

**Monitoring of War Crime Trials – Guarantee for the Process of Dealing with the Past
and Sustainability of the Judicial Reforms in Croatia**

Monitoring War Crime Trials Report

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The Project is financed within the EIDHR Program of the European Union for the Republic of Croatia. The contents of this Report are the sole responsibility of the civil society organisations and can under no circumstances be regarded as reflecting the position of the European Union. The project is also financially supported by the embassies of the Swiss Confederation, the United Kingdom of Great Britain and Northern Ireland, the Kingdom of the Netherlands and the Kingdom of Norway.



CONTENTS

I THE BROADER CONTEXT

- A. Spreading nationalistic rhetoric and justification for committed crimes
- B. The meeting of Croatian and Serbian Justice Ministers and the signing of the Protocol on Cooperation between the Prosecutor's offices of Serbia and Bosnia and Herzegovina – suggest better cooperation in prosecution of war crimes
- C. Croatian Government has still not written-off the costs of lost lawsuits

II COURT PROCEEDINGS

- A. Shortage of material and human resources by courts and state attorney's offices dealing with war crime trial cases
- B. Accused persons' unavailability – a characteristic of war crime trial cases
- C. Monitored trials in Croatia
 - 1. Proceedings against members of Croatian military units
 - (a) *First-instance court verdicts*
 - (b) *Proceedings in which the main hearings are currently held*
 - (c) *Sessions of the appeal chambers of the Supreme Court of the Republic of Croatia*
 - 2. Proceedings against members of Serb military formations
 - (a) *First-instance court verdicts*
 - (b) *Proceedings in which the main hearings are currently held*
 - (c) *Sessions of the appeal chambers of the Supreme Court of the Republic of Croatia*
 - (d) *Investigations and indictments*
 - 3. Proceedings for restitution of damage for the death (killing) of a close family member – inadequate and exhausting path of getting the damages paid to the family members of the killed victims
- D. Investigations and charges pressed in the Republic of Serbia
- E. War crimes prosecution in Montenegro – dissatisfaction of the victims with the course of the proceedings for the crimes committed in the Morinj Detention Camp



I THE BROADER CONTEXT

A. Spreading nationalistic rhetoric and justification for committed crimes

Judicial bodies of the Republic of Croatia must demonstrate that equal and unbiased approach is applied in respect of all direct war crimes perpetrators and other responsible persons. Despite positive attitudes expressed in the European Commission's Monitoring Report on Croatia's state of preparedness for EU issued in March 2013, a warning to Croatia can be easily read in that report stressing out that war crimes prosecution is an important issue which judicial institutions should systematically address.

Unfortunately, our society is still lacking atmosphere in which people would be willing to testify against crime perpetrators who were "on our side". Willingness to testify as well as media interest in prosecution of crime perpetrators is weakening day by day. Individual (former or present) politicians and other public persons openly demonstrate intolerance against minority ethnic groups, primarily the Serb ethnicity group, whereby the testimonies in court proceedings for war crimes are used to justify the crime commission for achieving "higher goals".

Ivan Vekić, from August 1991 until April 1992 in his capacity as the Minister of the Interior of the Republic of Croatia, on the occasion of providing his testimony at the main hearing held in the trial against Vladimir Milanković and Drago Bošnjak who are charged with numerous executions, unlawful arrests and maltreatments of the citizens of Sisak of Serb ethnicity, stated that there were many inside enemies belonging to the 'Fifth Column', that it was difficult to recognise enemy-affiliated civilians and that, if there had been such a possibility, such people were executed. Among other things, Ivan Vekić also stated that the war could not be won without killing the enemy, and that this is permitted at the time of war, but now what is permitted and what not is already another story.

Certain highly-ranked persons during the war, stated before court stated that the highest state authority was aware of the committed crimes (for instance, in the trial against Tomislav Merčep for crimes in Pakračka Poljana and at the Zagrebački velesajam). Vekić, however, was the first highly-ranked official who stated before court in the war crime trials that persons within the system were determining who was going to be executed and that such behaviour was approved and supported. He openly spoke of executions of civilians who were considered enemies and stated that he justified such executions.

Such witness depositions in trials concerning war crimes committed in Sisak and Pakračka Poljana obligate more than ever the DORH to carry out a research on the responsibility of (highly ranked) persons who were issuing orders for crimes to be committed and of persons who did nothing to prevent those crimes and punish the perpetrators.

B. The meeting of Croatian and Serbian Justice Ministers and the signing of the Protocol on Cooperation between the Prosecutor's offices of Serbia and Bosnia and Herzegovina – suggest better cooperation in prosecution of war crimes

Following the shift of authority in Serbia, the relations between Croatia and Serbia are gradually moving to normalized relations. At the beginning of March 2013, Minister of Justice of the Republic of Croatia Orsat Miljenić and new Serbian Minister of Justice Nikola Selaković met for the first time. Although, the Serbian side has certain restrictions in respect of the signing of the agreement on war crimes prosecution between Serbia and Croatia after viewing the draft prepared by Croatian ministry, both sides are willing to continue with negotiations in order to reach an acceptable solution.

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Another significant step forward in combating impunity in respect of the crimes committed in countries in the region represents the signing of the Protocol on Cooperation between the War Crimes Prosecutor's office of Serbia and the Prosecutor's Office of Bosnia and Herzegovina. This Protocol was signed on 31 January 2013 after several years of negotiations and several postponements.

The Prosecutor's Office of Bosnia and Herzegovina stated they would assume more intensively activities on the signing of the Protocol on the Cooperation with the prosecutor's offices in Croatia and Montenegro.

C. Croatian Government has still not written-off the costs of lost lawsuits

The issue of obliging family members of killed persons, mostly of Serb ethnicity to pay litigation costs for the lost lawsuits in which they requested compensation of non-pecuniary damage from the Republic of Croatia due to the killing of their close relatives is still not resolved in a satisfactory manner. Despite the fact that the Government in principle demonstrates a political will to resolve this issue, even eighteen months since the coalition came to power the actual government has still not found the way how to resolve this issue. This only causes a continuation of additional victimisation of family members of killed persons.

II COURT PROCEEDINGS

A. Shortage of material and human resources by courts and state attorney's offices dealing with war crime trial cases

Following the amendments to the *Act on the Application of the Statute of the International Criminal Court* which in 2011 stipulated exclusive competence of county courts in Zagreb, Split, Rijeka and Osijek to try war crimes cases, almost all war crime cases were transferred during 2012 from other county courts to the four aforementioned courts.

War Crime Departments were formally established at the mentioned courts. In addition, except for the Zagreb County Court, almost all judges from the Criminal Law Departments were appointed into those War Crime Departments. This forming of the mentioned departments was not followed by technical, educational or financial support. Presidents and judges of the mentioned courts as well as prosecutors share the opinion that the inflow of case has caused a work overload of their judges and state attorneys. Monitoring war crime trials, we concluded that the stipulation of exclusive competence of four county courts to try war crime cases did not produce the results which were expected. Instead, this only additionally burdened the courts. The difference in the quality of trials, considering the fact that true specialisation did not take place, has not been sufficiently demonstrated. The shortage of human and material resources poses a problem which both courts and state attorney's office are confronted with. The concern is also expressed because of potential inflow of new cases, which could be formed from the ICTY databases or as a consequence of the cases conducted before this court. Courts and prosecutor's offices informed us that their budgets remained within the same limits as their budgets in previous years, or they were even reduced, whereas the work quantity was increased.¹

B. Accused persons' unavailability – a characteristic of war crime trial cases

¹ This information originates from the meetings which were held between the representatives of our three organisations and the presidents/deputies and judges of the following courts: the Rijeka County Court (on 8 March), the Split County Court (on 20 March) and the Osijek County Court (on 12 April); and the county state attorneys and their deputies in the Split County State Attorney's Office (on 20 March) and the Osijek County State Attorney's Office (on 12 April).



In the court cases before county courts which are currently in the stage of investigation or main hearing, the defendants are unavailable to Croatian judiciary in vast majority. The fact that only few trial hearings are scheduled in absence of the defendants leads to a conclusion that the majority of cases are in an inactive status.

At the moment, there are 54 court files with 232, mostly unavailable, defendants at the Osijek County Court. In the first few months this year, the hearings were only scheduled in respect of 6 cases with available defendants: Vladimir Milanković and Drago Bošnjak (crime in Sisak), Mirko Sivić (crime in Osijek); Radojko Radmilović (crime in Bapska), Tihomir Kašanin (crime in Baranja), Rajko Milošević (crime in Bapska); and Ljubinko Radošević and Vojislav Grčić (crime in u Dalj).

First-instance court verdicts were rendered by this court in several cases against available defendants during this or previous years. The following defendants are waiting for the decision to be issued by the Supreme Court of the Republic of Croatia following the lodged appeal against the first-instance court verdict: Petar Mamula (crime in Baranja), Željko Čizmić (crime in Dalj), Milan Marinković (crime in Borovo Selo), Dušan Ivković² (crime in Vukovar) and Ivan Kumić³ (crime in Nova Gradiška).

End of February 2013, the indictment was laid against one available accused person, charged with the killing one young man after the fall of Vukovar.

Other defendants are unavailable.

In the first three months in 2013, main hearings were held in 17 cases, in which 37 persons were indicted. Out of that number, hearings were held in 4 cases in respect of 11 unavailable defendants – one member of Croatian military units (Damir Vida Raguž for the crime in Novska) and 10 members of Serb military units: Branko Dmitrović, Slobodan Borojević, Milinko Janjetović, Momčilo Kovačević, Stevo Radunović, Veljko Radunović, Katica Pekić and Stevan Dodoš (crime in Baćin), Dubravko Čavić (crime in the village along the Una river near Hrvatska Kostajnica) and Zdravko Pejić (crime in Saborsko).

In consideration of numerous proceedings in which the defendants were unavailable and doubts that certain judges have about holding trials *in absentia*, we would like to emphasize the fact that our three organisations including the international community were not against *in absentia* trials without any reservations. Our disagreement expressed in respect of the trials *in absentia* is primarily because of numerous unprofessionally conducted proceedings against members of Serb military units who were frequently, in spite of defective indictments in the '90s, sentenced to imprisonment for many years. On the other hand, despite the questionable fairness of trials for war crimes, it is understandable to conduct a trial in absence of one of the defendants if, for instance, one part or majority of co-accused persons is available to Croatian judiciary.

² Dušan Ivković attended the trial at first instance but did not attend the pronouncement of the sentence on 5 September 2012. He run away and left the territory of the Republic of Croatia. In the first-instance court verdict he was sentenced to 5 years and 6 months in prison.

³ Ivan Kumić was indicted on the basis of private lawsuit lodged by injured party Dimitrij Škrpan. Kumić was acquitted by the first-instance court verdict.



Despite the Supreme Court of the Republic of Croatia's decision issued in February 2012 allowing trial *in absentia* against Tomislav Duić and Emilio Bungur, the two out of five former Croatian Army military policemen, charged with the crime against prisoners of war in the Split military prison „Lora“, no trial hearing is scheduled at the Split County Court because of the opinion by the criminal law department of the Split court that no trials *in absentia* are to be conducted in the war crime cases „in accordance with the recommendations from the EU“.⁴

In many trials which we monitored, a certain number of accused persons was tried *in absentia*. In such cases the proceedings against unavailable accused persons were separated from the proceedings against available ones or single proceedings were carried out in which trial *in absentia* was conducted against a certain number of accused persons. Examples in the latter case are the following:

- in the trial against Novak Simić, Miodrag Kikanović and Radoslav Krstinić (crime in Dalj III), Simić was tried *in absentia*;
- in the trial against Damir Vida Raguž and Željko Škledar (crime in Novska II), Raguž was tried *in absentia*;
- in the trial against Pero Đermanović, Dubravko Čavić and Ljubiša Čavić (crime in the villages along the Una river near Hrvatska Kostajnica), Dubravko Čavić was tried *in absentia*;
- in the trial against already mentioned Tomislav Duić and Emilio Bungur including Tonći Vrkić, Miljenko Bajić, Josip Bikić, Davor Banić, Ante Gudić and Anđelko Botić (crime against civilians in „Lora“), Duić, Bajić, Bikić and Bungur were tried *in absentia*.

Only the trial against Božo Bačelić, Ante Mamić, Luka Vuka and Jurica Ravlić (crime in Prokljan), which commenced in 2001 but it came to a stay of proceedings in the period from 2007 to 2012 because of the escape of accused Bačelić. In 2012, Bačelić was extradited from Germany and the trial was continued. At present, the main hearing is ongoing. During the time when Bačelić was a fugitive, Mamić, Vuko and Ravlić were kept in custody, but the proceedings against them was not conducted. We are of the opinion that his right to a trial within a reasonable period has therefore been violated.

C. Monitored trials in Croatia

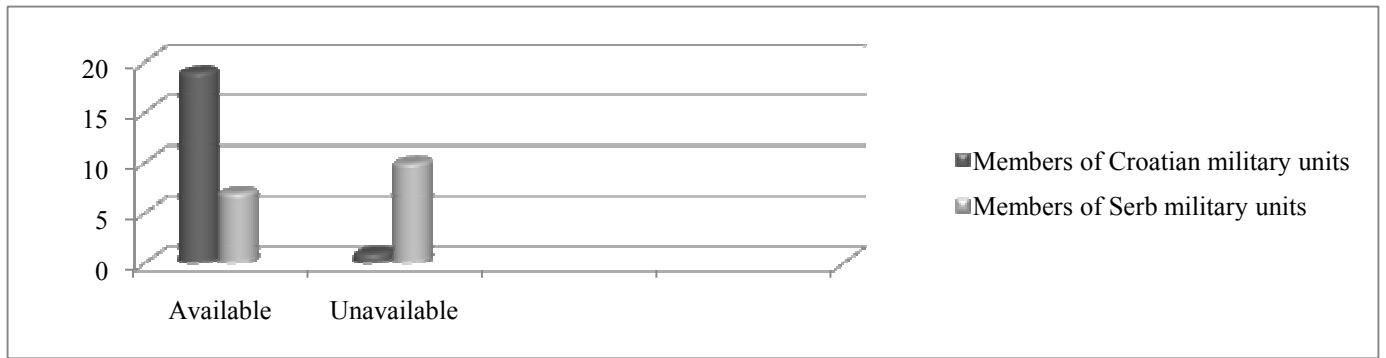
Out of 17 trials in which main hearings were held during the first trimester of 2013, 10 trials were held against the total of 20 members of Croatian military units whereas 7 trials were held against the total of 17 members of Serb military units. 19 members of Croatian military units attended trials and trial *in absentia* was held against one member. 7 accused members of Serb military units attended trials whereas trials *in absentia* was held against the other (10) accused persons.⁵

⁴ Such position was published in the article "The Supreme Court ordered starting of proceedings in the Lora 2 case, and the judge does not want to?", published on 15 April 2013 and available on the website of Slobodna Dalmatija, author Vladimir Matijanić. This attitude was presented by Damir Romac, the Judge of the Split County Court.

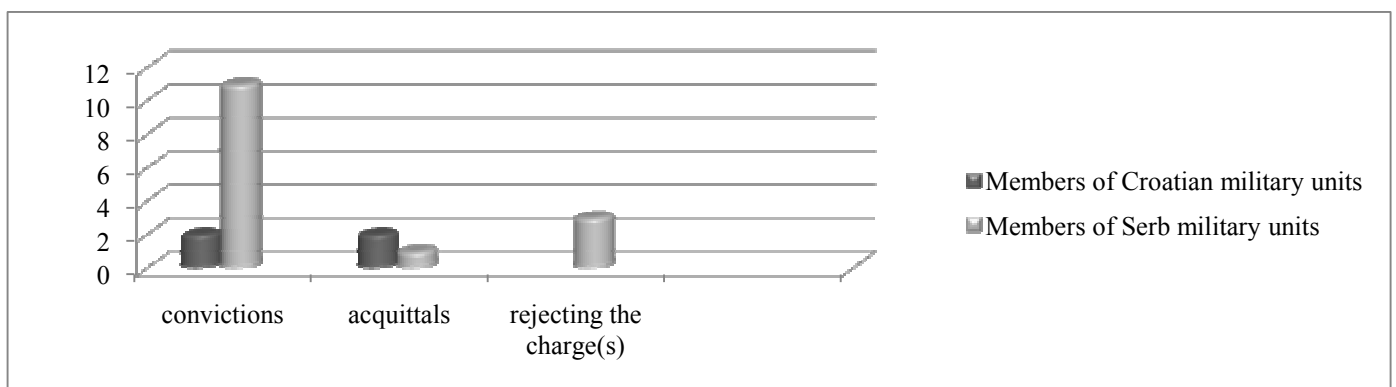
<http://m.slobodnadalmacija.hr/Novosti/Najnovije/tabid/296/articleType/ArticleView/articleId/207600/Default.aspx>

⁵ Table overview of monitored main hearings held at county courts and the VSRH sessions is attached to this report as a separate document.





First-instance court verdicts were rendered in 7 cases in respect of 19 defendants (4 members of Croatian military units and 15 members of Serb military units). In the mentioned first-instance court verdicts, two members of Croatian military units and eleven members of Serb military units were convicted to prison sentences, out of that number eight persons were sentenced *in absentia*, two members of Croatian military units and one member of Serb military units were acquitted whilst charges were dropped in respect of three members of Serb military units.



1. Proceedings against members of Croatian military units

(a) First-instance court verdicts

During the reporting period, the first-instance court verdicts were passed in two cases:

- according to the Zagreb County Court verdict dated on 07 March 2013, following the repeated trial, Damir Vid Raguž and Željko Škledar were acquitted of charges of torturing and killing Serb civilians Sajka Rašković, Mišo Rašković, Mihajlo Šeatović and Ljuban Vujić⁶ in the Raškovićs' family home in Novska on 21 November 1991.

- according to the Zagreb County Court verdict dated on 08 March 2013, following the repeated trial, Željko Belina and Dejan Milić were found guilty of killing Goranka Mileusnić, Vera Mileusnić and Blaženka Slabak and wounding Petar Mileusnić in Novska on 18 December 1991. Belina was sentenced to 10 years in prison, while Milić was sentenced to 9 years in prison.

⁶ The court did not determine the criminal responsibility of the accused Raguž and Škledar, although it was evident, according to the Court Council's findings, that the civilians had been killed by firearms-shots fired by now deceased Dubravko Leskovar, and probably also by now deceased Ante Perković, both members of the 1st Guards Brigade of the Croatian Army.



The proceedings against the stated accused persons had been held for killing the civilians in family homes of the Mileusićs and the Raškovićs at the Zagreb Military Court in 1992, however, those proceedings were cancelled following the application of the *Amnesty Act*. Both crimes, which had been committed by members of the same military unit (the 1st Guards Brigade of the HV (Croatian Army)), pointed to the created atmosphere of hatred and intolerance, in which the crime perpetrators thought that they could have committed crimes and got away unpunished. And they were right for so many years. Therefore, the above mentioned proceedings represent a tardy correction of a politically motivated erroneous application of the *Amnesty Act*.

(b) Proceedings in which the main hearings are currently held

During the reporting period, the trials (main hearings) have commenced or have been resumed in following cases:

- against Vladimir Milanković and Drago Bošnjak for execution of 26 citizens of Sisak of Serb ethnicity;
- repeated proceedings against Božo Bačelić, Ante Mamić, Luka Vuko and Jurica Ravlić for execution of one prisoner of war and two elderly civilians of Serb ethnicity after the completion of the Military Operation “Storm”;
- against Frano Drlje and Božo Krajina for execution of six elderly civilians (of Serb ethnicity) in the village of Grubori near Knin after the completion of the Military Operation “Storm”;
- against Tihomir Šavorić, Ivica Krklec and Alen Toplek for execution of four civilians in the surroundings of Mrkonjić Grad (Bosnia and Herzegovina) in 1995;
- against Tomislav Merčep, war-time counsellor in the Ministry of Interior of the Republic of Croatia, for issuing orders for illegal arrests, abuse and execution of civilians in the area of Kutina, Pakrac and Zagreb⁷;
- against Ante Babac and Mišo Jakovljević for execution of one prisoner of war at the Miljevci plateau;
- against Mirko Sivić for execution of two civilians in Osijek;
- against Velibor Šolaja for execution of one female person in the Medak pocket area.

(c) Sessions of the appeal chambers of the Supreme Court of the Republic of Croatia

During the reporting period, a session of the Appellate Chamber of the Supreme Court of the Republic of Croatia was held in respect of one case. The Appellate Chamber of the Supreme Court of the Republic of Croatia upheld the verdict passed by the Osijek County Court on 17 May 2012 in which Enes Viteškić had been convicted and sentenced to 11 years in prison for participating in killing of 17 persons of Serb ethnicity and one person of Hungarian ethnicity in Paulin Dvor near Osijek on 11 December 1991.

2. Proceedings against members of Serb military formations

(a) First-instance court verdicts

During the first trimester of 2013, the first-instance court verdicts were passed in respect of the following five cases:

- according to the Rijeka County Court verdict dated on 11 March 2013, seven accused persons were found guilty for killing at least 56 persons of Croat ethnicity in the village of Baćin near Hrvatska Dubica on 21 October 1991. Seven accused persons unavailable to the Croatian judiciary: Milinko Janjetović, Momčilo Kovačević, Stevo Radunović and Veljko Radunović were convicted in absence and sentenced to the maximum of 20 years in prison, whereas Branko Dmitrović, Slobodan Borojević and Stevan Dodoš were sentenced to 15 years in prison. The charges were rejected in

⁷ Tomislav Merčep was charged for illegal apprehension of 52 persons, out of whom 43 persons were killed, and another three persons have been registered as missing persons.



respect of the unavailable Dragica Pekić, and in respect of Marin Krivošić, the only accused person who was attending the trial, since the county state attorney's office had previously amended the charges in respect of Pekić and Krivošić charging them with participation in the armed rebellion;

- according to the Osijek County Court verdict dated on 11 March 2013, the charges against Tihomir Kašanin were rejected. The county state attorney's office had previously amended the factual aspects of the criminal offence and the legal qualification of the offence, charging the accused person with commission of the criminal offence of armed rebellion. Prior to the amendment to the indictment, Kašanin had been charged for commission of war crime – arrest and abuse of Croatian civilians in Beli Manastir;

- according to the Zagreb County Court verdict dated on 14 March 2013, Milan Španović - following the application of provisions of the new *Criminal Law Act* which came into force as of 01 January 2013, and which represent the law more favourable to the accused person – was acquitted of charges of intimidation the civilians and misappropriation of property in the village of Maja;

- according to the Osijek County Court verdict passed on 20 March 2013 after the completion of the renewed proceedings, Radojko Radmilović was sentenced to 3 years in prison for participating in intimidation and expulsion of civilian population of Croat ethnicity in Bapska;

- according to the Zagreb County Court verdict passed on 26 March 2013 after the completion of the third (the second repeated) trial, Pero Đermanović was sentenced to 9 years in prison, Dubravko Čavić – who was unavailable to the Croatian judiciary – was sentenced to 7 years in prison, Ljubiša Čavić was sentenced to 2 years in prison for detaining, torturing and killing one civilian of Croat ethnicity and for burning down the houses of two civilians of Croat ethnicity in the villages along the Una river near Hrvatska Kostajnica.⁸

During the reporting period, the first-instance court verdicts were passed against four former members of Serb military formations who had previously been extradited to the Republic of Croatia.

Out of the four accused persons, only Radojko Radmilović, who had been extradited by the Republic of Serbia, was found guilty and the verdict is still non-conclusive. The charges were rejected in respect of Tihomir Kašanin, who had been extradited by the United Kingdom, and in respect of Marin Krivošić, who had been extradited by the Republic of Montenegro. Milan Španović, extradited by the United Kingdom, was acquitted of the charges and the verdict is still non-conclusive.

(b) Proceedings in which the main hearings are currently held

At the beginning of April 2013, trial hearings have been actively held only in two cases in which members of Serb military formations had been accused of crimes:

- at the Karlovac County Court, a main hearing is pending in case against the accused Marko Bolić, who was charged of killing two members of Croatian military units who had previously laid down their arms and surrendered in the village of Podvožić;⁹

⁸ After the announcement of the verdict, the Trial Council President did not present a summarised explanation of the verdict, stating that he was not obliged to present to the public the reasons behind his judgment unless the accused persons were present at the announcement of the verdict. In our opinion, it was contrary to the provisions of the Constitution of the Republic of Croatia and the *Criminal Procedure Act*.

⁹ The criminal offence has been qualified as illegal killing and wounding of enemy, stated in Article 124, Paragraph 1 and Paragraph 2 of the OKZRH.



- at the Rijeka County Court, the proceedings have currently been held against Zdravko Pejić, who has been unavailable to the Croatian judiciary, and who was charged of killing a married couple of Croat ethnicity in the village of Saborsko.

(c) Sessions of appeal chambers of the Supreme Court of the Republic of Croatia

During the reporting period, sessions of appeal chambers of the Supreme Court of the Republic of Croatia were held in respect of five cases:

- on 23 January 2013, the session of the appeal chamber of the Supreme Court of the Republic of Croatia was held following the appeals lodged against the verdict passed by the Osijek County Court on 04 September 2012 according to which Rade Ivković had been sentenced to 8 years in prison, whereas Dušan Ivković had been sentenced to 5 years and 6 months in prison for raping a female person in Vukovar in 1991. We have no information about the Supreme Court's ruling in respect of this case.

- the Supreme Court of the Republic of Croatia on 30 January 2013 upheld the Rijeka County Court verdict according to which, after the completion of the third (the second repeated) proceedings, on 23 December 2011, Mićo Cekinović, in his capacity as a company commander within the paramilitary formations of the "SAO Krajina" (Serb Autonomous Region of Krajina), had been sentenced to 4 years in prison for condoning and issuing orders for arrests, abusing and killing of citizens of Croat ethnicity and burning down and destroying the buildings, which resulted in the physical abuse of one person of Croat ethnicity, in the killing of one civilian and burning down his house, and in expulsion of the majority of Croat population from their homes being carried out by his subordinates;

- the Supreme Court of the Republic of Croatia on 20 February 2013 upheld the Osijek County Court verdict according to which, after the completion of the fourth (the third repeated) proceedings, on 01 June 2012, Čedo Jović, in his capacity as a factual commander of the military police unit of the 35th Slavonian Brigade of the so-called RSK Army (Republic of Serb Krajina Army), had been sentenced to 5 years in prison for omitting to punish the perpetrators although he had known that his subordinated military policemen had been abusing the members of labour platoon of non-Serb ethnicity, and thus he had condoned such actions being continuously carried out by his subordinates, and he had condoned the consequences of such actions – the physical abuse of six persons, out of whom one person had died as a result of the abuse.

(d) Investigations and indictments

According to the statements issued by county state attorney's offices, the indictments were issued against two persons and a warrant for launching investigation was issued against one person during the first trimester of 2013:

- the Osijek County State Attorney's Office, at the beginning of January 2013, issued the indictment against an accused person, currently unavailable to the Croatian judiciary, charged that, in his capacity as commander of the Borovo Selo Territorial Defence Headquarters, he had known that his subordinates had been physically and mentally abusing and killing the civilians detained in Borovo Selo after the fall of Vukovar, but he had failed to take any measures whatsoever to stop the mentioned acts, which had led to the abuse of several dozens of persons, 17 persons had been killed, whereas 21 persons had been taken away into unknown direction and have since been registered as missing persons. The accused person has been unavailable to the Croatian judiciary.

- the Osijek County State Attorney's Office, at the end of February 2013, issued the indictment against an accused person charged for singling out a 21-year-old male civilian from a column of the captured civilians and killing the youngster by opening a burst of fire from the automatic rifle on 19 November 1991, after the occupation of Vukovar. The accused person committed the stated crime together with a member of (Serb) paramilitary formations. The

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accused person is available to the Croatian judiciary. He is currently serving a prison sentence for committing another criminal offence;

- the Osijek County State Attorney's Office at the end of March 2013 issued a warrant on conducting investigation against one unavailable accused person due to a probable cause that the accused person, together with another member of Serb paramilitary formations, both armed and making death threats, had raped two civilian female persons in February 1992 in Vukovar.

3. Proceedings for restitution of damage for the death (killing) of a close family member – inadequate and exhausting path of getting the damages paid to the family members of the killed victims

In everyday practice, the failure of victims' family members/plaintiffs to win civil lawsuits for restitution of damages for death (killing) of the close family member has been the most usual consequence of the non-existence of a legally valid and conclusive conviction of a crime perpetrator. The plaintiffs usually had some success in those civil lawsuits which were preceded by criminal proceedings in which the criminal responsibility of a crime perpetrator had been established. In those cases in which the plaintiffs filed claims no matter the fact that the criminal responsibility of crime perpetrator(s) had not been previously established in criminal proceedings, the plaintiffs were generally losing the lawsuits.¹⁰

However, after the Supreme Court of the Republic of Croatia in January 2013 passed the ruling in case of the plaintiffs Jovan Berić, Branka Kovač and Nevenka Stipišić, in accordance with the *Law on Responsibility for the Damage caused by Terrorist Acts and by Public Demonstrations*, stating that in case of terrorist acts, for which the Republic of Croatia has been held responsible, there actually was an obligation of paying damages to plaintiffs regardless of the fact whether the crime perpetrator had been either established in the criminal proceedings, or criminally prosecuted, or found guilty, the first-instance courts during the first trimester of 2013 sustained the claims in two cases in which the children of the killed civilians in Varivode had sued the Republic of Croatia:

- at the Knin Municipal Court, the verdict was passed on 23 January 2013, according which the Republic of Croatia had to pay 540,000.00 HRK of damages to Jovan Berić and to his sisters Branka Kovač and Nevenka Stipišić, whose parents Radivoje Berić and Marija Berić had been killed in the village of Varivode at the end of September 1995, more that 45 days after the completion of the Military Operation "Storm";

- at the Zadar Municipal Court, the verdict was passed on 29 January 2013, according which the Republic of Croatia had to pay 220,000.00 HRK per person to Todor Berić, Živko Berić and Drinka Berić, the children of the killed Marko Berić, and 440,000.00 HRK to Boško Berić, the son of the killed Jovo Berić and Milka Berić.

In the above stated cases, the courts have finally acknowledged the responsibility of the Republic of Croatia for the impunity of perpetrators of brutal killings in Varivode. However, in the above stated cases, the plaintiffs have won their cases since they had filed their claims within the general period of limitations. Unlike them, many other plaintiffs, whose close family members had been killed, filed the claims after the expiration of period of limitations, therefore it is most likely that their claims will be rejected by Croatian courts.

¹⁰ The claims were usually rejected due to the statute of limitations.



Krešimir Ivančić and Štefica Dželalija, whose father Zdravko Ivančić was killed together with another four civilians of Croat ethnicity in the village of Batinjska Rijeka near Daruvar on 11 May 1994, will have to pay back to the Republic of Croatia the adjudicated amount of damages they received in compensation for the non-material damage. According to the verdict passed by the Daruvar Municipal Court in 2007 and the verdict passed by the Bjelovar County Court in 2008, the litigation claim submitted by Krešimir Ivančić and Štefica Dželalija was accepted and each of them received the amount of HRK 105,000.00 as well as the court proceedings costs. However, the Supreme Court of the Republic of Croatia quashed the stated rulings in 2010 and dismissed the claim filed by Ivančić and Dželalija with an explanation that the statute of limitations came into force for initiation of proceedings for compensation of non-material damage. Krešimir Ivančić and Štefica Dželalija must pay to the Republic of Croatia a total of approximately HRK 430,000.00 – twice the amount they received earlier. Along with paying back the very amount of damages, they are obliged to pay the court proceedings costs as well as the statutory default interest. Ivančić and Dželalija lodged a constitutional complaint, however, the Constitutional Court of the Republic of Croatia rejected the constitutional complaint on 14 March 2013. They have exhausted all legal remedies available in the Republic of Croatia and the only instance which is left for them to appeal to is the European Court of Human Rights. The indictment was issued against the perpetrators of the crime against the father of Ivančić and Dželalija and another four civilians, however, the trial still has not been conducted since the indicted have been unavailable to the Croatian judiciary.

Regarding the necessity of providing compensation to all victims for the pain they suffered, as well as having in mind a large number of still non-prosecuted crimes or inadequately conducted criminal proceedings, which have all justifiably led to victims' expectations of successful outcome of their claims filed before the European Court of Human Rights, it is necessary to find a solution which would provide restitution to the (civilian) victims of war. By reaching settlements between the injured parties/plaintiffs and the respondent Republic of Croatia, further victimisation of the close relatives of the killed persons would be brought to an end, whereas the Republic of Croatia would relieve itself of the burden of almost definite payment of damages for its omission(s) to conduct adequate criminal prosecution against crime perpetrators, and it would restore the trust of its citizens into the Croatian legal system.

D. Investigations and charges pressed in the Republic of Serbia

During the first trimester of 2013, the War Crimes Prosecutor's Office of the Republic of Serbia ordered the investigation to be conducted against two accused persons, and issued the indictment against one person accused of crimes committed in the territory of the Republic of Croatia:

- at the beginning of February 2013, the investigation commenced against Žarko Milošević and Dragan Lončar, former members of Militia and the Sotin Territorial Defence, due to a suspicion that they had killed 16 civilians of Croat ethnicity in 1991. They were suspected that they, together with other members of Militia and the Sotin Territorial Defence, had apprehended more than ten civilians and detained them at the Militia station premises. During the night of 26 December 1991, and in the early morning hours of the following day, the suspects had ordered the entire group of civilians to get on the military truck and taken them into unknown direction - to the location where they had killed the civilians by shooting them with automatic rifles¹¹;

¹¹ Although the Vukovar County State Attorney's Office in 2007 laid the indictment against 17 persons accused of the crimes in Sotin, no one has been convicted so far for the crimes in Sotin. Due to inefficiency of the Croatian judiciary to prosecute the crimes committed in Sotin, victims' family members approached the War Crimes Prosecutor's Office of the Republic of Serbia. Their persistence and dedication have significantly contributed to the prosecution of the crime in the Republic of Serbia.



On 18 April 2013, one of the two persons accused of the crime in Sotin, escorted by the Croatian police and accompanied by representatives of the Croatian State Attorney's Office and the representatives of the Serbian Prosecutor's Office, and the officials of the Republic of Croatia Government's Office for the Detained and Missing Persons, pointed at the locations where victims' bodies had been buried. On the same day, a grave containing the bodies of three victims was found. Several days later, another grave was found on the location of the old slaughterhouse which contained human mortal remains mixed with animal remnants. It has been estimated that the human remains are the bodies of ten killed inhabitants of Sotin. It is the secondary grave, into which the bodies of the killed victims were transferred during 1997 with a goal of covering up the crime.

During war atrocities, 64 inhabitants of Sotin of non-Serb ethnicity were either killed or went missing. A total of 31 missing inhabitants of Sotin had been sought after prior to the discovery of these graves.

- in mid-March 2013, the indictment was laid against Marko Crevar, charged that he, in his capacity as former member of the Vukovar Territorial Defence, had physically abused two prisoners of war during the interrogation carried out in Sremska Mitrovica on 27 February 1992. According to the indictment, Crevar had committed the stated criminal offence together with Ljuban Miljanović and several unidentified members of the JNA (Yugoslav National Army) and the RSK Militia (Republika Srpska Krajina Militia members).¹²

E. War crimes prosecution in Montenegro – dissatisfaction of the victims with the course of the proceedings for the crimes committed in the Morinj Detention Camp

The third (the second repeated) court proceedings has been currently held at the Higher Court in Podgorica against six members of the JNA (Yugoslav National Army) accused of abuse of 169 prisoners of war and civilians from the Dubrovnik area. In the two first-instance court proceedings conducted so far, the accused persons were convicted to prison sentences ranging from 1 year and 6 months in prison up to 4 years in prison, however, the Appellate Court quashed both first-instance court verdicts.¹³

The detainees who had been detained in the Morinj Camp made a protest on 24 March 2013 since they believed that the criminal proceedings turned out to be a judicial farce. They announced that they would request the proceedings to be conducted before the Croatian judiciary.

¹² In 2007, the Osijek County State Attorney's Office indicted Marko Crevar, Ljuban Miljanović and Marko Kraguljac for the abuse of several Vukovar captives (prisoners of war) taken to Sremska Mitrovica. Considering the fact that the Croatian State Attorney's Office transferred the stated case to the War Crimes Prosecutor's Office of the Republic of Serbia, which indicted only Marko Crevar and no one else, the Republic of Croatia has continued with the criminal prosecution of other two accused persons.

¹³ Due to poor traffic connections and high travel costs to Podgorica, we have been monitoring the stated case only through the media.

