreated, tortured and killed: 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 (villagers from Kip); Jovo Žestić, Jovo Popović Simin, Slobodan Kukić, Rade Gojković, Savo Maksimović, Josip Cicvara (villagers from Klisa)</p>

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