Prosecuting War Crimes –
Guarantee of the Process of Dealing with the Past and Sustainability of Judicial Reforms in Croatia

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Historical and social context of the beginning of war crimes prosecutions
Tihomir Ponoš

In 1921 the Supreme Court in Leipzig tried 12 suspects for war crimes during the World War One. The harshest sentence was 4 years of prison. The war crimes committed in the period between the two world wars were not punished. The World War Two changed the attitude towards processing war crimes. At the big Nuremberg trials out of 21 defendants, eleven were given the death penalty, three were given life imprisonment, two were given imprisonment of 20 years, one 15 years, one 10 years and three were acquitted. Besides the big trial, twelve more trials were held in Nuremberg from August 1947 until October 1948. At the Tokyo trials which lasted from May 1946 until November 1948 before the International Military Tribunal for the Far East the Class A war criminals were tried for the war crimes committed during the World War Two in Asia and the Pacific. Also, as a consequence of the World War Two the Convention on the Prevention and Punishment of the Crime of Genocide was adopted in 1948. The change in war crimes trials occurred in the 1990's. The wars on the territory of the former Yugoslavia horrified the international public opinion with their brutality, but also with the fact that such wars were lead in the post-Cold War Europe.
The UN Security Council Resolution 827, adopted on 25th May 1993, established the International Criminal Tribunal for the Former Yugoslavia in The Hague, „for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1st January 1991 and a date to be determined by the Security Council upon the restoration of peace". The Tribunal indicted 162 persons, and rendered verdicts in the range from acquittals to life imprisonment. It has been criticized in all the countries whose nationals were tried, and depending on the verdict it was often proclaimed to be politically manipulated Tribunal by a given country's public opinion. The intention of the Tribunal was to systematically try the largest number of war crimes suspects possible. It is the first Tribunal to issue an indictment for war crimes against a sitting head of state, Slobodan Milošević, President of the Federal Republic of Yugoslavia. Undoubtedly, a range of top military and political officials would not have been tried if the Tribunal had not been established. The Tribunal also showed some important flaws. Several UN Member States did not fully cooperate with the Tribunal and its bodies, as prescribed by the UNSC Resolution 827, but appealed to the national legislation and the protection of national interests to avoid full cooperation. The Tribunal was also reproached for not investigating possible crimes committed by other states, that is not the former Yugoslav states, but before all the NATO members and their military intervention against the Federal Republic of Yugoslavia in 1999. The Tribunal was further rebuked for unacceptably lengthy trials, which in some cases lasted more than ten years. Also, the persons who were acquitted do not have the right to compensation from the Tribunal nor another UN body for the time spent in detention. It is also rebuked for not fulfilling one of its main tasks, to contribute to the reconciliation among the countries of the region, but that it had opposite effect, that its decisions can cause new tensions between states and peoples. The so far last step towards the establishment of international legal mechanisms for war crimes was the establishment of the International Criminal Court as a permanent court. This Court was established on the basis of the Rome Statute, adopted at an international diplomatic conference in Rome on 17th July 1998. The Statute entered into force on 1st July 2002. The Court has

the jurisdiction for the crimes of genocide, crimes against humanity, war crimes. Since 2017 it will also have jurisdiction for the crimes of aggression. So far 122 states are parties to the Statute. Currently, Croatia filed a genocide lawsuit against Serbia before the International Court of Justice Croatia, and later Serbia filed a counter-suit against Croatia. The hearings before the ICJ were carried out in March 2014, and the Court ruling is expected to be given in February 2015.

Since the beginnings of trial observation to a systematic war crimes trials monitoring

Zoran Pusić, Civic Committee for Human Rights

The number and the frequency of violation of human rights during the 1990's brought to the establishment of several NGO's and committees for the protection of human rights in Croatia. Many people turned to these organizations because they did not find any help from the state authorities for the violations of human rights they suffered. One of the first problems that the Civic Committee for Human Rights (CCHR) faced were massive claims of people who could not obtain Croatian citizenship although they lived in Croatia for 30 or more years. Furthermore, in 1992-1994 there was a wave of massive evictions. Hundreds of families were illegally thrown out of their apartments, without a judicial warrant, without legal bases, most frequently by brute force. By the end of 1993 and the beginning of 1994 an increasing number of wives and mothers of Croatian Army members turned to CCHR, because their sons and husbands were sent to the war against the Army of Bosnia and Herzegovina in that country. We also received information on the torture of prisoners in Kerestinec and Lora prison camp in Split. It was necessary to wait ten or more years to process some of the above mentioned crimes before courts in Croatia. Croatia reclaimed all of the RSK's (Republic of Serbian Krajina) territory in western Slavonia with the Military Operation *Flash* from 1st to 3rd May 1995. On 6th May 1995 several activists went to Pakrac and talked to the Chief of Police Nikola Ivkanac about establishing a Center for Human Rights. According to the existing knowledge, no crimes were committed in the area under the control of Nikola Ivkanac after the operation *Flash*. However, unfortunately, out of that area war crimes were committed. From 4th to 8th August 1995 the Military Operation *Storm* took place and Croatian Army completely defeated the RSK Army. This military victory enabled Croatia to reclaim almost whole territory of RSK. Unfortunately, the Operation *Storm* was tarnished with the toleration of crimes and an evident abuse of military victory in order to reduce the number of Croatian citizens of Serbian ethnicity. Croatia is bearing the consequences of this politics all these years and a significant amount of NGO's work is dedicated to mend and ease these consequences. By the end of 2000 twelve Croatian Army generals, out of whom seven in active service sent the Government a letter saying that the Army would not tolerate trials against Croatian army officials suspected of war crimes, qualifying this as the "criminalization of the Homeland War". At the beginning of 2001, the ICTY issued the first APB for the extradition of Croatian Army general Mirko Norac, one of the seven active service generals who signed the letter. Norac went into hiding. The Prime Minister Ivica Račan made a deal with the ICTY to defer the Norac case to Croatia. Thanks to the professionalism of the judge Ika Šarić at the Rijeka County Court the truth about the crimes committed in Gospić came out. Norac was sentenced to 12 years of

imprisonment. In May 2002 the trial against eight members of Military Police for the crimes in Lora Military Prison Camp in Split began. In November 2002 the judge Slavko Lozina acquitted all the defendants. In 2003, knowing that there is around 400 uninvestigated war crimes and more than 670 of war crimes suspects without trial, Vesna Teršelič from Antiwar Campaign, Katarina Kruhonja from the Center for Peace Osijek, Žarko Puhovski from Croatian Helsinki Committee and Siniša Maričić and me from CCHR agree a joint project of monitoring war crimes trials. In 2004, these four organizations established a new NGO, *Documenta*, specialized in investigating the past and war crimes trials monitoring.

War crimes trials monitoring and judicial reforms in the context of European integration negotiations

Vesna Teršelič, Documenta

After the elections in 2000 the Republic of Croatia turned towards the European Union and signed the Stabilization and Association Agreement in October 2001. The influence of the negotiations process on the improvement of work of the institutions and the announcement of their reform was visible. The context for more efficient war crimes trials was created due to the interaction of the newly elected social democrat- liberal coalition in power and the EU conditionality policy for cooperation with the ICTY. After flawed and ethnically biased war crimes investigations in the 1990s, the judiciary made certain steps forward. When HDZ came back into power in 2003, the eagerness of the authorities for the implementation of necessary reforms and a critical analysis of mistakes was reduced. In the context of negotiations appeared a need for a clear feedback on the advancement in the judiciary reform. The HRO's from Croatia evaluated that the development could be followed with systematic war crimes trials monitoring. In the year of intensification of EU accession negotiations they got financial support for a bigger team of lawyers who would monitor the trials. In 2005 the Police and County State Attorney's Office in Osijek resumed the investigation of crimes committed against Serb civilians interrupted in the early 1990s. That year a newly established monitoring team followed 12 war crimes trials before County courts. For the monitors it was very important to find an adequate form of exchange of opinions with the judiciary as well as informing and public awareness campaign regarding the problems relating to the war crimes trials. Cooperation with Croatian faculties of law and the OSCE was significant for the improvement of monitoring methodology. Although it is difficult to evaluate to what extent the NGOs were accepted as a corrective element, sometimes they did influence trends. At the meetings of NGOs with State Attorney's Offices and Courts in 2005 and the first half of 2006 the representatives of the judiciary stressed several times that war crimes investigations and trials are being brought to an end. The Chief State Attorney, Mladen Bajić, stressed on several occasion in his public statements that, luckily, there is no statute of limitations for war crimes, and that the State Attorney's Office is continuously gathering information and will not close any case. However, the success and the visibility of advocating for the efficiency of war crimes trials depended to a great extent on the dynamics of the communication with the European institutions. The communication between HRO's and European institutions was carried out through the OSCE Office. In Croatia. At the final stage of the EU negotiations, and for the purpose of a more

efficient advocating of reforms towards the public, at the beginning of 2011 the CSO's gathered to carry out a participative analysis of the tasks defined in the Chapter 23 of the negotiations. The *Platform 112* later resulted from this initiative. The Republic of Croatia started necessary reforms in the work of the police, the State Attorney's Offices and courts and humanized the trials by developing a witness support system. However, according to the opinion of HRO's, Croatia has not yet solved some important issues related to the war and the postwar period.

Crime, the purpose of punishment and reconciliation
Josip Kregar

Legal philosophy has been silent regarding the issue of big and small war crimes. The usual methods and approaches (utilitarian, retributive) are not entirely applicable. Recently in the legal philosophy the understanding of the purpose of punishment has drastically changed. While in the last century noble and humanist ideas were dominant, claiming that the punishment is in fact a process of rehabilitation and reintegration of the perpetrator in the society after serving the sentence, the simple rules of life and positive penology research have shown that prisons do not rehabilitate people, that the stigma of the criminal stays relatively permanently and that relapse is a rule. The liberal ideas that every individual is capable of improvement and that every person is useful and socially important have been refuted with criminal statistics and the description of life in prison. The punishment today is mostly considered unavoidable retaliation against the perpetrator who violated a rule. Social order is based on punishments for violations and prizes for respecting legitimate values and norms. Judicial procedures serve as unavoidable obstacles against trying the innocent and the abuse of (judicial) power (*in dubio pro reo*). Therefore, apart from the legality, as a basic condition of legitimacy, the punishment must have a purpose, a measure, and a justification. In other words, in order to achieve its social effect, the punishment must have a socially accepted justification. A punishment is justified and useful if it is approved by the majority, if there is a substantial relationship between the punishment and the sense that an ethical norm has been violated as a subjective recognition of sin and an objective position of the public. There are three reasons that justify the punishment: the fear of punishment will deter from the intention to violate the norm because the punishment is a clear sign of prohibition, the punished cannot repeat the deed, because s/he is in prison, and the third refers to the punishment as a method of re-education. The retribution theory is simpler: the perpetrators got what they asked for. The punishment is justified because they committed a crime that requires punishment. If there is no punishment for the crime, if the punishment is lacking, the guilty and the innocent are equaled, so there is in fact no equality. The idea of the punishment as retribution poses the question of a matching punishment. A general prevention, fear from norm violation exists only when there is a real possibility and high probability of punishment. There is no punishment when everyone is guilty and nobody is not because the case and the event could not be prevented with human strength and will. According to the number, the size, and especially the message sent to the society, the punishments given in Croatia for war crimes do not achieve the effect that is formally alleged as justification. Who can be scared of a punishment delayed by a process that lasts two decades? There are apparently average men walking the streets, and they

should be ashamed and fear punishment, but how, if they are helped, encouraged, and sometimes even celebrated? With this the public is deprived of education on what the laws are for and what is their real purpose, but the main ethical imperative related to war crimes based on the claim “never more” is out of reach. The notion of the evil that the war crimes imply as an almost routine activity is unacceptable. People were killed, tortured, ousted, humiliated... Crimes should be condemned by punishing the perpetrator and showing respect towards the victims’ suffering. The question is posed on how to overcome the vicious circles of guilt and suffering and let the people live in peace and for the future? First it is necessary to acknowledge that it is the people who participate in wars. Because, we must not forget that a great effort has been invested to represent the enemy as non-human, savage animal, scum, by which his killing becomes a morally acceptable act. However, the guilty and the convicted are also human. The victims have the right to respect, and the guilty the obligation of regret. The guilty have the right to mercy, and the victims have the right to „non-oblivion“: It is also said that the issues of war should be left to the historians. I do not doubt the good intention of this suggestion if it would be a discussion on the facts, but the historians live from a careful selection of facts and cases to prove a certain position. Moreover, it is said that history is written by the victors. Therefore the historians are those who rarely reconcile those in conflict, on the contrary, most often they contribute to the creation of the impression of truth by using human myths.

Characteristic examples of war crimes trials in the 1990s

Mladen Stojanović, Center for peace, non violence and human rights Osijek

In the 1990s in Croatia almost exclusively members of Serbian troops were tried for war crimes. Taking into account the fact that the trials were held in difficult times of war and postwar, in the situation where the law of war in practice represented a new moment for the judiciary, very often the trials were conducted unprofessionally and ethnically biased and mostly *in* absentia. On the bases of imprecise indictments, often addressed to several tens of defendants, without sufficient evidence and adequate defense, guilty verdicts were rendered with frequently poor explanations, and high prison sentences were assigned. The trials for war crimes committed by members of Croatian troops were left out. Members of Croatian troops were tried for criminal acts of murder, extortion, illegal detentions and thefts.

We will here present several examples of trials conducted in the 1990’s:

1. The case of Mihajlo Hrastov – criminal procedure that lasted more than two decades

The criminal procedure against Mihajlo Hrastov for the crime committed on the Korana Bridge was the first war crimes trial conducted against a Croatian Army soldier. The length of the trial is violating the rights of the victims and the defendant. At the Karlovac County Court the trial was under strong pressure of a part of the public and the local media and with the passage of time and after many reversal of the judgment the opinion was created that Hrastov was „a hero, not a criminal“. Despite the conducted hearing before the Supreme Court, certain facts remained that might bring into question the Court’s decision that the defendant Mihajlo Hrastov alone committed the abovementioned criminal act. Finally Supreme Court itself found as aggravating circumstance “the serious consequence of the committed criminal act, i.e. death of

thirteen persons and serious wounding of two persons“, but in spite of that, it pronounced a prison sentence below the legally stipulated minimum for the subject criminal act.

2. Crimes committed by the so-called “Merčep group” – liquidations qualified as killings

The Reserve Unit of the Ministry of the Interior under the command of Tomislav Merčep, was linked to arrests, extortions, abuse and killings of civilians in all the places where the Unit operated... Until today only three members of the Unit were sentenced for the murder of one person, and another three members for illegal deprivation of freedom and extortion. The criminal procedure against Tomislav Merčep is in course, with the qualification of war crime against civilian population, and it refers to a significant number of victims. The crimes committed by the *Merčep group* were among the first crimes that gained publicity among Croatian public.

3. Crime in Škabrnja

For the crimes committed in Škabrnja, among the most atrocious crimes committed during the Homeland war against non-Serbian population, Croatian judiciary sentenced 17 persons so far, but only two in presence. The posterior renewed procedures and the procedures against present defendants mostly ended with failure for the Prosecutor's Office. This caused fear among the families of the victims that the future renewed trials, if some of the indicted do get arrested, could result in acquittals. The ICTY did a little bit more by convicting the Krajina leaders Milan Babić and Milan Martić. However, probably the biggest disappointment for the people of Škabrnja was the absence of indictment against Ratko Mladić, commander of the Knin Corps of the Yugoslav Peoples’ Army when the crime was committed.

Indictments issued in the 1990s for the criminal offenses against values protected by the International Humanitarian Law

Veselinka Kastratović, Center for peace, non-violence and human rights, Osijek

Since the beginning of the systematic monitoring of war crimes trials, several specific problems were noticed in the indictments issued in the 1990s. There are some facts that have to be taken into account. Some places where numerous war crimes were committed suffered great human and material losses and for a series of objective circumstances the investigation of committed war crimes was difficult. Given the war situation at that time, it was difficult to get relevant information on what really happened in certain places. Material evidence on committed crimes were often located on the then occupied territory, and the witnesses, if they did not flee the crime scene, were also crime perpetrators themselves, inaccessible to the police and justice. In some cases the issued indictments were based on testimonies of the affected and witnesses given before the police in the places of their then residence where they fled from the place of suffering. As witnesses and victims were dispersed all around Croatia, their statements were taken by investigating judges of County Courts in the areas where those persons where at the moment. All of this made the investigation more difficult. Also, in the analysis of the indictments we should take into account the fact that State Attorney's Offices did not have experience in the indictments for war crimes, especially in the application of the Geneva Conventions and the additional Protocols and the Convention on Prevention and Punishment of the Crimes of Genocide. All the above mentioned problems affected the issuance of legally flawed indictments and the fact

that the indictments generally did not comprise all the war crimes committed in each place. The indictments issued by State Attorney' Offices in Croatia in the 1990's for the crime of genocide are legally flawed: they were generally issued against defendants (mostly Serbs, members of paramilitary forces) that were fugitive, unavailable to Croatian judiciary. They were also generally issued against a bigger number of defendants accused of war crimes or crimes of genocide. However, the indictments did not reflect a concrete contribution of each of the defendants in the commission of that crime, in order to be able to confirm the responsibility of every perpetrator beyond reasonable doubt. “Ethnic cleansing” is a term not often mentioned in indictments issued in Croatia. In the ICTY indictments ethnic cleansing has been treated as a support to the plan on territorial expansion (i.e. against Slobodan Milošević, Vojislav Šešelj and Radovan Karadžić). It has been qualified as a crime against humanity or war crime. However, grave forms of ethnic cleansing can represent genocide, a crime that always comes from the crime against humanity. Ethnic cleansing is a part of genocide as a charge against defendants by taking into account their position, the amount of power and genocidal intent.
Some of the characteristics of the indictments in the 1990s: imprecise allegations of Articles from the Geneva conventions, flaws regarding to the names of the defendants, the place and the time of the committal of crimes; generally they were indictments against fugitives, imprecision regarding descriptions of criminal act, suggested evidence and incriminations etc. After the new Criminal Code Procedure Act was adopted in 2008, the State Attorney's Office of the Republic of Croatia ordered a revision of all the competent County SAO's indictments. In fifteen reviewed cases against around one hundred persons the charges for war crimes were changed into charges for armed rebellion.

Deviations of the institutions of the Rule of Law in the case of Mirko Graorac
Zoran Pusić, Civic Committee for Hunam Rights

The case of Mirko Graorac, retired police officer from Split, started with his arrest on 29th April 1995. In the first trial in 1996, held before the Split County Court, Graovac was sentenced to 20 years of imprisonment and a lifetime expulsion from Croatia after serving the sentence. At the retrial in 2000 the Supreme Court sentenced Graorac to 15 years of imprisonment, without lifetime expulsion from Croatia. Since his arrest until 2011 Mirko Graorac was held in detention in Split, and later he was transferred to the Lepoglava Penitentiary. He served the last part of his sentence from 2003 to 2006 in Banja Luka, Bosnia and Herzegovina. The Split County Court sentenced him on the bases of testimonies of 11 witnesses, concluding that during 1992 Graovac was acting as a commander of the external guard of the concentration camp "Manjača", near Banja Luka and brutally tortured the prisoners. The County Court sentence was confirmed by the Supreme Court and the Constitutional Court rejected the defense appeal. In order to carry out the revision of the process it would be necessary to bring some new facts that were unknown to the Court at the time when the sentence was given. The trial against Mirko Graorac was conducted negligently and with bias. It is necessary to review the process because of this man, who was caused great injustice and for the sake of the credibility of Croatian judiciary. There is a series of facts in favor of this hypothesis. Some of these facts are easy to check already on the bases of trial

documents. In the trial the official Report of the War Crimes Commission of Bosnia and Herzegovina was not taken into account. According to the Report there is neither information nor any charges against Graorac.
At the beginning of March 2003, when we visited him at Lepoglava, the Penitentiary director told us that last year Graorac submitted a request for serving the rest of the sentence in Bosnia and Herzegovina and that the request was approved. On several occasions he stated that he did not want any amnesty but a just trial because he was innocent. Had he done anything that he was convicted for, it would surely have been stated in the War Crimes Commission of Bosnia and Herzegovina Report. For Graorac, for Croatian judiciary and for Croatian public it would be important to conduct a retrial in Croatia. Without that, there will always be a doubt that an innocent man has been convicted and that there was no strength to review the decision.

War crimes trials in the Republic of Croatia from 1991 to 2000 from the perspective of a judge
Sovjetka Režić, Split County Court

The period from 1991 until 2000 was especially difficult for the judiciary. Because of the fears from the “enemy in our own lines” on the one hand, and the wish to preserve the appearance on the preservation of the profession based on the principle of professionalism, diligence and ethics on the other, steps were taken with the hidden intention not only to divide the parties, but also the carriers of judicial duties on “ours” and “theirs”. Therefore, there was a massive lustration among the judges only according to the criteria of foreseeable adaptability to serving the “higher” cause: preserving Croatian sovereignty even if risking imposing injustice to the persons who were not lucky enough to be ethnic Croatians or they belonged to the circle of those who have not renounced from their communist past. Rarely the then court presidents maintained their positions, and they were all replaced by the personnel “checked out” by the secret services and the governing political option. Many were informed on the termination of their careers in the judicial bodies through newspapers, some were even informed by phone, all in the service of a prompt dismissal of the “disloyal”. In the early 1990s in Split arrests on the streets and in apartments on the bases of ethnicity or public statements were carried out. The people were suspected of being enemy collaborators or enemies. A certain number of such arrested people, suspected of crimes against state sovereignty, were “intended” for the so-called exchange: one or several arrested Croats were exchanged for the Serbs arrested by Croatian authorities. At the beginning of the Homeland War at the entrance of the town of Imotski several buildings were burned and destroyed and it was no secret that these were Serbian property with a clear message that they are not welcome back. In Split and surroundings and especially on islands (Brač, Hvar) partly for the same reason and even more for personal benefit, there was the phenomenon on „observing“ buildings and apartments where persons of non-Croat ethnicity lived, after which a forced eviction would follow, carried out by persons with weapons and ghillie suits for intimidation. Many forced evictions were mostly justified with final judicial decisions. However, they were systematic activities under the auspices of the state authorities.

Appointments and dismissals of judges in the Republic of Croatia from 1990 to 1996

Nikolina Židek

The period that was the object of this analysis overlapped with the proclamation of independence of the Republic of Croatia, breakout of war and immediate postwar period. At the beginning of 1990s, from the adoption of the Constitution until the end of 1993 when the Law on Courts and the Law on State Judicial Council were adopted (SJC) we were witnessing the so-called "permanent temporality" and legal uncertainty, and the judges in that period were "the least protected and the most vulnerable *species* of legal profession". In that period, according to the old Law on Ordinary Courts of Law some judges' offices of 8 years expired, while there were no more precise provisions on judges' appointments. All of this caused a so called „vacuum" or „extra constitutional position" of the judges, and the practice showed that "some judges whose period ended, continued to perform their duties, some received formal decrees on removal, and some were only called up to empty their offices "because of the newly created situation". When the Law on Courts entered into force at the beginning of 1994, the legal deadline for judges' appointment was 6 months upon the adoption of the Law, which was violated since according to the appointments available from the Official Gazette, no judge was appointed until 1995, when the SJC started working. However, with the very selection of the SJC members, and at the very beginning of the SJC's work it became obvious that then, after all the laws were finally adopted, that created the preconditions for a (f/n)ormal functioning of the judiciary, that body was only an instrument of the governing structure for the lustration of unfit judicial personnel. Also, with a close analysis of normative acts, we observe that during that period a fertile ground for lustration was carefully prepared and the judges were practically unable to repeal questionable decisions by legal remedies, while it is evident that in the end the Constitutional Court in the same period adopted arbitrary decisions to the detriment of the judges and in favor of the legislator, and later, the SJC. According to the data obtained from the analysis of published appointments and removals, in the very period until the adoption of the Law on Courts (from 1990 to 1993) the majority of judges were removed (around 66%), and about half of the total number of removed judges form 1990-1996 left their office until the end of 1992. In the whole period until 1996 37% of judges were transferred to another duty, while 63% left, either on their own will, either they were removed for unknown reasons. The number of removals for unknown reasons is very significant (30%), while also a significant number left and opened their private lawyers practices (17%) and retired (9,5%). We suppose that in this so called exodus of judges opening their own lawyer's practices (or notary public offices) was the solution of quality judicial professionals towards the insecurity and uncertainty of judicial status until the establishment of the SJC. We could add the retirement of older judges in the same category. By all means, the most worrying information is the big number of removals for unknown reasons (30%), which is an evident proof of lustration in Croatian judiciary in the first half of the 1990s. We can only guess how many of the judges removed for unknown reasons were removed on the basis of their ethnicity. Another worrying fact is that in spite of the legal insecurity or uncertainty until the adoption of the Law on Courts and the Law on SJC, judges were regularly appointed (35% of the total number of appointed judges in that period) and half of them were newly appointed, and half reelected. Therefore, we should pose a question under

which criteria and regulations, especially regarding the reelection. Looking at the whole period of 7 years, it certainly draws our attention that during 1994 no judge was appointed, while during 1996 62% appointments occurred.
The evident lustration in Croatian judiciary in favor of fit and new personnel without precise and professional criteria was surely carried out to the detriment of the quality and the long-term functioning of the system in the Republic of Croatia, which later reflected on the quality of the judicial decisions, duration of procedures and accumulation of backlog. Given the time distance of 18 years we can conclude that this "silent lustration" in Croatian judiciary was a long-term step back for judicial practice and that its consequences are evident until today.

A review of trials in absentia
Milena Čalić Jelić, Documenta

At the time of the start of the war conflicts and in the first years after the end of the war, the work on war crimes trials was a big challenge for Croatian judiciary that resulted in a non critical application of *in absentia* trials. In the period from 1992 to 2000 578 persons were convicted by Croatian courts for war crimes, out of whom 497 in absentia, that is, 86 % of the defendants.
The judiciary in the 1990s did not have the credibility regarding ethnic non-bias. Therefore, in late 1990s and after 2000 there was an idea that the war crimes trials were a tool for preventing the return of the Serbs who fled the country and that the authorities treat them in a discriminatory manner. "Selective" application of criminal prosecution had a damaging effect on the decisions of the people who were thinking on returning to the areas where they fled from. Numerous questions regarding independence of judiciary and prosecutors offices arise from the fact that domestic authorities and international community could not solve the problem created by the appointment of judges and prosecutors during the war and in the immediate postwar period. A great number of judges were appointed according to the procedure that was not based on professionalism, objectivity or transparency, but the dominant criteria of selection were reduced to ethnic or political motives.
Some of the specificities of trials in absentia: appointment of public defenders, giving the highest possible prison sentence, using mitigating and aggravating circumstances in rendering verdicts, not based on factual evaluation. According to several judgments, the most frequent motives for *in absentia* trials were formulated in the following way: it was in the interest of the protection of civilian population; the defendants are not available to the court; the detention is already determined and APB is issued; the defendant is fugitive; it is an extremely gross criminal act etc. Regarding the purpose of the trial, the most frequently mentioned reason is to avoid the statute of limitation (although there is no statute of limitation for war crimes) and so that the perpetrator would not escape justice. In favor of the *in absentia* trials the right of the victims is also stated. With the analysis of several judgments, with a special attention to the motives for *in absentia* trials we can conclude that during the 1990s this possibility, foreseen by law as an exception, was used too generally and in many cases out of the legal standards and principles of criminal procedure, especially regarding the right of the defendant to a defense and contrary to the principle of effectiveness.

Analysis of duration of war crimes proceedings before courts of the Republic of Croatia

Nikolina Židek

The object of this analysis are war crimes proceedings before courts of the Republic of Croatia from the 1990's until today, in order to obtain data on the duration of criminal proceedings, determine the average values and finally assess the efficiency of the judiciary in war crimes proceedings.

In order to establish trends of average duration of proceedings and their basic characteristics we have analyzed the final verdicts, non-final verdicts and proceedings in course that were available and at our disposal. Although we did not have access to the complete documentation of all the war crimes proceedings and the numbers are neither total nor final, the available data is a relevant sample to determine trends in certain periods.

The analysis of the final verdicts showed that the average time from the indictment until the final verdict is 74 months (6 years and 2 months), while, from the commitment of crime until the final verdict on average 156 months passed (13 years). Each final verdict comprised an average of 3 defendants. Naturally, when the trends are analyzed separately by decades (1990-2000, 2000- onwards) the numbers are significantly different.

As far as the final verdicts, there is a relatively high percentage (21%) of retrials, mostly one retrial, but some trials were repeated even four times. A significant amount of proceedings was conducted *in absentia*, shown in the very analysis of *in absentia* trials (cca 50%), but also the proceedings with non- final verdicts (50%). This trend is understandable given the fact that a significant number of perpetrators is not available to Croatian judiciary, which is also confirmed by the fact that 35% of *in absentia* trials ended in retrial (for at least one of the convicted in the case), after those who were previously tried *in absentia* became available to Croatian judiciary.

One of the most indicative data is the average duration of trials with first- instance (non-final verdicts) until today – almost 8 years, especially if we take into account that additional time will pass until the final verdict is given. Finally, the most preoccupying fact is that from the commitment of the crime until final verdict in analyzed cases around 13 years have passed, and that almost 21 years have passed since the commitment of crime and the today proceedings in course. And the victims are still waiting for justice.

Characteristic cases that marked the decade

Miren Špek, Center for peace, non-violence and human rights, Osijek

Although war crimes trials in the Republic of Croatia were conducted before 2000, with the change of power, but also because of some other material and procedural changes, the war crimes trials against members of Croatian military and police forces became somewhat more speedy and efficient. Criminal procedures that followed after 2000 against the defendants Tihomir Orešković and Mirko Norac (2003 - 2004), Mirko Norac and Rahim Ademi (2008 - 2009), Branimir Glavaš and others (2009 - 2010), are very important for the process of dealing with the past in Croatia. In these trials the defendants were mostly tried for command responsibility, the evidence gathered by the

ICTY were used, one decision was taken regarding the abolishment of legislative immunity, the probation of convicted war criminals and the length of detention were decided. Therefore, for these trials it became evident that immediately after the commitment of crimes the political and military leadership was informed. All the three above mentioned cases were investigated and tried to a great extent due to a significant pressure of the international community over Croatia to investigate crimes and punish the responsible. The trials also attracted media interest. There were intents of influencing witnesses and revealing their identities, overestimation of mitigating circumstances and low prison sentences, as well as acquitting the defendants from paying procedural costs although some of them were wealthy. Due to the social context where the trials were carried out, Croatian CSO's stressed human rights violations, and while monitoring war crimes trials against Croatian military and police members warned on irregularities and gave recommendations to Croatian judiciary. In their reports the CSO's warned on technical difficulties in trials and on biased reporting by the journalists, which showed a lack of investigative spirit and critical thinking. The organization that monitored war crimes trials draw attention to the fact that in the initiated investigations most of the suspects were lower ranked policemen/soldiers and called for prosecuting some of the commanders in the military hierarchy, whose names appeared during the procedures. Also, they stressed that the defenders of the accused often based their defense on incriminating witnesses and the decisions based on wrongful application of the General Amnesty Act on the members of Croatian Army/Police Forces.

Prosecution of war crimes committed in Vukovar and surroundings in 1991
Veselinka Kastratović, Center for peace, non-violence and human rights, Osijek

The crimes committed in Vukovar in the period from 26th August 1991 until the fall of Vukovar and surroundings, on 18th November 1991, have only been partially investigated and prosecuted. In spite of the fact that for some places in the surrounding of Vukovar the investigation was carried out, the indictments were issued and some defendants were found guilty and convicted to unconditional prison sentences. However, many killings of Croatian and other non-Serbian civilians and Croatian defenders during the occupation remained uninvestigated. After the return of the population to their homes, during or after the peaceful reintegration, some of the mass graves were fond and the destiny of the disappeared became known. Some of the victims have not been found until today, and the perpetrators of these killings have remained uninvestigated. For the crimes committed in Ovčara an indictment was issued against Veljko Kadijević and others, but it is imprecise considering the time of the commitment of the crime at the Ovčara farm. The Higher Court in Belgrade rendered several verdicts and sentenced direct perpetrators of the crimes at the Ovčara farm. In the Republic of Croatia there is no quality investigation of the crimes committed in Ovčara. In the indictment for the crime in Velepromet, where there was only one defendant present at the hearing, and the others were tried *in absentia*, the events at Velepromet and Ovčara were confused. For the crimes committed at the Velepromet prison camp, the real number of victims has not been determined until today. For the crimes committed in Bogdanovci village, no indictment has been issued until today. In Bogdanovci, a day after the fall of the village, 11th Nov 1991, nine

Albanians were publicly shot. Local Croats were beaten, subject to serious physical injuries, killed and buried in mass graves at the Boganovci cemetery or in individual graves. Several mass graves were found in Bogdanovci. In Trpinja on 14th Sept 1991 civilians from the Trpinja Road in Borovo Naselje were killed, and the crimes have not yet been prosecuted. According to the information from the media, around sixty Croatian soldiers and wounded were killed in Trpinja. The bodies of the victims have not been found until today. For the crimes committed in Sotin (where 65 persons were killed) the County SAO from Vukovar issued an indictment against 15 persons. The existing indictment is imprecise, and not all the killed victims were listed. The crimes in Lovas and Tovarnik have also been poorly investigated, which is also shown in the procedures before the County Court of Vukovar. More than 70 persons were killed in Lovas on the day when the village fell, 10th Oct 1991. On 18th Oct 1991 the remaining Lovas inhabitants were forced to step into a mine field, where many were killed or wounded. Women were raped. The Vukovar County Attorney's Office started a trial against 18 persons for the crime of genocide and war crime. The War Crimes Prosecutor's Office of the Republic of Serbia issued an indictment against 14 persons. In 2012 the War Crimes Council in Belgrade rendered a non-final guilty verdict. In January 2014 The Appellate Court in Belgrade reversed the sentence and sent it nack for retrial. After that, we are posing a question: is there justice for victims?

Prosecution of crimes committed during and immediately after the Military - Police Operation *Storm*

Marko Sjekavica, Civic Committee for Human Rights

Without questioning the legitimacy of the Military Police Operation *Storm*, the purpose of this text is to show that the crimes committed by Croatian part against the local Serbian population during and immediately after the operation were systematically covered up and suppressed in collective memory, with propaganda usage from the highest levels of power. The operation that lasted from 4th to 7th Aug 1995 and by which Croatia freed almost 20% of its territory, meant the end of Croatian Serbs parastate, Serbian Krajina, whose regime was based on numerous crimes against Croatian civilians and the policy of ethnic cleansing and elimination of Croatian identity. This was confirmed by the ICTY judgments in trials against RSK political and military leadership, as well as with the judgments of Croatian courts against members of Serbian paramilitary and paramilitia. Although the NGO's goal was to achieve justice and remedy for victims by advocating for equal trials and punishment, in public there was a tendency to create an impression that insisting on prosecuting war crimes committed by one's own side is a shameful and treacherous act. The readiness to face crimes and errors of one's own people was proclaimed treason, while silence and deceit was considered patriotism. However, the numbers speak for themselves. According to the comparison of the population censuses in 1991 and 2001, the percentage of Serbian population fell from 12,16% before the war to 4,54% after the war. Certain number of people left voluntarily, but in this difference between numbers there are hidden unprosecuted war crimes until today. Some were committed by killing civilian population, but most of them with their expulsion, mostly during and after the MPO *Storm*. Croatian Helsinki Committee (CHC) registered 677 civilian victims and around 20.000 destroyed buildings. Unlike the CHC registry, Croatian State Attorney's Office

seeks information on 214 killed persons, out of whom 167 victims of war crimes and 47 victims of murder. In the database of SAO there is a total of 27 war crimes (167) victims registered during and after the operation *Storm*. The perpetrators of 23 crimes (152 victims) are completely unknown. So far only 4 criminal procedures against 11 persons have been conducted before Croatian courts for the crimes committed during and after the Storm. According to the data obtained from SAO, for the crimes committed during and after the Storm more than 3700 persons were prosecuted before Croatian courts, and a little less than 2400 were convicted. These are mostly the crimes of plunder and arson. 14 persons were convicted for murder and 11 persons for the crimes of rape and other crimes against sexual freedom and moral. Nineteen years after the war crimes were committed during and after the MPO Storm only one perpetrator of war crimes was convicted. Therefore we must ask how much effort has Croatia invested and how much sensibility the Croatian society has so that our judiciary can prosecute the criminal part of our own past. The victims deserve piety and justice, and it is not possible without unbiased and efficient judicial procedures, where the guilt of the criminals will be determined. At the same time, the main condition for the construction of a post-conflict society, based on the respect for human rights, is prosecuting crimes committed in the conflict. All the rest is only feeding animosities and an uncertain postponement for the *dies certus an, incertus quando* of the new conflicts.

Support system for victims and witnesses in war crimes trials

Miren Špek,Center for peace, non- violence and human rights, Osijek

The crimes on the territory of the former Yugoslavia at the beginning of the 1990s made many of their citizens victims or witnesses of the most horrific crimes committed by gross violations of international humanitarian and war law. These were often vulnerable groups such as children, women and elderly persons. Many witnesses and victims who witnessed at the ICTY helped the international community know the truth on the horrible crimes committed in the Former Yugoslavia. The support to the *specific* groups in the society was already developed in a great number of countries by organizing assistance for victims, but the support for victims and witnesses before the ICTY required a new, clearer and more orderly approach because for the first time it was offered to the direct victims and witnesses of war conflicts. Since its establishment the ICTY took special care of the victims and witnesses who were supposed to testify before the tribunal. A special *Victims and Witnesses Unit* was formed to take care of the victims and the witnesses. The victim protection measures used by the ICTY were crucial for the quality of the witnesses' testimony. One of the most important measures are: taking the witness' name and/or identifying information off the Tribunal's public record, modifying the image of the witness' face and/or voice in televised proceedings, assigning the witness a pseudonym, allowing the witness to testify in closed session, allowing the witness to testify remotely via video. Since the beginning of its work until December 2013 the V*ictims and Witnesses Unit* offered support for around 4500 witnesses/victims. The experience of the support at the ICTY certainly influenced the creation and development of the support system in the Republic of Croatia. At the beginning of 2006 at the Vukovar and Sisak County Courts two pilot projects started, with the aim to give support for the witnesses and victims in war crimes trials. The support carriers were NGO volunteers. By the end of that year, the support to

witnesses/victims was available only at the Vukovar County Court, thanks largely to the personal commitment of the Court President, but also to the members of the Association of Volunteers for the Support for Victims and Witnesses. In 2007 UNDP in cooperation with the Ministry of Justice of the Republic of Croatia and Association of Volunteers for the Support for Victims and Witnesses from Vukovar started a project of "Assistance to the development of the system of support to witnesses and victims of crimes in the Republic of Croatia". The project was based on the achievements of the already established initiatives of the Association of the Vukovar County Court. Within that project until 2011 the Departments for support to witnesses and victims were established before the County Courts in Vukovar, Osijek, Sisak, Zagreb, Rijeka, Zadar and Split. This was also contributed by positive steps and changes in legal regulations that enabled a more efficient and improved support offer.

Prosecution of crimes of destruction of cultural property and historical monuments

Marko Sjekavica, Civic Committee for Human Rights

To destroy the heritage means to try to modify, falsify, cripple, remove and kill the identity of a social group that it belongs to. The identities and the heritage through which the identities are represented become especially endangered in revolutions, wars, social turmoil and other changes of power balance. In the aggression against the Republic of Croatia, whose goal was to create territories that the Great Serbian thought considered as part of „Serbian lands", the tactics consisted of ethnic cleansing of non-Serbian population from the territory, but also the cleansing of all the traces of Croatian identity from that space. The War Damages Registry registered the destruction of 66 museum buildings of a total of 204 museums, galleries and museum collections in the Republic of Croatia. The damages were registered on 45 museums and collections, in a way that 6551 museum artifacts were stolen, 1430 were destroyed, and 728 were damaged. The war damage was registered on 2271 protected cultural monuments. These data indicate that the purpose of this war was not only to destroy the physical integrity of the people who were supposed to be removed from certain territory, but their cultural traces were also supposed to be destroyed and erased. The heritage was not suffering as collateral victim of fights, but it was systematically destroyed as a target. Parallel to the aggression on Croatia and the destruction of Croatian heritage, there was also a systematic destruction of the Serbian minority heritage in Croatia. Facing this fact has not yet found a place or memory in the memorials, artistic or public space and discourse. Many material and non material carriers of Serbian identity on Croatian territory were destroyed. One of the examples of such irrational destruction of everything that was Serbian was the Museum of Nikola Tesla in Smiljan. The institutionalized destruction of Cyrillic and Serbian books, mining and burning Serbian Orthodox churches, monasteries and other monuments of presence and role of the Serbian people in the life of Croatia was not a rare phenomenon, and only recently we have heard words of condemnation by Croatian political authorities. The international community was not too efficient at the times when the monuments on the UNESCO World Heritage List were being destroyed: Dubrovnik Old Town, Diokletian's Palace in Split, Plitvice Lakes or St. Jacob's Cathedral in Šibenik, which was later included in the list. The reaction came in *post festum*, with a significant financial and expert help in

renovating damaged and destroyed heritage, as well as the ICTY justice that sanctioned the heritage destruction as gross violations of the Geneva Conventions and breaking the rules and customs of war. For the attack on the Historical Town of Dubrovnik on 6th December 1991 the Tribunal convicted the commanders of YPA General Pavle Strugar and Admiral Miodrag Jokić. The destruction of the Mostar Old Bridge and numerous mosques on the territories of Bosnia and Herzegovina were also part of the incriminations in The Hague's case of „Herceg-Bosna".

Analysis of the statutory and judicial policy of punishing war crimes perpetrators

Marko Sjekavica, CCHR
Jelena Đokić Jović, Documenta
Maja Kovačević Bošković, CCHR

The purpose of criminal sanctions consists of the special and the general prevention and the punishment of the perpetrator of a criminal act by the society. In contemporary legal orders of western type the balance has moved towards the preventive element of criminal sanctions. In determining punishment, one of the important circumstances that the court has to take into account is the degree of social danger of certain prohibited behavior. In the cases of war crimes, the degree of social danger is unquestionably big and expressed. When a court applies the institution of mitigating punishment as an exceptional authority, that is, gives a sentence below the lower limit prescribed for a certain criminal act, on the basis of discretionary evaluations that especially mitigating circumstances were given, it is its duty to especially state the motives for such circumstances. In practice it is often not the case or the motivation is included with few or model phrases in the explanation of the judgment.

When it comes to command responsibility it is often an example of a crime of inaction or omission by the defendant. The Laws from 1997, which were amended with the command responsibility in 2004 and 2013 exclude the possibility of reducing punishment in cases of command responsibility. The commander who failed to prevent their inferiors from illegal behavior will be punished the same way as the perpetrator himself. The Criminal Code of the Republic of Croatia for three types of war crimes (against civilian population- Art. 120., against the wounded and sick - art. 121. And against prisoners of war - Art. 122.) defines the sentence of imprisonment from 5 to 15 years or 20 years imprisonment. The new Criminal Code, entered into force on 1st January 2013, regulated the war crime as a unique criminal act with its basic and milder form. The most important factor in the process of determining the punishment before the ICTY is the gravity of the act. It is evaluated in the context of the nature of crime, volume and manner how the crime was committed and the form and degree of criminal responsibility. We decided to compare the verdicts rendered by the ICTY and Croatian domestic courts because of the position of the ICTY that there is no difference in gravity between the same type of crime against humanity and war crime. Voluntary surrender, guilty plea, significant cooperation of the defendant with the prosecutor, the age of the defendant, remorse and empathy, temporary insanity, saving lives or mitigating victim's suffering, good character and lack of criminal record are mitigating circumstances that the ICTY takes into account when reducing prison sentence. The most significant aggravating circumstance is the abuse of position of the superior. Young age, vulnerability of the victim, bigger number of victims, committing of crimes in

a longer period of time, sadism, perversion, verbal abuse before committing criminal act, discriminatory attitude, depriving assistance to people in need, continuing suffering of the survivors because of the trauma, also reflect on the length of the prison sentence. If we compare the ICTY and domestic courts case law we get to the conclusions that the ICTY gives higher prison sentences than domestic courts. On the one hand it is because the Tribunal mostly prosecuted the highest ranked military and political officials of the former Yugoslav countries and the domestic courts generally tried lower ranked persons. Also, according to its statute the ICTY has the possibility of giving life imprisonment sentence, as it was the case in some cases of genocide. In spite of that we can conclude that domestic courts are less harsh towards war crimes perpetrators, especially when they belong to the domestic side of the conflict or in the cases of command responsibility principle.

General Amnesty Act

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For a while there was an opinion that with the General Amnesty Act the Serbian criminals were amnestied. The political leadership and judicial bodies have not informed the public in an honest and thorough way on the character and the reach of the application of the General Amnesty Act. The case law, notably in the 1990s registered cases of wrong application of the Act on gross criminal acts, at the time qualified as murders. These abuses of amnesties for political purposes, where individuals from various judicial institutions participated, were aiming at protecting war crimes perpetrators of one's own ethnicity. Since 1992 in the Republic of Croatia several laws were adopted that intervened into the criminal law system. First it was the Act on Amnesty from Criminal Prosecution and Proceedings in Respect of Criminal Offences Committed during the Armed Conflicts and the War against the Republic of Croatia of 25 September 1992 (GO 58/92). This act amnestied the perpetrators of criminal acts in armed conflicts or related to it committed from 17th Aug 1990 until the date of the entry in force of the Act. The Act did not apply to the criminal acts that were pending prosecution according to the international law. The Act was amended on 31st May 1995 (NN 39/95), and extended its validity period until 10th May 1995. Afterwords a territorially limited Amnesty Act for perpetrators of criminal acts from the temporarily occupied parts of the territory of the Vukovar-Srijem and Osijek-Baranja Counties was adopted on 17th May 1996, and then a General Amnesty Act on 20th September 1996 that abolished the former two laws and that is still in force. The General Amnesty Act had the wide specter of application because it refers to the abolishment and to the full amnesty to the perpetrators of criminal acts committed in the aggression, armed rebellion or armed conflicts in the Republic of Croatia from 17th August 1990 until 23rd August 1996. Although these acts have undoubtedly contributed to the establishment of peace and reducing the tensions, their main drawbacks were imprecision, general vagueness and unpreparedness of judicial bodies that applied them. The first Amnesty Act with a general definition of criminal acts for which the law is applied already shifted the competence to the judicial power to apply the institution of amnesty. In the course of the war crimes monitoring in the Republic of Croatia we have noticed an additional

problem in practice. Namely, the amnesty from criminal prosecution does not mean that the perpetrator is not guilty, but that he will not be criminally prosecuted. In judicial practice, after a prequalification of the incrimination into armed rebellion, the courts automatically grant amnesty for criminal prosecution and do not decide whether the perpetrator committed the crime or not. Apart from leaving a certain social stigma over the perpetrator, a problem can arise related to the damage compensation for the time spent in detention. In cases where amnesty laws were wrongfully applied to the events that resulted in deaths, it is necessary to find a solution so that these persons can be prosecuted again. According to the new Criminal Procedure Act of 1st September 2011, „No one shall be tried again for an offence for which he has already been convicted by a final Court's decision“. That means that a retrial is possible if a previous procedure has terminated with a resolution, but not with a court decision. The application of the amnesty to the wide specter of criminal acts after 1992 and 1993 was limited to criminal acts against the Republic of Croatia and against the armed forces of the Republic of Croatia. Out of a total of 621 cases where the amnesty was applied for the crimes against the Republic of Croatia, it was mostly the crime of armed rebellion. Out of a total of 282 cases where amnesty was applied to the perpetrators of crimes against the Armed Forces of the Republic of Croatia it was mostly the criminal act of avoiding military service or deserting armed forces. We can conclude that the amnesty was applied uncritically, sometimes with unimaginable consequences.

Pending issue of reparations to the civilian victims of war and analysis results
Emina Bužinkić, Documenta

The Republic of Croatia has not established a comprehensive national program of compensations and reparations for the civilian victims and the war affected community. Adequate solutions for the creation of an integrated approach in facing violent past can be found in the establishment of a structured reparations program. Neither the Republic of Croatia, nor other former Yugoslav countries have fulfilled the task of establishing a reparation program by providing compensations and other rights for the victims. The filling of this “gap” was left to the CSO's through programs of humanitarian aid, orthopedic devices donation etc. Furthermore, the current laws that comprise certain provisions regarding civilian war victims exclude those who were affected by forced requisition of workers, parents of wounded and killed children, victims of sexual violence and other forms of torture and other categories of victims. The issue of the lack of justice for civilian war victims in Croatia is surely one of the most serious injustices of Croatian societies that are becoming a motive of growing frustrations and social divisions. There are several forms of sufferings that were often multiple for several victims or groups of victims. We are talking about the following groups of victims: civilian war invalids, family members of killed or disappeared (including parents of killed children, or children of killed parents and family members of killed during forced requisition of workers), mines and other explosive devices victims, victims of sexual violence and other forms of torture during deprivation of freedom, victims of terrorist attacks mostly in the areas not affected by war and victims during forced requisition of workers. Apart from physical sufferings, we should also stress that many victims suffered deep psychological traumas. We should also add the fact that the sufferings in war greatly influenced the economic situation of the affected because

many of them lost their work capacity and the capacity to gain salary and therefore encountered difficulties created by growing obstacles for a social integration.
The right to protection for civilian war victims was defined by three basic laws: Act on Protection of Military and Civil Disabled Victims of War that enables exercising certain social rights for the civilian war invalids and close relatives of killed or disappeared civilians, Act on the Liability for Damage Incurred as a Consequence of Terrorist Acts and Public Demonstrations, that enables damage compensation to the affected and the Act on the Liability of the Republic of Croatia for Damage Caused by Members of Croatia Armed and Police Forced during the Homeland War. The legal framework has been recently complemented with the application of the Act on the Financial Compensation to the Victims of Criminal Acts. Only one part of the affected have the status of civilian war victims because many have not been informed on the possibility of gaining such status. The right to a family retirement allowance is exercised only by some of the family members of killed civilians during forced requisition of workers, as well as some parents of killed children and children of killed parents. These groups of victims are not defined by any legal provision and therefore they cannot exercise any foreseen social rights. The rights from this domain are also difficult to be accessed by victims of sexual violence, that is, rape, considering the difficulty of proving suffering and a general inaccessibility to information and institutions.

Regional cooperation in war crimes trials: a transitional justice legacy in the Western Balkans *Bruno Vekarić,* deputy war crimes prosecutor of the Republic of Serbia

The establishment of regional cooperation is an important factor in overcoming and clarifying issues that represent a consequence of the war events in the 1990s. Regional justice is one of the most efficient roads towards reconciliation. On 16th December 2013 a trilateral meeting of Chief Prosecutors of Serbia, Bosnia-Herzegovina and Croatia was held. The Chief Prosecutors stressed the importance of continuing with cooperation in order to make impossible any hiding of suspects or indicted persons who avoid prosecution because they have other countries' citizenship and that the cooperation will be intensified. The Agreement on Cooperation in Prosecuting Perpetrators of War Crimes, Crimes Against Humanity and Genocide - Exchange of Evidence, Documents and Information signed with the State Attorney's Office of the Republic of Croatia contributed to the improvement of cooperation, which eventually brought to the discovery of a mass grave in Sotin near Vukovar in 2013. A concrete cooperation between the Office of the War Crimes Prosecutor of the Republic of Serbia and the State Attorney's Office of the Republic of Croatia began with the hearing of witnesses from Croatia. It was first done in the case of Ovčara, when witnesses, Croatian citizens, gave their deposition before the Zagreb County Court, which resulted in prosecuting war crimes perpetrators that have so far escaped justice in both countries. In a total of 11 cases in cooperation with the State Attorney's Office of the Republic of Croatia, one person has been sentenced to 20 years imprisonment at the first degree court, and in 10 cases final verdicts were rendered against 17 persons who were sentenced to a total of 144,6 years of imprisonment. When the Serbian Office of the War Crimes Prosecutor and Croatian State Attorney's Office signed the Memorandum on Realization and Enhancement of Co-operation in Fighting

All Forms of Grave Crimes in 2005, this marked a practical implementation of regional cooperation in war crimes cases. A framework of regional cooperation was established by the Serbian Office of the War Crimes Prosecutor that offered a solution model fort the problem of efficient war crimes trials because the victims, witnesses, perpetrators, and crime scenes were located at the territories of various countries of the Former Yugoslavia, in this case Serbia and Croatia. Regional cooperation was also established as a significant precondition of case referral from the ICTY to the domestic courts. The Agreement on cooperation in prosecuting perpetrators of war crimes, crimes against humanity and genocide was signed in Zagreb in 2006. It referred to the already prosecuted cases where criminal procedure was already initiated, but the defendants were unavailable to the judicial authorities of the state that initiated a procedure against them due to constitutional limitations regarding the extradition. The cooperation between the states in legal assistance in criminal matters represents a necessity and an obligation.

The work of the State Attorney's Office of the Republic of Croatia from 2000 until today *Milena Čalić Jelić, Documenta*

International and national organizations that monitored war crimes trials evaluated that the State Attorney's Office of the Republic of Croatia made a positive change in its attitude towards the unfounded indictments for war crimes and cases where amnesty could be applied. However, it was also established that it was necessary to review a certain number of closed cases of convicted ethnic Serbs whose charges of "armed rebellion" were later qualified as war crimes or ordinary crimes. Furthermore the persons who were previously convicted for "armed rebellion", and were later subject to amnesty still have a criminal file. The NGOs concluded that such situation is contrary to the meaning of the amnesty and that it has a negative effect on the full realization of their rights as Croatian citizens. In 2004 a review of investigations was carried out and procedures against 485 persons were abolished. Until 2009 the State Attorney's Office of the Republic of Croatia withdrew from accusation or a criminal act was prequalified in armed rebellion for another 260 persons. In the period 2004- 2008 the State Attorney's Office of the Republic of Croatia issued indictments against 426 suspects where in 10 cases 41 members of Croatian troops were indicted, out of whom 17 were finally convicted and four were acquitted. There were 5 new procedures in 2008 and 2009, and in 84% of the cases the final judgments were guilty verdicts. Until June 2006 Croatia was looking for around 1100 suspects of war crimes and another 400 were looked for on the bases of guilty verdicts rendered *in absentia*. Also the awareness raised on the need of cooperation among the former Yugoslav states regarding the guilty verdicts *in absentia*. By accepting the fact that a large number of war crimes investigations was initiated without sufficient evidence, the State Attorney's office undertook corrective activities in order to reduce the number of persons under APB.

State Attorney's Office in the 21st century.

The accession negotiations of Croatia with the EU contributed to an increased quality of work of the SAO. However this body still has great tasks ahead towards ensuring the Rule of Law in Croatian society. The issue of not sufficiently convincing evidence, questionable indictments, the review of the work in the 1990's, strengthening the regional cooperation in joint investigations, modernization and harmonization of

Croatian judicial system with the EU standards put important tasks before the SAO. Therefore every further step toward additional education and specialization of state attorneys is indispensable.

Crimes without judicial epilogue: missed opportunities for recognizing suffering and trust building

Vesna Teršelič, Documenta

While in the 1990s almost only the crimes committed by Serbian troops were investigated, after 2000 started the investigations of crimes committed by Croatian troops. However, even today only exceptionally the crimes that did not have death consequences are investigated. The prosecution of war rapes is intensified with delay, and systematic evictions, house mining or deportations are for the time not qualified as war crimes. Although the OHRs consider that the list of crimes without statute of limitations should be expanded, we cannot know how many acts for the time described as human rights violations will in the future be qualified as war crimes. If the victims suffered precisely because they did (not) belong to certain ethnicity, the effect of the damage affects the survivors even decades after the armed conflicts stop. The consequences of the two waves of ethnic cleansing are especially fatal: in 1991 mostly Croats were killed or had to abandon their homes, and in 1995 it was mostly Serbs. In the crimes committed by the members of YPA and Serbian troops in the aggression on Vukovar and surrounding villages (Berak, Bogdanovci, Bokšić, Čakovci, Mikluševci, Petrovci, Sotin, Svinjarevci, Tompojevci) mostly Croats were killed, but also ethnic Albanians, Rusyns and Serbs and members of other ethnic minorities. These crimes were only partially prosecuted. While after the military-police operations in 1995 and the peaceful reintegration in 1998 at least a part of Croats who fled in 1991 returned to their homes, the return of the Serbs who fled from the beginning of the war, and massively after the MPO's *Flash* and *Storm* in the 1990's, is discouraged. In spite of a more favorable political atmosphere after 2000, not even today all the persons interested in return have got a required support. The inefficiency of war crimes prosecuting and gross violations of human rights also contributed to the taking the decision whether to return or not. Due to failures in investigation some crimes will remain without judicial epilogue. Such is the case of the murder of Mihajlo Zec, his wife Marija and his twelve-year old daughter Aleksandra committed in the night between 7th and 8th December 1991. Many family members of war crimes victims who sued the Republic of Croatia have not got any moral or material satisfaction until today. Their suffering is not acknowledged, the perpetrators have not been criminally prosecuted, and most of them lost suits for damage compensation against the Republic of Croatia. OHR's have for years been asking the Croatian Government to adopt a resolution to write-off the costs of lost suits to all the plaintiffs, who have not achieved to exercise the right to non material compensation for the death of a family member and to give back the money to those who have already paid the costs of the procedure or whose property has been confiscated. Unfortunately, there is still no political will to adopt a National Program or a Law on Fund for Reparations of all the War Victims. Also the competent authorities, that have not even published the names of all the children killed in war until today, show that they are still not ready to publish the data on all the victims. A significant challenge that remains is public speaking on the destiny of all

those who do not fit into the simplified image of the war enshrined in the Declaration on the Homeland War adopted by the House of Representatives of the Croatian Parliament in 2000.

Rape and sexual violence as war crimes acts

Veselinka Kastratović, Center for peace, non- violence and human rights

Sexual violence involves rape, sexual abuse, genital mutilation, sexual slavery, forced pregnancy forced prostitution, sterilization. The victims of rape or other forms of sexual abuse are mostly women. Also we must have in mind that there is more silence around sexual violence against men than it is the case with sexual violence against women. During the war the men who were in prison camps were often victims of brutal sexual abuse. The war of the 1990s on the territory of the Former Yugoslavia, apart from enormous human and materiel losses, was marked by numerous war crimes against civilians sick and prisoners of war. With the establishment of the ICTY in 1993 a path has been open for prosecuting and punishing the gross crimes committed in the territory of the former Yugoslavia, including the crimes of rape. The ICTY was the first international criminal tribunal that rendered guilty verdicts for rape as a form of torture and sexual slavery as a crime against humanity. That way the jurisprudence sent a message. One of these messages is that an efficient criminal prosecution of sexual violence perpetrators in war conflicts is possible. A message of support and understanding of suffering of the victims and creating a safe space where they can speak out of what they experienced. Although the victims cannot participate as plaintiffs, but as witnesses, a safe space was created where their voice was heard, where they could talk about their sufferings, where they could get a moral satisfaction and know that the perpetrators will be convicted. At the same time a message to the perpetrators is also sent: the crime of rape and sexual violence cannot stay unpunished, the perpetrator will bear the consequences for the committed crime. The Basic Criminal Code of the Republic of Croatia of 1993 recognizes rape and coercing a person into prostitution as war crimes. County SAO's issued indictments for the war crimes against civilian population by rape, on the bases of the Article 120, item 1 of the Criminal Code. The foreseen prison sentence for this crime was between 5 and 20 years of prison. With the change of the Criminal Code in 2011, the war crime is broadened, especially regarding rape and sexual violence as war crimes. However, in spite of that, rape and sexual violence are treated as minor criminal acts. The minimum prison sentence is 3 years. Rape and sexual violence are not considered torture. The change of the Criminal Code of the Republic of Croatia is significantly discrepant regarding the jurisprudence of the ICTY regarding sexual violence prosecution. The ICTY's verdicts clearly stated that rape is considered crime against humanity, torture and gross violation of the Geneva Conventions. Sentences of over 25 years of prison have been given for such crimes. The stance of the ICTY towards rape and sexual violence has been clearly stated in one of the judgments: "total disregard for the sanctity of human life and dignity".

Problem of reparations to the victims of rape and sexual violence during the war: court practice and new legal initiatives

Milena Čalić Jelić, Documenta

The lack of support by the state authorities, the absence of acknowledgment and recognition of the suffering of victims of sexual violence in the society and social stigmatization often result in the fact that the very victims deny having been sexually abused. At the moment of writing of this book the number of raped and sexually abused persons on the territory of the Republic of Croatia during the Homeland War remains unknown. There were around 20 war crimes cases where part of incriminations was related to rape and sexual abuse. According to the allegations of the State Attorney's Office, the Ministry of Interior established that there is reasonable doubt that during the homeland war against 182 victims were committed war crimes of rape or other forms of sexual violence. Additional investigations established that in the meantime some of the potential victims died, some declared that they were not victims of rape or other form of sexual abuse that could be categorized as inhuman treatment, and some of the potential victims removed every possibility of giving a deposition. According to the registry of competent state attorney's offices, war crimes of rape have been committed against only 57 victims, mostly women, out of whom, there are criminal procedures initiated for 36 victims in different stages. There are 15 perpetrators convicted for the war crime of rape. According to the data of the Directorate General for Prisoners and Disappeared of the Ministry of War Veterans, during the war 7666 persons were exchanged, out of whom 932 were women (the number of detained persons is bigger than the number of exchanged persons), which does not suppose that all the detained persons suffered some form of sexual violence, but according to the testimonies of the survivors, rape and other forms of sexual violence were frequent forms of physical and psychical abuse and moral destruction of the detained in illegal detention centers, without any control over the treatment of the detainees. According to a review of the White Book of the Government of the Republic of Croatia there were 16 perpetrators for rape and 2 more charges for other criminal acts against sexual freedom brought for the crimes committed during and immediately after the MPO *Storm*. At an international level there is a growing awareness on the extent of sexual crimes committed in war, the gravity of their consequences and the necessity of their prosecution. By the end of June 2013 the UNSC adopted the Resolution 2016 that stresses the need for implementing consistent and rigorous investigation and criminal prosecution of sexual violence perpetrators in wars. In the earlier Resolutions, 1820 (in 2008), 1888 (in 2009) and 1960 (in 2010) the Council established that sexual violence, committed in a systematical way and as war weapon is an essential threat to the international peace and security that requires an adequate response. The disempowerment of rape and sexual violence victims during the war has also got a bigger media attention in the Republic of Croatia in the last two years through the work of CSO's and victims testimonies. This resulted in the first intents of solving their status and the right by the competent authorities. There are several important elements of sexual abuse as war crimes prosecution where improvement in judicial practice is necessary: qualification of war crime committed by rape, sensitive trials as a motivation for free testimonies, psychical and physical consequences in victims of sexual violence- the need for psychological support, the difficulties of an efficient prosecution, the punishment. Reparations to the civilian war victims do not only imply the distribution of money,

resources and services to their family members, but they should be a message of the whole society and the authorities that represent a continuity of the state in acknowledging and showing solidarity with their sufferings and losses. In accordance with the UN General Assembly Resolution 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, all the victims have the right to a remedy for suffered damage. According to the Resolution the states should endeavor to establish national programs for reparation and other assistance to victims.

Legal base for sanctioning hate speech - in the nineties and today

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In the last twenty years “hate speech” has been omnipresent in Croatian society. The narrative of discrimination, intolerance and violence as a rule escalates during war and in transition to democracy; therefore it is no wonder that such was the case in Croatia too. However, unfortunately even today similar statements are received without an adequate social reaction, and sometimes even with a certain dose of understanding and sympathizing. Not only Serb ethnic minority in Croatia or ethnic Serbs in general have been the object of discriminatory statements and hate speech in the last twenty years, but also other social groups, as a rule minorities, those who are different, weaker and endangered. We can easily recall verbal attacks on the basis of sexual orientation, ethnicity, race… One of the important initiatives in raising awareness and educating public in preventing hate speech, especially on the Internet is a recently initiated national campaign „Say no to hate speech on the Internet“. What makes the sanctioning of hate speech extremely demanding is the collision with the freedom of speech. The freedom of speech is one of the fundamental human rights for modern societies and as universal human right it is stressed in all the important international documents on human rights. Without the right to express one's own opinion there are no free individuals nor a democratic, pluralist society. However, not even modern, European states offer protection to all kinds of speech. The statements that motivate hate, racial intolerance or discriminatory treatment endanger other persons and groups of people by calling upon violence are not and should not be protected because they are against the rights and the freedoms of others. Even the Croatian Constitution does not consider hate speech a protected freedom of speech, which is the right to the freedom of thought and expression guaranteed by the Article 38 of the Constitution. Namely, according to the Article 39 of the Constitution any call for or incitement to war or use of violence, to national, racial or religious hatred, or any form of intolerance shall be prohibited and punishable by law. However, this general prohibition has not until recently been adequately implemented in the Croatian Criminal Code. The new Criminal Code that entered into force on 1st January 2013 closely follows the approach taken by the EU in this field; yet it remains to be seen to what extent and how the relevant provisions will be applied by Croatian courts. Some first, non-final, court decisions indicate that even the best laws require awareness and education of those who apply them and that they are not a guarantee that the foreseen solutions will be implemented in practice.

Five big battles of the ICTY

Mirko Klarin, Sense Tribunal Agency

In the past two decades of its existence and activity, the ICTY has exceeded all the expectations of its creators. This was not especially difficult since the creators did not expect much from the Tribunal they established. The establishment of the ICTY was supposed to cover the shame of inaction, ease the pressure of the international public opinion for military engagement in war on the territory of the former Yugoslavia and serve as a threat to the Balkans warlords. The threat that the international community will punish those who ordered and committed war crimes. However, since the very creators of the Tribunal did not believe the credibility of their own threats, it had no effect, which is confirmed by the fact that some of the heaviest crimes were committed after the establishment of the Tribunal. The past two decades of the existence of the ICTY could be resumed in its five „big battles"- for survival, for respect, for basis, for time and for heritage. Since, as Madelaine Albright recognized, „nobody really believed that it would work", its founders have not provided for the basic material, financial, human resources, logistic and other precondition for the tribunal's work. If there is one factor that made the ICTY survive the initial phase of neglecting and lack of care, it is the fact that the judges, prosecutors, investigators and others, took their work seriously and tried to do the best they could.

The second big battle of the ICTY, for respect (1996 - 1997), was not held only on the territory of the former Yugoslavia, whose regimes were more or less openly ignoring the orders from The Hague. It was equally important to fight for respect from the international factors- leading Western governments and alliances such as NATO and the EU, that treated ICTY as a marginal actor in political and military processes on the Balkans, almost as one of many NGOs working in that territory. The idea that without justice real and durable peace cannot be established has become less abstract with time. After the arrest of some of the war criminals from the Prijedor area, when NATO and other Western countries realized that the arrest of the persons indicted by the Tribunal will not cause World War Three, new operations followed, and in 1998 the UN General Assembly approved a record budget. Five years after its establishment the ICTY and its creators finally entered a period of stable and mature relations. Concentrated on gaining those whose survival it depended on, in the first few years the ICTY almost entirely neglected its „base", the public opinion in the countries of the former Yugoslavia. Since the very beginning the ICTY had big problems in relations with its „base" and did not achieve to convince the public of the former Yugoslavia that it is just and that is serves common interests. The general belief in the „base" from the beginning was that the Tribunal was biased, hostile towards „their" ethnic community and that it is subject to the external powers control. The most common explication or justification for such perception of the tribunal in the former Yugoslav countries gets down to pointing out that the *Outreach Program* was established late, not until the end of 1999. Only then did the activities begin to explain what the Tribunal is and what it serves for, and the Tribunal started to translate public statements, indictments and other documents into local languages. It should be taken into account that in the first seven years of the Tribunal's work, until 2000, in all the countries of the former Yugoslavia political elites in power and military leadership were suspects of war crimes against whom the Prosecutor's Office of the ICTY lead investigations. It is clear that it was not in the interest of the political and the intellectual elites of these countries that

their public opinion gets a positive image on the mission and the activities of the ICTY. However, the change of political elites in 2000 did not mark the breakup with the past nor it improved the perception of the ICTY in the eyes of the public of the former Yugoslavia. After the 11th September 2011 there was a change of priorities for the international community. In August 2003 the UNSC Resolution 1503 fixed deadlines for each of the phases of the Completion Strategy of the ICTY (and ICTR): complete investigations by the end of 2004, to complete all trial activities at first instance by the end of 2008, and to complete all work in 2010. Of all the deadlines established, only one was respected: all the investigations of the ICTY were completed and the new indictments were signed until 31st December 2004.

ICTY: basic characteristics and practice in the relevant cases for the Republic of Croatia

Jelena Đokić Jović , Documenta

The role of the ICTY is undisputable, especially in the development of the international humanitarian law, but also in establishing and interpreting the norms of the international common law. To establish criminal responsibility of individuals for gross violations of international humanitarian law on the territory of the former Yugoslavia since 1991, and therefore to contribute to the reestablishment and maintenance of peace in the region is the basic task of the Tribunal.

The Hague Tribunal was supposed to contribute first to end the hostilities and then to the processes of facing with the past in the post- Yugoslav states. In spite of that, the Tribunal is constantly rebuked for being biased and prone to certain ethnic group. The judgments are selectively perceived: they are approved when the convicted is member of other ethnicity, and denied if s/he is one's own national. The information campaign on the extension of crimes and the campaign of developing collective empathy towards all the victims were left out. Furthermore, on several occasions the Tribunal has undertaken the assessment of armed conflict, since it did not treat crimes committed in an entirely clear international context. I am stressing this because the rules are harsher when it comes to crimes committed in an international armed conflict than in an internal one („non-international conflicts“).

The practice of the Tribunal in relevant cases for the Republic of Croatia can be illustrated through several forms.

Establishing the facts (i.e. regarding bombing of Dubrovnik Old Town, artillery attack on Zagreb in May 1995 and the crimes committed during and immediately after the Military- Police Operation Storm)

Legal character of wars in Croatia and Bosnia and Herzegovina- total control of Croatia over the troops of Croatian Army Council.

Judgments based on the concept of joint criminal Enterprise

Hate crime as crime against humanity- incitation to commit crime as „verbal crime“.

Legal qualification of a concrete liability for the act of aiding

Status and rights of the indicted persons before the ICTY
Vesna Alaburić

After the World War Two the international community adopted a series of documents that established the core body of fundamental human rights that all the legal systems must strictly respect. Among these, the rights to the defendants in criminal procedures have a significant place: the right to freedom, the right to the presumption of innocence, the right to fair trial and a public hearing within a reasonable time by an unbiased and law- based court, to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him, to have adequate time and the facilities for the preparation of his defense to defend himself in person or through legal assistance of his own choosing. These and other rights guaranteed not only by different international documents on human rights but also constitutions of all the democratic countries are considered the fundamental elements of the right to a fair trial. It was understandable that the ICTY has the obligation to respect and ensure these internationally recognized rights to all the defendants in the procedures carried out before the court. Also, the same is prescribed in the Tribunal's Statute and Rules of Procedure and Evidence. The right to freedom is considered one of the most valuable human rights. Every person has the right to a trial in a reasonable period of time or to be released while waiting for the judgment. The detention before judgment represents a serious divergence from the principle of freedom and the presumption of innocence. Deprivation of freedom (i.e. prolongation of detention) before the judgment can only be an exceptional measure and it cannot be applied arbitrarily. The right of the defendant to the presumption of innocence, guaranteed by the ICTY Statute has to be strictly respected in all the phases of the procedure before the ICTY. If the Tribunal establishes that the defendant has committed the crime that he is charged for, the judicial council will sentence him to prison, which can be also a lifetime prison. The length of the prison sentence depends on the gravity of the committed crime, and the Tribunal takes into account the personal circumstances of the defendant, mitigating and aggravating circumstances and general practice of sentences before courts of the former Yugoslavia. The Appeals Chamber usually gave more favorable sentences to the defendants, by reducing prison sentences or acquitting the accused.

Comparative study of legal concepts applied in war crimes trials before international tribunals and Croatian domestic courts
Jelena Đokić Jović, Documenta
Marko Sjekavica, CCHR

Joint Criminal Enterprise (JCE)
JCE considers each member of an organized group individually responsible for crimes committed by group within the common plan or purpose. The responsibility of the participants in JCE is the most similar to the responsibility of co-perpetrator when a criminal act was committed by co-perpetration. The Case Law of ICTY did profile JCE as a special form of responsibility different from co-perpetration, where, unlike co-perpetration, it requires a lesser degree of probability of the commitment of a criminal behavior and a lesser degree of contribution to the commitment of the crime.
The concept of JCE has not been established in Croatian legislation. The provisions of

the Criminal Code in force at the time of the commitment of mass crimes on the territory of the Republic of Croatia do not contain the concept of responsibility for JCE, but are limited to the criminal responsibility for organizers of criminal associations close to the concept of JCE. The Article 24 of the Basic Criminal Code of the Republic of Croatia stipulates criminal responsibility and culpability of organizers of criminal associations, who are criminally responsible as direct perpetrators, regardless of whether s/he directly participated in commitment of one of those acts. Unlike the JCE that understands knowledge of existence of a system of abuse, that is the existence of eventual intent for the crimes committed out of a common purpose of the so-called extended form of JCE, in Croatia the responsibility for a heavier consequence resulting from criminal act is based on negligence.

Command responsibility marks responsibility of a military or civil superior who does not undertake measures s/he is bound to take in order to prevent the commitment of war crime, crime against humanity or genocide by its inferiors, that is, s/he does not undertake measures to punish these persons after the crime was committed. It is established with the aim to strengthen and ensure the respect of international humanitarian law and it is applied to international and non- international armed conflicts. In Croatian legal system the responsibility of the superior as a general principle of criminal responsibility did not exist until the adoption of the amendments to the Criminal Code in 2004. Namely, the Basic Criminal Code of the Republic of Croatia is applied to the war crimes committed from 1991 and 1995, as a legal basis of criminal prosecution by command responsibility. Due to the constitutional prohibition of retroactivity in application of legal rules, as well as of respecting the principles of legality, it is not possible to prosecute defendants on the basis of command responsibility for the crimes committed around 10 years before the adoption of incrimination of the command responsibility. Also, when it comes to the *mentem ream* of the defendant, the dilemma arose in the case when the defendant „had every reason to know" of the crimes committed by his inferiors, which, according to the opinion of some theorists of criminal law is close to the concept of objective responsibility and as a degree of guilt of the perpetrator introduces negligence, punishable as a degree of conscience of the crime perpetrator only if it is prescribed by law, which is not the case for war crimes in Croatian criminal legislation.

The role of the media in the process of dealing with the past
Drago Hedl

In 1994 in *Feral Tribune* weekly I published a text under the title „The fields of death in the Pakrac Valley". I travelled to the Pakrac Valley and I tried to talk to the people on what happened in that little town at the end of 1991, at the times where the soldiers under the command of Tomislav Merčep operated there. Only few of them were ready to say something. The rumors on liquidations of Serb civilians and some disloyal Croats resulted to be true. Several interlocutors and witnesses confirmed that. Of course, of all them asked for anonymity, fearing for their safety and the safety of their families. In December 2010 Tomislav Merčep was arrested under suspicion of direct responsibility for war crimes against civilian population in 1991, committed by the members of the Reserve Unit of the Ministry of Interior under his command. 16 years had to pass from the time when the first texts on these crimes were published,

mentioning Merčep's name, until the state started to investigate them.
At the same time when I published the article on Pakrac Valley, I also published my first texts on war crimes committed in Osijek. They were linked to the name of Branimir Glavaš. After the article was published, Glavaš sent me a message through one Member of Parliament, "that he would turn me into dust and ashes". I published his words in order to protect myself. That same day I received a call from the then US Ambassador Peter Galbraith who immediately intervened with the President Tuđman and the Minister of Defense Šušak. Galbraith's intervention had its effect; the threats seized. Since then I published several texts on the dark side of the war in Osijek. However, the political power of Branimir Glavaš was growing. He was a Member of Croatian Parliament, Governor of the Osijek- Baranja County and one of the most influential people from the President Tuđman's circle. It was not until 2005 when the conflict arises between Glavaš and HDZ party leadership, that it was possible to initiate criminal procedure against Glavaš. Two months after he was expulsed from the party, a traffic policeman from Osijek, Krunoslav Fehir gave me an interview, which I published in Feral Tribune on 15th May 2005. A horrible truth came to the surface and a thorough investigation on war crimes in Osijek was ordered. Soon it was discovered that besides the horrible crime, informally called „Garage case", there was also „Adhesive tape case", also incriminating Glavaš, where many Serb civilians were killed. Glavaš was detained on 26th Oct 2006, his trial started in October 2007, and on 8th May 2008 Glavaš was sentenced to 10 years of imprisonment. He did not appear to hear the verdict; he fled to Bosnia and Herzegovina, being its citizen. Although fugitive from justice, the Supreme Court of the Republic of Croatia in the appeal procedure in June 2010 reduced his sentence to 8 years of imprisonment. In December 2010, on the bases of the Agreement signed between Croatia and BiH on serving sentences by persons holding dual citizenship, he ends first in the prison of Zenica, and in June 2011 he is transferred to Mostar. He is still there, and, although in another country, he is active in the political life of Croatia thanks to the party HDSSB (which he founded and is currently its Honorary President), that has 7 MP's in Croatian Parliament.

The reception of the ICTY's guilty sentences for Herceg- Bosna by Croatian media, politics and society
Boris Pavelić

"Even 20 years after the crime in Ahmići we don't know who ordered the massacre, where was the political mind of the crime and who he was!" This is the title of the text published on 13th June 2014 on Croatian web portal *dnevno.hr*. Seven days earlier, on 6th June 2014 Dario Kordić, war Vicepresident of the Bosnian and Herzegovinian HDZ party returned to Croatia. In 2004 he was sentenced by the ICTY to 25 years of prison for war crimes committed against Muslims in Central Bosnia in 1993. Among around 500 people who waited for Kordić in Zagreb Airport, there was also the Bishop of Siak Vlado Košić. Several days later, in Catholic Church in Croatia weekly *Glas Koncila,* a comment by its Editor-in- Chief Ivan Miklenić was published: "It was unbearable to listen and read these labels that do not have absolutely anything with the historical facts because Dario Kordić was not accused nor convicted because of his personal participation in the Ahmići crime, nor it has been proved that he personally ordered the commitment of that crime". After that he concluded: "This label attached to Kordić is in

fact an expression of hatred towards Croatian people and independent Croatian state. The fact that this label is so distributed in Croatian media shows again how the media are against common good of Croatian people and Croatian state“. Dario Kordić himself gave an extensive interview in Zadar weekly *Hrvatski list* on 12th June. IN the interview titled "I have spent 17 years in prison although I was innocent", I shall quote only one sentence: "I pray to God that those Croats who falsely accused me and those who convicted me face their conscience“. The events that we described happened more than twenty years ago after the war between Croats and Bosniaks in Bosnia and Herzegovina, and ten years after the Appeals Chamber of the ICTY confirmed the first instance judgment against Dario Kordić. Some media, the Catholic Church in Croatia and the convicted war criminal deny responsibility and guilt for these events. This is a short but very illustrative image of the attitude of a great part of Croatian public towards the complex- judicial, political, social and moral- of Herzeg-Bosnia, the crimes committed in its name and the responsibility of Croatia for these crimes. "Croatia treats the heritage of Herceg-Bosne with oblivion, although the ICTY has established in several judgments that the crimes were committed in the circumstances of an international conflict. From that we can conclude that Croatia is treated there as aggressor, that is a participant in the war in Bosnia and Herzegovina“, stated for this text the lawyer Anto Nobilo, Croatian member of the defense team of the Croatian Defense Council General Tihomir Blaškić, another convicted Croat for war crimes against Bosniaks in Bosnia and Herzegovina. There were eleven trials for Croatian Defense Council's crimes against Bosniaks in Bosnia and Herzegovina carried out before the ICTY. 24 politicians of Herceg-Bosna and members of Croatian Defense Council were indicted. In all the final judgments the ICTY established that the CDC crimes against Bosniaks were committed within an international conflict. "This fact in Croatia has been ignored and neglected for all these years“, Anto Nobilo states. In May 2013 that silence was interrupted for a couple of days, when the Trial Chamber of the ICTY rendered the first instance judgment to the six political and military leaders of Herceg-Bosna, stated that there was a „joint criminal Enterprise“ for the establishment of Croatian entity. For a moment Croatian public opinion was stirred, but soon it drowned again in the lethargy of refusal, and with time more and more denial.

Presentation of war crimes trials in the media – the example of Gotovina and Markač judgements

Suzana Kunac

Eugen Jakovčić

Documenta – Centar for Dealing with the Past carried out an action research of content of central news program „Dnevnik“/“News“, transmitted on the public television from 15th- 30th April 2011 after a non-final verdict to the generals Gotovina, Markač i Čermak, a total of 15 news programs, because on 25th Apr 2011, there was no report on the judgment against generals. In all the analyzed „News“ the citizens were not given the context of the judgment. During the marathon „News“ on 15th April that lasted 41,07 minutes and was completely dedicated to the judgment, the public was not informed on the facts on the war events, the victims and the very course of the trial in The Hague that lasted from 11th Mar 2008- September 2010. The citizens simply did not get the answer why the generals were in The Hague in the first place and why are

the sentences so high. Through the reports of all the 15 News programs there was a total confusion regarding the data from the State Attorney's Office of the Republic of Croatia on "charges, prosecuted cases and victims of war crimes as well as the procedures regarding the crimes committed during and immediately after the Military Police Operation Storm". The key information was left out, that until then nobody has been sentenced for the war crimes committed during and immediately after the Military Police Operation Storm. The necessary explanations (that the joint criminal enterprise does not represent the responsibility of the state but a special form of individual criminal responsibility; that the decision of Croatian political and military leadership to ethnically cleanse RSK was deemed criminal; but not the legitimate decision of Croatian authorities to use military force to suppress the rebellion of the Republic of Serbian Krajina and regain control over its territory) have not found media space in the public television News. On the contrary, the statements of support and compassion with the convicted generals completely suppressed the informing of the public on the extent of the crimes and the massive exodus of Serbian population. Compassion and piety for victims of the committed crime were left out. There was neither analysis nor the answer to the question how the Trial Chamber got to the conclusion that the artillery attacks on the towns were aimed at the persecution of civilian population, and not at achieving military victory. Also the Croatian public was not informed on the position of the President Tuđman on Croatian citizens of Serbian ethnicity which is very important in order to understand the joint criminal enterprise accusation. From all the above mentioned we conclude that the public television, instead of factual informing of the public on the judgment, produced a series of manipulative, biased and propaganda contents. They have mutilated the content of its entire essence, ignoring the central issue of the judicial case against the three Croatian generals, which is the issue whether „ the Serb civilians in Krajina have been the target of crimes and should the indicted be held criminally responsible for these crimes ".