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Documenta – Centre for Dealing with the Past
Civic Committee for Human Rights

MONITORING OF WAR CRIME TRIALS

A REPORT FOR 2010

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LIST OF ABBREVIATIONS USED IN THE TEXT

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

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SUMMARY

A positive step forward in prosecution of war crimes began in 2000. Since then, we have been monitoring progress being made in respect of the following issues: corrections of mistakes from the nineties; upgrading the quality of indictments and trials; prosecution of crimes committed by members of Croatian formations; setting up a database on war crimes; regional co-operation between the judiciaries and laying the legal and organisational groundwork for the provision of witness support. The year 2010 was marked by increased efforts invested in investigations and laying new indictments against members of both Serb and Croatian formations. It was also marked by more frequent delegation of cases from county courts/state attorney's offices which lack adequate capacities.

Steps forward undertaken by the highest state officials during 2010, based on the initiative by the President of the RC Ivo Josipović, contribute to creation of a political and public opinion in Croatia and in other states in the region, a public opinion that condemns crimes while at the same time supports reconciliation processes. Nevertheless, trials are still conducted in the context of social tolerance towards „one's own" criminals, particularly in the atmosphere of preparation for the forthcoming parliamentary elections. Support to Branimir Glavaš was at the centre of public attention, but it was primarily coming from the Croatian Democratic Alliance of Slavonija and Baranja (the HDSSB) – a political party founded by Glavaš. However, a part of veterans associations also supported persons under investigation or persons against whom investigations could likely be opened. Such an atmosphere distorts the level of security that witnesses and victims need in order to feel ready to testify. Absence of political responsibility for the crimes committed nourishes the culture of non-punishment of crimes. For instance, the Deputy Speaker of the Croatian Parliament, Vladimir Šeks, remained at his function despite the fact that, as was established by a final verdict, a secret troop existed during the period when the Regional Crisis Headquarters was led by Šeks which took away, tortured and killed civilians.

A lack of political will to strengthen the independence, professionalism and efficiency of judicial bodies by specialisation of courts and state attorney's offices restrains further progress in prosecuting war crimes. Moreover, judging by the VSRH's decision in the case against defendant Kufner et al., there is no legal possibility to use witness depositions given to ICTY investigators as evidence before domestic courts.

For that reason, the following measures need to be taken:

- to amend the Act on the Application of the Statute of the International Criminal Court and the Prosecution of Crimes against International Law of War and Humanitarian Law along the following lines: (a) allowing for the possibility to use witness depositions given to ICTY investigators as evidence before domestic courts; (b) stipulating exclusive competence of four county courts (or one special court) and four state attorney's offices (or one special state attorney's office) to deal with war crime trials at the first instance; (c) stipulating that only judges with experience in the most serious criminal cases may be appointed members of war crimes councils; (d) stipulating that the VSRH's trial council comprises exclusively VSRH judges, thereby excluding jurors from those councils;

- to allow for the possibility of re-trials in respect of cases in which courts erroneously applied the Amnesty Act to murder cases in which there is a reasonable suspicion that the acts actually constituted a war crime;
- to develop and apply a strategy for victim and witness support. In this particular case, it is necessary to establish co-operation with civil society organisations, secure funds to improve the support system, to expand the network of courts in which this support already exists but also to develop a system of support at state attorney's offices and police;
- the Government of the RC should urgently pass a decision by which the RC would waive the payment of litigation expenses by all plaintiffs who lost their lawsuits claiming restitution of non-pecuniary damage for the death of a close person. It is necessary to adopt a national programme and a law which would regulate the aforementioned restitution in accordance with the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

Explanation

For almost two decades, the RC has been acquiring experience in prosecuting war crimes, but we still cannot express satisfaction with how trials are being conducted.

In the early nineties, there were two parallel processes going on: the adoption and application of the amnesty act and prosecution of war crimes.

Upon its recognition and joining the international community of sovereign countries, the RC granted amnesty for crimes committed during the war or crimes related to the war (those primarily referred to the criminal act of armed rebellion). In that manner, Croatian authority provided political and legal framework for the post-war integration of Serb minority, as well as for the normalization of inter-ethnic relations and strengthening of democratic processes. By doing so, Croatia showed that it wanted peace within its boundaries and strengthened its international position. However, what was lacking was informing the public about the character and scope of application of the amnesty act which supported the attitude assumed by a part of the public that application of the amnesty act abolished "Serb crimes and Serb criminals".

In that period, the DORH received a large number of criminal reports on war crimes committed by members of Serb formations.[1] A large number of in absentia trials was also conducted.[2] Trials were often conducted in an unprofessional manner and were ethnically biased. Based on poor indictments and without sufficient evidence, the courts were rendering convictions against which court-appointed

[1] According to the first data published by the DORH in 2004, a total of 4,774 persons were reported for war crimes between 1991 and 2004, investigation was initiated in respect of 3,232 persons; 1,400 persons were indicted, while 602 persons were convicted.

[2] A total of 464 persons were convicted in 118 cases conducted in absentia.

defence counsels often did not lodge appeals. Political and judicial elites were of the opinion that no war crimes could be committed during a defence war, thus such an opinion lead to the absence of prosecution for crimes committed by members of Croatian formations.

Reflecting on that period, the Chief State Attorney Mladen Bajić said on one occasion that „ we, in the judiciary, have to deal with the past". Thus, the second decade (2000 – 2010) was marked by „cleaning up" and correcting mistakes made in the previous work. In the repeated cycles, the DORH carried out a revision of criminal reports, investigations and indictments.[3] During 2009 and 2010, re-openings of certain court cases adjudicated in absentia were carried out.[4] At the same time, a computer database on war crimes was developed.

Since 2001, war crimes committed by members of Croatian formations have been investigated and prosecuted.[5] During 2010, there was a significant increase in the number of such cases.[6] For the first time, indictments were laid against members of Croatian formations for the crimes without death casualties.[7]

In the last years, the state attorney's offices initiated proceedings in 3 cases in which the amnesty act had previously been erroneously applied.[8] The incidents were previously legally qualified as murders, but in the new indictments they were changed into war crimes.

In 2010, investigations were also intensified and indictments were laid in respect of the crimes committed by members of Serb formations (See footnote 57). However, in the aforementioned proceedings almost all defendants are unavailable to the Croatian judiciary.

Co-operation between the DORH and the Office of the War Crimes Prosecutor of the RS continued. However, based on available information, there was a decrease in the number of exchanged cases

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[3] Until 2004, 1,546 criminal reports were rejected, and investigations on 485 persons were discontinued. By the end of 2010, criminal proceedings were initiated in respect of 3655 persons. However, investigations in respect of 1406 persons were later discontinued. Investigation is ongoing in respect for 283 and interrupted in respect of 90 persons. Indictments were laid against 1,878 persons, but out of that number 719 persons were acquitted, proceedings were discontinued or legal qualification of the criminal act was changed into armed rebellion. Convictions were rendered against 563 persons, while 596 persons were (indicted) without a judgement.

[4] The new 2008 ZKP rendered it possible for state attorney's offices to request reopenings of proceedings, and they did that in relation to 93 convicted persons. In respect of four convicted persons, the DORH requested protection of legality. For the majority (72) of the aforementioned number of absent convicted persons (97), proceedings have already been dismissed after the change of legal qualification of criminal acts or after charges were dropped.

[5] According to our data, 28 defendants were convicted based on final verdicts until the end of 2010, 4 defendants were acquitted while in respect of 4 defendants final judgment rejecting the charge was rendered after the prosecution dropped charges against them.

[6] According to our data, at the end of 2010 proceedings were underway in respect of 55 members of Croatian formations (six defendants were convicted with a first-instance (non-final) verdict, four defendants in respect of whom the first-instance (non-final) verdict rejecting the charge was rendered, one defendant was acquitted by a first-instance (non-final) verdict, 32 persons were charged and 12 persons against whom investigation is underway).

[7] In three cases, the defendants are charged with setting villages on fire (arson) and abusing civilians and detainees in prisons.

[8] Court cases against: defendant Fred Marguš et al., defendant Damir Vide Raguž et al., and defendant Željko Belina et al.

in 2010 compared with the previous years.[9] In 2010, amendments were made to the Agreement on Mutual Execution of Court Decisions in Criminal Matters between the RC and BiH that rendered it possible to prevent convicts with dual citizenships (both Croatian and Bosnian) from avoiding to serve prison sentences.

In 2010, the DORH requested a more substantial number of cases to be delegated to the courts with special competence for war crimes trials (county courts in Zagreb, Osijek, Rijeka and Split). This represents a significant step forward, but it could have and should have been taken earlier. Furthermore, we are of the opinion that creation of specialised state attorney's offices would significantly contribute to efficiency in their work. We find the basis for such opinion in the following:

1. Re-examinations („revisions") have been underway for almost ten years and yet we cannot be certain of the quality obtained

Re-examinations were carried out by the same ŽDOs which had laid the indictments without respecting the objectivity and impartiality standards. This way, the question whether all revisions were carried out in accordance with the guidelines from the Chief State Attorney is open to doubt. The revision of in absentia trials resulted in the request for re-opening of 14 cases with a total of 93 convicted persons (11.8% of trial cases, i.e. 20% of persons convicted in absentia).[10]

2. Prosecution for war crimes at slow pace

As of 31 December 2010, trials are underway in respect of almost 1,000 defendants. However, almost two hundred incidents that were reported as war crimes still remain non-prosecuted, the cases still being at the pre-investigation stage and perpetrators still being unidentified.[11] Non-prosecuted or unsatisfactorily prosecuted crimes are, for instance, those committed in Sisak, Vukovar and surrounding villages, Škabrnja, Antin and the crimes committed in detention camps. This absence of adequate investigations in respect of the crimes committed during the war has resulted in rulings rendered by the European Court for Human Rights in respect of two cases against the RC (Jularić vs. the RC and Skendžić vs. the RC).

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[9] According to data from December 2010, on the basis of the 2006 Agreement evidence was exchanged in 29 cases (3 cases in 2010, and other cases before 2010), pertaining to 52 accused persons. The DORH forwarded to the Office of the War Crimes Prosecutor of the RS evidence in 25 cases pertaining to 46 persons, whereas the Serbian prosecution transferred to the DORH 4 cases pertaining to 6 persons.

[10] For instance: the Osijek County Court rendered *in absentia* verdicts in 13 cases (concerning 48 persons). Although it was the duty of defence counsels to lodge an appeal – appeals were lodged only in two cases. The rendered convictions ranged from 5 to 20 years in prison, and 36 persons (75%) were sentenced to 10 or 15 years. The Osijek ŽDO requested re-opening of a trial in only one case.

[11] The Ministry of Justice in its reaction-letter to the Amnesty International's Report „ Behind a wall of silence" stated that according to the DORH database 188 events reported as war crimes are not addressed/prosecuted, whilst 306 events were prosecuted. We did not receive such data from the DORH. Last published DORH data (end of 2008) contained 703 events, and out of this number 402 events were not prosecuted.

3. (Non)prosecution of command responsibility

In 2010, an investigation was instigated against Tomislav Merčep, the MUP RC Adviser during the war and commander of reserve police units in Pakračka Poljana and Zagrebački velesajam, for execution of 43 civilians. On the other hand, despite the fact that certain data was presented in individual trials that could indicate (possible) command responsibility of individuals at the highest political and military levels, investigations against them remained non-instigated (for instance, against Davor Domazet Loša and Željko Sačić for the crimes committed in Medak pocket).

4. Need to intensify regional co-operation

If no efforts are taken to intensify co-operation between prosecutions of countries in the region, many perpetrators will remain unpunished for their crimes. Most often, perpetrators reside in the country of their ethnicity, including citizenship, which renders impossible their extradition to another state. However, agreements reached between prosecutions allow for a possibility of efficient prosecution. This, however, is rendered difficult because the competence for prosecuting war crimes perpetrators in Croatia was given to all ŽDOs (in the last years, there were ten or so ŽDOs which dealt with war crime cases). This impedes communication with the (specialised) Office of the War Crimes Prosecutor of the RS.

5. Inefficiency of courts

From April 2004 until 31 December 2010, we monitored a total of 83 cases at county courts in the RC (about 80% of cases which were conducted in that period or are still ongoing). In seven years, 46 cases were concluded with final verdicts. The largest number of cases was concluded in the period between 2008 and 2010. There are twenty or so ongoing cases per year.

Trials are dispersed at ten or so county courts. The four „specialised" courts are insufficiently used. In 2010, no main hearings were held in Split and Rijeka. The majority of cases were/are tried at the Sisak County Court (18 cases, i.e. 21,6 % of cases that we monitored)[12] despite the fact that the VSRH quashed, almost as a rule, the verdicts rendered by their war crimes councils (in 90% of cases, the VSRH upheld the verdicts only after re-trials).

Other arguments in favour of stipulating exclusive competence of „specialised" courts:

- County courts bear responsibility for trials previously conducted in absentia in unprofessional and biased manner (because they accepted low-quality indictments, they were rendering convictions despite lack of evidence, determining too high sentences, with inadequately explained judgments).
- A large percentage of cases in which the VSRH quashed the first-instance verdicts indicate a lack of professional capacity and/or willingness for professional and non-biased proceedings.[13] In certain trials, first-instance verdicts were quashed several times.

[12] According to the number of cases, county courts in Vukovar (13) and in Osijek (12) follow.

[13] The percentage of repeated cases in 2002 was 90%, while in 2003/04/05/07 it was 50-65%. Further improvements were made in 2008/09 (25.6%) and 2010 (36.3%). Unfortunately, in 2010 even 60% (9/15) of first-instance judgments were quashed.

- A large percentage of cases which get repeated and/or last for many years has a negative effect on victims/witnesses, defendants as well as on the DORH, which is preoccupied with such trials.[14]
- A large number of pending trials – according to the DORH's data – 596 indicted persons are still without a verdict, 283 persons are under investigation while investigation against 90 persons was discontinued.
- Judges from civil law departments are appointed members of war crimes councils at some county courts.
- Number of judges from criminal law department at some county courts is insufficient for conducting investigation and forming a trial- and extra-trial council.
- According to our observations, members of war crimes councils only seldomly raise questions during main hearings compared with the council president.
- Technical equipment at some county courts is insufficient, witness support services are established at 7 courts while other county courts are still without such service.

By establishing exclusive competence of four courts (or one) and by forming permanent war crimes councils, judges would become specialised for the subject matter, court practice would be homogenised[15], support to all victims/witnesses of war crimes would be easier to organize and facilitated monitoring of progress made in prosecution of war crimes would be rendered possible.

The VSRH – materials collected by ICTY investigators are illegally obtained evidence

Judging by the VSRH's decision in the case against defendant Kufner et al., there is no legal possibility to use witness depositions given to ICTY investigators as evidence before domestic courts. The use of the aforementioned depositions would only be possible in cases which, after an indictment has been laid before the ICTY, were transferred to the RC (under Rule 11bis of the ICC Rules of Procedure and Evidence).[16]

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[14] For instance:

- the trial against defendant Mihajlo Hrastov has been conducted since 1992. The first instance verdict was quashed two times and modified on one occasion, and then the Constitutional Court of the RC quashed the final conviction and remanded the case for a retrial;
- we have been monitoring the Lovas crime case at the Vukovar County Court since 2004, but no first-instance verdict has been rendered;
- in the case against defendant Rade Miljević, the convictions rendered by the Sisak County Court were quashed two times, and the defendant was released from detention after the expiry of a maximum detention period (4 years and 9 months).

[15] Sentences pronounced to perpetrators of war crimes are significantly lighter than those pronounced to perpetrators of other criminal offences – with the gravity equivalent to war crimes. When deliberating on sentences against members of Croatian formations, courts still assess participation in the Homeland War, as well as receipt of war medals as extenuating circumstances. This places perpetrators of war crimes in an uneven position, depending on their belonging to Croatian and Serb forces, respectively.

[16] The Ademi & Norac case was the only case transferred in such manner to the RC.

ICTY investigators carried out numerous investigations after which the ICTY Prosecution did not lay indictments because the rank of potentially accused persons was not at the level under the ICTY's competence. Therefore, some cases were transferred to the Croatian judiciary.

If the Act on the Application of the Statute, as was interpreted by the VSRH Chamber, does not provide for a possibility to use the aforementioned evidence in cases not transferred under Rule 11bis, then an urgent action is necessary to amend the corresponding legislation.

Croatian Constitutional Court – quashed final conviction against Mihajlo Hrastov

In the trial conducted since 1992 for the crime on Korana Bridge, the Constitutional Court quashed the final conviction for procedural but, in respect of the factual situation irrelevant reasons. Many legal authorities were appalled with the decision on the basis of which the Constitutional Court creates room for practice pursuant to which perpetrators who committed the most serious crimes are acquitted for formal, in legal practice actually strange reasons. Remanding the case for a retrial is definitely not beneficial for legal security and trust in judicial system.

Erroneous application of the amnesty - its implications and demystifications

Since 1992, several acts have been passed in the RC which have been referred to as amnesty acts[17], but the public has not been informed about the number of persons or which persons were to which those acts applied.

Having monitored court proceedings, we have encountered erroneous application of the amnesty act pertaining to criminal acts which were at the time legally qualified as murder (five cases, see footnote 71). In those cases, the defendants and the amnestied were members of Croatian formations. After several years and persistent pressure by family members of the victims and organizations for protection of human rights, the DORH re-initiated the prosecution of perpetrators.[18] Final (legally binding) conviction was rendered in one case in which the amnesty was erroneously applied before.[19] However, the outcome of other proceedings is still questionable. Namely, in two cases (pertaining to the killings

[17] The Act on Amnesty from Criminal Prosecution and Criminal Proceedings for the Crimes Committed in Armed Conflicts and in the War against the Republic of Croatia (OG 58/92) was passed on 25 September 1992 and was amended by the novel of 31 May 1995 (OG 39/95). It was followed by the Act on Amnesty of the Perpetrators of Criminal Acts Residing in the Temporarily Occupied Areas of Vukovar-Srijem County and Osijek-Baranja County dated on 17 May 1996 (OG 43/96) and, subsequently, by the General Amnesty Act dated 20 September 1996 (OG 80/96), which abrogated the two previous acts and which has still been in force.

[18] In the case against defendant Antun Gudelj, the proceedings were conducted only thanks to the persistence and years-long legal battle of Jadranka Reihl-Kir, the wife of one of the persons killed. In July 2008, Gudelj was sentenced to 20 years in prison having been found guilty of committing three acts of murder and one act of attempted murder. The VSRH upheld the first instance verdict in the second instance, but we are not familiar with the third instance decision.

[19] Having re-issued the indictment, this time containing legal qualification of a war crime against civilians, Fred Maguš was convicted by a final verdict and sentenced to 15 years in prison.

of civilians in Novska) in which the convicts had received amnesty, having re-issued the indictment, this time containing legal qualification of a war crime, different verdicts were rendered. In one case, the verdict pertaining to the merit of things was rendered, while in the other the indictment was dismissed because the court council deemed that this matter had been previously adjudicated by a final verdict and that a re-trial was not possible. In the third proceeding, the DORH dismissed criminal report filed by the killed person's wife deeming that it did not contain elements of war crime, but it was the criminal act of murder which had been previously tried and to which the Amnesty Act had been applied.

Primarily for the purpose of establishing the extent to which amnesty was erroneously applied to the acts which, in our opinion, contained elements of war crime, we initiated the analysis of military court's cases.[20] In the case files we have analyzed so far, we did not find new cases of erroneous application of the amnesty act to the criminal acts which contained elements of war crime, apart from (the aforementioned) cases with which the public was already familiar. However, we found two cases in which the Amnesty Act was applied to the criminal act of murder but in which the VSRH, acting upon the appeals lodged by the military prosecutor's office, quashed the ruling on suspension, as well as approximately 20 cases of bizarre applications of amnesty to acts such as poaching. The analysis of cases, in which the amnesty act was applied to criminal acts of armed rebellion committed in a legally qualified form, meaning which resulted in death of one or more persons, violence or mass-scale destruction, is still ongoing.[21]

Erroneous application of the amnesty act to criminal acts of murder (in the majority of cases war crime, actually) represents additional injustice inflicted towards the victims. Therefore it is necessary to analyze the cases in which the amnesty was applied and re-initiate the proceedings in those cases in which it was erroneously applied to incidents which resulted in killings.

Legal proceedings for compensation of non-pecuniary damage caused by the killing of a close person

Injured persons, organizations dealing with protection of human rights and international institutions (the OSCE) have been warning for years about the practice which renders it impossible for close relatives of killed persons to achieve justice by determining criminal responsibility of perpetrators (many criminal acts were not prosecuted), nor does it provide them with a possibility to exercise compensation for the death of a close person.

[20] Having inspected the archives of the Zagreb Military Court, we have established that the aforementioned court, in the period between 1992 and 1996, applied the Amnesty Act in a total of 1,019 cases. At the Osijek Military Court, the Amnesty Act was applied in 184 cases (pertaining to 6,474 persons), while at the Osijek Military Court in 18 cases (pertaining to 662 persons). We do not have data on the number of cases and persons to whom the amnesty act was applied at other military courts (in Bjelovar, Karlovac, Rijeka and Sisak). We still have not received permission to inspect their archives.

[21] It concerns 78 out of 1221 cases that we inspected.

We have collected 105 cases dealing with compensation of non-pecuniary damage for the killing of a close person. Requests by plaintiffs/injured parties were rejected in the majority of cases.[22] There is a considerably larger possibility for a plaintiff to win the case in a lawsuit if perpetrator's guilt had been established in criminal proceedings that preceded the litigation case. Victims' family members who lost the lawsuits pay high proceedings expenses. Namely, in 61.4% of analyzed cases, the courts obliged the plaintiffs, after they had rejected the plaintiffs' claims, to pay the proceedings expenses in the amount between HRK 5,000.00 and 107,400.00. Only in a handful of cases it was adjudicated that each party in the proceedings should bear its own expenses, mostly due to the lack of list of expenses presented by municipal state attorney's offices. Of the presented number, 16% of plaintiffs are paying or have paid off the expenses of the proceedings, while in other cases the plaintiffs have not yet been ordered to pay court expenses because decisions are not yet final and enforceable or are at the review stage before the VSRH. Croatian Government's decision on writing off litigation costs does not apply to the analyzed cases[23] because the subject proceedings were initiated after the adoption of the law in 2003.

The RC should stop causing additional injustice to the families who still await the establishment of criminal responsibility for the killing of their close persons. The Government of the RC should urgently pass a decision by which the RC would waive the payment of expenses by all plaintiffs who lost their litigation claims for restitution of damage for the killing of a close person. The RC should adopt a national programme and a law which would regulate compensation of damage for the killing of close persons in compliance with the 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 of the UN.

[22] In 74% of cases, claims were rejected due to statute of limitations for the initiation of litigation proceedings, adopted objection for war damage, lack of evidence that damage was committed by members of Croatian formations or due to lack of responsibility of the RC in the area that was under control of Croatian authorities. In only 12% of cases, the courts accepted the claims. In other cases, litigation proceedings are still ongoing. In the majority of cases in which courts accepted the claims, there is a final convicting verdict against perpetrators.

[23] On 28 May 2009, the Government of the RC passed a Decision by which it wrote off unpaid expenses awarded to the RC by final verdicts rendered after 31 July 2003 in the proceedings instigated on the basis of Article 180 of the Obligations Act (the aforementioned Article was quashed in 1996), and which continued in 2003. However, this Decision did not include those plaintiffs who filed their claims after 1996 and who constitute the majority of all plaintiffs.

KEY OBSERVATIONS

Political and social context in which trials are taking place

There is an ever-growing awareness in the RC about the need to prosecute perpetrators of all war crimes, regardless of their belonging to Croatian or Serb formations.

In war crimes trials, the focus of public interest lies on perpetrators instead on victims. In the media, victims receive neither adequate space, nor support. The general public particularly lacks compassion towards victims from other ethnic communities.

During 2010, public expressions of support for defendants-convicted members of Croatian military and police formations have become less frequent in comparison with the previous years.[24]

Trials are still conducted in the context of social tolerance towards „one's own" criminals, particularly in the atmosphere of preparation for the forthcoming parliamentary elections.

Paying respect to all war crimes victims

In order to prevent repeating of war conflicts and killing, it is necessary to prosecute perpetrators of crimes and compensate victims and their family members. Likewise, it is important to find bodies of missing people, exhume and identify them, decently bury them and to adequately mark all graves and sites of killing, as well as to appropriately mark anniversaries of the killings.

During the war in Croatia and after its completion, monuments were erected on well-known locations of mass killings of Croats. Commemorations, marking the anniversaries of killings, were attended by high-ranking state officials and/or representatives of local authorities.

However, since political will to prosecute criminal acts committed by members of Croatian formations was lacking, there was no awareness about the need to pay respect to the victims of those crimes, either.

During the last several years, the situation has changed. The practice of erecting monuments on well-known localities of mass graves of all victims is gradually being adopted. Likewise, steps forward undertaken by the highest state officials during 2010 might have a significant influence on the creation of a political and public opinion, both in Croatia and in other states in the region, a public opinion that condemns crimes while at the same time supports reconciliation processes.

Thus, the President of the RC, Ivo Josipović, during his visit to BiH, paid respect to local war victims. Apart from that, he attended the unveiling of a new monument dedicated to the victims of crimes com-

[24] During 2010, Branimir Glavaš received largest support from one part of veterans associations and local media. We also observed the protests of veterans associations on the occasion of arrest and opening of investigation against Tomislav Merčep, charged with criminal acts committed against Serb civilians from the area of Zagreb, Pakrac and Kutina, as well as against Jure Šimić, charged with a criminal act against JNA officers at the Bjelovar barracks.

mitted in Varivode (a village in which members of Croatian formations killed nine elderly persons of Serb ethnicity in 1995). President of the RC, Ivo Josipović, and of the RS, Boris Tadić, visited together the Ovčara Memorial Site near Vukovar together (a site where at least 200 persons taken away from the Vukovar hospital were executed)[25] and Paulin Dvor near Osijek (a village in which HV members killed 18 inhabitants of Serb ethnicity out of revenge in December 1991).

Erecting monuments and paying respect to victims by the highest state officials on the sites of destruction, detention and killing of innocent people not only represents an act of paying respect for all war crimes victims, but it is also necessary in order to make those sites become the places of remembrance, with **a clear condemnation message of** crime and of **evil**.

Agreement between the Republic of Croatia and Bosnia and Herzegovina on amendments to the Agreement on Mutual Execution of Court Decisions in Criminal Matters prevented convicted persons from avoiding to serve prison sentences

Before the signing of the aforementioned Agreement (Sarajevo, 10 February 2010), the existing Agreement on Mutual Execution of Court Decisions in Criminal Matters between the RC and BiH had proven to be flawed. Namely, the Agreement stipulated that a receiving state will take over the execution of a final court verdict rendered by a requesting state only if a convicted person agrees with it. This was used by numerous perpetrators of criminal acts, dual citizens of the RC and BiH, who received final convicting verdicts and who avoided the execution of a sanction by escaping to another state of which they hold citizenship and by denying consent for the execution of a sanction. General public became aware of this problem after Branimir Glavaš fled Croatia prior to the pronouncement of a first instance verdict for war crimes against civilians in Osijek.

Necessary amendments to the Agreement were made in order to prevent perpetrators from avoiding to serve prison sentences in such a manner that consent to serve a sentence is no longer requested from those persons who were convicted by a final verdict in one state and who decided to flee to another state.

These amendments finally put an end to impunity of perpetrators of criminal acts, dual citizens of the RC and BiH, who were convicted by final court verdicts and who abused their dual citizenships by avoiding to serve sentences for the crimes they had committed.

Glavaš case – a trial marked by political and media pressure

As in previous years, the case of Branimir Glavaš, a very influential local politician and until recently a MP, who was convicted with a final verdict, was in the centre of public attention in 2010, as well.

Pressure during the trial against Glavaš et al. for crimes committed against Serb civilians in Osijek, mostly coming from political and media allies of the 1st defendant Glavaš, reached its climax at the be-

[25] According to data from the International Committee of the Red Cross, a total of 262 persons were taken away from the hospital. A total of 200 persons were exhumed at Ovčara, out of whom 194 persons were identified (according to data from the ICTY).

ginning of 2008 when the Croatian Parliament withheld its permission to detain MP Glavaš, whereby it directly interfered in the work of judicial authorities.

However, the most significant consequence of the Croatian Parliament's decision saw the light of day in 2009, when Glavaš fled to Bosnia and Herzegovina shortly prior to the pronouncement of the first instance verdict in which he was sentenced to 10 years in prison. Taking into account the fact that, apart from the Croatian citizenship he also held the BiH citizenship, he could not have been extradited to Croatia. Thus, the Glavaš case became a strong direct incentive to sign the aforementioned Agreement on Amendments to the Agreement on Mutual Execution of Court Decisions in Criminal Matters between the RC and BiH. Amendments to the aforementioned Agreement rendered it impossible for convict Glavaš to avoid serving his prison sentence.

a) Verdict rendered by the VSRH and verdict rendered by the BiH Court

Glavaš' verdict became final on 2 June 2010, after the VSRH reduced the sentence pronounced in the first instance verdict from 10 to 8 years in prison. In our opinion, the length of sentences pronounced against Glavaš and other perpetrators of crimes against Serb civilians in Osijek is short, bearing in mind the severity of crimes, as well as former practice in war crimes trials in the RC. Still, it is a fact that the final verdict effectively disproved the syntagm of the „so-called crimes" and the „so-called victims", that it mentioned by name and sentenced the perpetrators, including a politically very influential representative of the Croatian Parliament and that the intent and cruelty of the crime was disclosed.[26] The verdict was also a significant step forward towards clarification of executions of civilians in Osijek. It encompassed nine out of approximately 40 victims executed in Osijek.

On 20 September 2010, the BiH Court upheld the verdict rendered by the VSRH and accepted the severity of the pronounced punishment. It took over the execution of the verdict and ordered detention against Glavaš, after which Glavaš was arrested. On 14 December 2010, the Appellate Chamber of the BiH Court upheld the first instance verdict whereupon it became final (legally binding) in BiH. Convict Glavaš is serving prison sentence in the maximum-security correctional facility in Zenica.

b) Pressure towards the judiciary and political pressure

Pressure exerted by Glavaš' followers, primarily from the Croatian Democratic Alliance of Slavonija and Baranja (the HDSSB) – a political party founded by Glavaš, a part of local veterans associations and media under his influence (most notably "Slavonska televizija" [Slavonian Television] lasted during the entire trial. This year, especially at the time of adoption of the verdict by the VSRH and the verdict by the BiH Court, this pressure continued.

[26] Apart from Glavaš, who was sentenced by a final verdict to 8 years in prison, final prison sentences were also pronounced against other defendants in the trial: Ivica Krnjak to 7, Gordana Getoš Magdić to 5, Dino Kontić to 3 years and 6 months, Tihomir Valentić to 4 years and 6 months and Zdravko Dragić to 3 years and 6 months in prison.

Thus, the adoption of the verdict by the VSRH was marked with statements on alleged attempts to bribe VSRH judges in order to pass a verdict favourable for Branimir Glavaš. In relation to that, in October 2010 USKOK initiated investigation against five persons close to Glavaš – business-wise, politically or media-wise. The HDSSB also used the highest political instance, the Croatian Parliament, to publicly express „non-recognition" of the verdict rendered by the VSRH.

Media reporting on war crimes trials

One of the objectives of monitoring war crimes trials is raising public awareness about the importance of objective and ethnically non-biased prosecution of war crimes, with the purpose of establishing co-existence in a post-conflict society and creating stable and permanent preconditions for reconciliation of war parties and keeping of peace. Without media contribution, this daunting process is almost impossible to carry out. That is why it is important to concentrate on raising the quality of reporting on war crimes trials.

The biggest responsibility for dissemination of intolerance and hatred lies with some of leading politicians. However, since media are not merely transmitters of information, they play a huge role and responsibility in the creation of public opinion. An approach full of nationalist propaganda, including hate speech, was characteristic for many media in the first half of the 90's. Biased manipulation with facts contributed to the creation of a climate of impunity for crime, while in some extreme cases (for instance, the writing of ST or Vinkovački vjesnik weeklies) there are, in our opinion, elements which might indicate responsibility for inciting crimes.[27]

In comparison with the 90's, the tendencies have changed, but even in 2010 we notice bias and a lack of respect towards victims of crimes in a part of the media. Below in the text we present examples of such reporting.

Example 1 In the trial against defendant Željko Belina et al. for a crime committed by the killing three and wounding one civilian in Novska in 1991, the War Crimes Council of the Sisak County Court on 19 November 2010 rendered a judgment rejecting the charge, because it held the view that this was a res iudicata case i.e. that the matter was already judged and that, due to such procedural obstacle, it was not possible to pass a verdict based on the merit of things.[28] Of media representatives, only a Sisak correspondent for Večernji list daily reported about the trial. In an article which was published in numerous electronic and print media, it was incorrectly stated that, on the occasion of explaining the verdict, the judge told the defendants: "Crime in Novska really took place, but there is no evidence that you did it". The judge did not say that and, from the conducted evidence procedure, in our opinion, one

[27] The practice of the International Crime Tribunal for Rwanda went in the direction of establishing criminal responsibility of media representatives for gross violations of international humanitarian law.

[28] The judgement rejecting the charge was rendered because criminal proceedings for the aforementioned crime had already been conducted against the defendants in 1992, in which the military prosecution dropped charges against two defendants, while in respect of the other two, the Zagreb Military Court dismissed the criminal proceedings by applying the Amnesty Act.

could conclude quite the opposite: that the defendants were responsible for the crime. This incorrect media report directly contributed to the creation of a wrong picture in the public that the defendants - Croatian soldiers at the time when the act was committed, were acquitted of charges because they were not found guilty of a brutal crime with which they were charged. The majority of media failed to state the exact information, while published articles did not express respect towards families of victims and condemnation of perpetrators of the crime. By doing so, the media contributed to a renewed victimization of injured persons and further mythisation of the role of a victim and of a criminal based exclusively on national criteria. Dialogue on facing responsibility for the committed crime in a local community was absent.

Example 2 pertains to media reactions on the pronouncement of a verdict by the ICTY Appeals Chamber upon the extraordinary legal remedy, a request for re-assessment of the verdict in the case against defendant Veselin Šljivančanin for a crime committed in Ovčara. The Appeals Chamber quashed the verdict in the section pertaining to aiding and abetting in the murder of 194 persons from the Vukovar hospital.[29]

While reporting on this verdict, the media brought into question the competence and objectivity of the ICTY as a whole. Distrust was incited towards an institution which, despite its errors, played a key role in impartial prosecution of war crimes committed on the territory of the former Yugoslavia and thereby provided a huge contribution to peace and recovery of societies devastated by war conflicts. Strong provocative headlines incited public revolt. Since this is a crime of large proportions, which has still not been adequately punished at the highest commanding levels, such reporting manipulated with victims' feelings. Media attempted to present ICTY's work as being directed against the interests of the RC and based on primarily ethnic criteria, whereby verdict rendered in this trial was compared to the forthcoming verdict in the trial against defendants Ante Gotovina, Ivan Čermak and Mladen Markač.

Nevertheless, it is also important to point at the positive practice, particularly the contribution of individual journalists who, through their investigative approach, contributed to the revealing of committed crimes and/or perpetrators.

Furthermore, media approach which puts victims at the centre of attention, who have for many years been marginalized and additionally victimized by the institutions and the society as a whole, con-

[29] The Centre for Peace, Nonviolence and Human Rights, the Documenta, the Civic Committee for Human Rights, as well as the Humanitarian Law Centre, deem that the ICTY Appeals Chamber reviewed the verdict against Veselin Šljivančanin and acquitted him of criminal responsibility for aiding and abetting the murder of 194 prisoners from the Vukovar hospital in 1991 on the basis of a testimony provided by only one witness whose impartiality is not convincing and without taking into consideration circumstances under which the crime was committed. By doing so, in our opinion, the standard of adjudication lost its objectivity and strength, while the pronounced verdict lost its credibility.

On the other hand, although reduced in relation to the second-instance verdict (from 17 to 10 years in prison), the new sentence is twice as high in relation to the sentence pronounced by the first instance verdict, in which defendant Šljivančanin was sentenced to 5 years in prison for aiding and abetting torture as a violation of the law and warfare habits.

tributes to the actualization of committed crimes and their prosecution.[30] By paying attention to war crimes trials, dealing with the past and by accepting an approach which acknowledges conclusions and opinions of civil society organizations, we contribute to raising public awareness about this sensitive and important issue.[31]

Competence in war crimes trials

In previous years, we warned about the problem of dispersed (scattered) war crimes trials over a large number of county courts in the RC.[32] We stressed the need to pass amendments to the Act on the Application of the Statute of the International Criminal Court and the Prosecution of Crimes against International Law of War and Humanitarian Law which would stipulate exclusive (not facultative) competence for county courts in four largest cities (Zagreb, Split, Rijeka and Osijek) when trying such cases.

For a long period of time, we have been stressing that the concentration of trials at the aforementioned four courts would contribute to further professional improvement (specialization) of judges in war crimes cases and the establishment of permanent war crimes councils, while the possibility of negative influences on court proceedings in (smaller) local environments would thus be eliminated.

In compliance with the aforementioned, we stressed the need to pass amendments to the Act on the Application of the Statute which would stipulate exclusive competence for ŽDOs in Zagreb, Split, Rijeka and Osijek that would contribute to creation/strengthening of specialized DORH teams as well as to a facilitated exchange of information about crimes and more efficient regional cooperation in the prosecution of perpetrators.

Furthermore, we also stressed the need to pass amendments to the aforementioned Act in such a manner that only judges with many years of working experience in criminal cases may be appointed members of war crimes councils, as well as to supplement the Act with a provision that would stipulate the composition of the VSRH Council when it tries cases as the second-instance court in such a manner that lay judges are excluded from the panel's composition and that panel members are exclusively Supreme Court judges.[33]

However, no regulations were amended along the aforementioned lines.

With regard to court competences, officials from the highest judicial bodies are of the opinion that rationalization of courts' network, which is conducted within the reform of the judiciary, would reduce the number of county courts and, thus, reduce the number of county courts which would try war crimes cases.

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[30] Such was, for instance, reporting on crimes and war crimes trials by Novi list daily.

[31] For instance, the HTV (Croatian Radio and Television) show titled Hrvatska uživo (Croatia live).

[32] In the previous years, trials were conducted at approximately 15 county courts.

[33] Obviously, the objective of the Act on the Application of the Statute is "professionalization" of councils, but it did not anticipate the composition of the VSRH trial chamber, therefore it is regulated by the provisions of a general regulation (the ZKP).

Rationalization of network of county courts will not contribute to more efficient war crimes trials

Rationalization means merging individual courts of the same type. So far, rationalization of network of municipal and misdemeanour courts was formally conducted, but only several courts were "physically" merged. Rationalization of county courts has not even been formally conducted, while according to a draft law, the number of county courts should be reduced from 21 to 15. The number of ŽDOs should be harmonized with the county courts network. Implementation of rationalization, which should be completed by the end of 2019, requires significant funds, while the dynamics of investing into adaptation, internal decoration or construction of court annexes has not been determined for the time being.

Since rationalization will most probably eliminate not more than 6 county courts, out of which some (in Zlatar, Čakovec and Koprivnica) did not even try war crimes cases, the number of county courts at which it will be possible to try war crimes cases will not be significantly reduced.

Bearing in mind the excessive number of courts in relation to the size of the country and the number of population, inefficiency on the part of courts and huge funds which such court network requires, we are of the opinion that rationalization of court network is useful, but since this is a process that will last for many years and the dynamics of which is uncertain, that a more professional, more impartial and more efficient prosecution of war crimes requires urgent institutional improvements. We are of the opinion that stipulating exclusive competence for county courts in Zagreb, Split, Rijeka and Osijek which, at the same time, have by far the largest number of judges from criminal departments and the best spatial and technical conditions, as well as exclusive competence for ŽDOs in the aforementioned cities, represents the most effective manner of achieving a quality step forward towards prosecuting war crimes.[34]

However, based on the experiences of special courts in countries in the region (Serbia and BiH), as well as ad hoc courts for the territory of the former Yugoslavia and Rwanda, an ideal solution would be the establishment of only one specialized court and one specialized prosecutor's office.

The introduction of prosecutors and judges who would work exclusively on war crimes cases would definitely set unified working standards, which would contribute to a higher quality and a more efficient investigations and prosecution of crimes.

The work of county courts

The number of county courts trying war crimes cases in the last years has not been significantly reduced. Thus, during 2010, we monitored first instance trials in war crimes cases at nine county courts.

Despite the fact that we stressed insufficient personnel capacities for trying war crimes cases at many of the county courts, lack of spatial and technical conditions and, at some courts, lack of professional

[34] County courts in Osijek and Zagreb have had at their disposal a support service for victims and witnesses of criminal acts, while county courts in Rijeka and Split established those services in January 2011 in cooperation with the UNDP.

Previously, such services were established only at the county courts in Osijek, Vukovar, Zadar and Zagreb and at the Municipal Criminal Court in Zagreb, while in January 2011, apart from the aforementioned county courts in Rijeka and Split, the service was also established at the Sisak County Court.

capacities and/or will/courage for professional and impartial trial, main hearings are still conducted at a relatively large number of courts.

For several years we have been emphasizing that members of war crimes councils should be judges with working experience in criminal cases (judges from criminal law departments). However, the Act on the Application of the Statute regulates that judges with working experience in the most complex cases should be appointed members of war crimes councils (the Act does not specify what kind of cases), but the VSRH, in its decision No. II 4 Kr 11/09-3 of 3 February 2009 (the case of defendant I. H.), stated that a war crimes council should comprise exclusively judges with working experience in criminal cases. Judges from civil law departments of county courts are still being appointed into war crimes councils, but we do not have data whether judges from civil law departments who were appointed members of war crimes councils have working experience in criminal cases.[35]

Despite frequently stressing the existence of four «specialized» war crimes courts (in Zagreb, Split, Rijeka and Osijek), not a single main hearing in a war crimes case was held at county courts in Rijeka and Split during 2010.

Still, it is worth noting the increased number of (delegated) cases in which state attorney's offices in Zagreb, Osijek and Split act, i.e. investigations or first instance proceedings are conducted by county courts in the aforementioned cities.[36] If such practice continues, it is to be expected that in the following years the number of county courts trying such proceedings could nevertheless be reduced.

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[35] During 2010, members of war crimes councils were judges from civil law departments of the following county courts: Predrag Jovanić and Alenka Lešić (the Sisak County Court), Katica Krajnović (the Osijek County Court), Juraj Dujam (the Karlovac County Court), Željko Marin and Berislav Matanović (the Vukovar County Court), Ordana Labura and Dalibor Dukić (the Šibenik County Court).

[36] Noted cases of delegation:

- criminal acts committed outside the RC:
  - at the Osijek County Court, investigation was conducted against Aleksandar Vasiljević, Major-General of the former JNA and Head of the SSNO (Federal People's Defence Secretariat) Security Directorate, and against Miroslav Živanović, lieutenant-colonel in the SSNO security body of the former JNA. The investigation procedure was conducted for a war crime against war prisoners and a war crime against civilians committed in detention camps in Serbia (Stajićevo, Begejci, Sremska Mitrovica and Niš) and in the area of Croatia (Stara Gradiška);
  - in June 2010, the Zagreb ŽDO laid the indictment against seven members of the 7th Guard Brigade of the HV due to execution by firing squad of six captured members of the Republika Srpska Army in the village of Mlinište in BiH;
- criminal acts committed on the territory of the RC:
  - in March 2010, after the VSRH quashed the verdict rendered by the Požega County Court in the case against defendant Kufner et al. for a crime against Serb civilians in Pakrac area (in Marino Selo), the case was delegated to the Osijek County Court;
  - in September 2010, the Osijek ŽDO filed an investigating request and in January 2011 the indictment against a ZNG (Croatian National Guard) member charged that in the village of Rastovac, in Grubišno Polje municipality, he killed a civilian (the main hearing is currently ongoing before the Belgrade Higher Court for the same act and against the same defendant);
  - in November 2010, the Zagreb ŽDO issued the indictment against Željko Gojak, charged that on 5 October 1991 in Karlovac, together with unknown members of the ZNG, he killed three members of the Roknić family;

Lack of professional capacities and/or will for impartial trial at county courts is indicated by a large number of first instance verdicts quashed by the VSRH. Namely, 16 sessions of the VSRH Appeals Chambers were held during 2010. Until the completion of this Report, we were familiar with 15 decisions of the VSRH, 9 of which were quashing.[37] The VSRH upheld only five verdicts rendered by first instance courts, while it altered one verdict in the sentencing section.[38]

In our previous Reports, we pointed at a large number of quashed verdicts rendered by county courts in Požega, Sisak and Karlovac. However, reason for concern lies in the fact that the VSRH quashed three verdicts rendered by the Osijek County Court which it reviewed during 2010, more so because those were the cases in which first instance verdicts had been quashed on several occasions.[39] It is one of the four facultatively competent courts according to the Act on the Application of the Statute.

Apart from the aforementioned, we also noted trials in which, despite the availability of defendants and their presence at hearings, trial hearings are scheduled very rarely and first instance trials last for several years.[40]

- in December 2010, the Zagreb ŽDO issued the indictment against three members of Croatian formations due to execution of six civilians of Serb ethnicity in Grubori village in the Knin area in August 1995, while investigation against another defendant is underway;
- an investigation is ongoing at the Split County Court against four former members of the HV Military Police due to crimes committed against civilians and prisoners in the Šibenik prison of Kuline.

[37] The following verdicts were quashed:
- of the Požega County Court dated 13 March 2009 in the case against defendant Damir Kufner et al. (crime in Marino Selo);
- of the Karlovac County Court dated 1 December 2009 and 4 May 2010 – both in the case against defendant Mićo Cekinović (crime in Slunj and surrounding villages);
- of the Sisak County Court dated 26 August 2009 in the case against defendant Ivica Mirić (crime in Brezovica forest); dated 13 November 2009 in the case against defendant Milan Španović (crime in Maja and Svračica); dated 16 February 2010 in the case against defendant Pero Đermanović et al. (crime in villages along Una river near Hrvatska Kostajnica);
- of the Osijek County Court dated 7 April 2009 in the case against defendant Petar Mamula (crime in Baranja); dated 29 January 2007 in the case against defendant Enes Viteškić (crime in Paulin Dvor); dated 18 February 2010 in the case against defendant Čedo Jović (crime in Dalj IV).

[38] The VSRH upheld the verdict rendered by the Rijeka County Court dated 25 March 2009 in the case against defendant Zlatko Jušić et al. (crime in Velika Kladuša), the verdict by the Osijek County Court dated 7 July 2009 in the case against defendant Stojan Pavlović et al. (crime in Popovac), the verdict of the Zadar County Court dated 15 March 2010 in the case against defendant Nedjeljko Janković (crime in Ravni Kotari) and two verdicts rendered by the Sisak County Court: dated 10 June 2010 in the case against defendant Ivica Mirić (crime in Brezovica forest) and dated 12 May 2010 in the case against defendants Ivica Kosturin and Damir Vrban (crime in Letovanić).

The VSRH altered the verdict rendered by the Zagreb County Court on 8 May 2009 in the case against defendant Branimir Glavaš et al. (crime in Osijek) in the sentencing section.

[39] In two cases (against defendant Enes Viteškić for a crime in Paulin Dvor and against defendant Čedo Jović for a crime in Dalj IV), the first instance verdicts were quashed for the second time, while in the case against defendant Petar Mamula for a crime in Baranja, the VSRH quashed the first instance verdict rendered by the Osijek County Court for the third time.

[40] Cases:
- at the Osijek County Court, not a single hearing was held in the trial against defendant Željko Čizmić (crime in Dalj) during 2010. The main hearing started way back in 2006, but due to recesses exceeding two months the hearing had to start anew on several occasions;
- at the Vukovar County Court, the main hearing in the trial against defendant Ilija Vorkapić (crime in Lovas) is ongoing. We have been monitoring the main hearing since 2005. The main hearing had to start anew on several occasions: due to separation

During 2010, the largest number of war crimes trials was conducted at the Sisak County Court; however, we are of the opinion that examples of bad practice indicate dubious preparedness of that court to try such cases. We emphasise the trial against defendant Rade Miljević, in which the VSRH has so far quashed the first instance convictions on two occasions and in which the defendant, after 4 years and 9 months spent in detention, was released from detention due to expiry of the maximum period of detention. Likewise, we would like to single out different verdicts rendered in two cases in which the Sisak ŽDO raised indictments against defendants, members of Croatian formations, who were previously subjected to the Act on Amnesty from Criminal Prosecution and Procedures for Criminal Acts Committed during Armed Conflicts and in the War against the Republic of Croatia. [41]

When rendering convictions in trials in which defendants are members of Croatian formations, the courts still consider participation in the Homeland War and medals received for participation as extenuating circumstances when deliberating a sentence.

We have emphasised on several occasions our position that defendants, having committed crimes during participation in the Homeland War, caused damage to the society in general and to the RC and that, when deliberating a sentence for the committed war crimes, it is inappropriate to assess participation in the war as an extenuating circumstance. This brings into question the objectivity of courts when trying cases conducted against members of Croatian military and police forces.

Medals awarded for participation in the Homeland War will, according to the practice of the former and the current President of the RC, probably be stripped off perpetrators after convicting verdicts have become final. Already due to that reason, those medals should not be assessed as extenuating circumstances when deliberating sentences.

Apart from the aforementioned, the courts often, regardless of perpetrators' belonging to Croatian or Serb formations, assess the elapse of time since a crime was committed as an extenuating circumstance. Bearing in mind the fact that criminal prosecution for war crimes does not fall under statute of limitations, from which it is obvious that the legislator's intention was not to have this circumstance influencing the punishment of perpetrators of war crimes, and also bearing in mind the fact that time distance from the commission of crimes is such that it could be assessed as an extenuating circumstance for all defendants, we deem that courts should not take this circumstance into consideration when deliberating the length of sentence.[42]

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of proceedings in relation to unavailable defendants, due to change of council president and council members, arrest of one defendant who was, prior to that, tried in absentia, due to recesses exceeding two months.

[41] In the first trial, on 16 April 2010, the War Crimes Council of the Sisak County Court, presided by judge Snježana Mrkoci, sentenced the absent defendant Damir Vide Raguž to 20 years in prison, while the present defendant Željko Škledar was acquitted of charges.

In another trial, the Council, presided by the same judge, on 19 November 2010 applied the institute *ne bis in idem* and rendered a judgement rejecting the charge in relation to present defendants Željko Belina, Dejan Milić, Ivan Grgić and Zdravko Plesec, deeming that the matter was already judged by a final verdict.

Both verdicts are, for the time being, non-final.

[42] A position similar to ours was also adopted by the VSRH Council when explaining the verdict in the case number I Kž 1008/08-13 of 18 November 2009 in the case against defendants Rahim Ademi and Mirko Norac.

The Hrastov case – the longest case in trials for war crimes in Croatia, in which the Croatian Constitutional Court quashed the convictions rendered by the VSRH

The trial against Mihajlo Hrastov, which has been ongoing for almost two decades, is the most blatant example showing inefficiency of judicial bodies.

In this case, which goes back to 1992, the VSRH quashed the verdicts of acquittal rendered by the Karlovac County Court on two occasions. Subsequently, the VSRH, following the issuance of a third first-instance verdict of acquittal, obviously by deeming that it would bring the conduct of this trial closer to its finalisation, made an exception and decided to conduct a hearing by itself. At that moment, the trial went on for 17 years already. So, the VSRH Council conducted a hearing and, in May 2009 altered the Karlovac County Court's verdict of acquittal and found Hrastov guilty sentencing him to 8 years in prison. Then, in November 2009, the VSRH Council, deciding on appeals at the third instance, altered the verdict in the sentencing section and sentenced Hrastov to 7 years in prison. Therewith, Mihajlo Hrastov received a final verdict of conviction because, in his capacity as a member of the RC special police, on 21 September 1991 at the Korana Bridge in Karlovac he killed 13 and wounded 2 captured JNA soldiers and thus committed a crime against humanity and international law by unlawful killing and wounding the enemy.

However, in December 2010, the Constitutional Court of the RC quashed the second- and the third-instance conviction rendered by the VSRH.

The Constitutional Court of the RC was of the opinion that the VSRH Council, having conducted the hearing itself, failed to publish the verdict in which defendant Hrastov was found guilty and sentenced to a prison term. By doing so, the VSRH Council violated the defendant's right to a fair trial because he was detained before being informed of the enacting terms of the conviction. The case was remanded to the VSRH for a retrial before a council, the composition of which would have to be changed. Hrastov was released from custody.

Such a decision stirred debate on correctness of (different) interpretations on criminal-procedural standards, both by the VSRH and the Constitutional Court. Many legal authorities were appalled by the decision on the basis of which the Constitutional Court creates room for a practice by which perpetrators of the most serious crimes – those aimed against humanity and values protected by international law - are being acquitted due to formal, in legal practice actually strange, reasons.

As a result of such decision by the Constitutional Court of the RC, a belief started to grow in the public, in particular among the people who did not accept the conclusions of the final verdict against Mihajlo Hrastov, that Hrastov was „a hero, not a criminal".

In addition to the aforementioned Constitutional Court's decision in the Hrastov case, we find it necessary to stress the possibility that the Constitutional Court, in line with its newly-established practice, also quashes the final verdict against Branimir Glavaš and other perpetrators of crime in Osijek just

because one member of the trial chamber also participated in the issuance of extra-trial decision on the defendant's detention.[43]

The Supreme Court of the RC - materials collected by ICTY investigators are illegally obtained evidence

The ruling of the VSRH No. I Kž 585/09 of 23 March 2010 quashed the first instance verdict reached by the Požega County Court No. K-11/08 of 13 March 2009 which found Damir Kufner and other defendants in the trial guilty of committing a war crime against civilians in Marino Selo. This verdict was, inter alia, quashed because of the position assumed by the VSRH Council that the first instance verdict was based on illegally obtained evidence – testimonies by surviving victims provided to ICTY investigators.

The VSRH Council explained its position that testimonies by surviving victims provided to ICTY investigators represent illegally obtained evidence with the following:

- provision of Article 28 of the Act on Application of the Statute of the International Criminal Court and Prosecution for Criminal Acts against International War and Humanitarian Law[44] stipulated the procedure in case when the ICC[45] transfers criminal prosecution to the RC;

[43] In 2009 and 2010, the Constitutional Court quashed two final verdicts rendered by county courts in Slavonski Brod and Pula because their judges – members of trial chamber - participated in the issuance of extra-trial decision on detention. The Constitutional Court provided an explanation that participation of the same judge in both councils brought into question impartiality of that judge.

[44] Article 28 reads:

Transfer of cases from the International Criminal Court (ICC):

(1) In the case when the International Criminal Court, in compliance with its Statute and the Rules of Procedure and Evidence, transfers criminal prosecution in a certain case to the Republic of Croatia, the State Attorney shall initiate criminal prosecution before a competent court taking the facts on which the indictment of the ICC was based as the foundation for the indictment.

(2) The proceedings in the RC shall be conducted with the application of domestic criminal substantive and procedural laws.

(3) Exceptionally, the State Attorney may, on the basis of evidence obtained by the ICC, issue an indictment before a competent court in the RC without conducting an investigation and without consent from the investigating judge.

(4) Evidence obtained by ICC bodies may be used in criminal proceedings in the Republic of Croatia providing that the evidence was presented in a manner set forth by the ICC Statute and the ICC Rules of Procedure and Evidence and that it can be used before that Court. The Croatian court shall assess the existence or non-existence of facts which are proven by this evidence pursuant to Article 8 of the Criminal Procedure Act.

(5) The Government may conclude a special agreement with the ICC which shall regulate particular issues from its jurisdiction when taking over proceedings.

(6) ICC representatives shall be rendered possible to attend the proceedings in all of its stages and shall be provided with any necessary information about the course of the proceedings.

[45] The application of Article 28 pertaining to transfer of cases from the ICTY to the RC is regulated by Article 49, paragraph 2 of the same Act.

- paragraph 4 of the aforementioned Article stipulates that evidence collected by ICC/ICTY bodies can be used in criminal proceedings in the RC providing that the evidence was presented in a manner set forth by the Statute and the ICC/ICTY Rules on the Procedure and Evidence and that it can be used before that court;
- in order for the aforementioned Article to apply, after the indictment has become legally valid, criminal prosecution must be transferred to the authorities of the RC pursuant to Rule 11bis of the ICC Rules of Procedure and Evidence,
- the case, which the VSRH resolved as the court of second instance, was not transferred pursuant to Rule 11bis of the ICC Rules of Procedure and Evidence,
- it is evident from trial documentation that notes in this case were forwarded to the Croatian prosecutor's office so that the prosecution could use them as a source for questioning witnesses during the evidence procedure and that the first instance court was obliged to exclude them from the case file by treating them as citizens' testimonies provided to police authorities during an informative talk.

This decision by the VSRH is of extreme importance because it sets forth standards for future practice which will apply in relation to the use of evidence collected by ICTY investigators in cases in which the ICTY did not transfer criminal prosecution powers to the RC pursuant to Rule 11bis of the ICC Rules of Procedure and Evidence.

In the aforementioned decision, the VSRH assumed a position that statements provided by surviving victims to ICTY investigators may be used as legally obtained evidence in proceedings before courts of the RC by invoking Article 28 of the Act on the Application of the Statute only in those cases in which criminal prosecution was transferred by the ICTY pursuant to Rule 11bis of the ICC Rules of Procedure and Evidence.[46] In all other cases when courts in the RC receive an opportunity to use evidence obtained by the ICC (ICTY) during criminal proceedings, they can not do it by invoking Article 28 of the Act on the Application of the Statute, but exclusively in compliance with domestic criminal and procedural provisions contained in the ZKP. According to the opinion of the VSRH, statements provided by surviving victims to ICTY investigators were not legitimate evidence, they were actually notes taken by investigators of the Prosecutor's Office which represents prosecution before the ICTY and they should be equalised with informative talks performed by the prosecutor.

The impossibility to use evidence materials obtained by ICTY investigators represents problem for future war crimes prosecution.

Namely, ICTY investigators conducted numerous investigations after which the ICTY Prosecutor's Office did not lay indictments because the rank of potential defendants was not at the level of ICTY's jurisdiction. Such cases bear „category 2" mark in the ICTY. Some „category 2" cases were handed over to the Croatian judiciary, as was the case with materials in this specific trial conducted before the

[46] The case of defendants Rahim Ademi and Mirko Norac is the only „category 1" case (transferred to the RC pursuant to Rule 11bis).

Požega County Court and, after the first instance verdict was quashed, delegated to the Osijek County Court.

If witness depositions provided to ICTY investigators really end up at the level of circumstantial evidence and cannot be used as evidence in criminal proceedings before domestic courts even in exceptional situations (for instance, because a witness died in the meantime), the possibility of prosecuting perpetrators of numerous crimes will definitely be reduced. Namely, almost two decades have elapsed since crimes were committed, many crimes have not yet been investigated or have been insufficiently investigated by judicial bodies of the RC. Surviving victims, injured persons and witnesses are dying, while memories of the living fade away due to elapse of time, old age, illness or fear. Situation is somewhat better with regard to material evidence because the possibility of its repeated presentation is better.

We are of the opinion that it is necessary to ensure the possibility of using materials collected by ICTY investigators before domestic courts, irrespective of whether those are cases transferred pursuant to Rule 11bis or not. Double valorisation of such materials, depending on the "category of cases", has no justification whatsoever, particularly bearing in mind the fact that they have been presented pursuant to the same procedural rules.

The objective of the Act on the Application of the Statute definitely must not be reducing witness depositions provided before Hague investigators to the level of circumstantial evidence. If the aforementioned Act does not permit use of evidence collected by ICTY investigators in cases which were not transferred to the RC pursuant to Rule 11bis not even in exceptional situations, urgent legal amendments are required.[47]

In Croatia, after the new ZKP comes fully into force on 1 September 2011, investigating procedures will fall under the competence of state attorneys who will be able to entrust the performance of evidence actions to investigators.

With that regard, we ask ourselves whether domestic courts will still evaluate actions performed by ICTY investigators in cases which were not transferred pursuant to Rule 11bis in a manner that they equalise them with police enquiries or will they, by drawing a parallel with investigators' actions introduced to domestic criminal legislation with the new ZKP, admit those actions as valid evidence material?

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[47] In BiH, this matter was regulated by the *Act on the Transfer of Cases by the ICTY to the Prosecution of Bosnia and Herzegovina and the Use of Evidence Collected by the ICTY in Trials before the Courts of Bosnia and Herzegovina.* In practice, testimonies of victims/witnesses which were provided to ICTY investigators are used exceptionally, whereby only those documents collected via official request and verified by the ICTY are used. Apart from that, ICTY investigators may be invited before the court during the presentation of evidence to provide testimony about the circumstances under which investigations were carried out and under which information was collected during the investigation.

The work of state attorney's offices

Reopenings of criminal proceedings

The ŽDOs, in compliance with the Instruction issued by the Chief State Attorney of the RC[48], continued working on the process of rectifying mistakes committed in the work during the 90's when indictments were lightly laid (after which the courts pronounced convicting verdicts) against members of Serb formations, despite the fact that defendants' actions often did not contain essential characteristics of war crimes or despite the uncertainty that those were precisely the defendants who were perpetrators of the evidently committed war crimes.

As in 2009, we noticed trials in which state attorney's offices, having previously requested reopenings of proceedings formerly concluded with final verdicts, which reopenings were admitted by the courts, changed legal qualification of the criminal acts contained in the indictments into armed rebellion or another act subject to amnesty. In those cases, courts suspended criminal proceedings with regard to members of Serb formations formerly sentenced in absentia.

Namely, after the 2008 amendments to the ZKP (OG, 152/08) rendered it possible for state attorney's offices to request reopenings of proceedings, they requested reopenings in relation to 93 absent defendants.[49] Apart from that, in one case, in relation to four defendants, state attorney's office filed a request for the protection of legality.

The courts resolved requests filed by state attorney's offices in a positive manner, while proceedings have already been discontinued after the change of legal qualification of criminal acts contained in the indictments or after charges were dropped for the majority (72) of the aforementioned number of absent convicted persons (97).

The DORH is of the opinion that this is an acceptable solution and that, should it be subsequently determined for any of these people that he/she was perpetrator of a war crime, there will be no procedural obstacles to re-open criminal proceedings.

Apart from the aforementioned, amendments to the ZKP also rendered it possible for persons sentenced in absentia to request re-opening of proceedings regardless of whether they are available to the court or not. However, filing of requests for re-openings of proceedings by convicted persons is, for the time being, quite rare.[50]

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[48] Instruction pertaining to the application of provisions of the OKZRH and the ZKP in war crimes cases – criteria (standards) for criminal prosecution, number: O-4/08, of 9 October 2008.

[49] Previously, in 118 criminal cases a total of 464 persons were sentenced in absentia.

[50] In July 2010, the Serbian Ministry of Justice was forwarded a list with 1543 persons who are either sentenced (538), indicted (563) or under investigation (433) for war crimes, by Croatia. The list was available to citizens at the Ministry of Justice of the Republic of Serbia, while persons sentenced in absentia have a possibility to request reopening of proceedings before Croatian courts.

Pre-investigations

There is a large number of non-prosecuted crimes. The 2009 Report on the Work of State Attorney's Offices did not contain data on the number of incidents reported as war crimes, nor did it mention the number of incidents for which criminal proceedings have not yet been instigated because perpetrators are unknown.[51] According to data published by the Ministry of Justice of the RC, 494 cases refer to the commission of war crimes. Out of that number, in 306 cases perpetrators are known and cases are at one of the stages of criminal procedure, while in 188 cases perpetrators are still unknown.[52]

Intensive cooperation between state attorney's offices and police authorities is necessary for successful identification of perpetrators of crimes, as well as acting of police authorities upon orders issued by state attorney's offices. However, due to elapse of time and related (im)possibility to provide evidence, the work of bodies which are obliged to collect data on perpetrators and their ordering parties and initiated criminal prosecution is getting more difficult year by year.

According to information obtained from the Chief State Attorney, the ŽDOs prepared lists of priority cases, and then the DORH drafted a shortlist of cases in which inquests have been intensified. During that process, the following criteria were used: number of victims, severity of crimes, significance of case in local environment etc.

In order to facilitate overview of war crimes cases and more successfully reveal direct perpetrators or responsible commanding officers, in the last years the DORH established an IT programme for monitoring war crimes which was funded by the Kingdom of Netherlands. The database contains data on crimes, victims, evidence and identified perpetrators.[53] Facilitated search of data should also render possible exchange of data with competent bodies from other countries, which will be of crucial importance for efficient prosecution of perpetrators of war crimes in the future.

However, there is a reason for concern, stated by the DORH itself in the 2009 Report on the Work of State Attorney's Offices, that the promptness of work of state attorney's offices and sufficient number of staff will come into question on 1 September 2011 when state attorney's offices, in compliance with the new ZKP, take over a much broader scope of activities in relation to all criminal acts then is the case now. The aforementioned deficiencies, as well as lack of funds, space and equipment, could have an adverse effect on prosecution of perpetrators of all criminal acts, including war crimes.

At the same time, the Ministry of Justice of the RC received a list with 40 persons who are suspect of committing war crimes, by Serbia. In January 2011, after the arrest of Tihomir Purda, a Croatian defender who is suspect by Serbia to have committed a war crime in Vukovar in November 1991, but who was not on the list of 40 suspects, the question of the number of persons who are suspect of commiting war crimes by Serbia was reopened.

[51] In the 2008 Report on the work of state attorney's offices it was stated that out of 703 incidents reported as war crimes, criminal proceedings were instigated in 301 incidents, while in relation to 402 incidents perpetrators were unknown and cases were in a pre-investigation stage.

[52] Ministry of Justice of the RC: Response to the Amnesty International Report "Behind a Wall of Silence".

[53] In the Croatian Ministry of Justice Response to the Amnesty International Report, a difference between the previous number of incidents (703) and the number from this Response (494) is explained by the establishment of a database, which rendered it possible to have insight into a complete picture of war crimes cases.

Investigations and indictments

Unlike the previous years, when indictments laid for some defendants did not contain specific activities of committing the act with which the defendants were charged[54], the newly laid indictments were written in a more correct (precise) manner.

During 2010, there was a significant increase in the number of cases in which investigations are ongoing, indictments were laid or verdicts were rendered against members of Croatian formations, in which victims were civilians or prisoners of Serb ethnicity.[55]

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[54] Examples of indictments laid in previous years:

- after the re-opened trial in which the Sisak County Court on 13 November 2009 found Milan Španović guilty that he, together with 18 co-perpetrators, committed a war crime against civilians and in which he was sentenced to 3 years and 5 months in prison (in 1993, he was tried in absentia and sentenced to 20 years), on 28 September 2010 the VSRH quashed the first instance verdict. Namely, the Sisak ŽDO did not amend the indictment No. KT-53/93 of 13 August 1993 although proceedings were discontinued in relation to five co-perpetrators even before the verdict was pronounced; then, on 19 November 2009 (six days after the pronouncement of the first instance verdict), the ŽDO abandoned criminal prosecution of all other co-perpetrators;
- in the trial conducted at the Vukovar County Court against Ilija Vorkapić for a crime in Lovas upon the indictment issued by the Vukovar ŽDO No. K-DO-39/00 of 19 December 2004 (which was the result of merging indictment issued by the Osijek ŽDO No. KT-265/92 of 19 December 1994 and by the Vukovar ŽDO No. K-DO-44/04 of 1 October 2004) for crimes of genocide and a war crime against civilians, after the separation of proceedings in relation to unavailable defendants in April 2009, the Vukovar ŽDO failed to amend the indictment in relation to two present defendants (Ilija Vorkapić and Milan Tepavac – in relation to whom proceedings were also separated in December 2010);
- indictment issued by the Bjelovar ŽDO number KT-49/94 of 12 June 1997 against 28 defendants (Milan Lončar et al.), which encompassed 12 incriminating events from the area of the-then Daruvar Municipality, did not clearly and sufficiently individualize the role of individual defendants in the commission of individual acts with which they were charged. Proceedings against Dragomir Ćasić, the 19th defendant in the aforementioned indictment, which were conducted at the Bjelovar County Court after the defendant's arrest, were completed on 11 October 2010 by rendering a non-final acquitting verdict.

[55] Those are proceedings against:

- Damir Raguž Vide and Željko Škledar, for the killing of Sajka Rašković, Mišo Rašković, Mihajlo Šeatović and Ljuban Vujić in Novska in 1991;
- Željko Belina, Dejan Milić, Ivan Grgić and Zdravko Plesec, for the killing of Goranka Mileusnić, Vera Mileusnić and Blaženka Slabak and injuring Petar Mileusnić in Novska in 1991;
- Božidar Vukušić, for the killing of Jovan Ergić in Dragišići in Šibenik hinterland in December 1991;
- Ivan Husnjak and Damir Sokol, for setting on fire houses in the villages of Pušine and Slatinski Drenovac in 1992;
- Željko Gojak, for the killing of three members of Roknić family in the settlement of Sajevac near Karlovac in October 1991;
- Tomislav Merčep, for the killings, disappearances and torture of civilians from the area of Pakrac, Kutina and Zagreb;
- Veljko Marić, for the killing of civilian Petar Slijepčević in Grubišno Polje in October 1991 (the main hearing is ongoing before the Belgrade Higher Court against the same defendant and for the same act);
- Jure Šimić, for the killing by a firing squad of three officers of the former JNA at the Bjelovar barracks;
- Frano Drlja, Božidar Krajina and Igor Beneti, for the killing of six civilians and setting on fire houses in Grubori near Knin in August 1995;
- Željko Sačić, for a crime in Grubori - as for the three previously mentioned defendants;

When it comes to the performance of state attorney's offices, we have noticed positive steps forward in the prosecution of perpetrators of war crimes who had not been prosecuted for years, or who were never convicted despite the fact that prosecution had been initiated.

Thus, in December 2010, investigation was initiated against Tomislav Merčep who was, during the war, Assistant Minister of the Interior of the RC and commander of formations of reserve police stationed in Pakračka Poljana and at Zagreb Velesajam, for the crimes committed against injured persons from Zagreb, Pakrac and Kutina area. Those cases were also subject to investigation conducted by the ICTY, and the ICTY Prosecutor's Office forwarded the case file to the DORH in 2006.

Indictments were re-issued against members of Croatian formations who were, in the trials conducted before the Zagreb Military Court in 1992 due to torture and execution of civilians in Novska, amnestied by the application of the-then valid Act on Amnesty from Criminal Prosecution and Procedures for Criminal Acts Committed in Armed Conflicts and in the War against the Republic of Croatia. Although the defendants were amnestied in 1992, the VSRH deemed that those were not matters adjudicated by a final verdict, because the new description of facts contained more facts than they were contained in the proceedings conducted before the Zagreb Military Court, when legal qualifications themselves were different (at the time, the acts were qualified as killing).

Until 2009, we did not notice a single case before the Sisak County Court in which members of Croatian formations were charged with the commission of war crimes. During 2009 and 2010, the Sisak ŽDO pressed charges against nine former members of Croatian formations in four criminal proceedings.

This year, we noticed the first proceedings against members of Croatian formations in which the consequences of actions were not the most severe (death) outcomes.[56] Until the initiation of these proceedings, members of Serb formations were exclusively charged with war crimes in which consequences occurred that did not include death outcomes.

- Emil Crnčec, Nenad Jurinec, Tihomir Šavorić, Ante Novačić, Robert Precehtjer, Goran Gaće and Robert Bevak, former members of the 7th Guard Brigade of the HV, for the killing by a firing squad of six members of the Republika Srpska Army captured during the Maestral 2 action in Mlinište in BiH in 1995;
- Tvrtko Pašalić, Željko Maglov, Damir Boršić and Milorad Paić, former members of the military police, for the abuse of civilians and war prisoners at the Šibenik prison of Kuline;
- Stjepan Klarić, Željko Živec, Dražen Pavlović, Viktor Ivančanin and Goran Štrokelj, for physical and mental abuse of persons at the „War prisoner's shelter" in Kerestinec.

[56] Those are proceedings against:
- Ivan Husnjak and Goran Sokol, charged that, although they were aware of illegal actions performed by their subordinates, they failed to do anything in order to prevent and punish such actions which resulted in setting fire in two villages inhabited by the Serb population and the destruction of more than 30 family houses;
- four former members of the military police, for the abuse of civilians and war prisoners in the Šibenik prison of Kuline;
- five defendants, for physical and mental abuse of persons at the „War prisoner's shelter" in Kerestinec.

During 2010, the ŽDOs filed several investigation requests or laid indictments for the crimes committed by members of Serb formations, but almost all defendants in those proceedings are unavailable to the judicial bodies of the RC.[57]

Although in the trial conducted during 2007 and 2008 at the Zagreb County Court against defendants Rahim Ademi and Mirko Norac for the crimes in Medak Pocket data was presented which pointed at direct perpetrators of crimes and potentially responsible commanders, the ŽDO has still not requested conduct of an investigation.

We also noted cases in which the ŽDOs dismissed criminal reports in which submitters of reports deemed that the reported persons had committed war crimes:

- a criminal report against P. K. for a war crime against civilians, which the Centre for Peace Osijek filed in 2005, was dismissed. In the decision on dismissal, it was stated that the reported person, as president of the Military-Housing Commission of the Osijek Operational Zone during armed conflicts, participated in forceful evictions of persons of non-Croat, primarily Serb ethnicity, from military or socially-owned apartments, that by doing so the reported person violated human rights and freedoms, that he violated the right to equality of all before the law, the right to personal safety and protection from violence and the right to select an apartment and a place of residence, whereby the reported person committed a criminal act of racial and other discrimination referred to in Article 133, paragraph 1 of the OKZRH (for which the statute of limitations for criminal prosecution had set in). However,

[57] Noted cases:

- the Dubrovnik ŽDO laid the indictment against commander of the Herzegovina Corps of the Republika Srpska Army, for the shelling of civilian targets on broader Dubrovnik area and the killing of 7 civilians;
- the Sisak ŽDO laid the indictment against: nine defendants charged with execution of 56 civilians of Croatian ethnicity in Baćin; six defendants charged with execution of 22 and severe injuring of one civilian in Joševica; five defendants for the crimes committed during the attack on villages inhabited primarily by Croatian population in Glina area in which 185 persons were killed and there was a large-scale destruction of property;
- the Osijek ŽDO laid the indictment against Enes Taso for the crimes committed in Dalj, and the Osijek County Court conducted investigation against Aleksandar Vasiljević and Miroslav Živanović for the crimes committed in detention camps in Serbia (Stajićevo, Begejci, Sremska Mitrovica and Niš) and in detention camp in Stara Gradiška;
- the Šibenik ŽDO laid the indictment against one defendant charged that in Suknovci and in Oklaj he abused and beat up civilian population of Croatian ethnicity, as a result of which one person died, that he raped one female person, attempted to rape another one, as well as that he threatened civilians, terrorized them and looted their property;
- the Karlovac ŽDO filed an investigation request against two persons, due to reasonable suspicion that in the village of Barilović they killed two members of Croatian formations, after they had surrendered;
- the Vukovar ŽDO laid the indictment against one defendant for the killing of one female person in the Vukovar settlement of Lužac in November 1991; an investigation request against four defendants for a crime committed against captured Croatian policemen in Borovo Selo; an investigation request against one person for the abuse of captured Croatian defenders near the car bridge Erdut-Bogojevo after the occupation of Borovo-commerce factory; an investigation request against one defendant for the taking away a civilian who was later found dead and for the abuse of two civilians in Antin at the end of 1991;
- at the Šibenik County Court investigation is ongoing against one defendant for the killing of two elderly persons of Croatian ethnicity in Drinovci near Drniš in December 1992.

total nature and amount of the reported person's actions still does not render it possible to conclude that he had exercised all essential characteristics of a war crime against civilians;

- a criminal report filed by the injured person S. G.-Ž. against R. A., D. Š., D. K. and V. K. due to a war crime against civilians committed to the detriment of D. Ž. was dismissed. D. Ž. was a distinguished engineer working in the Sisak oil refinery who was executed by members of the Sisak ZNG at the Zagreb garbage landfill Jakuševac in November 1991. According to the opinion of the ŽDO, there was no broader context of the events than the one which had already been factually described in the proceedings held before the Zagreb Military Court (at the time, the act was legally qualified as murder), which was suspended by way of application of the-then valid Act on Amnesty from Criminal Prosecution and Procedures for Criminal Acts Committed in Armed Conflicts and in the War against the Republic of Croatia.

The aforementioned examples indicate that some perpetrators of criminal acts committed at the time of war could remain unpunished.

Regional cooperation in the prosecution of perpetrators

Cooperation between judicial bodies of countries in the region in war crimes cases is necessary, primarily because countries are not in a position to extradite their own citizens. Evidence and information about cases and perpetrators are handed over through cooperation between domestic state attorney's offices and prosecutor's offices competent for the prosecution of perpetrators of war crimes in Serbia and in Montenegro. Cooperation is essential for bringing before justice perpetrators, who very often reside in a country of their ethnicity and, at the same time, a country of their citizenship.

The inception of cooperation between Croatian and Serbian prosecutor's offices was established in the case of a war crime against war prisoners committed at the agricultural facility „Ovčara" near Vukovar.[58] There was a need for more efficient forms of cooperation and thus, during 2006, agreements on cooperation in prosecution of perpetrators of war crimes, crimes against humanity and genocide, were signed between the DORH and the competent prosecutor' offices in Serbia and in Montenegro, which agreements rendered possible the exchange of evidence, documents and data and, as a consequence, the prosecution of perpetrators, as well.

According to data obtained from the Office of the War Crimes Prosecutor of the RS in December 2010, on the basis of the aforementioned agreement between competent prosecutor' offices in Croatia

[58] For the execution of a minimum of 200 persons (civilians, injured persons, prisoners, medical personnel…) taken away from the city hospital after the fall of Vukovar and executed at Ovčara, the Serbian judiciary rendered final sentencing verdicts against 15 persons (a total duration of sentence being 207 years in prison) in three proceedings, while five defendants received final acquitting verdicts. According to information from the Office of the War Crimes Prosecutor of the Republic of Serbia, they are still investigating crimes committed at Ovčara.

and Serbia evidence was exchanged in 29 cases, pertaining to 52 defendants.[59] The DORH fowarded to the Office of the War Crimes Prosecutor of the RS evidence in 25 cases pertaining to 46 persons.[60] The Office of the War Crimes Prosecutor transferred to the DORH 4 cases pertaining to 6 persons.[61]

According to information from the DORH, evidence and data are forwarded in indisputable cases, in which the amount of evidence material is sufficient to conduct investigation and/or lay indictments against perpetrators.

In the Instruction on handling war crimes cases, which the Chief State Attorney of the RC issued at the end of 2008, the ŽDOs were requested to perform their tasks in an equal and unbiased manner, irrespective of ethnic affiliation of the victims or perpetrators. After that, the ŽDOs reviewed cases, which led to an increased number of abandoned criminal prosecutions and re-openings of proceedings conducted in the absence of defendants.

We are of the opinion that reviews of cases, providing they have been performed in a quality manner, must render possible the viability of only those indictments from which, according to available evidence, reasonable suspicion ensues that the defendants are perpetrators of war crimes. However, a proportionally small number of cases in which cooperation between the Croatian and Serbian prosecutor's offices was carried out, in comparison with a large number of persons who were sentenced, charged with or against whom investigation for war crimes is ongoing in Croatia, points at significant consequences of the former, non-professional/biased work of Croatian prosecutor's offices and of courts and that reviewing of cases is a continuous process which requires constant efforts.

We appreciate efforts invested by the DORH so far, which in the last years achieved a significant step forward towards prosecuting all crimes in an equal and unbiased manner, irrespective of ethnic affiliation of the victims or perpetrators, but we deem that intensive cooperation is necessary for more efficient prosecution.

Cooperation (communication) was partially rendered difficult by the fact that all ŽDOs are competent for prosecuting crimes in Croatia, while in the RS one prosecutor's office was established, specialized for war crimes. This is also one of the reasons we are of the opinion that it would be useful to stipulate

[59] It is stated on the web site of the Office of the War Crimes Prosecutor of the Republic of Serbia that cooperation with the DORH was carried out in 39 war crimes cases. However, the aforementioned number pertains to all forms of mutual cooperation, including those on the basis of a Memorandum from 2005 and the Agreement on international legal assistance.

[60] In relation to 15 persons, the Prosecutor's Office decided not to initiate criminal prosecution, one person died during discussions whether to initiate criminal prosecution, while cases pertaining to 11 persons are still being discussed. Furthermore, although criminal reports were accepted in relation to two persons, after re-examination the reports were eventually dismissed. Investigation is underway against two persons, an indictment was issued against four persons, in relation to one person, after the initiation of proceedings, criminal prosecution was abandoned, while first instance verdicts were rendered against 10 persons (out of that number, a final verdict was reached in relation to two persons).

[61] Two cases are being discussed at the DORH, while the DORH decided to initiate criminal prosecution in relation to two persons (in two cases).

exclusive competence of the ŽDOs in Zagreb, Split, Rijeka and Osijek to handle war crimes cases. Bearing in mind a large number of cases which are at the pre-investigation stage and in which perpetrators are still unknown, possible establishment of a specialized prosecutor's office exclusively competent to handle such cases would not come too late. The establishment of exclusive competence of four ŽDOs or of one specialized prosecutor's office would result in strengthening/creation of specialized teams and would contribute to a facilitated exchange of information about crimes and a more efficient regional cooperation and, thereby, to a faster and high quality revealing and prosecution of perpetrators.

Apart from the aforementioned, a reason for concern is the fact that the agreement, such as the one signed between the DORH and prosecutor's offices in Serbia and in Montenegro, has not been signed between the DORH and the Prosecutor's Office of BiH. Even during 2010, we monitored proceedings at county courts in the RC which were tried in the absence of defendants who, according to information available to courts, reside in the area of BiH.[62] Lack of such an agreement, impossibility to extradite one's own citizens, as well as impossibility of accepting, in BiH, of (final) verdicts pronounced in the RC in the absence of defendants renders impossible bringing of perpetrators to justice.

Support to victims and witnesses of criminal acts – expanding the network of support offices at courts

During 2010, one could notice steps forward in the development of a support system for victims and witnesses, primarily in criminal proceedings. However, we are still of the opinion that not enough efforts have been made to harmonize legislation, quickly and qualitatively, with world trends in the development of victims' rights and the protection and assistance to witnesses and victims of criminal, and particularly of pre-criminal proceedings.

A step forward also needs to be made in the development of support system in civil proceedings (damage compensations…), because victims and witnesses of criminal acts, particularly war crimes, need support from the moment of commission of a criminal act until the completion of court proceedings, but also later in civil proceedings (proceedings for compensation of damage).

Last year, legal and administrative measures established necessary preconditions for the development of a systematic and comprehensive support system for witnesses. By coming into force of the Act on Amendments to the Courts Act on 1 November 2009, legal framework for the establishment of supporting services at county courts in the RC was established. On the basis of a pilot project conducted by the UNDP and the Ministry of Justice, Departments for organization and providing support for

[62] Noted cases:
- Damir Vide Raguž - at the Sisak County Court on 16 April 2010 sentenced in absentia by a first instance verdict to 20 years in prison;
- Bogdan Kuzmić – at the Vukovar County Court on 15 July 2010 sentenced in absentia by a first instance verdict to 7 years in prison.

victims and witnesses were formally established at county courts in Vukovar, Osijek, Zadar and Zagreb and at the Municipal Criminal Court in Zagreb.[63]

In July 2010, an agreement was reached between the Ministry of Justice of the RC, the UNDP and the Embassy of the Kingdom of Netherlands to the RC, to expand support for victims and witnesses to another three county courts. Beginning of 2011, new departments were opened at the county courts in Split, Rijeka and Sisak which, along with the previously established supporting services, creates a network of seven county courts. Bearing in mind the forthcoming rationalization of the courts network, pursuant to which reduction of number of county courts is anticipated (most probably to 15), we deem it necessary to establish departments for support at those county courts, because of availability of support to all citizens, but also because war crimes trials will still be conducted at all county courts.

In January 2010, the Government of the RC established the Commission for monitoring and improving support system for victims and witnesses with the basic objective of drafting the National strategy of support for victims and witnesses. Tasks of the Commission are: standardization in handling victims and witnesses for all institutions within the penal system and for the institutions in which a victim may end up before, during and/or after the completion of court proceedings (medical institutions, civil society organizations providing different forms of assistance and support), encouraging activities of state and other bodies for the purpose of implementing the National Strategy, providing opinions to the Government of the RC on draft laws and other issues influencing the improvement of support system in practice, as well as raising public awareness about the rights of victims and witnesses. We hope that the Commission will contribute to a qualitative improvement of support system for victims and witnesses, primarily bearing in mind that the existing support system represents a good basis for further development of support at other courts, but also at the entire repression system (the police and the DORH).

We deem it necessary to institutionalize support system in the DORH and the police, particularly bearing in mind a large number of unresolved war crimes cases, the new role of state attorney's offices at the investigation stage and the fact that the new Criminal Procedure Act (OG 152/08), which will apply to all criminal acts as of September 2011, including war crimes, stipulates special relation and respect of victims.[64]

Since we do not have information that neither the DORH nor the ŽDOs plan the establishment and development of a support system within their scope of activities, we express concern that particularly

[63] According to data from the Ministry of Justice, Department for probation and support for victims and witnesses, from June 2008 until 31 December 2010, services provided by the officers from departments established at county courts in Zagreb, Vukovar, Osijek and Zadar in war crimes cases were used by 801 victims/witnesses: in Zagreb 268 (including victims/witnesses who received support at the Sisak and Karlovac County Courts), in Vukovar 383, in Osijek 132 and in Zadar 18.

[64] According to the new ZKP, victim of a criminal act is entitled to an effective psychological and other expert assistance and support by a body, organization or institution charged with assisting victims of criminal acts in compliance with the law; he/she is entitled to participate in criminal proceedings as an injured person and has other rights stipulated by the law.

sensitive categories of victims and witnesses - victims and witnesses of war crimes, will still be left to their own devices.

Further development of a support system needs to be followed by adequate education of judges and state attorneys with the aim of raising their awareness about the needs of witnesses and victims in court proceedings and better understanding of the role and significance of witness support. In order to achieve full integrity of criminal proceedings and, thereby, efficiency of the judiciary in its entirety, it is necessary to ensure a comprehensive support system capable of responding to witness and victim needs and protecting their fundamental rights. First and foremost, it is necessary to provide a victim with the right to respect his/her privacy and prevent, or at least reduce, secondary victimization by inappropriate actions during court proceedings.

Starting from the needs and rights of victims and bearing in mind previous accomplishments pertaining to the improvement of victims' position, we deem it necessary to:

- expand the field of application and strengthen the existing system of free legal assistance,
- determine clearer standards for a more frequent use of „special measures" when questioning victims/witnesses,
- render it possible to use separate entrances/waiting rooms in court buildings (and other similar places),
- accelerate the creation of state funds for the victims of serious criminal acts for the purpose of compensating them on behalf of the state.

Implementation of an efficient victim and witness support system in the RC will continue to primarily depend on the Croatian Government's attitude towards victim and witness support, i.e. on the efforts invested into a quick and efficient expansion of the support system, but also on joint activities by numerous ministries, state institutions but also civil society organizations with the aim to accomplish common purposes and objectives.

Need for efficient and standardised reparation mechanisms for civil victims – analysis of legal proceedings for compensation of non-pecuniary damage caused by the killing of a close person

As we did in the last year's Report, we express concern because of a lack of political responsibility towards families of victims of crimes committed during the war who initiated damage proceedings before Croatian courts attempting to exercise their right to a compensation of damage for the loss of their close relatives. Still, there is a large number of plaintiffs/injured persons who have to deduct from their scarce funds in order to settle the costs of lost lawsuits.

Numerous family members of civil victims of war crimes and crimes committed during the war did not receive any satisfaction for the loss of a close person. One of the reasons for such situation is a large number of crimes for which the guilt of perpetrators has not been established.

Although in 2003 two acts were adopted[65] which attempted to resolve responsibility for damage occurred during the war, judging by the analyzed cases, the overview of which we present below in the text, they apparently failed.

We have collected and analyzed more than one hundred court cases dealing with compensation of non-pecuniary damage for the killing of close persons which are currently at various procedural stages.[66] According to analyzed cases, only 12% of plaintiffs managed to receive compensation of non-pecuniary damage from the RC. Others were denied, and the majority (61.4%) were ordered to pay court expenses.

Basic reasons for the failure of plaintiffs/injured persons lie in inefficient research and prosecution of war crimes, because injured persons mostly filed claims although criminal responsibility of perpetrators was not established, and it was not likely that competent institutions would conduct investigation and identify and prosecute perpetrators.

In the majority of analyzed proceedings (69%), claims were rejected due to statute of limitations for the initiation of proceedings. The courts applied a general (five-year) deadline for statute of limitations, counting from the commission of a harmful event, while the courts did not assess the cause – killing of a civilian by committing a criminal act, due to lack of a final convicting verdict.

However, court practice in this type of cases has not been aligned in the RC.

Nevertheless, in a smaller number of litigation proceedings courts ruled on behalf of injured persons by invoking the Obligations Act, which stipulated that a request for compensation of damage caused by a criminal act, in case when a longer deadline for statute of limitations is anticipated for criminal prosecution, should fall under statute of limitations by the expiry of the time period determined for statute of limitations of criminal prosecution. Although this longer period for statute of limitations may apply only in cases in which a verdict has established that damage was caused by a criminal act, the law stipulated an exception pursuant to which litigation court has the right to establish whether dam-

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[65] The Act on Responsibility for Damage Caused by the Acts of Terrorism and Public Demonstration (OG, 117/03) and the Act on Responsibility of the Republic of Croatia for Damage Caused by Members of Croatian Armed and Police Forces during the Homeland War (OG, 117/03).

[66] Out of 105 analyzed cases, in 74% of cases claims were rejected due to statute of limitations for the initiation of litigation proceedings, adopted objection for war damage, lack of evidence that damage (by committing a criminal act of murder or war crimes) was committed by HV members or members of Croatian police forces or due to lack of responsibility of the RC in the area that, at the time of commission of a criminal act, was not under control of Croatian authorities. In only 12% of cases, the courts accepted the claims, establishing responsibility of the RC and awarding compensation of non-pecuniary damage to the plaintiffs. In other cases, litigation proceedings are still ongoing. In the majority of cases in which courts accepted the claims, there is a final convicting verdict against perpetrators of criminal acts.

age was caused by a criminal act providing there were some obstacles, due to which it was not possible to conduct criminal proceedings against responsible person. In several cases, litigation courts deemed that they had powers to question and assess whether damage was caused by activities which contain elements of a criminal act and, having assessed so, they awarded compensation to the injured persons/ plaintiffs.

We also noticed a non-uniform court practice in cases in which, pursuant to the Act on the Responsibility for Damage Caused by the Acts of Terrorism and Public Demonstration, compensations were requested for the killing on occupied area. In some cases, courts assumed a position that the RC is not liable for damage occurred on temporarily occupied area during the occupation, while in other cases they assumed a position that the RC was responsible because harmful activities contained all characteristics of terrorist acts.

Injured persons, organizations dealing with human rights and international institutions (the OSCE) have been warning for years about the practice which renders it impossible for close relatives of killed persons to achieve justice by establishing criminal responsibility for the committed criminal act (many criminal acts were not investigated and prosecuted), nor does it provide them with a possibility to exercise compensation for the death of a close person.

We would particularly like to warn about repeated injustice towards injured persons, which is, this time, taking place during litigation proceedings. Namely, in 61.4% of analyzed cases, the courts obliged the plaintiffs to pay the proceedings expenses in the amount between HRK 5,000.00 and 107,400.00 after they had rejected the plaintiffs' claims. Only in a handful of cases it was adjudicated that each party in the proceedings should bear its own expenses, mostly due to the lack of list of expenses presented by municipal state attorney's offices.

Of the presented number, 16% of plaintiffs are paying or have paid off the expenses of the proceedings, while in other cases the plaintiffs have not yet been ordered to pay the expenses of the proceedings, because decisions are not yet final and enforceable or are in the review stage before the VSRH. Croatian Government's decision on writing off litigation costs does not apply to the analyzed cases[67], because the subject proceedings were initiated after the adoption of the law in 2003.

[67] On 28 May 2009, the Government of the RC passed a Decision by which it wrote off unpaid expenses awarded to the RC by final verdicts rendered after 31 July 2003 in the proceedings instigated on the basis of Article 180 of the Obligations Act (the aforementioned Article was quashed in 1996), and which continued on the basis of the 2003 Act on responsibility for damage caused by the acts of terrorism and public demonstration and the Act on responsibility of the RC. The aforementioned Decision authorised state attorney' offices not to initiate distraining procedures in order to collect expense claims and to withdraw distraint motions in the already instigated procedures. The Ministry of Justice assumed the obligation to obtain data on collected expense claims and propose to the Government the manner of their return. However, this Decision did not include those plaintiffs who filed their claims after 1996 and who constitute the majority of all plaintiffs.

In compliance with this Decision, the DORH passed a General Instruction on handling such cases in which it was stated that, if the litigation proceedings are still ongoing, the DORH will inform, in writing, the plaintiff or his/her plenipotentiary about the Government's decision and will not request compensation of litigation expenses should they withdraw lawsuit against the RC.

We would also like to add that the protection system of civilian disabled persons from the Homeland War and family members of killed, deceased or missing civilians is regulated by the Act on Protection of Military and Civilian Invalids of War, and the administrative procedure for the exercise of status of a civilian war victim and the rights stemming from that status showed its deficiencies. The abovementioned Act, as well as by-laws adopted along with it, were the topic of numerous round tables organized by civil society organizations and of critical reviews related to non-recognition of rights for certain civilian war victims, deadlines stipulated for submission of requests and the impossibility of obtaining credible documentation. Data, pursuant to which approximately 6,670 civilians died[68] in Croatia during the Homeland War, while the number of beneficiaries of family disability benefits from among civilian disabled persons is only 359, speak about the failure of exercising the rights of civilian victims and their relatives[69].

All of the aforementioned indicates that there is a lack of satisfactory and efficient mechanism within the system by which civilian war sufferers (particularly of war crimes), regardless of the fact whether the perpetrators were sentenced and of their non/affiliation to military formations, would be adequately compensated.

We are advocating the adoption of a national programme and a law which would regulate compensation of damage for the killing of close persons in compliance with the 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 of the UN. [70]

Apart from that, it is necessary to urgently resolve the issue of paying litigation expenses in order to achieve at least partial justice towards victims and holding the state liable for non-prosecution of numerous crimes. It is necessary to pass a decision, as soon as possible, by which the RC denounces charging of expenses from all plaintiffs who failed with their claims for the compensation of damage due to death of a close person.

Erroneous application of the amnesty - its implications and demystifications

Upon its recognition and joining the international community of sovereign countries, the RC (by will of its political elite and under pressure from the outside) decided through legislative institutions and judicial authority to grant amnesty for crimes committed during the war or crimes related to the war (those primarily referred to the criminal act of armed rebellion). In that way, Croatian authority provided political and legal framework for the post-war integration of Serb minority as well as for normali-

[68] Source: Dr.sc. Dražen Živić and prof. Bruna Esih: War crime – a means and consequence of Serbian aggression on the Republic of Croatia, the Institute of Social Sciences *Ivo Pilar;* http://www.studiacroatica.org/zivic/zivicesih.htm

[69] http://www.mzss.hr/hr/zdravstvo_i_sotionlna_skrb/sotionlna_skrb/urights_za_zastitu_zrtava_i_sudionika_the war/godisnji_prikaz_numbera_korisnika_iz_systema_zastite_military_i_civilianih_invalida_the war

[70] 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 ***http://www2.ohchr.org/english/law/remedy.htm***

zation of inter-ethnic relations and strengthening of democratic processes. Croatia thus showed that it wanted peace within its boundaries and strengthened its international position.

However, opinion that the application of the amnesty act only abolished "Serb crimes and Serb criminals" has prevailed in the public to this day. Namely, the political elites and judicial bodies failed to correctly and thoroughly inform the public about the character and scope of application of the amnesty act. The information on which persons, or which number of persons, the amnesty laws were applied to, is unavailable to the public. At the same time, in the judicial practice we have encountered cases of erroneous applications of the amnesty act to the cases of serious crimes, which were at the time qualified as murders.[71]

We deem it important to establish at least an approximate number of persons which the amnesty acts had been applied to, and to research whether the amnesty acts had been applied, and to which extent, to

[71] By monitoring trials or through communication with members of victims' families, we registered the following cases:

1. by the decision of the Osijek County Court, the criminal proceedings against Fred Marguš were cancelled in June 1997 following the application of the General Amnesty Act; the trial had been held for murder of four persons. In 2006, charges were again pressed against Marguš; the indictment encompassed a larger number of victims while the crime was qualified as a war crime against civilians. In 2007, Marguš was sentenced to 15 years in prison and the sentence became legally valid;
2. by the decision of the VSRH, the criminal proceedings against Antun Gudelj were cancelled in May 1997 following the application of the General Amnesty Act. The trial had been held for murder (of Josip Reihl Kir, Goran Zobundžija and Milan Knežević) and attempted murder (of Mirko Tubić). The Constitutional Court of the RC accepted the constitutional complaint lodged by the injured party Jadranka Reihl Kir and quashed the decision on trial cancellation issued by the VSRH. In July 2008, Gudelj was found guilty by the Osijek County Court and sentenced to 20 years in prison for three criminal acts of murder and an attempted murder. At the second-instance, the VSRH upheld the first-instance court verdict. We are not familiar with any decision reached by the VSRH in the third-instance;
3. by the decision of the Zagreb Military Court (case No. K-42/92), the criminal proceedings against Dubravko Leskovar and Damir Vida Raguž were cancelled in November 1992 following the application of the amnesty act; the trial had been held for murder (of Sajka Rašković, Mišo Rašković, Mihajlo Šeatović and Ljuban Vujić) committed in Novska in 1991. The criminal proceedings for the same crime were initiated against Damir Vida Raguž and Željko Škledar in 2009, however, this time the offence was qualified as a war crime against civilians. By the first-instance court verdict issued by the Sisak County Court, Raguž was sentenced in absentia to 20 years in prison, while Škledar was acquitted of charges. The verdict is for the time being not legally valid;
4. by the decision of the Zagreb Military Court (case No. K-44/92), the criminal proceedings against Željko Belina, Dubravko Leskovar and Dejan Milić were cancelled in November 1992 following the application of the amnesty act; the trial had been held for murder (of Goranka Mileusnić, Vera Mileusnić and Blaženka Slabak) and an attempted murder (of Petar Mileusnić), committed in Novska in 1991. Criminal proceedings against Željko Belina, Dejan Milić, Ivan Grgić and Zdravko Plesec were conducted for the stated offence before the Sisak County Court in 2010 (in 1992, the State Attorney's Office dropped charges against Grgić and Plesec). The verdict on suspension of indictment was reached since the Court Council deemed that the case had already been adjudicated (res iudicata) with a legally valid verdict. The stated verdict (passed in 2010) has for the time being not become legally valid;
5. by the decision of the Zagreb Military Court (case No. K-3/92), criminal proceedings against R.A., D.Š., D.K., and V.K. were cancelled in November 1992 following the application of the amnesty act; the accused had been charged with murder of D.Ž. at the Jakuševac garbage landfill in Zagreb. In April 2010, the Zagreb ŽDO rejected the criminal report which named the aforementioned persons as perpetrators of war crime against civilians; the Zagreb ŽDO deemed that the criminal proceedings could not have been repeatedly conducted as the case had already been tried and the trial had been suspended with a legally valid verdict.

criminal acts which had not been encompassed, or should not have been encompassed by the amnesty – primarily bearing in mind the criminal act of murder or war crimes. For that reason, we undertook to analyze relevant laws and their application by military courts in the RC. The research is in progress.

Legal regulations

Since 1992, several acts have been passed in the RC which all intervened into the penal system and which have been referred to as amnesty acts.

Firstly, on 25 September 1992, the Act on Amnesty from Criminal Prosecution and Criminal Proceedings for the Crimes Committed in Armed Conflicts and in War against the Republic of Croatia (OG 58/92) was passed. Perpetrators of criminal acts committed during the armed conflicts, during the war against the RC, or criminal acts related to these conflicts, i.e. the war, committed in the period from 17 August 1990 until the day of the Act's coming into effect, were abolished (acquitted from criminal prosecution) by the aforementioned act.[72] Criminal acts, which the RC was obligated to prosecute in accordance with the provisions of international law, were exempted from the amnesty. The stated Act was amended by the novel of 31 May 1995 (OG 39/95), which covered the period until 10 May 1995 and which bridged the legal gap that occurred after 25 September 1992.

The aforementioned Act was followed by the territorially-limited Act on Amnesty of the Perpetrators of Criminal Acts Residing in the Temporarily Occupied Areas of Vukovar-Srijem County and Osijek-Baranja County dated 17 May 1996 (OG 43/96) and, subsequently, by the General Amnesty Act dated 20 September 1996 (OG 80/96), which abrogated the two previous acts and which has still been in force.

The General Amnesty Act had the widest scope, since it referred not only to the abolition but also to the absolute amnesty from execution of a legally valid verdict against perpetrators of criminal acts committed during the aggression, armed rebellion or armed conflicts in the RC, or criminal acts in relation to the same, committed in the period from 17 August 1990 until 23 August 1996.

Although their contribution to the attempts of establishing peace and reducing tensions caused by the armed conflicts occurring at that time was indisputable, the major failings of the stated acts were impreciseness, their generality and unpreparedness of the judicial bodies which were applying them, which caused dilemmas over the scope of the amnesty and which all led to the subsequent cancellations of individual criminal proceedings against perpetrators of the most serious violations of humanitarian law which had characteristics of war crimes.

Already in the first Amnesty Act, the legislator resorted to a quite broad definition of criminal acts which the Act applied to, and in that way the legislator simply transferred onto the judiciary the authority to ap-

[72] Abolition refers to the acquittal from criminal prosecution at the stage when the criminal proceedings have not yet been initiated, or they have been initiated, but have not been concluded with a legally valid verdict. Amnesty is a broader concept than the abolition, since it refers to the acquittal from criminal prosecution, an entire or partial acquittal from execution of the sentence, commutation of pronounced sentence, removal of conviction from the record, or annulment of legal consequences of the verdict.

ply the institute of amnesty, thus bringing into question the principle of a three-tiered system, and admitting legal uncertainty into the system, since the provisions of the Act provided opportunity for multiple interpretations. Therefore, it was practically "up to the courts to create presumptions for the amnesty. However, immediately after the promulgation of that Act, a draft of its credible interpretation showed up in the Croatian Parliament, containing a catalogue of criminal acts for which the courts were supposed to grant the amnesty, but the aforementioned draft would soon mysteriously disappear."[73]

A possibility to lodge an appeal in all these cases was limited. The only party which had an opportunity to lodge an appeal was the prosecutor (who even had a time limit of only 24 hours to do so). However, following the General Amnesty Act's coming into force, the prosecutor lost that right in case the court had applied the amnesty to the benefit of a perpetrator within the framework of legal qualification of the criminal act which was established by the prosecutor.

(Im)possibility of a repeated trial

We are of the opinion that it is absolutely necessary to find a solution for the cases in which the amnesty acts were erroneously applied to the incidents which had resulted in deaths, in order to make room for a repeated prosecution of persons whom the amnesty had been erroneously applied to.

In court practice there are different interpretations of the possibility of a repeated trial for the same incident (this time qualified as a war crime) against the persons whom the amnesty was previously applied to. These interpretations range from the opinion that the pronouncement of verdict on suspension of indictment, or reaching the decision on cancellation of criminal proceedings (by applying the amnesty act), does not exclude either a possibility of instituting and conducting criminal proceedings at a later stage, or even reaching a verdict of guilty against perpetrators of war crimes, since these constitute crimes not only against the social values of the RC[74] but also crimes against humanity and international law; to the opinion that it is not possible to try a person for an offence, not even in case when the offence constitutes a war crime, if the factual situation was encompassed by the initial court decision (on amnesty), unless the requirements were met for reopening of the case contained in the provision of Article 406, paragraph 1, item 5 of the ZKP (OG 110/97).[75]

The aforementioned provision of the ZKP stipulated a possibility of reopening of criminal proceedings to the detriment of the accused if the act on amnesty had been applied to a criminal act which it could not have been applied to.[76] However, the possibility of submitting a request for reopening of the case was limited by one-month time limit starting with the day of the prosecutor's obtaining information on the

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[73] Petar Novoselec: Retrospection to the Changes of Penal Legislation made so far in the Republic of Croatia, Croatian Yearbook of the Penal Law and Practice, Volume 3, No. 2, 1996, pages 578-581.

[74] For instance, the VSRH verdict No. I Kž-211/1998-3 of 01 April 1999

[75] For instance, Constitutional Court of the RC decision No. U-III-543/1999 of 26 November 2008.

[76] The Constitutional Court of the RC invoked the aforementioned provision in the decision No. U-III/791/1997 of 14 March 2001 by which it upheld the constitutional complaint lodged by Jadranka Reihl Kir (wife of the killed Josip Reihl Kir) and quashed

fact of misapplication of the amnesty. The new ZKP (OG 152/08), the provisions of which on reopening of the case have come into force for all criminal acts, does not contain a provision with such content.

New disputes over the possibility of repeated prosecution of persons to whom the amnesty was previously applied, depending on the fact whether the previous criminal proceedings were either cancelled by a decision or by a verdict on suspension of the indictment was passed, could lead to non-standardised legal provisions which refer to the *"ne bis in idem"* principle.

Namely, the ZKP, which is still applied in the criminal proceedings for war crimes, stipulates that "no-one may be retried for the criminal act for which he/she was already tried and which trial was concluded with a legally valid court verdict", therefore with a verdict or a decision. By literal interpretation of the aforementioned provision, the persons to whom the amnesty was previously applied could not be retried for the same criminal act, regardless of the fact whether the previous criminal proceedings were cancelled with a decision or if the proceedings were concluded with a verdict on suspension of the indictment.

The new ZKP (OG 152/08), which will come into force in its entirety as of 1 September 2011, stipulates that "no-one may be repeatedly prosecuted for the criminal act for which he/she was already tried and which trial was concluded with a legally valid court verdict". This implies that it is possible to retry a person for the same criminal act only if the previous criminal proceedings were cancelled with a decision, and not in case when the criminal proceedings were concluded with a legally valid verdict (either verdict of guilty, verdict of acquittal, or verdict on suspension of the indictment).[77]

Cancellations of criminal proceedings on the basis of amnesty acts in the Zagreb Military Court [78] practice

In the period from July 2009 until December 2010, we made inspection into the preserved records of the former Zagreb Military Court which were cancelled on the basis of the amnesty act(s) and which have been archived in the State Archives in Zagreb.[79]

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the VSRH decision No. Kž-102/97-4 of 22 May 1997 by which the VSRH - applying the General Amnesty Act to the case - had cancelled criminal proceedings against the accused Antun Gudelj.

[77] The aforementioned legal formulations are not in accordance with Article 31, paragraph 2 of the Constitution of the RC, which reads: "No-one can be either retried, or penalised in the criminal proceedings for the same criminal act for which he/she was already acquitted or found guilty following a legally valid verdict in accordance with the law." The stated sentence may imply that it is possible to retry a person for the same criminal act if the previous criminal proceedings were concluded with a legally valid verdict on suspension of the indictment or if the previous criminal proceedings were cancelled with a decision.

[78] The Military Court was established on the basis of the provision of Article 2 of the Regulation on Organisation, Operation and Scope of the Judicial Authority in Times of War or Direct Jeopardy to the Independence and Integrity of the Republic of Croatia, dated 7 December 1992. Article 4 of the aforementioned Regulation stipulated that military courts were founded for the area covering each of the operational zones. At that time, six operational zones had been established with the seats in Osijek, Bjelovar, Zagreb, Karlovac, Rijeka and Split.

[79] Inspection into the records and the analysis of work of the Zagreb Military Court was performed by Maja Kovačević Bošković, Jelena Đokić Jović and Marko Sjekavica.

We present the initial results of the analysis of cases of the Zagreb Military Court.[80]

There are 1,019 criminal cases in the registry of the Zagreb Military Court, out of which 9 cases have not been preserved and we have not made inspection into another 10 cases since they are currently located at municipal courts, county courts, or the VSRH.[81]

A total of 806 cases were registered and filed for 1992; 72 cases for 1993; 69 cases for 1994; 66 cases for 1995; and 6 cases for 1996.

The widest application of the amnesty occurred in 1992 and 1993, while application of the amnesty act was subsequently limited to criminal acts against the RC (a total of 621 cases – mostly for the criminal act of armed rebellion) and to criminal acts against the armed forces of the RC (a total of 282 cases – mostly for the criminal act of non-obeying the conscripting and avoidance of military service and to the criminal act of AWOL and desertion from the armed forces).

On the basis of analyzed cases, we have concluded that, due to imprecision and generality of the legislative formulation of "links" between the criminal acts and the aggression, armed conflicts etc., it was primarily the first amnesty act, among the others in the series, that was also applied to perpetrators of criminal acts against life and body, such as murder and serious physical injury (5 cases), and in some cases also to perpetrators of other criminal acts: against community-owned property and private property (concealment, causing damage to other person's property, unlawful occupancy of a community-owned immovable property, requisition of motor vehicles), against public transport security, against general security of people and property, against business (poaching), against official duty and public authorities (abuse of office and official authorities).[82]

Furthermore, we noticed the-then trend of drawing up imprecise indictments which neither contained a visible causal link between the acts of the accused person and the occurrence of serious consequences such as wounding and killing of citizens of the RC, nor did the indictment explanations contain listed evidence which could have corroborated the decisive facts.[83] Such indictments contained descriptions of the situation in a state of war while the responsibility of the accused persons was collectivised, instead

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[80] The analysis of cases in which the amnesty was applied at the Osijek Military Court and the Osijek County Court is in progress. We kindly requested approval for inspection to be made into the records of other military courts too, however, since May 2010 we have not received any reply from the Ministry of Justice of the RC.

[81] The inspection was not made into the Zagreb Military Court cases No. K-42/92 and No. K-44/92 which refer to the murders committed in Novska. We included the aforementioned cases in the analysis since we collected data on them by monitoring trials for the aforementioned crimes which were held at the Sisak County Court during 2010.

[82] We determined some 20 cases in which the consequences of erroneous application of the amnesty have not caused a major damage. For instance, the case of accused HV members who were charged with the criminal act of poaching (during the game close season, they killed a doe, a buck, and a wild hare by shooting from automatic weapons).

[83] For instance, the following issues were described by imprecise formulations contained in the indictments:
- incriminated event "in which a violent, unlawful wounding and killing of citizens of the RC occurred", while the act was committed "with a purpose of establishing a new communist authority" (K- 249/92);

of providing specific acts of the accused persons which would have constituted essential characteristics of the criminal acts which the accused persons had been charged with (neither the circumstances nor consequences of actions by the accused persons - such as the place of the attack, time of the attack, or the identity of injured person(s) - were precisely stated).[84] Reading out of criminal reports or official records was often proposed as evidence, but the same could not be used in the evidence procedure before the court. Although the court usually did send such indictments back to the Military Prosecutor's Office for correction of errors, the same indictments would be returned uncorrected to the Military Court which would often result in cancellations of criminal proceedings by applying the amnesty act. In several cases, such practice might have led to non-prosecution of persons accused for the very acts which possibly could have had characteristics of war crimes. Preparation of thorough analyzes of such cases is in progress.

The most serious consequences of erroneous application of amnesty have manifested themselves in three cases in which the amnesty was applied to criminal acts which had been qualified as murder – which, in our opinion, actually had characteristics of war crimes.[85] In those cases, the Military Prosecutor's Office did not even lodge appeals against the decisions of the Zagreb Military Court by which criminal proceedings against the accused persons were cancelled following the application of the act on amnesty.

Contrary to the aforementioned cases, in two cases in which criminal acts had been qualified as murder (case No. K-887/92), i.e. murder for gain (case No. K-625/92), the Military Prosecutor's Office did lodge appeals against decisions on suspension of criminal proceedings, which resulted in the VSRH quashing the decisions and reversing the cases for further trial, since it was not possible to suspend criminal proceedings by applying the-then valid amnesty act.[86]

However, the consequences of erroneous application of the amnesty act to the case of murders in Novska and the case of murder at Jakuševac have still not been remedied.

The epilogue of reopened criminal proceedings for the crimes in Novska is uncertain, since in one case the first-instance court passed the verdict of guilty, and in another case it has reached a verdict on suspension of indictment. Final decision in those cases will be made by the VSRH.

- "on an unknown day in August 1991, in the village of Rajić, Novska municipality, he joined the paramilitary formations of the so-called "SAO Western Slavonija" with weapons in his hands, all with a purpose of separating the Novska area from the matrix and annexing that area to the so-called para-state of 'SAO Western Slavonija'; also in November 1991, in Stara Gradiška prison, he interrogated, beat and mistreated the captured Croatian soldiers… and thus committed a criminal act against the RC – by taking part in the armed rebellion" (K- 228/92).

84 The aforementioned primarily refers to the criminal act of jeopardizing the territorial integrity of the RC (Article 231 of the KZRH) and to the criminal act of armed rebellion (Article 236.f. of the KZRH), which were committed in the form as they were qualified, which means that the criminal acts resulted in death of one or more persons, or they involved serious violence or mass-scale destruction, i.e. jeopardizing security of the RC (Article 236.o. of the KZRH).

85 This refers to the case K-3/92 (murder at Jakuševac) and the cases K-42/92 and K-44/92 (murders in Novska).

86 After the cancellation decision of the VSRH, the cases were not retried at the Zagreb Military Court. We have no information whether these cases were transferred to some other court, or what was the final epilogue of these cases.

In the case of murder at Jakuševac, a remedy for consequences of erroneous application of the amnesty is nowhere in sight. Following the application of amnesty, the-then State Attorney, in his request for protection of legality, pointed to the fact that in that specific case the amnesty act had been erroneously applied, which was also established in the VSRH decision which, unfortunately, has merely declaratory effects. The victim's family recently attempted to re-initiate criminal prosecution against the perpetrator by lodging a criminal report, however, the report was rejected.

Furthermore, due to a failure to establish individual criminal responsibility in cases in which the amnesty act had been erroneously applied, the claims contained in subsequent civil lawsuits filed by plaintiffs (the victims' close family members) who requested the sued RC to be ordered to pay a just pecuniary compensation of non-material damage, were rejected. This led to a situation in which the victims' family members, besides being deprived of satisfaction which the conviction of crime perpetrators would have brought them, also lost the satisfaction of gaining a just material compensation.

OVERVIEW OF MONITORED TRIALS

Reopened cases based on the request by the State Attorney's Office

In 2010, four proceedings were dismissed at county courts on the basis of requests for reopening of proceedings and request for the protection of legality that were submitted by ŽDOs. Having changed legal qualification of crimes in the indictments into criminal acts that fall under amnesty, the proceedings were dismissed in respect of 23 members of Serb formations.[87]

Other monitored trials

In addition to the aforementioned reopened proceedings, we monitored main hearings in 22 war crimes trials held at county courts. In another four trials, the main hearings did not commence although they were scheduled because the conditions for holding them were not met.[88] Apart from that, we also monitored a trial in which the criminal act was not legally qualified as a war crime but as murder of an official person, attempted murder of an official person and instigating murder of an official person. We monitored this trial because the conflict perpetrators were members of the JNA and the Croatian formations, respectively.[89]

Out of 22 trials, 18 dealt with war crimes against civilians, 2 with a war crime against war prisoners and the remaining 2 trials dealt with genocide and a war crime against civilians.

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[87] In 2010, following the permission to re-open the cases, the Zadar County Court dismissed criminal proceedings against:

- Maks Podgornik and Zdravko Ranđelović;
- Zoran Lakić, Marko Lacmanović, Rajko Radmanović, Bogdan Repaja and Drago Repaja;
- Milenko Drača, Stevan Drača, Stevan Milanko, Milan Milanko, Branko Lakić, Dragan Končarević, Živko Milanko, Branko Milanko, Željko Sanković, Davor Sanković and Dragan Drača.

At the Sisak County Court, criminal proceedings were dismissed against: Nikola Radišević, Jovo Zubanović, Simo Plavljenić and Dušan Paunović. Previously, the VSRH found that the request for the protection of legality was well-founded and that, with the previous final verdict, the law was violated to the detriment of the convicted persons.

[88] At the Zagreb County Court, the main hearing did not begin in the trial against defendant Mirko Sivić (crime in Osijek) because of his unfitness to plead (to stand trial). In the trial against defendant Željko Žakula (crime in Čanak), the hearing before the Gospić County Court did not begin because the defendant is unavailable, allegedly he resides in the RS. In the trials against defendants Milan Velebit (crime in Taborište) and Stojan Letica (crime in Novo Selište), the hearings did not begin because the defendants, who reside in the area of the RS, did not respond to the Sisak County Court's summons to a hearing.

[89] This trial is conducted at the Rijeka County Court against defendants Vlado Grbina, Petar Petrović and Radovan Anđić, former JNA officers and conscripts-soldiers, for the murder of Rifet Mustić and Mladen Bujačić and attempted murder of Željko Krulić, Valter Dajčić and Herkul Alaburić on the island of Mali Lošinj in 1991.

Trials were conducted before 9 county courts. We monitored the following main hearings: 7 trials at the Sisak County Court, 3 trials in Vukovar, 2 trials per courts in Karlovac, Osijek, Zadar, Šibenik and Bjelovar and 1 trial per courts in Zagreb and Gospić.[90]

Eight first-instance trials had to be repeated. In three cases, the main hearings were held for the third time after the VSRH quashed the verdicts rendered by the first-instance courts on two occasions.[91] In other 5 trials, the first-instance proceedings were repeated for the first time.[92]

55 persons were accused in a total of 22 trials. 19 persons were accused in 8 trials for committing crimes as members of Croatian formations, whilst 36 persons were accused in 14 trials for committing crimes as members of Serb formations.

32 defendants attended the main hearings (18 members of Croatian- and 14 members of Serb formations). Trials were also held against 23 absent defendants (one member of Croatian- and 22 members of Serb formations).[93] Three trials were held without the presence of any defendant.[94] Out of 32 present defendants, 22 of them were detained (13 members of Croatian- and 9 members of Serb formations).

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[90] The trials at the county courts were conducted against the following defendants:
- in Sisak: against Milenko Vidak (crime in Slunjska Greda); against Ivica Kosturin et al. (crime in Letovanić); against Pero Đermanović et al. (crime in the villages along Una river near Hrvatska Kostajnica); against Damir Vide Raguž et al. (crime in Novska II); against Ivica Mirić (crime in Brezovica forest); against Željko Belina et al. (crime in Novska III); against Rade Miljević (crime at the Pogledić hill near Glina);
- in Vukovar: against Bogdan Kuzmić (crime at the Vukovar hospital); against Miloš Stanimirović et al. (crime in Tovarnik); against Milan Tepavac et al. (crime in Lovas);
- in Karlovac: against Mićo Cekinović (crime in Slunj and surrounding villages); against Miroslav Bijelić et al. (crime in Slunjska Selnica);
- in Osijek: against Čedo Jović (crime in Dalj IV); against Damir Kufner et al. (crime in Marino Selo);
- in Zadar: against Nedjeljko Janković (crime in Ravni Kotari); against Milan Jurjević et al. (crime in Kruševo);
- in Šibenik: against Božidar Vukušić (crime in Dragišići); against Rajko Janković (crime in the villages of Promina Municipality);
- in Bjelovar: against Dragomir Ćasić (crime in Bijela); against Ivan Husnjak et al. (arson in the villages Pušine and Slatinski Drenovac);
- in Gospić: against Goran Zjačić (crime in Frkašić II);
- in Zagreb: against Željko Gojak (crime in Karlovac).

[91] Trials against the following defendants: Čedo Jović (crime in Dalj IV); Rade Miljević (crime at the Pogledić hill near Glina); Milan Jurjević and Davor Tošić (crime in Kruševo).

[92] Trials against the following defendants: Mićo Cekinović (crime in Slunj and surrounding villages); Miroslav Bijelić et al. (crime in Slunjska Selnica); Rajko Janković (crime in the villages of Promina Municipality); Ivica Mirić (crime in Brezovica forest) and Damir Kufner et al. (crime in Marino Selo).

[93] Trials in absentia were conducted against member of Croatian formations Damir Vide Raguž (crime in Novska II) and against the following defendants - members of Serb formations: Dubravko Čavić (crime in the villages along Una river near Hrvatska Kostajnica), Bogdan Kuzmić (crime at the Vukovar hospital), Miroslav Bijelić, Savo Padežanin, Đuro Tepšić and Rade Bjeloš (crime in Slunjska Selnica), Miloš Stanimirović, Stevan Srdić, Dušan Stupar, Boško Miljković, Dragan Sedlić, Branislav Jerković, Jovo Janjić, Milenko Stojanović, Dušan Dobrić, Đuro Dobrić, Jovan Miljković, Katica Maljković, Nikola Tintor, Željko Krnjajić and Radoslav Stanimirović (crime in Tovarnik) and against Davor Tošić (crime in Kruševo).

[94] Trials for the crimes at the Vukovar hospital, Slunjska Selnica and Tovarnik.

In 2010, a total of 15 first-instance verdicts were rendered, comprising 11 verdicts of conviction, 2 verdicts of conviction/acquittal, 1 verdict of acquittal and 1 verdict rejecting the indictment.

Based on the first-instance (non-final) verdicts: 19 defendants were convicted (5 members of Croatian and 14 members of Serb formations), 3 defendants were acquitted of charges (1 member of Croatian and 2 members of Serb formations), whereas the charges were rejected in respect of 4 members of Croatian formations.

The pronounced punishments were mostly within the thresholds stipulated for the corresponding crimes (5-20 years of imprisonment). 20 years of imprisonment, being the maximum punishment, was pronounced only in respect of one defendant.[95] Four defendants, by applying the provisions on mitigating the punishment, received prison sentences below the stipulated minimum for the corresponding crime.[96]

[95] Damir Vide Raguž (crime in Novska II).

[96] Defendant Mićo Cekinović (crime in Slunj and surrounding villages) was sentenced to 4 years in prison, defendants Ljuban Bradarić and Ljubiša Čavić (crime in the villages along Una river near Hrvatska Kostajnica) were sentenced to 1 and 2 years in prison, respectively while defendant Rajko Janković (crime in the villages of Promina Municipality) was sentenced to 3 years and 6 months in prison.

OPINIONS ON INDIVIDUAL TRIALS

Repeated trial against defendant Čedo Jović, charged with a war crime against civilians[97]

Osijek County Court

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

Defendant: Čedo Jović

War Crimes Council: judge Darko Krušlin, Council President, judges Drago Grubeša and Miroslav Jukić, Council Members

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

Defence: lawyer Tomislav Filaković

Opinion after the conducted repeated trial

Following the repeated trial, on 18 February 2010, the War Crimes Council of the Osijek County Court found the defendant Čedo Jović guilty because, in his capacity as commander of a military police unit of the 35th Slavonija Brigade of the so-called RSK Army, although he knew that his subordinate military policemen Novak Simić, Miodrag Kikanović and Radovan Krstinić were torturing non-Serb members of the manual labour platoon in Dalj, failed to take any action to punish the perpetrators and thus, by accepting the continuation of their impermissible actions, he also agreed to the consequences of such actions (five physically tortured persons and one person who died from torture).

The defendant was sentenced to five years in prison. His detention, which began on 7 July 2008, was extended.

Previously, the VSRH quashed the verdict of guilt reached by the Osijek County Court on 8 April 2009 which sentenced the defendant to five years in prison.

The VSRH quashed that verdict because **the first instance court committed essential violation of the criminal procedure provisions by using witness testimonies presented in another trial** (Kio-35/07, i.e. Krz-42/07, conducted against Novak Simić, Miodrag Kikanović and Radovan Krstinić[98]). More precisely, it was stated in the hearing records that thirteen witnesses presented identical testimonies to the ones presented during the investigation. In the investigation records, however, it was stated that the witnesses presented identical testimonies to the ones contained in the trial records of the trial against the defendant Novak Simić et al. Therefore, the investigation records and the main hearing records do not contain the testimonies of thirteen witnesses. Instead, they only contain enclosed records with the testimonies of the mentioned witnesses originating from another trial.

[97] Mladen Stojanović monitored this trial and reported thereof.

[98] Previously, Simić, Kikanović and Krstinić had received a final sentence for (direct) commission of the act with which their superior – defendant Čović - is presently charged.

Since the first instance court had assessed precisely those testimonies and based its verdict on them, the VSRH quashed that verdict and reversed the case to the first instance court for a retrial. The first instance court was instructed to carry out a direct questioning of the aforementioned witnesses and enter their testimonies into trial records.

Since the verdict was quashed due to essential violation of the criminal procedure provisions, the VSRH did not engage itself in the assessment of facts determined in the first instance verdict.

In the repeated trial, out of the aforementioned 13 witnesses the War Crimes Council of the Osijek County Court did not take testimonies of 5 witnesses at all. In addition, while questioning 2 witnesses, the Court again stated in the court records that their testimonies were in compliance with the testimonies presented at the previous main hearing, i.e. in compliance with the testimonies provided in the trial against Novak Simić et al. However, unlike the 8 April 2009 verdict, the first instance court did not even use other disputable testimonies in the explanation of the verdict dated 18 February 2010. It only used one witness testimony (Mirko Kelava).

A disputable issue in the trial was whether the injured persons (Hungarians and Croats mobilised into a „manual labour platoon") had the status of civilians and whether the defendant, in addition to the position of head of security, was also a military police commander in the 35th Slavonija Brigade of the so-called RSK Army, a superior officer to the convicted persons Simić, Kikanović and Krstinić.

As in the first trial, the Council reached a conclusion that mobilised members of the "manual labour platoon" had the status of civilians since they did not actively participate in hostilities and that the defendant Jović was the actual commander of the military police unit in the 35th Slavonija Brigade.

The Council rejected numerous pieces of evidence proposed by the defence including, among others: the proposal for expert interpretation of the provisions of "The rules of security service in the SFRJ armed forces" and "The rules of military police service in the SFRJ armed forces" in order to establish whether it could have been possible to be the head of security and a military police commander at the same time; the proposal to obtain organization of the 35th Slavonija Brigade of the so-called RSK Army from the RS; the proposal to obtain information from the Osijek-Baranja Police Administration or from the Dalj Police Station whether a criminal report had been filed in 1995 after the killing of Antun Kundić. The Council was of the opinion that presentation of such evidence was unnecessary.

Without prejudice to the freedom of the Council's choice what evidence should be presented, we are of the opinion that presentation of some of suggested pieces of evidence would not have significantly delayed the proceedings. Instead, it would have significantly contributed to the likelihood that the VSRH would uphold the first instance court's verdict, particularly bearing in mind the fact that the defendant already spent one year and nine months in detention and that the VSRH still did not have a chance to evaluate the facts that had been established by the first instance court[99].

[99] The VSRH, at the session of the Appellate Panel held on 13 October 2010, quashed the first instance verdict reached by the Osijek County Court for the second time, this time due to erroneously and incompletely established facts and reversed the case to the first instance court for a re-trial.

Trial against defendant Mićo Cekinović, charged with a war crime against civilians [100]

Karlovac County Court

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

The defendant: Mićo Cekinović

The War Crimes Council: judge Ante Ujević, Council President, judges Alenka Laptalo and Juraj Dujam, Council Members

Prosecution: Zdravko Car, Karlovac County Deputy State's Attorney

Defence: lawyer Luka Šušak

Opinion after the conducted first instance trial

The verdict of the Karlovac County Court No. K-19/02 of 1 December 2009 found the defendant Mićo Cekinović guilty that, in November 1991 as commander of a group of Primišlje Territorial Defence which was within the composition of the so-called SAO Krajina military, before and during the attack on and the occupation of Slunj and surrounding villages, for the purpose of expelling the population of Croatian ethnicity, he permitted and ordered deprivation of liberty of inhabitants of Croatian ethnicity and their physical abuse. Thus, the defendant's subordinate soldiers arrested civilian Tomo Kos and beat him up, while during the attack on Slunj the defendant permitted the killing of citizens as the result of which a member of his unit killed Pavo Ivšić, whereby the defendant committed a war crime against civilians referred to in Article 120, paragraph 1 of the OKZ RH. By applying the provisions on mitigating a sentence, he was sentenced to one year in prison.[101]

The indictment laid against defendant Cekinović was broader than the criminal act for which he was sentenced. He was also charged with permitting members of his unit to set on fire and demolish buildings as well as to expel the population of Croatian ethnicity from their homes.

After the conducted trial, the court found to be indisputable:

- that at the critical period of time the defendant was the commander of the Veljun Territorial Defence group which comprised a part of the Regional Headquarters of the Veljun Territorial Defence (hereinafter: the Veljun RŠTO), all within the composition of the so-called SAO Krajina paramilitary;
- that the group took part in the occupation of Slunj and surrounding Croatian villages;
- that the action, ordered by commander of the Veljun RŠTO Milan Strunjaš, had the ultimate goal of expelling Croatian population;

[100] Martina Klekar monitored the trial and reported thereof. Milena Čalić Jelić monitored the repeated trial and reported thereof.

[101] The VSRH quashed the aforementioned verdict on 24 March 2010 and then, in the repeated trial, on 4 May 2010, the defendant was found guilty and sentenced to four years in prison.

- that buildings were set on fire and demolished during the military action;
- that the defendant's subordinate soldier killed civilian Pavo Ivšić;
- that, before the action, almost all Croats abandoned the area where the action was performed:

The court found to be disputable:

- whether the unit, which was under the defendant's command, could be attributed to destruction of civilian facilities;
- whether the defendant's subordinates were expelling population of Croatian ethnicity;
- what was the defendant's responsibility with regard to deprivation of liberty and physical abuse of Tomo Kos;
- what was the defendant's responsibility with regard to killing of Pavo Ivšić.

With regard to a section of the indictment which charged the defendant with permitting destruction and setting buildings on fire, apart from the indisputable fact that buildings were set on fire and destroyed during the military action, the Court assessed that there was no evidence that those were precisely the defendant's subordinates who committed those acts. Therefore, the defendant was not found guilty with regard to that section of the indictment.

With regard to expulsion of population of Croatian ethnicity, the Court assessed that, at the beginning of military activities by the commander's unit, as well as after the occupation of Slunj and surrounding villages, there was almost no Croatian population in that area any longer. Because of that, the enacting part of the verdict did not encompass that section of the facts contained in the indictment.

The Court based its conclusion on the defendant's responsibility with regard to deprivation of liberty and physical abuse of Tomo Kos on the testimonies provided by the injured person himself, as well as by witness Mile Jančić who confirmed that, during the critical period of time, Đuro Grubor, direct perpetrator of deprivation of liberty and physical abuse of Tomo Kos, was a member of the Primišlje Territorial Defence unit.

The Court assessed the injured person's testimony as credible.[102]

The Court did not accept a part of the defendant's defence in which he testified that he did not recall that event at all, nor did it accept the testimony provided by witness Jovo Milošević who confirmed the defendant's defence, with the explanation that the abovementioned witness was proposed by the defendant, that he was a member of the defendant's unit, because of which his testimony was protective towards the defendant.[103]

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[102] The injured person attributed the majority of negative traits to Đuro Grubor, while he perceived the defendant as a dominant military person in the critical event, bearing in mind the fact that it was precisely the defendant whom Đuro Grubor had asked: "Cekin, where to take him". At a later stage, the injured person also heard that the defendant was a platoon commander.

[103] Witness Milošević testified that on the critical event he saw Đuro Grubor, but he did not see the defendant.

The Court did not find problematic the fact that the list of members of the Primišlje Territorial Defence group did not contain the name of Đuro Grubor, bearing in mind the fact that witness Jovo Milošević testified that Đuro Grubor was the actual member of that unit, that members of one unit often moved to another unit without keeping proper records thereof and, on top of that, the Court stated that, even if Đuro Grubor was not a member of the Primišlje Territorial Defence, it was evident from the testimony of Tomo Kos that the defendant had tempore criminis superior rank over Grubor.

With regard to the killing of civilian Pavo Ivšić, it is indisputable that he was killed by a member of the Primišlje Territorial Defence Nenad Tepavac (questioned in this particular trial in the capacity of witness), which is confirmed by the existence of a final court verdict. [104]

The Court concluded „that the defendant permitted a member of his unit Nenad Tepavac to act in this manner", basing such conclusion on a lack of guarantees that the defendant had clearly warned members of his unit about their duty to respect the Geneva Conventions relating to civilians and war prisoners, that the defendant must have been close to the site of the event and that the defendant failed to conduct any procedure to assess Nenad Tepavac's responsibility. The Court found the defendant's responsibility with regard to this particular event in „systematic omissions in the defendant's actions", from which the Court derived the conclusion that this was a criminal act committed by non-doing, i.e. that the defendant contributed with his omissions to the killing of the injured person or, in other words, that in his capacity of a commander he failed to take necessary actions to avoid the most serious consequences.

However, the Court, apart from the fact that it did not state the legal provision on which it based the defendant's responsibility for non-doing, and it is the provision under Article 28 of the OKZRH, also failed to explain its conclusion that the defendant permitted the actions by Nenad Tepavac as a member of the defendant's unit.

The defendant's behaviour (possibly) implies non-commission of necessary actions (warning his subordinates about the obligation to respect the provisions of the Geneva Conventions) in order to prevent the occurrence of consequences (in this particular case, death and physical abuse of civilians).

The formulation „permitted", used by the Court, is inadequate because it can be ambiguously interpreted, although the Court explained later in the verdict that the issue here involved non-commission and the defendant's omissions. However, as already stated, the correlation between Article 120 and Article 28 of the KZRH was not mentioned anywhere.

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[104] The verdict No. K-17/07 of 11 October 2007 issued by the Karlovac County Court found the defendant Nenad Tepavac guilty of criminal acts of murder referred to in Article 34, paragraph 1 of the KZRH (the fact: the killing of Pavo Ivšić) and of a war crime against civilians referred to in Article 120, paragraph 1 of the OKZRH (the fact: abuse of civilians Slavko Flanjko and Tomo Kos) and received a joint prison sentence in the duration of 10 years. The verdict by the VSRH No. I Kž-1265/07 of 1 October 2008 altered the first-instance verdict and charges for a criminal act referred to in Article 120, paragraph 1 of the OKZRH were rejected because the Court violated the rule of speciality referred to in Article 14 of the European Convention on Extradition, whereby the criminal law was violated to the defendant's detriment. Namely, extradition was not requested with regard to the aforementioned criminal act, thus the defendant Tepavac could not have been tried. In a part of the verdict pertaining to the killing of Pavo Ivšić, the VSRH altered the decision on sanction by sentencing the defendant to 8 years in prison.

Furthermore, it is a fact that the defendant Tepavac was sentenced for murder under Article 34, paragraph 1 of the KZRH, while his higher ranking officer Cekinović was found guilty of a war crime against civilians under Article 120, paragraph 1 of the OKZRH.

Although the defendant Cekinović's established responsibility is based on two events: deprivation of liberty and physical abuse of Tomo Kos and the killing of Pavo Ivšić, and while respecting the standpoint that a superior officer is held responsible for his omissions and not for the actions committed by his subordinates, we ask the following question: is it legally acceptable that a subordinate officer, as a direct perpetrator, is sentenced for one criminal act (killing), while his higher ranking officer, as the ordering party or a person who failed to prevent the commission, is sentenced for another (more serious) criminal act (war crime against civilians)?

The Court assessed as mitigating circumstances the defendant's lack of prior convictions, positive attitude towards civilians placed at the Slunj shelter and towards captured Croatian soldier Juraj Jurašin. The latter was assessed as a particularly important mitigating circumstance which served as the foundation for pronouncing a one-year prison sentence, a minimum which can be pronounced for the subject criminal act by way of applying the provisions on sentence mitigation.

Opinion after the conducted repeated trial

The repeated main hearing in the trial against defendant Mićo Cekinović was concluded after just one session which lasted four hours in total.

Although the manner of committing the act is mostly non-commission, the legal provision which regulates such a manner of committing an act was not mentioned in the legal qualification of the act, neither in the indictment, nor in the verdict.

While pronouncing the verdict, detention against the defendant was extended because of the legal basis under Article 102, paragraph 1, item 4 of the ZKP (particularly severe circumstances under which the act was committed), although when deciding on the sentence against the defendant, the Court took into consideration numerous mitigating circumstances, because of which it eventually pronounced a prison sentence in the duration of four years, more lenient than the sentence stipulated for the subject criminal act.

Explanation

In the repeated trial[105] held on 4 May 2010, the Karlovac County Court reached a verdict finding the defendant Mićo Cekinović guilty that, in November 1991, as commander of a group of Primišlje Ter-

[105] Previously, on 24 March 2010, the VSRH quashed the first instance verdict by the Karlovac County Court of 1 December 2009 in which the defendant was found guilty and, by applying the provisions on mitigating a sentence, he was sentenced to one year in prison. The VSRH was of the opinion that the conclusion of the court of first instance about the lack of evidence on the defendant's responsibility for the destruction of buildings and expulsion of Croatian population was incorrect. The VSRH instructed the first-instance court to analyze all pieces of evidence individually during the repeated trial, but also as a whole, to incorporate the

ritorial Defence which was within the composition of the so-called SAO Krajina paramilitary, in the town of Slunj and surrounding villages, contrary to the provisions of international conventions, he allowed and ordered deprivation of liberty, physical abuse and killing of villagers of Croatian ethnicity, as well as setting buildings on fire and demolishing them. In accordance with that, members of his unit arrested one person, beat him up and detained him without any legal grounds, one civilian was killed and his house was set on fire, while the majority of population of Croatian ethnicity was expelled from their homes. He was sentenced to 4 years in prison.[106]

A repeated trial before the Council of the Karlovac County Court the composition of which remained unchanged (evidence procedure, deliberation and pronouncement of the verdict) lasted for a total of four hours. During the evidence procedure, witness testimonies and material documentation of the case file were presented, while a new piece of evidence proposed by the defence counsel pertaining to the establishment whether victim Pavo Ivšić was a civilian was rejected as irrelevant.

In the repeated trial conducted in such a manner, it was evident that the first-instance court was guided by the standpoints of the VSRH regarding the conduct of the main hearing and reaching a verdict, the first-instance court assessed the following:

- for the demolition and setting on fire of buildings in Slunj and surrounding villages and for the expulsion of population of Croatian ethnicity, it assessed as evidence the military tactics of the JNA to systematically shell an individual village before a full-on assault, with the basic goal of intimidating civilian population to force them to abandon the area, documentation that was seized following the military and police operation "Storm" (basic orders of the attack on Slunj) and the testimony of Branko Adžibaba who confirmed that Slunj was shelled before the town was occupied. The court viewed the defendant's responsibility in the larger context of the entire military operation, and not only in the isolated behaviour of his unit;
- for the abuse and unlawful detention of civilian Tomo Kos, it assessed as credible the testimony provided by the injured party, as well as claims by Đuro and Jovo Milošević that the defendant knew that Tomo Kos was physically abused and that he ordered his arrest;
- regarding the killing of Pavo Ivšić, it concluded that there were no firm guarantees that the defendant, in his capacity of commander, clearly warned his subordinates to firmly adhere to the rules set forth by the Geneva Conventions and that a conclusion could be drawn that the defendant allowed members of his unit to kill civilians while performing military operations, which is exactly what Nenad Tepavac, a member of his unit, did. The court particularly stated that the defendant committed a criminal

event into the broader context of events in Slunj at the time, to consider and assess the actions by the defendant's unit in the organized and coordinated operation of seizing the entire town, as well as to evaluate witness testimonies in co-relation with an extensive documentation from the case file.

[106] At the session of the Appellate Panel, the VSRH quashed the aforementioned verdict and for the second time reversed the case to the first instance court for a re-trial. The aforementioned session was held on 24 October 2010.

act by non-commission (he did not directly order the killing), and that, as a commander, he did not take necessary measures to ensure the conditions to avoid the most serious consequences.

The Council assessed as mitigating circumstances the defendant's lack of prior convictions, his family situation, the fact that his direct responsibility is reflected only in the arrest of Tomo Kos, while other consequences can be attributed to his omissions, the defendant's attitude towards arrested civilians and the protection of life of captured Croatian soldier Juraj Jurašin. Therefore, the Court pronounced a sentence which is below the minimum sentence stipulated for this criminal act.

Legal qualification of the criminal act in this case does not completely follow the factual description of the act itself. Namely, defendant Cekinović was charged with and was finally convicted because, as a commander, he allowed and ordered impermissible behaviour. However, the legal qualification does not mention Article 28 of the OKZRH which would suggest that the act was performed by non-commission. Unlike the legal qualification from the indictment and from the verdict, the explanation of the verdict explicitly state that the act, except for giving the order to arrest Tomo Kos, was performed by non-commission, i.e. by the defendant's omission to take necessary measures.

While pronouncing the verdict against the defendant Mićo Cekinović, the Council reached a decision on the extension of detention pursuant to Article 102, paragraph 1, items 1 and 4 of the ZKP[107]. On 14 May 2010, the VSRH partially upheld the defendant's appeal and altered the verdict of the first instance court, so that detention against the defendant was extended only pursuant to the detention basis under Article 102, paragraph 1, item 1 of the ZKP, because there are still circumstances indicating the danger of flight (the defendant has a dual citizenship, his family resides in the RS, from which it ensues that the defendant is not firmly linked with the territory of the RC). According to the VSRH's assessment, there were no reasons to determine detention under Article 102, paragraph 1, item 4 of the ZKP, i.e. particularly severe circumstances under which the act was committed. After all, this is what the first-instance court stated in its verdict itself when explaining the pronouncement of a sentence below the legally stipulated minimum for the subject criminal act.

[107] Article 102, paragraph 1 reads:

"If there exists reasonable suspicion that a person committed an offence, detention against this person may be ordered:

(1) if there are circumstances indicating a danger of flight (the person is in hiding, his identity cannot be established, etc.);

(4) if the offences involved are: murder, robbery, rape, terrorism, kidnapping, abuse of narcotic drugs, extortion, abuse of powers in economic business activities, abuse of office or authority, association to commit a criminal offence or any other criminal offence punishable by imprisonment for a term of twelve years or more and if this is necessary because of the particularly grave circumstances of the offence."

Trial against defendant Goran Zjačić, charged with a war crime against war prisoners[108]

Gospić County Court

Criminal act war crime against war prisoners under Article 122 of the OKZRH

Defendant: Goran Zjačić

War Crimes Council: judge Dušan Šporčić, Council President and judges Dubravka Rudelić and Matilda Rukavina as Council members

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

Defence: lawyer Ljubiša Drageljević

Opinion of the monitoring team after the conducted first instance trial

On 25 February 2010, the War Crimes Council of the Gospić County Court reached a verdict which found the defendant Goran Zjačić guilty of committing a war crime against war prisoners referred to in Article 122 of the OKZRH and sentenced him to 7 years in prison.

In the enacting terms of the verdict, the Court erroneously established the facts because it erroneously stated the injured person's name, replacing him with the name of a witness.

The indictment charged the defendant that, from the beginning of May 1994 until 5 August 1995, as a member of the Military Police company within the 15th Corps of the so-called RSK Army, in the prison designated for war prisoners which was located in the primary school building in Frkašić where war prisoners, members of the HV, the HVO and the BiH Army were detained, on those days when he was on guard he tortured war prisoners, treated them inhumanely and caused them numerous injuries which resulted in serious disruption of their physical and mental health and a life-time disability.

The Court found the defendant's defence, that he was a member of the Military Police company with the 15th Corps of the so-called RSK Army and that he was located in Frkašić prison but that he did not commit the criminal act with which he was charged, to be arbitrary and contradictory in itself and gave faith to the testimonies provided by questioned witnesses – injured persons. Furthermore, the defendant himself, on the occasion of the first questioning, testified that he had beaten up detainee Johannes Tilder, deeming that the injured person was responsible for the killing of his cousin. The defendant also testified that he had a habit of hitting prisoners.

The Court found that the defendant had beaten prisoners with fists, legs, small military shovel, wooden sticks and batons. He particularly tortured detained members of the HV, Johannes Tilder, Ivan Čaić

[108] Maja Kovačević Bošković monitored this trial and reported thereof.

and Ivan Dadić, he beat up and abused detained member of the BiH Army Kadir Bećirspahić and detained member of the HVO, Marko Tomić.

The indictment charged the defendant, as was adjudicated in the verdict, with abusing detainee Marko Tomić and beating him on his beck with a military baton. However, during the evidence procedure, witnesses Marko Tomić and Mate Tomić were questioned, who had provided their testimonies during the investigation as well. It was evident from their testimonies that the defendant did not abuse Marko, as it was stated in the verdict, but Mato Tomić. Witness Marko Tomić testified that defendant Goran Zjačić did not hurt him personally, but he did hurt detainees Dadić and Čaić.

Such an error made by the Court makes it obvious that the facts were erroneously established because there was an error made when stating the name of the person who was injured by the defendant's actions, i.e. because determinations set forth in the verdict (with regard to the injured party) were not in compliance with the court minutes containing testimonies of witnesses who had provided depositions regarding the crucial facts.

In the section of the verdict where the Court explains the decision on criminal sanction, it is stated that the Council took into consideration the severity of the committed criminal act, the fact that the subject involved the most serious criminal acts anticipated by the Criminal Law Act and persistence in the commission of the act. However, on the other side, the Council found that the "only extenuating circumstance for the defendant was, to a certain extent, the elapse of time, because more than 15 years had passed since the criminal act was committed".

We are of the opinion that the term „elapse of time", particularly when this term is joined by the term „to a certain extent", is not listed in the ZKP as a circumstance which could affect the severity of a sentence pronounced against the defendant. It is unclear why the Council found this to be an extenuating circumstance, particularly because the issue involves a criminal act for which there is no statute of limitations. Namely, precisely because the „criminal prosecution of a war crime does not fall under the statute of limitations … the legislator's intention was not to have the elapse of time affecting the sentencing of perpetrators of those criminal acts, although this particular circumstance is… often used as a significant extenuating circumstance when pronouncing a sentence, providing that the defendant himself did not contribute to the elapse of time by his actions".[109]

[109] The verdict of the VSRH, No. I Kž 1008/08-13 of 16, 17 and 18 November 2009, the trial against defendants Rahim Ademi and Mirko Norac for criminal acts referred to in Articles 120 and 122 of the OKZRH.

Trial against defendant Nedjeljko Janković, charged with a war crime against civilians[110]

Zadar County Court

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

Defendant: Nedjeljko Janković

War Crimes Council: judge Dijana Grancarić, Council President and judges Enka Moković and Milan Pečina as Council members

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

Defence: lawyer Luka Šušak

Opinion after the conducted first instance procedure

Verdict No. K-43/09 of 15 March 2010 rendered by the Zadar County Court found the defendant guilty that, in October and November 1991 in Zemunik Gornji, Goleš hamlet, and Jagodnja Donja, as a member of the „180th Motorized Brigade within the composition of the 9th Corps of the Yugoslav Army", alone and together with Slavko Đokić, member of the same military unit, while implementing the Great Serbian idea of military conquer and separation of a part of the territory of the RC, the defendant brutally intimidated Croatian population, looted and destroyed civilian property in order to force them to abandon their homes and the area of the so-called Republic of Serb Krajina, i.e. to render it impossible for them to return to their homes. He was sentenced to 6 years in prison.

The defendant was arrested in the Republic of Slovenia and extradited to the RC. The time when he was deprived of liberty, from 12 August 2008 to 22 April 2009, was included in the pronounced prison sentence, as well as his time spent in detention from 22 April 2009 onwards and the time he spent in prison serving a 2-year sentence adjudicated by the Banja Luka Military Court No. IK-54/92 of 23 March 1992.[111]

In compliance with the established facts, the Court disregarded those parts of the indictment for which it deemed they were not proven. Apart from that, the wording "destroyed civilian property" was added to the enacting terms of the verdict with an explanation that the DORH obviously failed to add that wording to the indictment.

[110] Martina Klekar monitored this trial and reported thereof.

[111] The quoted verdict of the Banja Luka Military Court found the defendant, together with Slavko Đokić, guilty of committing an extended criminal act of robbery related to the events in Jagodnja Donja. With regard to events in Zemunik Gornji, Goleš hamlet, the defendant alone was found guilty of committing a criminal act of damaging other person's property concurrent with the criminal act of bringing into jeopardy the life and property by dangerous acts or means.

The defendant's defence counsel disputed the indictment by asking the following questions:

- whether in this particular case a final verdict was reached;
- whether the perpetrator was the defendant (Nedjeljko Janković, son of Žarko) or Nedjeljko Janković, son of Petar;
- whether the perpetrator's intention was intimidation of the population with the objective of making them leave the territory of the so-called RSK (and, by doing so, commission of a war crime) or it was a criminal act of robbery, damaging other person's property and bringing other persons into jeopardy by a dangerous act?

The Council found it indisputable that it was precisely the defendant, at the incriminating period of time a conscript in the 180th Motorized Brigade of the 9th Corps of the Yugoslav Army, who was the perpetrator of the subject criminal act, not a person with the same name and family name, a volunteer from Vojvodina, member of the same unit, although the defence claimed that the presented material evidence pointed otherwise.

The Council assumed a standpoint that in this specific case it was not an adjudicated matter, with the explanation that the trial conducted in Banja Luka was essentially different from the criminal proceedings in question because, "apart from the fact that certain objective elements of the incriminating event partially coincided, subjective elements on the defendant's side are completely different". The verdict stated that war crime against civilians referred to in Article 120, paragraph 1 of the OKZRH, unlike the criminal acts for which the defendant received a final sentence before the Banja Luka Military Court, contains a different motive, has a different protective object, and the facts discussed in the subject criminal proceedings are much wider. To support this standpoint, the Court stated that „the criminal act of war crime is not a proprietary offence, nor is its objective unlawful gain of proprietary benefit, but it is a criminal act contrary to the Convention relative to the Protection of Victims of Non-international Armed Conflicts, the motive of which was intimidation of local population and forcing them to leave the RC."

Factual descriptions of the criminal acts contained in the verdict rendered by the Banja Luka Military Court and in this verdict indicate, without any doubt, that this was the same event with a different legal qualification. Bearing in mind the court practice hitherto, pursuant to which it was permitted to try perpetrators of war crimes against whom charges filed for the same events during the 90's had been rejected by applying the General Amnesty Act when those acts had been legally qualified as murders, it is not to be expected that the VSRH would deem that the subject matter of the indictment had already been adjudicated with a final verdict.

However, it is questionable whether the VSRH would also deem that the motive behind the criminal act in question was forcing Croats to abandon their homes and the territory of the so-called RSK and render it impossible for them to return, or the motives were of proprietary nature.

Namely, although it is indisputable that a war crime can also be committed towards a member of the same ethnicity, we point out that the enacting terms of the verdict reached by the Zadar County Court stated that the injured persons were Croats, although it was evident from the testimonies provided by some injured persons, as well as by some witnesses, that there were also persons of Serb ethnicity among the injured persons, some of whom abandoned their homes only in August 1995, meaning during or immediately after the "Storm" military action. None of the injured persons testified during the trial that the defendant forced them to abandon their homes and the occupied areas of the RC.[112]

[112] On 20 October 2010, the VSRH Appellate Panel at its session upheld entirely the first instance verdict.

Trial against defendants Ivica Kosturin and Damir Vrban, charged with a war crime against civilians [113]

Sisak County Court

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

Defendants: Ivica Kosturin and Damir Vrban

War Crimes Council: judge Melita Avedić, Council President, judges Predrag Jovanić and Željko Mlinarić, Council Members

Prosecution: Marijan Zgurić, Sisak County Deputy State's Attorney

Defence: lawyer Berisav Herceg representing the 1st defendant; lawyer Stanislava Jerković Bjelajac representing the 2nd defendant

Opinion after the conducted first instance trial

War Crimes Council of the Sisak County Court failed to caution the witnesses during the trial in the manner as provided for in the ZKP.

However, omission which triggered the strongest impression during our monitoring was the one made by the Council President during the questioning of witness-injured party Barica Ivanjek. Namely, before presenting photographs of her late husband's dead body, the Council President did not clearly caution her about what kind of photographs she was about to see. Hence, having viewed the photographs, the injured party got sick, started to shiver and cry. She was taken in a state of shock to the hall in front of the court-room. Since the court decided to make a recess, all persons who attended the trial, including relatives of the persons charged with the death of her husband, were present there too.

Despite the Council's awareness of the injured party's mental problems caused by her husband's death, because of which she had already spent time in hospital, the Council President did not ensure presence of an employee from the Witness Support Department. This shows a lack of court's sensibility and a necessity to establish a support service to victims and witnesses of crimes at the Sisak County Court.

When deliberating a sentence for the defendants, the court found the following extenuating circumstances: the defendants' participation in the Homeland War, the passage of time since the commission of the crime, and also several war medals in respect of the 1st defendant.

Although domestic courts, when deliberating a sentence, evaluate as a rule participation of the defendants in the Homeland War as an extenuating circumstance, we already provided our opinion on several occasions that crime perpetrators inflicted damage to the society in general and to the RC with their actions during their participation in war. For that reason, when a sentence for war crimes is to be de-

[113] Tino Bego and Milena Čalić Jelić monitored this trial and reported thereof.

liberated, we find it inappropriate to consider their participation in the Homeland Was as an extenuating circumstance, because this raises suspicion into court's objectivity in trials against members of the Croatian military and police forces.

Also, passage of time since the crime was committed should not be considered as extenuating circumstance because it concerns a crime, prosecution of which is not subject to statute of limitations. Therefore, it is obvious that legislator's intention was not to consider passage of time to have any effect on punishing war crime perpetrators.[114]

The 1st defendant's war medals, which probably will be stripped away from him if found guilty by a final verdict, for that reason alone should not be considered as extenuating circumstance when deliberating on a sentence.

The course of the trial

The indictment laid by the Sisak ŽDO charged the defendants that on 7 September 1991 in Letovanić, as members of the RC armed forces – having received information that a civilian Slavko Ivanjek was insulting and cursing Croatian President Franjo Tuđman under the influence of alcohol and in public, and was telling that Serbs would win the war – they took Slavko Ivanjek out of his house and beat him up inflicting him numerous bodily injuries. Due to these injuries, Ivanjek soon died after the defendants left him at the premises of temporary military barracks known as „ORA". Therefore, the defendants committed a war crime against civilians.

The defendants pleaded not-guilty to the crime of which they were charged.

Twenty witnesses and one forensic expert were heard during the evidence procedure. Inspections of a substantial number of material evidence were carried out.

On 12 May 2010, the War Crimes Council of the Sisak County Court ruled that the defendants committed the crime of which they were charged in the indictment laid by the Sisak ŽDO. Each defendant received a prison sentence in the duration of 7 (seven) years.

Taking into account the fact that both defendants received prison sentences in the duration of more than five years, their detention was extended. The council also decided that the defendants were obliged to pay expenses of the trial.[115]

[114] The Panel of the VSRH assumed a similar position when providing its explanation of the verdict in the case No. I Kž 1008/08-13 of 18 November 2009 against defendants Rahim Ademi and Mirko Norac.

[115] The VSRH, at the session of the Appeals Chamber held on 12 October 2010, upheld the first instance verdict in its entirety.

Trial against Damir Vide Raguž and Željko Škledar for a war crime against civilians[116]

Sisak County Court

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

Defendants: Damir Vide Raguž and Željko Škledar

War Crimes Council: Snježana Mrkoci, Council President; Ljubica Balder and Predrag Jovanović, Council Members

Prosecution: Jadranka Huskić, Sisak County Deputy State's Attorney

Defence: Željko Dumančić, a lawyer representing the 1st defendant; Nataša Čučić, a lawyer representing the 2nd defendant

Opinion after the conducted first instance trial

The Sisak County Court conducted a trial concerning the execution of four Serb civilians (Mišo Rašković, Sajka Rašković, Mihajlo Šeatović and Ljuban Vujić) in Rašković family's house in Novska in November 1991.[117]

On 16 April 2010, the War Crimes Council of the Sisak County Court rendered a verdict of guilty against the 1st defendant Damir Vide Raguž for a war crime against civilians that he committed on 21 November 1991 in Novska, as a member of the 1st platoon of the 1st HV Guard Brigade together with platoon members: the deceased Dubravko Leskovar and the deceased Anto Perković, and with Marijan Kumić, Boris Tutić and Željko Škledar. Damir Vide Raguž entered the house of Mišo Rašković around 22:00 hours where he found civilians Mišo Rašković and his wife Sajka Rašković, their neighbours Mihajlo Šeatović and Ljuban Vujić. Knowing them to be Serbs by ethnicity, the defendants requested from the persons found in the house to surrender the weapons. Having found weapon cleaning kit in the house and after Kumić, Tutić and Škledar left the house, Raguž, Leskovar and Perković started torturing the civilians. They fired several shots at men causing instant death of Mišo Rašković, Mihajlo Šeatović and Ljuban Vujić. They took Sajka Rašković to the bedroom, forced her to take off her clothes and lay down on the bed, and inflicted a cut wound on her neck. After that, they fired several shots at her causing her instant death.

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[116] Milena Čalić Jelić monitored this trial and reported thereof

[117] On 23 March 1992, the Zagreb Military Prosecution laid the Indictment No. KTV-517/92 against Dubravko Leskovar and Damir Vide Raguž charging them, in its qualified form, with murder and not with a war crime against civilians. Despite the fact that personal and material evidence presented at the main hearing before the Military Court in Zagreb (trial case file no. K-42/92) pointed out to the responsibility of the defendants, the court council presided by judge Krešimir Murovčić reached a decision on 10 November 1992 dismissing the trial on the basis of the then-valid Amnesty Act related to criminal prosecution and proceedings for criminal acts committed in armed conflicts and in the war against the Republic of Croatia. The Zagreb Military Prosecution did not lodge an appeal against this decision.

Legal qualification of the criminal offence in the aforementioned indictment (murder, and not war crime), as well as dismissal of the trial by amnestying the perpetrators were the consequence of the back- then prevailing opinion in the Croatian judiciary «that it is not possible to commit a war crime during a defence war».

He received a long-term prison sentence in the duration of 20 years.

The 2nd defendant Željko Škledar was acquitted of charges because the Council could not prove that Željko Škledar participated together with Raguž, Leskovar and Perković in the torture and execution of civilians, as charged by the indictment. Witnesses Boris Tutić and Marijan Kumić, who were found in the Rašković's house on that critical night, stated that Škledar left the house with them before the crime was committed.

The trial was conducted in the absence of the 1st defendant Damir Vide Raguž, on the basis of the decision on holding the trial in absentia rendered on 8 March 2010 wherein it was stated that the defendant was unavailable to the Croatian judiciary bodies because he was in BiH.[118] Important reasons provided to hold the trial in absentia were explained with the need to ensure a quick and efficient conclusion of the criminal proceedings against the 2nd defendant Škledar, who was under custody.

The War Crimes Council based its verdict on the presented evidence: witness testimonies and experts heard as witnesses, and material evidence collected in the pre-criminal proceedings.

All proposed evidence relating to the written material or presentation to the witnesses of their testimonies provided before the Military Court in Zagreb in the trial no. K-42/92 was rejected because it was assessed as unlawful. The Council did not provide any explanation about such decision. Therefore, we find it to be unclear, although our assumption is that the reason for assessing it to be unlawful rests on the 2nd defendant Škledar's right to defence. He only participated as a witness in the trial conducted before the Military Court. For that reason, he could not have presented his opinion in respect of the presented evidence.

A direct consequence of such decision is omission of the cut wound on the right chest side inflicted to Sajka Rašković from the description of facts in the indictment. This remained as unsupported evidence because the expert's finding and opinion presented in the trial before the Military Court was not read in this trial.

The trial conducted before the Sisak County Court itself was initiated with a criminal report against identified and unidentified perpetrators, submitted by victims' relatives in December 2008, containing the legal qualification of a war crime against civilians.

The Sisak County Court rejected a request to carry out an investigation against Damir Vide Raguž and supported it with an explanation that in his case a trial had already been conducted before the Military Court in Zagreb with the same description of facts. Afterwards, the Supreme Court took a position that investigation against Vide Raguž does not represent a violation of his rights (the principle *„ne bis in idem"*), because the event described in the request for investigation comprises a further criminal quantity which is much broader than the one presented in the trial before the Military Court in Zagreb. Therefore, the Supreme Court found it to be obvious that this was not a res iudicata case.

[118] In the course of the main hearing, the Council President remarked that a domestic arrest warrant was issued against the defendant Vide Raguž, and that the issuance of an international arrest warrant was underway.

Trial against Bogdan Kuzmić for a war crime against civilians[119]

Vukovar County Court

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

Defendant: Bogdan Kuzmić

War Crimes Council: judge Nikola Bešenski, Council President; judges Jadranka Kurbel and Nevenka Zeko, Council members

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

Defence: lawyer Stjepan Šporčić, a court-appointed defence counsel

Opinion after the conducted first instance trial

War Crimes Council of the Vukovar County Court concluded the first instance trial against the defendant Bogdan Kuzmić for a war crime against civilians under Article 120, paragraph 1 of the OKZRH committed on 19 November 1991 at the Vukovar hospital over Marko Mandić, Branko Lukenda and Tomislav Hegeduš.

Based on the verdict-before-appeal (not final) rendered on 15 July 2010, the defendant was found guilty and sentenced to 7 years in prison, in his absence. [120]

On 29 May 1997, the Vukovar County State Attorney's Office requested an investigation against Bogdan Kuzmić. Following the investigation conducted by the Vukovar ŽDO, the indictment no. DO-K-12/98 laid on 19 March 2001 charged Kuzmić with committing a war crime against civilians under Article 120, paragraph 1 of the OKZRH. He was charged with murder of civilians Martin Došen, Marko Mandić, Branko Lukenda, Stanko Duvnjak and Tomislav Hegeduš, in an unidentified manner.

The Indictment was amended on 6 July 2010 after a certain number of witness testimonies were heard in the course of evidence procedure. The defendant was charged with unlawful confinement of civilians Marko Mandić, Branko Lukenda and Tomislav Hegeduš, thus committing a war crime against civilians.

The main hearing began in April 2008. However, no trial hearings were scheduled from February 2009 until March 2010. Therefore, the main hearing had to start anew.

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[119] Veselinka Kastratović monitored this trial and reported thereof.

[120] In the decision No. Kv-289/06 issued on 3 January 2007, the Vukovar County Court decided to try the defendant Kuzmić in absentia. The Vukovar ŽDO appealed against this decision. However, the Supreme Court of the Republic of Croatia, in its decision no. I Kž 91/07 of 21 February 2007, dismissed the appeal as unsubstantiated.

The court conducted the evidence procedure and heard the closing speeches of parties and participants in the trial. The Court found the defendant guilty and sentenced him to 7 years in prison. The Court determined the defendant's identity based on the testimonies provided by several witnesses who knew the defendant because they had been working together for several years in the Medical Centre in Vukovar where the defendant was employed as a doorkeeper.

On the basis of several testimonies provided by witnesses who saw the defendant at the moment when the so-called JNA forces entered the Vukovar hospital after the fall of the city, the Court found that the defendant was a member of the reserve unit of the so-called JNA. He was seen in olive-drab uniform of the so-called JNA, armed, with a helmet on his head. Based on the testimonies provided by several witnesses, the Court found that the defendant entered the Vukovar hospital on 19 November 1991.

Based on the testimonies provided by several witnesses, the Court found that it was the defendant who singled out and abducted Branko Lukenda, Tomislav Hegeduš and Marko Mandić „Gipser" from the persons who were at the hospital at that time. The initial indictment charged the defendant that he singled-out, abducted and killed five persons: Martin Došen, Stanko Duvnjak, Tomislav Hegeduš, Branko Lukenda and Marko Mandić. In the amended indictment, the defendant was charged that he unlawfully detained Tomislav Hegeduš, Branko Lukenda and Marko Mandić. The Court accepted testimonies of the witnesses who stated that the defendant was the one who interrogated Stanko Duvnjak and took him out of the hospital. However, the Court found it indisputable that Stanko Duvnjak was in a bus in the military barracks at Sajmište and then taken to Ovčara where he was killed. Stanko Duvnjak's body was found in the mass grave Grabovo at Ovčara, exhumed and identified. Stanko Duvnjak is among 200 identified Ovčara victims. The Court accepted testimonies of the witnesses who stated that the defendant was the one who singled out wounded Martin Došen and his brother. However, the Court also established from the witness testimonies that Martin Došen and his brother were taken away the next morning by other unidentified persons.

The Court established that on 19 November 1991 in the late afternoon the defendant took away Branko Lukenda, Tomislav Hegeduš and Marko Mandić from the hospital. From Josip Lovrinić's testimony, presented at the main hearing, the Court established that the defendant was the one who took away and unlawfully detained the injured parties in the house next to the hospital (viewed in the Osijek direction).

The Court found that "no-one ever told the injured parties that they were taken captives (as prisoners of war), neither they were not on any list of captured persons, nor they were they registered as captives by anyone. On the contrary, not only that the stated injured persons were registered as captives, which would enable them to exercise their rights as detainees, but the fact that they had been unlawfully detained in the house right next to the hospital building was the exact reason why they went missing without a trace and why they still have not been found".[121]

[121] The verdict of the Vukovar County Court, No. K-16/01, of 15 July 2010, page 14.

Contrary to this establishment, witness Ljiljana Mandić (Marko Mandić's wife), stated at the main hearing that she attempted to intervene and turned to the former JNA Major Veselin Šljivančanin. She said: „I repeated twice and I remember that Major Šljivančanin wrote down the name and surname on a separate piece of paper and I saw him putting that paper in the left pocket of his uniform. The soldier who was with him was in charge of preparing and in possession of a list of most likely, male employees at the hospital; on that list I saw the name of my husband at about the 16th position ".[122]

The Court accepted the standpoint of the Vukovar County State Attorney's Office that Branko Lukenda and Tomislav Hegeduš, at the critical time, "regardless of the fact that they were policemen" were at the hospital as civilians. The Court referred to the „fact that a couple of months before the fall of the hospital, the two of them were recording and providing care for injured persons. Therefore, they cannot be regarded as potential war prisoners but as civilians exclusively. It is also an undisputable fact that they were at the hospital wearing civilian clothes and without firearms".

Contrary to that, Branko Lukenda and Tomislav Hegeduš were entered as police officers on the "List of employees missing while defending the sovereignty of the RC" (source: The Vukovar-Syrmia Police Administration of the MUP RH). At the hearing, witness Vesna Bosanac stated the following: „Branko Lukenda was assigned by the police to record the names of wounded persons admitted to the hospital, to seize their weapons and similar items. He carried out this task until the day of occupation of the hospital. Stanko Duvnjak was also a policeman before, but he was at the hospital as a wounded person because of his foot injury and was awaiting evacuation as a wounded person. Tomislav Hegeduš was also assigned by the police to keep records of killed persons and all of their personal belongings. He carried out this task until the day of occupation of the hospital. Martin Došen was a seriously wounded person and was awaiting for evacuation at the hospital."[123]

The Court also accepted Anka Furundžija's testimony, who stated the following:"I knew Branko Lukenda. He was an inspector at the police. Those last days and months, before the fall of Vukovar, he was performing his police duties at the hospital. I also know what his specific tasks were."[124]

Witness Zdenka Žulj stated: „I knew Branko Lukenda and Tomislav Hegeduš because they were working as policemen a few months before the fall of the hospital and, as such, they were performing certain duties at the hospital."[125]

In addition to the aforementioned, Article 4 of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 stipulates the following: „Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into

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122 Main hearing records of the Vukovar County Court of 7 April 2008, pages 3 and 4.

123 Main hearing records of the Vukovar County Court of 18 June 2008, page 3.

124 Man hearing records of the Vukovar County Court of 22 July 2008, testimony by Anka Furundžija

125 Man hearing records of the Vukovar County Court of 22 July 2008, page 2

the power of the enemy: members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces."[126]

Thus, the status of injured parties Branko Lukenda and Tomislav Hegeduš can be viewed as disputable.

It is worth mentioning that Branko Lukenda, Tomislav Hegeduš and Marko Mandić are included on the list of Ovčara victims and recorded as missing persons. This is an important fact and, therefore it was to be expected that the Vukovar ŽDO should have insisted already in the investigation phase on hearing the witnesses who were at the hospital, in the military barracks and at Ovčara hangar. This should have been done to determine or remove suspicion whether this case's victims ended up in the yard of the house next to the hospital or they ended up as Ovčara victims. The Agreement signed between the State Attorney's Office of the RC and the Office of the War Crimes Prosecutor of the RS provides for the evidence exchange. For that reason, there have been no formal legal obstacles to further investigate this crime.

The Court did not accept the opinion of the Vukovar ŽDO that the defendant acted contrary to the provision of Article 3 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War. The Court accepted the opinion of the Vukovar ŽDO that the defendant acted contrary to the provisions of Article 75, paragraphs 3 and 6 of the Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (Protocol I).

The Court determined that the defendant acted with premeditation, that he was aware of his actions and that he wanted them to be realised. The Court found the basis for such opinion in witness testimonies which provided description of the defendant's activities at the critical event in the Vukovar hospital and how he behaved toward the victims/injured parties.

We are of the opinion that the Vukovar ŽDO should have made additional efforts to request reopening of the investigation and determining whether the mentioned victims are the only victims in respect of which the defendant may be charged. An additional reason for this should have been the photographs viewed during the evidence procedure on which other victims could be seen who were recorded as the Ovčara victims, who were found there or who are still missing.[127]

Besides, the fact is that Ljiljana Mandić and Anica Lukenda, victims' spouses, explicitly emphasized the importance of finding out the truth about what happened to their husbands, to find their remains and

[126] Official Gazette, International Rules and Regulations, No 5/94

[127] Two CDs were viewed at the main hearing:

- on the CD handed over by the Vukovar ŽDO there were recordings of the Vukovar hospital taken on 20 November 1991, the conversation of the Major of the so-called JNA Veselin Šljivančanin with the ICRC representative from Geneva, the carrying out of wounded persons from the hospital and exit of civilians and hospital personnel;
- on the CD handed over by Ms Vesna Bosanac there were recordings of the Vukovar hospital taken on 19 November 1991, the statement provided by Đuro Šrenk and Ivan Herman, exhumed from the Ovčara mass grave, the statement provided by Jean Michel Nicolier, reported missing on 20 November 1991 in Vukovar, next to whom on the recording was the defendant Bogdan Kuzmić. Jean Michel Nicolier is on the list of Ovčara victims.

to bury them deservingly. The fact is that none of the injured parties in this trial attended the pronouncement of the first instance verdict. This can be interpreted as an expression of their dissatisfaction with what was achieved by this trial. Despite the fact that the trial was conducted in a legally correct manner, it did not provide expected information to injured parties about what happened to their husbands.

In addition to the aforementioned, the in absentia trial, despite the Supreme Court's opinion, did not bring any quality step forward in this specific case. Namely, since no agreement on co-operation has been signed between the Croatian State Attorney's Office and the competent prosecution authority in BiH, such as the ones signed between the DORH and the prosecution authorities in Serbia and in Monte Negro, that would enable exchange of evidence, this case cannot be forwarded to the BiH Prosecution Office where the defendant resides. Considering the fact that he was tried in his absence, once the verdict becomes final in the RC, it will not be possible to enforce this verdict in BiH because only those final verdicts reached in the presence of the defendant can be enforced in BiH.

Repeated trial against defendant Ivica Mirić, charged with a war crime against civilians[128]

Sisak County Court

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

Defendant: Ivica Mirić

War Crimes Council: judge Melita Avedić, Council President and judges Alenka Lešić and Predrag Jovanić, Council Members

Prosecution: Marijan Zgurić, Sisak County Deputy State's Attorney

Defence: lawyer Domagoj Rupčić

Opinion after the conducted repeated trial

After the repeated trial was completed[129], the Sisak County Court reached a verdict on 10 June 2010 in which defendant Ivica Mirić was found guilty that, on 9 October 1991, in his capacity as a Sisak Police Administration reserve unit member, having learnt that Miloš Čalić, a person of Serb ethnicity, was receiving medical treatment at the "Rebro" hospital in Zagreb, he went there together with two unidentified police reserve unit members, reserve policeman Ilija Čakarić and an unidentified female person, and took Miloš Čalić out of the hospital in a van. Heading in Sisak direction, between the villages of Lekenik and Dužica, the defendant ordered the driver to go off the main road, take a forest path and pull over the vehicle. There, together with two unidentified police reserve unit members, he pulled Miloš Čalić out of the vehicle and forced him to walk toward a little wooden bridge some 50 meters away from the vehicle. There, Miloš Čalić was murdered by firearms shots just because he was of Serb ethnicity. On 10 October 1991, his corpse was found in the Brezovica forest. Defendant Ivica Mirić received nine years in prison for the commission of a war crime against civilians.[130]

The repeated trial was conducted before the changed composition of Sisak County Court's Council. In total, two hearings were held (26 May and 10 June 2010). The ŽDO proposed new evidence pertaining to the circumstance under which the victim's corpse was moved and the establishment of identity of

[128] Milena Čalić Jelić monitored this trial and reported thereof.

[129] The VSRH, in its decision of 24 March 2010, accepted defendant Mirić's appeal and quashed the first instance verdict reached on 26 August 2009 by the Sisak County Court wherein the defendant was found guilty and sentenced to 9 years in prison and reversed the case to the first instance court for a retrial. The VSRH was of the opinion that the defendant's reasons, contained in his appeal for denying the first-instance verdict, were justified. Moreover, the VSRH pointed out to the fact that the first-instance court failed to provide reasons and evaluation of certain parts of presented evidence, heard witness testimonies, which could eliminate the defendant's criminal responsibility.

[130] The VSRH, at the session of the Appellate Panel held on 7 December 2010, upheld the 10 June 2010 first-instance verdict in its entirety.

one of unidentified perpetrators to be presented by the repeated hearing of the eye-witness. However, this proposal was rejected as irrelevant.

The Council established beyond doubt that victim Miloš Čalić was a person of Serb ethnicity from Sisak, and that even before his killing, he was a victim because explosives were planted in his family house in Sisak on 14 September 1991, that he suffered from mental disorder and anxiety and was treated at the "Rebro" hospital in Zagreb. It was also established beyond any doubt that the injured party died due to a violent death inflicted by firearms shots on 9 October 1991.

It was also indisputable that a group of Sisak Police Administration reserve unit members came to the "Rebro" hospital in Zagreb and took Miloš Čalić out of the hospital. It was also not disputable that defendant Ivica Mirić and witness Ilija Čakarić were among the group of police reserve unit members.

The first-instance court gave credibility to the testimony of Ilija Čakarić about the manner and place of crime execution. His testimony was partially confirmed by other witness testimonies in respect of the defendant's previous "persecution" (threats to kill and similar) of the victim.

It remained undetermined, even after the repeated trial, who were the other two crime perpetrators and who was the girl who participated in taking away the victim from the hospital. Moreover, it also remained unestablished how come that the dead body was found at a completely different location from the one where Miloš Čalić was killed.

The first-instance court failed to follow the instructions stipulated in the quashing decision by the VSRH because, even after the trial had been repeated, it neither analysed all witness testimonies and correlated them, especially with collected material evidence, nor did it present additional evidence to determine the identity of unidentified perpetrators.

Although the Court's assessment of "participation in and contribution to the Homeland War" as an extenuating circumstance when deliberating a sentence for the perpetrators who committed a war crime in their capacity as members of Croatian formations, suggests a potential bias, the Court assessed as extenuating circumstance the defendant's participation in the Homeland War during all of its duration, the fact that he received several war medals and that he had no previous convictions. The Court assessed as aggravating circumstances when deliberating a sentence the intensity of violating the protected values and the circumstances of crime commission (taking a sick person out of the hospital).

While monitoring this trial, it became evident that investigation of this crime began after finding Miloš Čalić's body in the Brezovica forest. Already back then, the defendant gave statement to the Police and certain investigation activities had been carried out. It took 18 years for the initiation of investigation before the Sisak County Court which contributed to a vague wording in the conviction and to leaving the status of pre-investigative procedure open in order to identify other, presently unidentified, perpetrators who were mentioned by the names Blaž and Joža in defendant Mirić's defence.

Repeated trial against defendant Rajko Janković, charged with a war crime against civilians[131]

Šibenik County Court

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

Defendant: Rajko Janković

War Crimes Council: judge Dalibor Dukić, Council President and judges Jadranka Biga Milutin and Ordana Labura, Council Members

Prosecution: Zvonko Ivić, Šibenik County Deputy State's Attorney

Defence: lawyer Tomislav Filaković

Opinion of the monitoring team after the conducted first instance procedure

After the repeated trial, the War Crimes Council of the Šibenik County Court rendered a verdict on 24 September 2010 in which the defendant was found guilty of committing a war crime against civilians under Article 120, paragraph 1 of the OKZRH and sentenced to 3 years and 6 months in prison.

The indictment No. K-DO-12/03 of 11 July 2003, laid by the Šibenik ŽDO, amended by the memo dated 13 May 2004 and at the trial hearings held on 14 May 2004, 10 September 2010 and 24 September 2010, charges the defendant that, from the end of 1991 until the Military-Police Action "Storm" on 4 August 1995, at the temporary occupied territory of the RC in the villages of Promina Municipality, he mistreated and intimidated civilians of Croatian ethnicity, threatened them, spread fear and terror among them, looted their property and the property of expelled Croats.

In the first-instance procedure held before the Šibenik County Court in 2004, the Council found the defendant guilty on seven counts of the indictment and acquitted him on two counts. He was sentenced to 4 years in prison.

However, the VSRH with its decision No. I Kž 395/05-3 quashed the first-instance verdict in 2008 and ordered a re-trial due to essential violation of the criminal procedure provisions. The aforementioned violation was made because, the Council, in its verdict, partially convicted and partially acquitted the defendant in respect of the same factual description of the offence. All activities of one perpetuated (extended) criminal offence that the defendant was charged with, comprising in total nine activities, should have also been ruled in its entirety. Considering the fact that the court found that the defendant did not commit certain activities, it should have omitted them from the factual description but failed to do so.

[131] Maja Kovačević Bošković monitored this trial and reported thereof.

With the verdict of 24 September 2010, the defendant was again found guilty on seven counts of the indictment. This time, he received a shorter prison sentence. Same as in 2004, the defendant received a prison sentence below the minimum sentence stipulated for a war crime against civilians under Article 120, paragraph 1 of the OKZRH.

The Council viewed as particularly extenuating circumstances the fact that the defendant had no previous convictions, his help provided to HV members, protection from enemy's soldiers and the fact that he was found guilty of a fewer number of criminal activities than the one with which he was charged. Such opinion by the Council resulted with pronouncing a prison sentence below the minimum sentence stipulated for the criminal offence concerned.

The reasons why the Council decided to mitigate the sentence in the overturned verdict are almost identical to the reasons stated in the explanation of the 24 September 2010 verdict. The only difference is that in the latter verdict "the passage of time" is also stated as a reason for mitigation. No explanation was provided on which were the new circumstances that made the court decide to pronounce even shorter punishment.

We deem that the courts, when they decide to mitigate a sentence, are obliged to precisely explain those particularly expressed extenuating circumstances which justify the application of sentence mitigation.

We find doubtful whether the fact that the defendant was sentenced for a fewer quantity of criminal activity than the one he was charged with can be assessed as an extenuating circumstance and, in particular, as a reason to pronounce a prison sentence below the minimum threshold.

Trial against defendant Dragomir Ćasić, charged with a war crime against civilians[132]

Bjelovar County Court

Criminal act: war crime against civilians under Article 120, paragraph 1 of the OKZRH Defendant: Dragomir Ćasić

War Crimes Council: judge Sandra Hančić, Council President and judges Antonija Bagarić and Mladen Piškorec, Council Members

Prosecution: Branka Merzić, Bjelovar County State's Attorney

Defence: lawyers Krešimir Papac and Krunoslav Kunštić

Opinion after the conducted first-instance procedure

After the first-instance procedure concluded on 11 October 2010, the War Crimes Council of the Bjelovar County Court acquitted defendant Dragomir Ćasić of charges that he, in the night of 18/19 August 1991, in his capacity as a member of paramilitary unit of the so-called Territorial Defence of Western Slavonija, together with Krsto Žarković, Ljubomir Banjeglav, Milan Šopalović, Nenad Majić, Sreten Kulić, Miodrag Zorić, Vasilije Pavković, Petar Kuridža, Boro Tomić, Rajko Glumac and Milan Romanić, unlawfully confined citizens of the RC Zlatko Starešinić, Darko Petrovicki, Damir Rambousek and Marijan Petrovečki, and took them to a Chetnik prison in Bijela where they were tortured and abused. Several days later, the aforementioned persons were transferred to the central prison in Bučje where Darko Petrovicki, Damir Rambousek and Marijan Petrovečki disappeared without a trace and therefore are presumed killed.

Defendant Ćasić was acquitted of charges because it was not proven in his case that he committed the crime as charged. His detention, as of 1 August 2010 when he was arrested at the Bajakovo border crossing, was vacated when the verdict was pronounced.

The Indictment No. KT-49/94 of 12 June 1997 was laid by the Bjelovar ŽDO against 28 accused persons (Milan Lončar et al.). It covered 12 different incriminating events that occurred in the then-Daruvar municipality area in the period between August and December 1991. However, the role of each individual defendant in commission of certain acts as charged was not clearly and sufficiently individualised in the indictment.

In this indictment, Dragomir Ćasić was charged, together with other defendants, with torture and killing of war prisoners because it was stipulated that injured parties Zlatko Starešinić, Darko Petrovicki, Damir Rambousek and Marijan Petrovečki were police members.

[132] Milena Ćalić Jelić monitored this trial and reported thereof.

However, the indictment was amended on 6 August 2010. In the new Indictment No. K-DO-29/10, it was stipulated that four injured persons were civilians and hence defendant Ćasić was charged with unlawful taking of civilians to a detention camp, therefore committing a war crime against civilians.

During the evidence procedure, the court heard the testimonies of three, and read the testimonies of two witnesses. The heard witnesses confirmed that they saw the defendant in the village of Bijela at the incriminating time but did not confirm that he participated in their arrest or torture of prisoners. The defendant confirmed his presence in Bijela in the presented defence. Witness Zlatko Starešinić, who claimed in his testimony during the 1997 investigation that the defendant participated in his confinement and taking of him and other prisoners to a detention in Bijela, changed his testimony during the main hearing and stated that he did not recall whether Dragomir Ćasić was among the persons who confined them.

By analysing the presented evidence, the Court established beyond any doubt that defendant Ćasić was a member of paramilitary formation – Territorial Defence of Western Slavonija – for several days in August 1991 and that in such capacity he was in Bijela, and this would possibly confirm the commission of armed rebellion, which is covered by the General Amnesty Act, whilst it was not proven that he personally and within a group captured citizens, took them to a prison where they were tortured and abused, while some of them were killed.

The Indictment No. KT-49/94 of 12 June 1997 laid by the Bjelovar ŽDO and the outcome of this trial points out to the need of further reviews of indictments laid after the conduct of investigations in the absence of defendants.

Dragomir Ćasić was arrested at the Bajakovo border crossing on 1 August 2010. He was in detention until the pronouncement of the verdict of acquittal on 11 October 2010, i.e. he spent 2 months and 10 days in detention. According to defence counsels, the defendant will ask for compensation of damage due to unfounded detention if the VSRH upholds the first-instance verdict.

Trial against defendants Pero Đermanović, Ljuban Bradarić, Dubravko Čavić and Ljubiša Čavić, charged with a war crime against civilians[133]

Sisak County Court

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

Defendants: Pero Đermanović, Ljuban Bradarić, Dubravko Čavić[134] and Ljubiša Čavić

War Crimes Council: judge Snježana Mrkoci, Council President; judge Željko Mlinarić, Council member; judge Alenka Lešić, Council member

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

Defence: lawyer Zorko Kostanjšek, for the 1st accused; lawyer Danko Kovač, for the 2nd accused; lawyer Željko Andrijević, for the 3rd accused; lawyer Domagoj Rupčić, for the 4th accused

Opinion about the conducted first-instance procedure

On 23 April 2010, Sisak County Court War Crimes Council pronounced the sentence which found the defendants guilty of war crime against civilians under Article 120, paragraph 1 of the OKZRH.

The Court pronounced the defendants guilty of the following: that they, in their capacity as members of illegal armed formations of the so-called SAO Krajina, in the villages along the Una river in the vicinity of Hrvatska Kostajnica (Stubalj, Graboštani, Donji Hrastovac and Gornji Hrastovac) in October 1991, unlawfully detained, tortured and killed civilian Vladimir Letić (charges against the 1st accused Pero Đermanović and the 3rd accused Dubravko Čavić), were setting houses on fire thus destroying the property on a large scale (charges against the 1st accused Pero Đermanović and the 4th accused Ljubiša Čavić), and were intimidating civilians thus causing fear and atmosphere of uncertainty, in order to force the civilians to leave their homes (charges against the 2nd accused Ljuban Bradarić).

They received the following prison sentences: Pero Đermanović received 11 years of imprisonment, Ljuban Bradarić received 1 year, Dubravko Čavić 9 years, and Ljubiša Čavić 2 years.[135]

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[133] Jelena Đokić Jović monitored the trial and reported on it.

[134] The War Crimes Council, with concurrence of the prosecution counsel, decided to try in absence the 3rd accused Dubravko Čavić. Čavić has been unavailable to the judicial authorities of the Republic of Croatia since 1995, when he moved to the Republic of Serbia. The Court concluded that the accomplishment of efficient trying of available defendants (out of whom, in the moment of passing that decision, the 1st accused Đermanović and 4th accused Ljubiša Čavić were held in custody) presented an extremely important reason for holding the trial in absentia.

[135] By applying the provisions on commutation of sentence, the Court pronounced sentences to the defendants Ljuban Bradarić and Ljubiša Čavić which are below the minimum prescribed penalty for criminal act of war crime against civilians.

The Court excluded from the factual description of the verdict the 4th accused Ljubiša Čavić's participation in execution of Vladimir Letić. According to the Court's assessment, the presented evidence, especially the deposition given by the witness Stevo Karanović, has led to the conclusion that the 4th defendant participated in the arrest and apprehension of the injured person Letić in the Territorial Defence Command. However, the Court also assessed that this fact did not suggest, not even as an indication, that the defendant knew that Vladimir Letić would be killed.

During the evidence procedure, 17 witnesses were questioned directly in the courtroom, the depositions given by two witnesses were read out, the record on exhumation of mortal remains of civilians and other victims of war in the territory of Hrvatska Kostajnica, dated on 22 May 1996, was read out, and the inspection was made into the photo documentation of the exhumation.

The majority of questioned witnesses do not have a direct i.e. first-hand knowledge of the incriminated events. They have acquired information from their fellow villagers.

Witnesses Nikola Medić, Nikola Jeličić, Ana Čorić, Dragica Grubić and Milka Mrkšić stated that they knew the 1st defendant, but they had not recognized him in the group of people who were taking the injured party Vladimir Letić through the village. However, based on the deposition given by Stevo Karanović who was "decidedly testifying throughout the entire trial, bearing in mind all the circumstances, thus described the dynamics of movement of the now-late Vladimir Letić in the period from 16 October until 17 October 1991"[136], the Court established as undoubted fact that the injured person had firstly been tortured and subsequently executed by the defendants Pero Đermanović and Dubravko Čavić, and the person nicknamed "Japan".

According to the Court's conclusions, the statements given by the witness Stevo Karanović have been substantiated by the depositions given by witnesses Slavko Vukičević and Ostoja Vukičević, which are not congruent in all details, however, the mentioned witnesses explicitly stated that the defendants Pero Đermanović and Dubravko Čavić had been in the vehicle with Vladimir Letić.

By analysing the evident discrepancies between the statements of questioned witnesses, the Court has concluded that there is a considerable lapse of time from the incriminating event to the moment of giving statements, which makes it rather unjustified to expect the witnesses' statements to be congruent in all details. Such interpretation is justified in case of the discrepancies of minor importance concerning non-decisive issues, however, the discrepancies between the statements given not only by several different witnesses but also between the statements given by one single witness, which are not thoroughly explained, may question the completeness and correctness of the established facts.[137]

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[136] Verdict No: K-44/09 of 23 April 2010, page 21

[137] The deposition given by the witness Stevo Karanović differs from the statement given during the investigation procedure and in the proceedings No: Kir-816/08 against an unidentified perpetrator. The Council declined to present the statement given by witness Karanović with an explanation that the mentioned statement referred to another criminal proceedings.

Although the factual description of the verdict does contain a statement that after his arrest, the injured person Letić was interrogated, physically and psychically abused in the Territorial Defence Command, and subsequently taken to Stubalj in order to disclose the houses which harboured weapon storages, the explanation of the verdict does not contain a word about it.

In addition, the Court declined to bring face-to-face the witnesses whose depositions contained discrepancies regarding major issues. Moreover, the Court also rejected request for evidence for conducting the on-site investigation in order to establish the fact whether the witness Stevo Karanović, from the position he happened to be at that time, could have seen the persons who had set on fire his house and the house of Ivo Karanović. However, it is possible only for the Supreme Court of the RC, following an appeal, to make a final assessment whether there was a need to present each submitted evidence.[138]

The main hearing was conducted in inadequate conditions – in the courtroom which was in under reconstruction. The Court does not have technical equipment for transmission of sound and vision. Requests for questioning of the witnesses currently residing in the territories of neighbouring countries to be done via video-conference link are being regularly rejected.

[138] The VSRH, at the session of its Appeals Chamber held on 22 December 2010, quashed the first-instance court verdict.

Trial against defendant Božidar Vukušić, charged with a war crime against civilians[139]

Šibenik County Court

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

Defendant: Božidar Vukušić

War Crimes Council: Jadranka Biga Milutin, Council President, and judges Dalibor Dukić and Sanibor Vuletin, Council Members

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

Defence: lawyer Branimir Zmijanović

Opinion about the conducted first-instance procedure

By the Šibenik County Court verdict No. 25/10 of 22 September 2010, defendant Božidar Vukušić was found guilty of war crime against civilians under Article 120, paragraph 1 of the OKZRH, according to charges from factual description stated in the indictment No: K-DO-16/10 of 15 July 2010 laid by the Šibenik ŽDO.

After the conducted evidence procedure, the first-instance court established the fact that defendant Vukušić on 29 December 1991 at about 13:00 hours in Dragišići, in his capacity as a member of the 3rd Battalion of the 113th Brigade of the Croatian Army, while Nikola Rašić a.k.a. "Zec", Croatian Army 113th Brigade 3rd Battalion 3rd Company Special Purpose Platoon Commander, was questioning the civilian Jovan Ergić about his knowledge of enemy forces, opened machine-gun fire and shot Jovan Ergić with a 20-round burst, causing Jovan Ergić's immediate death. The defendant was sentenced to a prison term in duration of 9 years.

An undisputed fact in this trial was that the defendant did open machine-gun fire, in the moment when Nikola Rašić a.k.a. "Zec" was questioning the civilian Jovan Ergić, and that the defendant shot Ergić with a 20-round burst which caused Ergić's instant death. After all, the defendant confessed commission of the mentioned act of the crime.

In its verdict, the Court did not specifically state which issues in the trial were considered as disputable, however, these can be read between the lines from the sentence following the sentence containing the undisputable facts. The sentence reads as follows: "All aforementioned statements were confessed by defendant Božidar Vukušić stating in his defence that he had acted in line with the order issued by the 113th Brigade Command, which order had been communicated to him by now-late Ante Juričev Marinčev a.k.a "Boban", as well as Nikola Rašić a.k.a. "Zec", who had been his superior officer ".

[139] Martina Klekar monitored this trial and reported thereof.

Therefore, the disputable issue was whether defendant Vukušić, as he claimed in his defence plea, had committed the described act of the crime by following the order issued to him.

In his defence plea, the defendant claimed that he had committed the criminal act following the order issued by one of the commanders of the 113th Brigade, now-late Ante Juričev Martinčev a.k.a. "Boban", and Nikola Rašić a.k.a. "Zec", 113th Brigade Special Purpose Platoon Commander. Defendant Vukušić claimed that soldier Ivica Morić had conveyed to him the order issued by the Command to shoot the civilian to death "in case the civilian was lying" and that the defendant had replied to Morić that he would obey the order. The defendant stated the soldier Ivica Petrić as being an eyewitness to the event. Moreover, the defendant claimed that he was subsequently informed on the cited order also by Ante Juričev Martinčev a.k.a. "Boban" in person, as well as Nikola Rašić a.k.a. "Zec".

The Court found such a defence plea unfounded and inadmissible, entirely in contradiction with the results of the conducted evidence procedure and directed towards reducing the degree of criminal accountability.

The Court Council found the basis for such a standpoint primarily in the depositions given by the witnesses Nikola Rašić a.k.a. "Zec", Marijan Zorica, Ante Buha and Neven Slavica.

Witness Nikola Rašić denied that he had issued any sort of order for killing Jovan Ergić, and also negated that he would have given the order, by undertaking any concludent action, to the defendant to shoot and kill the stated civilian.

The Court found the confirmation of credibility of the deposition given by the witness Rašić in the statements given by the witness Neven Slavica, who claimed that Rašić had been out of his mind, surprised and extremely agitated when he had seen what the defendant had done, so the Court concluded that Rašić would not have acted in such a manner if the defendant's statement given in his defence had been true.

It was the testimony given by Commander Ante Buha from which the Court drew the conclusion that no order for killing of the civilian Jovan Ergić had been issued by the 113th Brigade Command. In his testimony, Ante Buha claimed that he had called the Military Police immediately upon receiving the information on critical event and that the Military Police had taken the defendant to prison.

The Court based its opinion that the defence presented by the defendant is illogical and unconvincing also on the deposition given by the witness Marijan Zorica, who stated that immediately after the machine-gun fire and the information that Jovan Ergić had been killed, Marijan Zorica took home the other civilian, who had accompanied now deceased Ergić in entering the enemy controlled area in Čista Mala in order to pick up the dead body of a Croatian soldier, and who had been brought for interrogation together with Jovan Ergić. Zorica personally took the other civilian to Gaćelezi, and ordered the civilian's house and the entire village to be put under constant surveillance by the members of the 113th Brigade.

From all the above stated, the Court Council concluded that the defendant was not telling the truth, otherwise it would be highly disputable why the order mentioned by the defendant would refer to only one civilian, i.e. why the order would not refer to both civilians.

In addition, witnesses Ivica Morić and Ivica Petrić stated that they had not witnessed the critical event whatsoever, i.e. that they had not been present at the scene of the crime and that they had no knowledge of what had happened.

By analysing the depositions given by other witnesses – Dejan Birin, Stipe Gojević, Mirko Veleglavac, Ante Bareša, Marko Bareša, Neven Ivas, Milija Miloš and Marija Barišić – the Court stated that the mentioned persons had not been eyewitnesses to the event but instead, that they subsequently learnt, from hearsay by the late "Boban", Nikola Rašić and other Croatian Army members, that the defendant Vukušić had killed the civilian Jovan Ergić.

In the section of the explanation of the verdict referring to the imposed sentence, the Court stated as aggravating circumstance the fact that the defendant had been convicted on several occasions, and that he had killed the late Jovan Ergić without any reason or a cause, in the very moment after Jovan Ergić had delivered to the 113th Brigade the dead body of a Croatian soldier from the area of Čista Mala. As mitigating circumstances, the Court took into consideration the fact that the defendant had been awarded the Homeland War participation testimonial, and that during the main hearing the defendant had apologised to the family of the killed and expressed regret and remorse for committing the crime.

We are of opinion that the trial was conducted correctly, however, we would like to point to the section of the hearing in which the defendant entered the plea. Namely, when entering the plea on his attitude towards the indictment, the defendant stated: "I plead guilty, but not in a sense…", and in that moment he was interrupted by the Court Council President who entered in the record that the defendant "had confessed to the crime" and that the Court could proceed and hear the defence plea. However, at that moment, both the defendant and his defence counsel unanimously stated that they would present the defence at the end of the evidence procedure after all.

Such actions by the Council President, as well as acts of other participants in the trial, who all failed to react in that particular moment, are incorrect in respect of the defendant since the mentioned persons have not even tried to establish what the defendant's real opinion was and what his attitude was towards the indictment. Namely, confession cannot be made under condition. If the defendant pleads guilty, but not in accordance with the charges stated in the indictment, such a plea cannot be considered as the confession to crime.

Repeated trial against defendants Miroslav Bijelić et al., charged with a war crime against civilians[140]

Karlovac County Court

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

Defendants: Miroslav Bijelić, Savo Padežanin, Đuro Tepšić and Rade Bjeloš

War Crimes Council: judge Ante Ujević, Council President, judges Jasminka Jerinić Mušnjak and Marijan Janjac, Council Members

Prosecution: Zdravko Car, Karlovac County Deputy State's Attorney

Defence: lawyer Stanislav Rožman representing defendant Bijelić; lawyer Hrvoje Rožman representing defendant Padežanin; lawyer Davor Bartolac representing defendant Tepšić; lawyer Sanda Kličarić representing defendant Bjeloš

Opinion after the conducted repeated trial

The first-instance trial was repeated in the absence of defendants Miroslav Bijelić, Savo Padežanin, Đuro Tepšić and Rade Bjeloš.[141]

Based on the results of the evidence procedure, the Court found Bijelić, Padežanin and Tepšić guilty as charged. However, by finding them guilty without the presentation of defendants' defence and without actual punishment of perpetrators, no justice can be reached, neither in respect of the defendants, nor in respect of the injured parties and the society in general. For justice to be reached, it is necessary to forward this case file to the judiciary authorities of the countries in which the defendants reside.

The repeated trial against the 2nd defendant Bijelić, the 3rd defendant Padežanin, the 4th defendant Tepšić and the 5th defendant Bjeloš was conducted on the basis of the indictment no. KT-6/96 of 29 February 1996 laid by the Karlovac ŽDO. The indictment charges the defendants that, in May 1992, as members of paramilitary units of the so-called "SAO Krajina", when executing orders issued by their immediate commander Rade Peleša, they killed Josip Obranović and thereby committed a war crime against civilians.

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[140] Maja Kovačević Bošković monitored this trial and reported thereof.

[141] The initial (first) trial was conducted against five defendants, comprising four aforementioned defendants and the 1st defendant Rade Peleša. Only the 1st defendant attended the trial. On 27 November l996, all five defendants were found guilty and sentenced to 10 years in prison each. However, in March 1997, the VSRH quashed the first instance verdict due to essential violation of the criminal procedure provisions because the first instance court, in one of its main hearing sessions, conducted the questioning of witnesses in the absence of defence counsels representing the 2nd, 3rd and 4th defendant. The repeated trial was conducted only against defendant Rade Peleša who attended the trial. On l6 March l999, he was found guilty and sentenced to 12 years in prison. The VSRH later altered the first instance verdict in the sentencing section and sentenced defendant Peleša to 10 years in prison. Meanwhile, he completed serving his prison sentence.

Three witnesses were heard at the hearing, two witness testimonies were read and material evidence was presented.

The War Crimes Council of the Karlovac County Court reached a verdict on 29 June 2010 finding Bijelić, Padežanin and Tepšić guilty and sentencing them to 10 years in prison each, while it acquitted Rade Bjeloš.

The Court based its decision establishing the defendants' guilt primarily on the "Report on exceptional event". It can be derived from this report that the aforementioned defendants killed Josip Obranović, that Obranović was not killed in the course of a conflict or because he was offering resistance. The court concluded that he was killed just because he wanted to flee from the occupied territory and that the soldiers (the defendants in this trial) each fired a single bullet from their weapons, as a result of which Obranović died.

The Court supported the credibility of the aforementioned Report with the testimonies of individual witnesses who testified that they saw precisely the defendants taking Obranović in the direction of the river Kupa, and after that a shot was heard.

However, in respect of the 5th defendant Rade Bjeloš who was charged with a co-perpetration of this criminal act, the Court found no evidence of him being guilty and acquitted him of charges. Namely, a piece of evidence was presented during the trial – inspection of the report issued by the Karlovac Police Administration (PA) on 17 May 2010. It ensued from this report that Rade Bjeloš, with his personal data provided in the indictment, was not kept in the records of the Karlovac PA and that he did not live in that area. The Karlovac PA has a record of a person with the same name and surname, but this person was born in 1967 and not in 1952 as specified in the indictment. It is evident from the testimony of Rade Peleša, heard as a witness, that Rade Bjeloš was only a few years older than other defendants who were born in 1972 and 1973.

Considering the fact that the State Attorney is a party in the trial determining the subject-matter of the trial hearing – an objective (factual) and subjective identity of the charge (of a person with specified personal data), and since it did not withdraw charges against defendant Bjeloš during the trial, the Court acquitted him. In this specific case, the Court found no correlation between the indictment and the verdict in respect of subjective identity.[142]

[142] Article 350 of the ZKP stipulates that a judgement (verdict) may relate only to the person who is charged and only to the act which is the subject of the charge.

STATEMENTS OR PRESS RELEASES

Press Release
in respect of the verdict passed by the VSRH in the court case against Glavaš et al. for the war crime against civilians of Serb ethnicity in Osijek in 1991.

Nineteen years after the crime was committed, the Supreme Court, in its verdict after appeal, established the facts which, beyond a reasonable doubt, reveal the war crimes committed against Serb civilians in Osijek in 1991. This verdict finally puts an end to any further denial of the crime and it eliminates the use of allegations i.e. the attitude according to which "the so-called crimes" were occurring in wartime Osijek in 1991. The victims are no longer considered as "the so-called victims" who got what they were asking for. Also, this verdict clearly identifies the perpetrators and reveals intention and cruelty of the crime – how the victims were abused, tortured and killed, or how they survived by sheer luck. In our opinion, the pronounced sentences do not correspond to the gravity of the crime and they are inconsistent with the previous court practice for war crimes in the RC.[143]

Namely, the Supreme Court reduced sentences to all defendants. It reasoned it with extenuating circumstances which actually, in our opinion, challenged the crime and even justified the crime. Such reasoning merely follows the footsteps of deliberations made by our judiciary back in the nineties when the prevailing attitude was that a Croatian soldier could not possibly commit a war crime in time of a defensive war. What raises a particular concern is the fact that the Supreme Court is creating a judicial practice by passing such a verdict and explanation of extenuating circumstances contained therein, as well as with the verdicts in the Medak Pocket, and in the Korana Bridge crime cases. Creation of such judicial practice does not contribute to ensuring accountability for the committed crimes, but instead it justifies them in the manner that is identical to the prevailing opinion of the public (that this, indeed, presents a crime, but those were "such times"). At the same time this can be also interpreted as ethnic partiality in war crime trials.

We are of the opinion that the Supreme Court made a correct conclusion when it found that the 1st defendant Branimir Glavaš committed an extended criminal offence in the "Garage" and the "Sellotape" cases. It found that the offence in question had been committed with two forms of acting: one was

[143] For instance: the defendant F.M. received a sentence of 15 years in prison for the crime against civilians in Čepin where 8 persons had been killed; the defendant T.M. et al received prison sentences in the duration of 15,12, 8 and 7 years, respectively, for the crime committed in Cerna where a four-member family (with two minors) had been killed; the defendant D.Đ. was sentenced by the final (second-instance court) verdict to 12 years in prison for the crime in Ravno Rašće where one person had been killed; the defendant S.P. was sentenced to 8 years in prison for the crime against civilians and the crime against war prisoners resulting in the death of one person caused by sustained injuries, and the abuse of civilians and war prisoners; the defendant J.V. was sentenced to 6 years in prison for the crime against civilians in Borovo Selo (he physically abused two civilians, with no death casualties).

committed by omission to act and the other was committed by acting during certain time continuity (July 1991-December 1991). It was committed in the same situation, by using the same qualification/characteristic and the same circumstances serving as a motive to commit those crimes.

Hence, the Supreme Court established that the crimes in Osijek had begun before the fall of Vukovar. However, in commutation of the sentences to all defendants, the Supreme Court assessed as extenuating circumstances the fact that the crimes had been committed during November and December 1991 – at the most difficult times for Croatia's subsistence, in the situation of panic and fear, after the fall of Vukovar. The Court found this to be the case of a "situational felony", typical for a war situation that Croatia had been experiencing.

We find it unacceptable that a crime in Osijek can be justified with "barrels aimed at Osijek" and with "panic and fear of the Osijek citizens after the fall of Vukovar". In situations of panic and fear, commanders, both military and civilian ones, bear even greater responsibility for their actions. For that reason, this could be even determined as an aggravating circumstance. The Supreme Court's thesis of "situational felony" is dangerous because it diminishes the responsibility of Croatian soldiers and policemen in cases where war crimes had been committed against civilians, prisoners and wounded persons with an explanation that Croatia was in danger. Such attitude is particularly unacceptable in respect of the crime in question because some of the defendants, as the Court found, had belonged to a secret group which had been committing crimes in conspiracy for quite some time.

With particular emphasis, we wish to point out that the arresting, torturing and killing innocent civilians in Osijek have no causal link whatsoever with innocent victims in Vukovar. Namely, it is simply ironical that the highest judicial body justifies the crimes with innocent Vukovar's victims of crimes, when at the same time, insufficient efforts are being put into investigating and sanctioning of the crimes committed in Vukovar and in other places[144].

Moreover, we find that neither special merits for contributions in the Homeland War, nor army ranks or officer's status, should be valued as extenuating circumstance. On the contrary, these should be obliging a person to be of exemplary behaviour, having a high level of awareness of the need to familiarise with and to respect the provisions of international humanitarian and war law. In this specific case and in respect of the defendants in question, this was not the case. Further to that, the provisions of Article 36 of the Act on Medals and Appreciations by the Republic of Croatia provide for a legal basis according to which the perpetrators of this crime should be stripped off their medals and awards because they were acting contrary to legal order and moral legacy of the RC.

[144] For instance, the date 18 November 1991 was stipulated in the indictment of the Vukovar ŽDO (No. KDO-K-41/99, of 24 December 2002) against the defendant Veljko Kadijević et al. for criminal offences of war crime against civilians, war crime against sick and wounded persons and war crime against war prisoners as the date of the commission of crimes at Ovčara, regardless of the fact that ICTY in the Hague and the Higher Court in Belgrade established in respect of the trials for crimes committed in Ovčara that the time of crime was 20/21 November 1991.

We find the reasoning by the Supreme Court to be unacceptable when it particularly valued the contributions made by the defendant Gordana Getoš Magdić and the defendant Zdravko Dragić in revealing and clarification of criminal offences regarding establishing facts on criminal responsibility of Branimir Glavaš, Ivica Krnjak and Gordana Getoš Magdić, at the same time failing to take into consideration the fact that the stated defendants, when they were presenting their defence plea in the course of the main hearing, denied the testimonies provided at the pre-investigation stage and during the investigation procedure by stating that policemen extorted their confessions by abusing and blackmailing them.

In determining the sentence to Branimir Glavaš, the question remains why the Supreme Court did not take into consideration the circumstances that have to do with the character of the perpetrator outside the context of the offence, i.e. in another words, why he, as the Parliamentary representative, refused to appear before court and opted instead to be a fugitive from justice.

Osijek, Zagreb, 6 August 2010

Statement
on the occasion of unveiling a new monument dedicated to the victims of crime committed in Varivode

This year we are marking 15 years since the massacre in Varivode when, on the night of 28 September 1995, members of the Croatian Army killed domicile population of Serb ethnicity almost two months after the cessation of war activities undertaken during the "Storm" military-police action. Nine persons, the youngest of whom was 60, while the oldest was 85, were executed brutally and without any reason.

With regard to the solemn unveiling of a new monument and the commemoration of the victims of Varivode crime, this Tuesday, 5 October 2010, we are reminding all relevant Governmental institutions about their failure to identify and prosecute the perpetrators of the war crime in Varivode and their obligation to ensure compensation and recognition of their losses.

Documenta - **Centre for Dealing with the Past; Centre for Peace, Nonviolence and Human Rights-Osijek, and the Civic Committee for Human Rights welcome the initiative to unveil a new monument for** the victims of Varivode crime, **hoping that this site, as well as all other sites of destruction, detention and killing of innocent civilians, will become places of remembrance which will send a clear message of condemnation of evil and of all crimes.**

Until April 2010, only a modest plaque containing the list of killed victims was standing in the centre of Varivode, the village that used to have almost 500 inhabitants before the war and presently only several dozens of them live there. A wooden cross, erected in their memory, was vandalized on 23 April 2010.

The victims of Varivode crime: Jovan Berić, Marko Berić, Milka Berić, Radivoj Berić, Marija Berić, Dušan Dukić, Jovo Berić, Špiro Berić and Mirko Pokrajac, were riddled with bullets, mostly on the doorsteps of their homes.

Their bodies were buried in a mass grave in Knin, not all evidence was collected and no standard ballistic expertise was performed. Every document, testimony, statement and each available data indicate that this war crime was conducted in an extremely cruel manner. Four members of Croatian police forces were suspected of having committed the crime, but after the proceedings conducted before the Zadar County Court and the repeated trial conducted before the Šibenik County Court, the trial was discontinued due to lack of evidence, whereby the investigation was sent back to the beginning, against unidentified perpetrators. Even eight years after the trial before the Šibenik court was completed, no new information is available and the prosecution of perpetrators of this crime has not been initiated. Victims' families, seeking justice from the RC before municipal and county courts, received new blows of humiliation by the judiciary which rejected their claims and ordered them to pay court expenses. Jovan Berić, the son of persons killed in Varivode, was ordered to pay court expenses in the amount of no less than HRK 54,000.00.

On this occasion, we would like to express solidarity with the victims' families and once again warn about the lack of compassion towards victims belonging to different ethnic communities. We are glad that the President of the RC, with his arrival, expressed a clear standpoint towards the crime and we call upon the judiciary to take action.

Press Release
in respect of the judgment rendered by the Sisak County Court for the crime in Novska

Herewith, we wish to draw public attention to injustice which was confirmed again by the judgment rendered by the Sisak County Court on 19 November 2010. In this judgment, the indictment for war crimes against civilians was rejected in respect of four Croatian Army members: Željko Belina, Dejan Milić, Ivan Grgić and Zdravko Plesec.

This case is about the crime which occurred in Novska in the family house of Petar Mileusnić in the night of 18 December 1991 when his wife Vera Mileusnić, daughter Goranka Mileusnić and neighbour Blaženka Slabak were brutally killed. Only Petar Mileusnić survived the abuse and shot injuries of his head and neck. The proceedings conducted before the Military Court in Zagreb in 1992 were discontinued because the perpetrators were amnestied by scandalous and entirely unsubstantiated application of the Amnesty Act related to Criminal Prosecution and Proceedings for Criminal Acts Committed in the Armed Conflict(s) and in the War against the Republic of Croatia.

In the trial conducted this year (2010) before the Sisak County Court, the Court Council presided by judge Snježana Mrkoci rendered a judgment rejecting the charge pursuant to Article 353, item 5 of the Criminal Procedure Act, because it held the view that this was a res iudicata case i.e. that the matter was already judged, and that the indictment should be quashed because the trial against the defendants for the same act had previously been discontinued with a final judgement on discontinuation pursuant to the aforementioned Amnesty Act.

Detention of defendants was vacated and they were set free.

Worth emphasising is the fact that this is the case of formal judgement and not the case of judgement by which the court decides on the merit of the thing and decides on the defendants' guilt (render a judgment). For that reason, the media coverage in respect of this case, which conveyed insinuation by Večernji list journalist Zdravko Stržić, is not true. This journalist monitored the trial and wrote in his paper article that the judge had stated: „Crime in Novska actually happened, but there is no proof that you were the ones who did it". This is not what the judge had stated because the court was not expressing its opinion about the merit of the thing. In our opinion, based on the conducted evidence procedure one could actually reach a totally opposite conclusion: that the four defendants in fact are responsible for the war crime as charged. In our opinion, such writing is biased. It serves to create a false picture in the public alluding that the defendants – Croatian soldiers at the time of crime commission – were acquitted because no proof was found that they murdered civilians.

Such judgment does not resolve the subject-matter of the accusation. Instead, it only deals with proceeding's formal issue. It reflects existence of a legal obstacle which prevents taking a decision on the well-foundedness of the accusation - the reason why this trial is dismissed. Therefore, this presents a sort of trial dismissal by way of a judgment, which was done even after commencement of the main

hearing. For that reason, it is utterly incomprehensible why the Council carried out entire evidence procedure (ballistic expertise, additional forensic expertise, and psychiatric expertise was performed in respect of the 1st defendant Željko Belina; witnesses were heard and, among others, also the witness-injured party Petar Mileusnić) only to render the judgment which was grounded on the circumstance barring prosecution (obstacle to hold trial), which, if we were to accept it, existed from the very beginning of the main hearing when such a judgment (on rejecting the charges) could have been rendered in the first place. However, the fact that the indictment was confirmed (i.e. it became legally enforceable) by the extra-trial chamber of the Sisak County Court when deciding on the defendant's appeal, reveals the attitude that there had not been any obstacles to hold trial in this case.

We accept that judges have a dogmatic, formalistic and conservative legal view in respect of the matter already judged and that they support a sustainable opinion that disgraceful mistakes made by the Croatian judiciary in the 90ties cannot be corrected by retrials. However, the aforementioned judge does not have a consistent view in this matter. Namely, in the legally and factually complementary Novska crime case, in which Ljuban Vujić, Mihajlo Šeatović, Sajka Rašković and Mišo Rašković were brutally killed, this judge took exactly opposite position that there was no res iudicata principle that could be applied in that particular case, and reached a convicting verdict in respect of the first defendant Damir Vida Raguž.

It is necessary to remind ourselves of the legal perception of the VSRH according to which "issuance of decision on discontinuation of the trial for the crime referred to in Article 35, paragraph 2, item 4 of the Criminal Law of the RC (murder) for the same event, does not exclude a possibility to initiate and run proceedings against certain persons for war crimes against civilians, at the later stage".

Herewith, we express our utmost criticism because no clear condemnation of this crime was expressed in explaining the judgment, which was based solely on formal-legal reasons, in respect of actions which the defendants had indisputably committed, and which some of them even admitted in the course of the trial.

The judge omitted to express regret over the fact that she was pronouncing a judgment rejecting the charge because of the formal reasons. This is how she would have given a clear notice to the defendants that the evidence procedure findings proved beyond any reasonable doubt the commission of a serious war crime against civilians, and for which they got away unpunished because of the holes in the legislation. This is the minimum which the victims and public deserve to be given by the court trial which rests on justice.

Instead, President of the Council, when explaining the judgment, stated the following: "It is distressing that courts must try Croatian soldiers for the things for which we got used to think they were perpetrated by the opposite side, especially during the time when all of us were lighting candles for Vukovar victims".

The fact that this judgment is not final and that the Sisak County State Attorney's Office will appeal against it after receiving a written version of the judgment, leaves us hope that the VSRH will remain consistent in its opinion that there is no res iudicata in this case, and will quash therefore the disputed verdict and ensure an appropriate conviction of war criminals.

An open letter in respect of the decision rendered by the ICTY Appeals Chamber concerning the Major Veselin Šljivančanin

Osijek, Zagreb, 11 January 2011

File no. 4-2011

Dear Mr. Brammertz,
Dear Mr. Bajić,
Dear Mr. Vukčević,

The fact that the crime at Ovčara was to happen was known by all persons who could have and should have prevented it – handing the prisoners over to Territorial Defence (hereinafter: TO) members was, actually, a decision which allows the crime! A series of the testimonies in the Ovčara case (tried before the War Crimes Chamber in Belgrade), and in the case of the war crime at Vukovar hospital (a concluded first-instance trial conducted before the Vukovar County Court) address this issue clearly. It appears that the Appeals Chamber of the ICTY had not been provided with detailed information about the two aforementioned trials. We expect from the ICTY, the Serbian Office of the War Crimes Prosecutor and the Croatian State Attorney's Office to cooperate in order to investigate and prosecute the responsible persons based on their command and guarantee responsibility.

On the basis of only one witness statement, the Appeals Chamber of the ICTY reviewed the judgment against Veselin Šljivančanin and freed him from criminal responsibility for aiding and abetting the murder of 194 prisoners of war from the Vukovar hospital in 1991. Impartiality of this witness is rather unconvincing. Also, the circumstances of the commission of the crime had not been considered. Therefore, in our opinion, the standard of trying comprises defects in respect of its objectivity and the pronounced judgment lost on its credibility. We are concerned that this judgment could turn into an obstacle in prosecution of the persons responsible for the crime at Ovčara based on their guarantee and command responsibility. Namely, if the persons responsible on the basis of command and guarantee responsibility do not get prosecuted, there will be no justice for victims. The judicial truth about the crime will remain incomplete. Preventive effect will remain absent in respect of expected reinforcement of awareness about the need for abiding the humanitarian law in armed conflicts at all military levels.

We deem that the Appeals Chamber of the ICTY was not made familiar in-depth with numerous witness statements (particularly provided by the JNA members[145]) which were presented: during the

[145] The following persons were heard as witnesses: the Chief of the JNA Guards Brigade Headquarters, Lieutenant Colonel Miodrag Panić; the JNA Security Department Chief, General Aleksandar Vasiljević; the Commander of the 80th Motorised Brigade, Lieutenant Colonel Milorad Vojinović; Major Šljivančanin's Deputy, Major Ljubiša Vukašinović; the Administrative Clerk in the Guards Brigade Security Department, Captain Borče Karanfilov; the 80th Motorised Brigade Chief of Security, Captain Dragi Vukosavljević (whose superior was Major Šljivančanin); and the Commander of the 80th Motorised Brigade Military Police Unit, Captain Dragan Vezmarović, and other former officers and JNA members.

trial in the Ovčara case against Miroljub Vujović and other direct crime perpetrators, concluded with a legally binding verdict rendered by the War Crimes Chamber in Belgrade; during the first-instance trial concluded before the Vukovar County Court in respect of the crime committed in the Vukovar hospital. On the basis of their testimonies it can be concluded that a political decision had been made (in the "Velepromet" facilities on 20 November 1991 at the meeting of "the SAO Krajina Government" when this decision was formalised). Based on this decision, military orders had been issued according to which the prisoners from the Vukovar hospital were to be handed over to TO members and to the Leva supoderica paramilitary group. Decisions were made to prevent a more serious conflict between members of JNA troops in charge of the security of prisoners and the TO members who demanded that the prisoners had to be handed over to them so that they could put them "on trial". Also, the testimonies of lowest-rank soldiers, before the Court in Belgrade, clearly indicate that everyone knew that the handing-over of the prisoners to the TO meant actually a decision allowing retaliation. One witness[146] testified that during the selection ("triage") of prisoners in the Vukovar hospital, Major Veselin Šljivančanin had said that the wounded persons and medical personnel would be transported to Croatia, whereas the persons who had participated in combats would be tried. It is evident from this statement that he knew the purpose of selection – it was intended for the court martial i.e. for revenge campaign. This, in our opinion, is the basis of his responsibility and we ask the ICTY Prosecution to initiate a trial before its Appeals Chamber by taking into consideration the witness testimonies provided before the two aforementioned courts.

Moreover, we warn about the responsibility of national judiciaries to prosecute the responsible persons based on their command responsibility. Herewith, we appeal to the Serbian War Crimes Prosecutor's Office to file a request for investigation against the JNA members who knew about the killing of prisoners at Ovčara and therefore aided and abetted the mentioned murders. We appeal to the State Attorney's Office of the Republic of Croatia to revise, correct and reinforce the indictment laid several years ago against Veljko Kadijević and Blagoje Adžić.

Considering the fact that any army's organisation rests on the principle of subordination, it seems impossible that Mile Mrkšić made the decision on his own to hand-over the persons from the Vukovar hospital to local authorities. We find that this decision had to originate from the highest authority level of the former JNA.

To support this, we provide the testimonies from the court proceedings conducted thus far, which present, in our opinion, circumstantial evidence for investigating the responsibility of commanders for the crime at Ovčara. These testimonies indicate that the highest JNA authority and their subordinated officers, including Veselin Šljivančanin, knew and/or must have known about the fate of persons who were removed from the hospital in Vukovar:

i) A group of senior intelligence officers of the former JNA was sent from the Begejci detention camp (where they had operated as investigators since October 1991) to Vukovar even before 19 Novem-

[146] The witness Nikola Dukić.

ber 1991 with the task to carry out a „triage“ or selection of the prisoners at Velepromet and at the Vukovar hospital (the witness Bogdan Vujić speaks thereof in his testimony presented to the War Crimes Chamber in Belgrade; he mentioned that Branko Korica, Kijanović, himself and several more persons were in that group). Also, organisation/logistics of „triage“ was agreed in Negoslavci at the command post of the Guards Brigade; there existed a "triage" plan for the hospital and Veselin Šljivančanin was put in charge of it.

ii) The list of persons found in the Vukovar hospital was prepared by the former JNA immediately after it entered the hospital on 19 November 1991. This could be concluded from the testimony of witness Ljiljana Mandić (trial against the defendant Bogdan Kuzmić for the crime at the Vukovar hospital, concluded with a first-instance verdict at the Vukovar County Court). She testified that she approached Major Veselin Šljivančanin on 20 November 1991 and said to him that her husband Marko Mandić had been taken away by Bogdan Kuzmić, and after that she saw that the soldier accompanying Veselin Šljivančanin held a list of names, and that her husband's name was on the 16th or 17th position on the list).

iii) Former JNA officers, as witnesses in the trial against direct perpetrators in the crime at Ovčara, before the War Crimes Chamber in Belgrade stated that the former JNA entered the hospital facilities on 19 November 1991; they had been informed that Croatian soldiers retreated to the hospital, that they put civilian clothes on and disguised themselves by putting on bandages and plasters; that during the process of identification of who was a civilian and who was a soldier, they were provided assistance by local people from Vukovar. In the concluded first-instance trial for the crime at the hospital in Vukovar, the witnesses were mentioning the removal of persons from the hospital. It had been mentioned that Bogdan Kuzmić, accompanied by soldiers of the former JNA, was going through the hospital doing the identification of persons. He personally took away Marko Mandić, Branko Lukenda and Tomislav Hegeduš (still missing, registered on the list of persons removed from the Vukovar hospital and taken to Ovčara). The accused Kuzmić was seen next to Martin Došen and Stanko Duvnjak (his body was identified in the mass grave at Grabovo). Therefore, the JNA was in absolute power over the prisoners from the hospital. Veselin Šljivančanin was in charge of the triage on 20 November 1991 and this selection had been obviously performed on the basis of the lists prepared the day before. Criteria according to which this triage was made are not clear especially because women, civilians and journalists were among the persons taken to Ovčara.

iv) The fact that the JNA knew what was going on at Ovčara and that no court had been established in Vukovar is evident from the testimonies presented to the War Crimes Chamber in Belgrade by high ranked officers of the former JNA (the commander of the 80th Motorised Brigade of the former JNA from Kragujevac and his deputy; the commander of the 80th Motorised Brigade Military Police Unit of the former JNA; the commander of light Artillery Missile Battalion within the 80th Motorised Brigade from Kragujevac).

v) The Guards Brigade of the former JNA remained present in Vukovar until 24 November 1991. Thus, at the critical time of the crime at Ovčara, present in Vukovar was the military authority of the former JNA represented by the Guards Brigade with Mile Mrkšić as the commander and Miodrag Panić as his deputy. Veselin Šljivančanin was in charge of the triage in the hospital. Officers subordinated to Šljivančanin provided him with information what was happening to prisoners at the military barracks (attacks on the buses, attempted removals of the prisoners from the buses), what was going on in the hangar (beating prisoners, taking them away into an unknown direction – i.e. to Grabovo), as well as about the act of murder at the mass grave (the testimony provided by the commander of the 80th Motorised Brigade from Kragujevac; he stated before the War Crimes Chamber in Belgrade that he had heard the very next day after the commission of murder of the prisoners at his command post, and that he himself had been present at Ovčara and that he had seen that the prisoners were being tortured);

vi) On 21 November 1991, Miodrag Panić, Miroljub Vujović (TO Vukovar's commander) and several other high-ranked officers of the former JNA went to attend the reception hosted by Veljko Kadijević. Despite the fact that on the previous night more than 200 persons from the Vukovar hospital had been killed, Veljko Kadijević and the highest ranks of military authority of the former JNA were awarding them with words of appraisal and acknowledgments.

Herewith, we appeal to the competent prosecution authorities to do their best within their abilities to prosecute the commanders responsible for the crime at Ovčara.

a) Trials re-opened pursuant to the request filed by the State Attorney's Office or the request for the protection of legality

	Case	Criminal offence/ Court/ Council	
1.	**CRIME IN THE VILLAGE OF PECKI – BJELOVEC HAMLET** After the prosecution dropped charges, the criminal proceedings were discontinued on 7 January 2010. Previously, the VSRH[2] established that the request for the protection of legality was well founded and that the final verdict of the Sisak District Court No. K-24/92 of 25 May 1993 and the verdict of the VSRH No. I Kž 833/93 of 30 November 1993 had violated the law to the detriment of the sentenced persons.	War crime against civilians Sisak County Court **War Crimes Council:** judge Melita Avedić, Council President; judges Predrag Jovanić and Ljubica Balder, Council Members	
2.	**DEFENDANT MAKS PODGORNIK ET AL.** Following the permission to re-open criminal proceedings (in which the defendants had been found guilty in their absence, on the basis of the Verdict K-4/95 of 26 January 1995 reached by the Zadar County Court, and sentenced to 8 years in prison each because of the commission of a war crime against civilians), and after amending the indictment into a criminal offence of endangering the territorial integrity referred to in Article 231, paragraph 1 of the KZRH[3] - on 12 April 2010, the Zadar County Court discontinued the criminal proceedings against the defendants by applying the General Amnesty Act.	War crime against civilians; after the change of legal qualification: endangering the territorial integrity Zadar County Court	
3.	**DEFENDANT ZORAN LAKIĆ ET AL.** Following the permission to re-open criminal proceedings (in which the defendants had been sentenced, on the basis of a legally binding Verdict K-58/95 of 15 March 1996 reached by the Zadar County Court, to 20 years in prison each for the commission of a war crime against civilians), and after amending the indictment into a criminal offence of endangering the territorial integrity referred to in Article 231, paragraph 1 of the KZRH - on 9 April 2010, the Zadar County Court discontinued the criminal proceedings against the defendants by applying the General Amnesty Act.	War crime against civilians; after the change of legal qualification: endangering the territorial integrity Zadar County Court	
4.	**DEFENDANT MILENKO DRAČA ET AL.** Following the permission to re-open criminal proceedings (in which the defendants had been sentenced to 6 to 8 years in prison, on the basis of legally binding verdict No. K-47/92 of 7 December 1994 reached by the Zadar County Court, for the commission of a war crime against civilians), and after amending the indictment into armed rebellion referred to in Article 235, paragraph 1 of the KZRH, - on 11 March 2010, the Zadar County Court discontinued the criminal proceedings against the defendants by applying the General Amnesty Act.	War crime against civilians; after the change of legal qualification: armed rebellion Zadar County Court	

[1] Translator's note: the County State Attorney's Office (hereinafter: ŽDO)

[2] Translator's note: The Supreme Court of the Republic of Croatia (hereinafter: the VSRH)

[3] Translator's note: The Criminal Law Act of the Republic of Croatia (hereinafter: KZRH)

	Indictment No. / ŽDO[1]	Defendants	Names of victims
	Indictment No. KT-178/92 of 30 November 1992 issued by the Sisak District Public Prosecution, amended at the main hearing held on 15 September 2009. **Prosecution:** Jadranka Huskić, the Sisak County Deputy State's Attorney	**Nikola Radišević, Jovo Zubanović, Simo Plavljanić and Dušan Paunović** Members of Serb formations Fugitives from justice, tried in absentia	**Victims – killed:** Stjepan Horvat, Đuro Horvat, Mato Horvat and Ivan Bugarin
	Indictment No. KT-44/93 of 30 December 1994 issued by the Zadar District State Attorney's Office, amended by a memo dated 11 March 2010.	**Maks Podgornik and Zdravko Ranđelović** Members of Serb formations (pilots of the so called JNA) Tried in absentia	- no victims, the defendants were charged with destroying the HTV transmitter antenna system "Grba" near Zadar
	- not in possession of the Indictment	**Zoran Lakić, Marko Lacmanović, Rajko Radmanović, Zoran Radmanović, Bogdan Repaja and Drago Repaja** Members of Serb formations Tried in absentia	- not in possession of the names of victims
	- not in possession of the Indictment	**Milenko Drača, Stevan Drača, Stevan Milanko, Milan Milanko, Branko Lakić, Dragan Končarević, Živko Milanko, Branislav Milanko, Željko Sanković, Davor Sanković and Dragan Drača** Members of Serb formations Tried in absentia	- not in possession of the names of victims

b) Trials in which first instance verdicts were rendered by county courts in 2010

	Case	Criminal offence/ Court/ Council	
1.	**CRIME IN LETOVANIĆ** On 12 May 2010, the first instance verdict was reached finding the defendants guilty and sentencing them to 7 years in prison each. *The VSRH, at the session of the Council held on 12 October 2010 upheld the first instance verdict.*	War crime against civilians Sisak County Court **War Crimes Council:** judge Melita Avedić, Council President; judges Predrag Jovanić and Željko Mlinarić, Council Members	
2.	**CRIME IN SLUNJ AND SURROUNDING VILLAGES** Previously, the VSRH quashed the first instance verdict reached on 1 December 2009 wherein the defendant was found guilty and sentenced to one year in prison. In the repeated trial, on 4 May 2010 the defendant was found guilty and sentenced to 4 years in prison. *The VSRH, at the session of the Council held on 24 October 2010 quashed the first instance verdict of 4 May 2010.*	War crime against civilians Karlovac County Court **War Crimes Council:** judge Ante Ujević, Council President; judges Alenka Laptalo, and Juraj Dujam, Council Members	
3.	**CRIME IN THE VILLAGES ALONG THE UNA RIVER NEAR HRVATSKA KOSTAJNICA** On 23 April 2010, the first instance verdict was reached wherein the defendants were found guilty and sentenced to prison terms: Pero Đermanović (11 years), Ljuban Bradarić (1 year), Dubravko Čavić (9 years) and Ljubiša Čavić (2 years). *On 22 December 2010, the VSRH quashed the first instance verdict rendered by the War Crimes Council of the Sisak County Court and reversed the case back for a retrial.*	War crime against civilians Sisak County Court **War Crimes Council:** judge Snježana Mrkoci, Council President; judges Željko Milinarić and Alenka Lešić, Council Members	
4.	**CRIME IN NOVSKA II** On 16 April 2010, Damir Vide Raguž was found guilty by the first instance verdict and sentenced to 20 years in prison, whereas the defendant Željko Škledar was acquitted of charges. *In 1992, the defendants Raguž and the deceased Dubravko Leskovar were tried for the event in question. Back then, the Zagreb Military Prosecution charged the defendants with a murder. However, the Zagreb Military Court discontinued the proceedings by applying the Act on Pardon against Criminal Prosecution for Criminal Acts Committed in Armed Conflicts and in the War against the Republic of Croatia.*	War crime against civilians Sisak County Court **War Crimes Council:** judge Snježana Mrkoci, Council President; judges Predrag Jovanović and Ljubica Balder, Council Members	

	Indictment No. / ŽDO	Defendants	Names of victims
	Indictment No. K-DO-22/2009 of 3 December 2009 issued by the Sisak ŽDO **Prosecution:** Marijan Zgurić, Sisak County Deputy State's Attorney	**Ivica Kosturin and Damir Vrban** Members of Croatian formations Kosturin has been detained as of 30 September 2009, and Vrban as of 2 October 2009.	**Victim (tortured and killed):** Slavko Ivanjek
	Indictment No. KT-36/95 of 30 July 2009 issued by the Karlovac ŽDO, amended at the main hearing held on 4 May 2010 **Prosecution:** Zdravko Car, Karlovac County Deputy State's Attorney	**Mićo Cekinović** Member of Serb formations In detention as of 16 April 2009.	**Victims:** - **killed:** Pavo Ivšić - **tortured and unlawfully detained:** Tomo Kos - **expelled:** all inhabitants of Croatian ethnicity
	Indictment No. K-DO-10/09 of 5 November 2009 issued by the Sisak ŽDO **Prosecution:** Ivan Petrkač, Sisak County Deputy State's Attorney	**Pero Đermanović, Ljuban Bradarić, Dubravko Čavić and Ljubiša Čavić** Members of Serb formations Defendant Pero Đermanović is detained, defendant Ljuban Bradarić attends the trial undetained, defendant Dubravko Čavić is unavailable to the Croatian judiciary – tried in absentia, while defendant Ljubiša Čavić attends the trial undetained after the pronouncement of the first instance verdict.	**Victims:** - **unlawfully detained, tortured and killed:** Vladimir Letić - **burned houses:** belonging to Stevo Karanović and Ivo Karanović - **intimidated:** Danica Devedžija
	Indictment No. K-DO -16/09 of 15 January 2010 issued by the Sisak ŽDO, amended in April 2010 **Prosecution:** Jadranka Huskić, Sisak County Deputy State's Attorney	**Damir Vide Raguž and Željko Škledar** Members of Croatian formations Defendant Raguž is unavailable to the Croatian judiciary and thus tried in absentia, while defendant Škledar attends the trial undetained (he was in detention until the pronouncement of the first instance verdict)	**Victims – tortured and killed:** Sajka Rašković, Miša Rašković, Mihajlo Šeatović and Ljuban Vujić

	Case	Criminal offence/ Court/ Council	
5.	**CRIME IN DALJ IV** The VSRH quashed, because of procedural omissions, the 8 April 2009 first instance verdict in which the defendant was found guilty and sentenced to 5 years in prison. Following to that, in the repeated trial, on 18 February 2010, the War Crimes Council of the Osijek County Court found again the defendant guilty and sentenced him to 5 years in prison. The VSRH, at the session of the Council held on 13 October 2010 again quashed the convicting verdict of the Osijek County Court. The main hearing in the third (second repeated) trial began on 22 December 2010.	War crime against civilians Osijek County Court **War Crimes Council in the repeated trial:** judge Darko Krušlin, Council President; judges Miroslav Jukić and Drago Grubeša, Council Members **War Crimes Council in the third (second repeated) trial:** (the hearing began on 22 December 2010): judge Darko Krušlin, Council President; judges Ante Kvesić and Katica Krajnović, Council Members	
6.	**CRIME IN RAVNI KOTARI** On 15 March 2010, the defendant was found guilty and sentenced to 6 years in prison. The sentence included the time which the defendant spent under arrest and the time he served in prison on the basis of a final verdict reached by the Banja Luka Military Court. The VSRH, at the session of the Council held on 20 October 2010 upheld the first instance verdict. *Namely, in 1992 the defendant was sentenced by a final verdict reached by the Banja Luka Military Court to 2 years in prison in respect of the events in question. The conduct of the defendant was determined to have a legal qualification of a robbery, of damaging another persons' property and endangering life and property by dangerous public acts or means.*	War crime against civilians Zadar County Court **War Crimes Council:** judge Dijana Grancarić, Council President; judges Enka Moković and Milan Pečina, Council Members	
7.	**CRIME IN FRKAŠIĆ II** On 25 February 2010, the defendant was found guilty by the first instance verdict and sentenced to 7 years in prison.	War crime against war prisoners Gospić County Court **War Crimes Council:** judge Dušan Šporčić, Council President; judges Dubravka Rudelić and Matilda Rukavina, Council Members	
8.	**CRIME AT THE VUKOVAR HOSPITAL** On 15 July 2010, the Vukovar County Court's War Crimes Council found the defendant guilty and sentenced him to 7 years in prison.	War crime against civilians Vukovar County Court **War Crimes Council:** judge Nikola Bešenski, Council President; judges Nevenka Zeko and Jadranka Kurbel, Council Members	

	Indictment No. / ŽDO	Defendants	Names of victims
	Indictment No. K-DO-52/08 of 4 November 2008 issued by the Osijek ŽDO, amended (specified) on 31 March 2009 Prosecution: Dragan Poljak, Osijek County Deputy State's Attorney	**Čedo Jović** Member of Serb formations In detention as of 7 July 2008.	**Victims:** - **killed:** Antun Kundić - **physically abused:** Ivan Horvat, Ivan Bodza, Karol Kremerenski, Josip Ledenčan and Emerik Huđik
	Indictment No. KT-23/96 of 3 August 2009 issued by the Zadar ŽDO Prosecution: Radovan Marjanović, Zadar County Deputy State's Attorney	**Nedjeljko Janković** Member of Serb formations Arrested on 12 August 2008, extradited, in detention in Zadar as of 22 April 2009.	**Victims – seized money and/or destroyed property:** Jandra Žepina, Ika Žepina, Ružica Žepina, Zorka Žepina, Ranko Kovačević, Boris Guša, Branko Guša and Duje Žepina
	Indictment No. K-DO-13/08 of 9 March 2009 issued by the Gospić ŽDO Prosecution: Željko Brkljačić, Gospić County Deputy State's Attorney	**Goran Zjačić** Member of Serb formations In detention as of 28 September 2008.	**Victims:** - **physically abused:** Johannes Tilder, Ivan Čaić, Ivan Dadić (HV members); Marko Tomić (HVO member); Kadir Bećirspahić (BIH Army member)
	Indictment No. DO-K-12/98 of 19 March 2001 issued by the Vukovar ŽDO; amended by a memo dated 6 July 2010 Prosecution: Vlatko Miljković, Vukovar County Deputy State's Attorney	**Bogdan Kuzmić** Member of Serb formations The defendant is a fugitive from justice, thus he is tried in absentia	**Victims – unlawfully detained and later killed in an unidentified manner:** Marko Mandić, Tomislav Hegeduš, Stanko Duvnjak, Branko Lukenda and Martin Došen *– the amended indictment of 6 July 2010 no longer charges the defendant with the singling-out and the death of Stanko Duvnjak and Martin Došen.*

	Case	Criminal offence/ Court/ Council	
9.	**CRIME IN SLUNJSKA SELNICA** On 29 June 2010, after the repeated trial, the Karlovac County Court's War Crimes Council found defendants Bijelić, Padežanin and Tepšić guilty and sentenced them to 10 years in prison each. Defendant Bjeloš was acquitted of charges. *Previously in March 1997, because of procedural omissions, the VSRH quashed the first instance verdict in which the defendants were found guilty and sentenced to 7 years in prison each.*	War crime against civilians Karlovac County Court **War Crimes Council:** judge Ante Ujević, Council President; judges Jasminka Jerinić Mušnjak and Marijan Janjac, Council Members	
10.	**CRIME IN DRAGIŠIĆI** On 22 September 2010, the verdict was pronounced in which the defendant was found guilty. He was sentenced to 9 years in prison.	War crime against civilians Šibenik County Court **War Crimes Council:** Jadranka Biga Milutin, Council President; judges Dalibor Dukić and Sanibor Vuletin, Council Members	
11.	**CRIME IN THE VILLAGES OF PROMINA MUNICIPALITY** On 24 September 2010, after the repeated trial, the Šibenik County Court found the defendant guilty again. He was sentenced to 3 years and 6 months in prison. *Previously, the VSRH quashed the verdict of the Šibenik County Court which convicted the defendant in May 2004 and sentenced him to 4 years in prison.*	War crime against civilians Šibenik County Court **War Crimes Council:** judge Dalibor Dukić, Council President; judges Jadranka Biga-Milutin and Oredana Labura, Council Members	
12.	**CRIME IN BIJELA** On 11 October 2010, with the first instance verdict, the Bjelovar County Court acquitted the defendant of charges.	War crime against civilians Bjelovar County Court **War Crimes Council:** Judge Sandra Hančić, Council President; Judges Mladen Piškorec and Antonija Bagarić, Council Members	
13.	**CRIME IN BREZOVICA FOREST** Previously, on 13 April 2010 the VSRH quashed the verdict rendered by the Sisak County Court on 26 August 2009 wherein the defendant was found guilty and sentenced to 9 years in prison. After the repeated trial, on 19 June 2010, the defendant was found guilty again and sentenced to 9 years in prison *The VSRH, at the session of the Council held on 7 December 2010 upheld the first instance verdict of 10 June 2010.*	War crime against civilians Sisak County Court **War Crimes Council:** judge Melita Avedić, Council President; judges Predrag Jovanić and Alenka Lešić, Council Members	

	Indictment No. / ŽDO	Defendants	Names of victims
	Indictment No. KT-6/96 of 29 February 1996 issued by the Karlovac ŽDO Prosecution: Zdravko Car, Karlovac County Deputy State's Attorney	**Miroslav Bijelić, Savo Padežanin, Đuro Tepšić and Rade Bjeloš** Members of Serb formations Tried in absentia	**Victim - killed:** Josip Obranović
	Indictment No. K-DO-16/10 of 15 July 2010 issued by the Šibenik ŽDO Prosecution: Emilijo Kalabrić, Šibenik County Deputy State's Attorney	**Božidar Vukušić** Member of Croatian formations In detention as of 17 June 2010.	**Victim – killed:** Jovan Ergić
	Indictment No. K-DO-12/03 of 11 July 2003 issued by the Šibenik ŽDO Prosecution: Zvonko Ivić, Šibenik County Deputy State's Attorney	**Rajko Janković** Member of Serb formations In the repeated trial the defendant attended the trial undetained (he was in detention during the first trial – from April 2003 until the pronouncement of the first instance verdict in May 2004)	**Victims/injured parties - tortured and/or intimidated and/or victims of plunder:** Šime Zelić, Neda Zelić, Vlado Zelić, Ankica Zelić, Neda Zelić, Anđa Čavlina, Dinka Karaga, Ante Parać, Milka Parać, Marija Parać, Ante Bračić, Marija Bračić
	Indictment No. K-DO-29/10 of 6 August 2010 issued by the Bjelovar ŽDO Prosecution: Branka Merzić, Bjelovar County State's Attorney	**Dragomir Ćasić** Member of Serb formations In detention as of 1 August 2010 until the pronouncement of the first instance verdict of acquittal on 11 October 2010.	**Victims:** **- confined in detention camp, tortured and maltreated, still missing:** Darko Petrovicki, Damir Rambousek and Marijan Petrovečki; **- confined in detention camp, tortured and maltreated:** Zlatko Starešinić
	Indictment No. K-DO-4/09 of 1 April 2009 issued by the Sisak ŽDO; amended on 7 June 2010. Prosecution: Marijan Zgurić, Sisak County Deputy State's Attorney	**Ivica Mirić** Member of Croatian formations In detention as of 5 March 2009.	**Victim - killed:** Miloš Ćalić

	Case	Criminal offence/ Court/ Council	
14.	**CRIME IN NOVSKA III** On 19 November 2010, the Sisak County Court's War Crimes Council rendered a judgement rejecting the charges pursuant to Article 353, item 5 of the ZKP[4] because it held the view that this was a res iudicata case i.e. that the matter was already judged. *In 1992, an investigation into the incriminating event was conducted against Željko Belina, Ivan Grgić, Dubravko Leskovar, Dejan Milić and Zdravko Plesec for criminal offences of murder and attempted murder. After the investigation, the Military Prosecution Office in Zagreb dropped charges against Grgić and Plesec, whereas the procedure against Belina, Leskovar and Milić was conducted before the Zagreb Military Court. The trial ended on 2 November 1992 with the decision on dismissal of the criminal procedure by applying the amnesty law.*	War crime against civilians Sisak County Court **War Crimes Council:** judge Snježana Mrkoci, Council President; judges Višnja Vukić and Predrag Jovanić, Council Members	
15.	**CRIME IN SLUNJSKA GREDA** On 20 December 2010, the War Crimes Council of the Sisak County Court found the defendant guilty. He was sentenced to 8 years in prison.	War crime against civilians Sisak County Court **War Crimes Council:** judge Snježana Mrkoci, Council President; judges Predrag Jovanić and Alenka Lešić, Council Members	

[4] Translator's note: The Criminal Procedure Act (hereinafter: ZKP)

	Indictment No. / ŽDO	Defendants	Names of victims
	Indictment No. K-DO-35/08 of 9 July 2010 issued by the Sisak ŽDO. **Prosecution:** Jadranka Huskić, Sisak County Deputy State's Attorney	**Željko Belina, Dejan Milić, Ivan Grgić and Zdravko Plesec** Members of Croatian formations Following the rendered dismissing verdict, the defendants were released from the custody (they were detained as of 20 August 2010).	**Victims:** **- killed:** Goranka Mileusnić, Vera Mileusnić and Blaženka Slabak **- maltreated and injured:** Petar Mileusnić
	Indictment No. K-DO-36/08 of 20 September 2010 issued by the Sisak ŽDO **Prosecution:** Ivan Petrkač, Sisak County Deputy State's Attorney	**Milenko Vidak** Member of Serb formations Extradited to Croatia on the basis of a decision of the Serious Crimes Court in Trabzone in the Republic of Turkey, issued on 4 August 2009, is currently under detention in the Sisak prison.	**Victim – killed:** Stjepan Sučić

c) ongoing trials

	Case	Criminal offence / Court / Council	Indictment No. / ŽDO	
1.	**CRIME IN TOVARNIK** The trial is ongoing. The main hearing began on 13 April 2010.	Genocide and war crime against civilians Vukovar County Court **War Crimes Council:** judge Nikola Bešenski, Council President; judges Nevenka Zeko and Zlata Sotirov, Council Members	Indictment No. DO-K-34/00 of 1 February 2001 issued by the Vukovar ŽDO Prosecution: Miroslav Dasović, Vukovar County Deputy State's Attorney	
2.	**ARSON IN THE VILLAGES OF PUŠINE AND SLATINSKI DRENOVAC** The main hearing began on 22 March 2010. Considering the fact that the last trial hearing was held in May 2010, the main hearing will have to start anew.	War crime against civilians Bjelovar County Court **War Crimes Council:** judge Sandra Hančić, Council President; judges Mladen Piškorec and Ivanka Šarko, Council Members	Indictment No. K-DO-6/06 of 23 September 2008 issued by the Bjelovar ŽDO Prosecution: Branka Merzić, Bjelovar County State's Attorney	

	Defendants	Names of victims
	Miloš Stanimirović, Stevan Srdić, Dušan Stupar, Boško Miljković, Dragan Sedlić, Branislav Jerković, Jovo Janjić, Milenko Stojanović, Dušan Dobrić, Djuro Dobrić, Jovan Miljković, Katica Maljković, Nikola Tintor, Željko Krnjajić and Radoslav Stanimirović Members of Serb formations The defendants are unavailable to the Croatian judiciary and thus are tried in absentia. Present defendants Milenko Stupar, Strahinja Ergić, Dragoljub Trifunović, Đorđe Miljković, Mićo Miljković and Janko Ostojić faced trial before. Stupar, Ergić, Trifunović and Mićo Maljković were acquitted; charges in respect of Ostojić were dismissed, while Đorđe Miljković was sentenced to 3 years in prison. Later, after his arrest Aleksandar Trifunović also faced trial. However, in the course of the main hearing and following his release from detention, he fled from the Republic of Croatia. In respect of defendants Jovan Medić and Božo Rudić, proceedings were discontinued because of their death.	**Victims** (according to the Indictment, in respect of 24 defendants): **- killed:** Ruža Jurić, Ivan Jurić, Željko Vrančić, Antun Šimunić, Berislava Šimunić, Danijel Marinković, Mato Ćuk, Marijan Mioković, Rudolf Rapp, Ivan Zelić, Stjepan Matić, Stipo Kovačević, (?) Bilić, an unidentified male person, Karlo Grbešić, Anto Markanović, Marko Bošnjak, Ivo Maleševac, Djuro Grgić, Marin Mioković, Branko Salajić, Tomo Glibo, Filomena Glibo, Ivan Burik, Pavao Vrančić, Ilija Džambo, Krešo Puljić, Mato Čulić, Vojko Selak; **- tortured:** Mirko Markutović, Živan Markutović, Andrija Jurić, Tomislav Grgić, Stjepan Marinković, Pavo Donković, Božo Grbešić, Žarko Grbešić, Dragan Hajduk, Stjepan Glibo, Branko Šimunić, Ratko Dovičin, Marin Mitrović, Marijan Matijević; **- expelled:** Ilija Šimunić, Tomislav Grgić and his mother, Jozo Beljo and his family, Vlatko Glavašić, the familiy of Ivan Palijan, Ivo Djurić, Juro Beljo, Mato Ćuk, the family of Mijo Siketić, Andrija Jurić, Stipo Glibo, Vjekoslav Mioković, Josip Djurčinović, Martin Djurčinović, Marija Topić, Marica Grgić, Đuro Grgić, Ivan Zelić, Stjepan Matić, Dragan Hajduk, Mijo Petković; **- forced to labour:** Mijo Siketić, Mile Ivančić (wounded), Stipo Kovačević, Bilić and another unidentified person, Martin Habčak; **- burned houses:** Marin Šijaković, Vlatko Glavašić, Rudolf Rapp, Dragan Hajduk; **- maltreated:** Marija Palijan, Tanja Palijan, Martin Habčak, Adam Čurčinović
	Ivan Husnjak and Goran Sokol Members of Croatian formations Attend the trial undetained	Injured parties – owners and holders of destroyed facilities: - in the village of Pušine, 17 houses were destroyed and the Orthodox church tower was damaged; - in Slatinski Drenovac: 19 houses were destroyed; - the hunter's lodge was destroyed between Pušine and Slatinski Drenovac

	Case	Criminal offence / Court / Council	Indictment No. / ŽDO	
3.	**CRIME IN LOVAS** The trial is ongoing. *Due to a recess exceeding two months (not a single trial hearing was held since 16 February 2010), the main hearing started anew in December 2010.*	Genocide and war crime against civilians Vukovar County Court **War Crimes Council:** judge Jadranka Kurbel, Council President; judges Berislav Matanović and Željko Marin, Council Members Note: Begining of 2009, the Council was altered. Previously, the Council comprised: judge Ante Zeljko, Council President; judges Zlata Sotirov and Nevenka Zeko, Council Members	Indictment No. KT-265/92 of 19 December 1994 issued by the Osijek ŽDO, and Indictment No. K-DO-44/04 of 1 October 2004 issued by the Vukovar ŽDO, merged into a single Indictment No. K-DO-39/00 issued by the Vukovar ŽDO **Prosecution:** Vlatko Miljković, Vukovar County Deputy State's Attorney	
4.	**CRIME IN KRUŠEVO** The main hearing in the third (second repeated) trial is ongoing. *Previously, the VSRH quashed in 2000 the first instance verdict of acquittal reached on 1 December 1997. Then, in 2007 it also quashed the verdict by which the first instance court on 15 September 2005 found the defendants guilty sentencing defendant Jurjević to 4 years and defendant Tošić to 15 years in prison.*	War crime against civilians Zadar County Court **War Crimes Council:** judge Enka Moković, Council President; judges Boris Babić and Dijana Grancarić, Council Members	Indictment No. KT-266/97 of 18 June 1997 issued by the Zadar ŽDO. **Prosecution:** Radoslav Marjanović, Zadar County Deputy State's Attorney	

	Defendants	Names of victims
	Milan Tepavac and Ilija Vorkapić (following the separation of court proceedings in April 2009, the trial in their case is conducted under No. K-20/09) Members of Serb formations Defendants Tepavac and Vorkapić attend the trial undetained On 29 April 2009, the proceedings were separated in respect of the present defendants –. In respect of defendants-fugitives from justice: Ljuban Devetak, Milan Devčić, Milenko Rudić, Željko Krnjajić, Slobodan Zoraja, Željko Brajković, Ilija Kresojević, Milan Rendulić, Obrad Tepavac, Zoran Tepavac, Milan Radojčić, Milan Vorkapić, Dušan Grković and Đuro Prodanović – the proceedings were registered under No. K-25/00. However, no hearings are being scheduled. In December 2010, the Tepavac case was separated from the Vorkapić case due to the incapability of Tepavac to stand trial.	**Victims:** **- 24 persons died in a mine field:** Božo Mađarac, Mijo Šalaj, Tomislav Sabljak, Slavko Štrangarić, Nikola Badanjak, Marko Vidić, Mato Hodak, Tomo Sabljak – junior, Ivica Sabljak, Slavko Kuzmić, Petar Badanjak, Marko Marković, Ivan Conjar, Ivan Kraljević – junior, Ivan Palijan, Josip Turkalj, Luka Balić, Željko Pavlić, Darko Pavlić, Darko Sokolović, Zlatko Božić, Ivan Vidić, Antun Panjek, Zlatko Panjek **- 45 persons were killed at different locations in Lovas:** Danijel Badanjak, Ilija Badanjak, Antun Jovanović, Anka Jovanović, Kata Pavličević, Alojzije Polić, Mato Keser, Josip Poljak, Ivan Ostrun, Dragutin Pejić, Stipo Mađarević, Pavo Đaković, Stipo Pejić, Živan Antolović, Milan Latas, Juraj Poljak, Mijo Božić, Vida Krizmanić, Josip Kraljević, Mirko Grgić, Mato Adamović, Marko Sabljak, Zoran Krizmanić, Josip Jovanović, Marin Balić, Katica Balić, Josip Turkalj, Petar Luketić, Ante Luketić, Đuka Luketić, Jozefina Pavošević, Marijana Pavošević, Slavica Pavošević, Stipo Luketić, Marija Luketić, Josip Rendulić, Rudolf Jonak, Andrija Deličić, Pero Rendulić, Franjo Pandža, Božo Vidić, Zvonko Martinović, Marko Damjanović, Anica Lemunović, Đuka Krizmanić **- 15 seriously injured persons in a mine field:** Marko Filić, Emanuel Filić, Stjepan Peulić, Josip Sabljak, Stanislav Franković, Milko Keser, Ivica Mujić, Ljubo Solaković, Milan Radmilović, Zlatko Toma, Josip Gešnja, Mato Kraljević, Petar Vuleta, Lovro Geistener, Dragan Sabljak **- 18 seriously injured persons due to maltreatment:** Mato Mađarević, Đuro Filić, Zoran Jovanović, Marija Vidić, Đuka Radočaj, Berislav Filić, Emanuel Filić, Pavo Antolović, Ivo Antolović, Željko Francisković, Ivan Đaković, Anđelko Filić, Zvonko Balić, Vjekoslav Balić, Man Pejak, Petar Sabljak, Marko Grčanac
	Milan Jurjević and Davor Tošić Members of Serb formations Defendant Jurjević attends the trial undetained (he was in detention from 26 May until 1 December 1997); defendant Tošić is a fugitive from justice, thus is tried in absentia.	**Victim – killed:** Mile Brkić

	Case	Criminal offence / Court / Council	Indictment No. / ŽDO	
5.	**CRIME IN MARINO SELO** The repeated trial is ongoing before the War Crimes Council of the Osijek County Court. *Previously, the VSRH quashed the verdict rendered on 13 March 2009 by the War Crimes Council of the Požega County Court wherein the defendants were found guilty and sentenced to prison as follows: Kufner (4 years and 6 months), Šimić (1 year), Vancaš (3 years), Poletto (16 years), Tutić (12 years) and Ivezić (10 years).* *The case was delegated to the Osijek County Court thereafter.*	War crime against civilians Osijek County Court **War Crimes Council:** judge Zvonko Vrban, Council President; judges Miroslav Rožac and Darko Krušlin, Council Members	Indictment No. K-DO-48/10 of 28 June 2010 issued by the Osijek ŽDO **Prosecution**: Božena Jurković, Požega County Deputy State's Attorney	
6.	**CRIME ON THE POGLEDIĆ HILL NEAR GLINA** The third (second repeated) trial is ongoing before the War Crimes Council of the Sisak County Court. *Previously, the VSRH quashed already twice the convictions rendered by the Sisak County Court in which the defendant was sentenced to 14, i.e. 12 years of prison, respectively.*	War crime against war prisoners Sisak County Court **War Crimes Council:** judge Melita Avedić, Council President; judges Alenka Lešić and Željko Mlinarić, Council Members	Indictment No. K-DO-03/06 of 4 September 2006 issued by the Sisak ŽDO, amended at the main hearing held on 9 May 2007 **Prosecution**: Marijan Zgurić, Sisak County Deputy State's Attorney	
7.	**CRIME IN KARLOVAC** The main hearing began on 17 December 2010.	War crime against civilians Zagreb County Court **War Crimes Council:** judge Siniša Pleše, Council President; judges Martina Maršić and Gordana Mihela Grahovac, Council Members	Indictment No. K-DO-188/10 of 22 November 2010 issued by the Zagreb ŽDO. **Prosecution**: Jurica Ilić, Zagreb County Deputy State's Attorney	
8.	**CRIME IN MALI LOŠINJ**[5] *The main hearing is ongoing*	Murder of an official person, attempted murder of an official person and instigating another person to commit a murder of an official person Rijeka County Court **Court Council:** judge Ika Šarić, Council President	Indictment No. KT-122/91-IV of 30 June 2008 issued by the Rijeka ŽDO. **Prosecution:** Darko Karlović, Rijeka County Deputy State's Attorney	

[5] Although this is not a war crime case, we are monitoring it because the conflict perpetrators were members of the Yugoslav National Army (JNA) i.e. of the Croatian formations.

	Defendants	Names of victims
	Damir Kufner, Davor Šimić, Pavao Vancaš, Tomica Poletto, Željko Tutić and Antun Ivezić Members of Croatian formations Defendants Damir Kufner, Davor Šimić and Pavao Vancaš attend the trial undetained. Defendants Tomica Poletto, Željko Tutić and Antun Ivezić are still in detention.	**Victims:** **- maltreated and tortured:** Branko Stanković, Mijo and Jovo Krajnović (the Kip village inhabitants); Milka Bunčić, Jeka Žestić and Nikola Ivanović (the Klisa village inhabitants) **- maltreated, torutured and killed:** Pero Novković, Mijo Danojević, Gojko Gojković, Savo Gojković, Branko Bunčić, Nikola Gojković, Mijo Gojković, Filip Gojković, Jovo Popović – Tein, Petar Popović, Nikola Krajnović, Milan Popović (the Kip village inhabitants); Jovo Žestić, Jovo Popović Simin, Slobodan Kukić, Rade Gojković, Savo Maksimović, Josip Cicvara (the Klisa village inhabitants)
	Rade Miljević Member of Serb formations Was in detention as of 10 March 2006. His detention was vacated in December 2010 because the maximum detention period had expired.	**Victims – killed civilians:** Janko Kaurić, Milan Litrić, Borislav Litrić and Ante Žužić
	Željko Gojak Member of Croatian formations In detention	**Victims – killed:** Marko Roknić, minor Danijela Roknić and Dragica Ninković
	Vlado Grbin, Petar Petrović and Radovan Anđić Officer (1st defendant) and JNA conscripts-soldiers (2nd and 3rd defendant) Grbin and Petrović are tried in their absence whereas Anđić attends the trial undetained	**Victims – killed:** Rifet Mustić and Mladen Bujačić **- victims of attempted murder:** Željko Krulić, Valter Dajčić and Herkul Alaburić

d) trials in which main hearings, although scheduled, did not begin

	Case	Criminal offence / Court / Council	
1.	**CRIME IN THE VILLAGE ČANAK** *The main hearing was scheduled for 9 November 2010.* *The defendant failed to attend the main hearing and hence the hearing had to be postponed.*	War crime against civilians Gospić County Court	
2.	**CRIME IN OSIJEK – DEFENDANT MIRKO SIVIĆ** Due to the defendant's illness and subsequent procedural incapacity, the proceedings against him were previously separated from the proceedings against Branimir Glavaš et al. –who received a final sentence for the crime in Osijek. *Although the main hearing was scheduled for 18 October 2010, it did not begin on that date due to defendant's incapability to stand trial.*	War crime against civilians Zagreb County Court **War Crimes Council:** judge Željko Horvatović, Council President; judges Zdravko Majerović and Koraljka Bumči, Council Members	
3.	**CRIME IN TABORIŠTE** Although scheduled for 7 June 2010, the main hearing before the Sisak County Court did not begin in the trial against defendant Milan Velebit. The defendant is in the Republic of Serbia, of which he is a citizen. *He failed to respond to the notice of summons.*	War crime against civilians Sisak County Court **War Crimes Council:** Judge Melita Avedić, Council President; judges Predrag Jovanić and Ljubica Balder, Council Members	
4.	**CRIME IN NOVO SELIŠTE** Although scheduled for 7 June 2010, the main hearing did not begin before the Sisak County Court in the trial against defendant Stojan Letica. The defendant resides in the Republic of Serbia. He failed to respond to the notice of summons. *The VSRH passed a decision on 1 December 2010 to conduct the trial in absence of the defendant.*	War crime against civilians Sisak County Court **War Crimes Council:** Judge Melita Avedić, Council President; judges Željko Mlinarić and Ljubica Rendulić Holzer, Council Members	

	Indictment No. / ŽDO	Defendants	Names of victims
	Indictment No. KT-23/97 of 16 October 2009 issued by the Gospić ŽDO **Prosecution:** Pavao Rukavina, acting Gospić County State's Attorney	**Željko Žakula** Member of Serb formations The defendant resides in the Republic of Serbia. Thus, he is unavailable to the Croatian judiciary.	**Victim – killed:** Blaž Grbac
	Indictment No. K-DO-76/06 of 16 April 2007 issued by the Osijek ŽDO **Prosecution:** Jurica Ilić, Zagreb County Deputy State's Attorney	**Mirko Sivić** Member of Croatian formations Attends the trial undetained	**Victims - killed:** unknown male person and Alija Šabanović
	Indictment No. KT-171/92 of 29 June 2009 issued by the Sisak ŽDO **Prosecution:** Sonja Rapić, Sisak County Deputy State's Attorney	**Milan Velebit** Member of Serb formations He is unavailable to the Croatian judiciary.	**Victim-killed:** Jelena Palaić
	Indictment No. K-DO-44/06 of 26 November 2008 issued by the Sisak ŽDO **Prosecution:** Sonja Rapić, Sisak County Deputy State's Attorney	**Stojan Letica** Member of Serb formations He is unavailable to the Croatian judiciary.	**Victim-killed:** Stjepan Šubić

	Case	Criminal offence / Court	Indictment No. /ŽDO	
1	**CRIME IN MARINO SELO** The VSRH quashed the verdict rendered on 13 March 2009 by the War Crimes Council of the Požega County Court wherein the defendants were found guilty and sentenced to prison as follows: Kufner (4 years and 6 months), Šimić (1 year), Vancaš (3 years), Poletto (16 years), Tutić (12 years) and Ivezić (10 years). The case was delegated to the Osijek County Court	War crime against civilians The VSRH public session was held on 23 March 2010	Indictment No. K-DO-14/07 of 12 August 2008 issued by the Požega ŽDO, amended on 18 February 2009. **Prosecution:** Božena Jurković, Požega County Deputy State's Attorney	
2	**CRIME IN SLUNJ AND SURROUNDING VILLAGES** The VSRH quashed the verdict reached on 1 December 2009 by the Karlovac County Court wherein the defendant was found guilty and sentenced to one year in prison.	War crime against civilians The VSRH public session was held on 24 March 2010.	Indictment No. KT-36/95 of 30 July 2009 issued by the Karlovac ŽDO, amended at the main hearing held on 4 May 2010. **Prosecution:** Zdravko Car, Karlovac County Deputy State's Attorney	
3	**CRIME IN SLUNJ AND SURROUNDING VILLAGES** After the repeated trial, the War Crimes Council of the Karlovac County Court rendered a verdict on 4 May 2010 finding the defendant guilty and sentenced him to 4 years in prison. The VSRH Appeals Chamber held its session on 24 October 2010 and quashed the first instance verdict. We are not familiar with the decision of the VSRH.	War crime against civilians The VSRH public session was held on 24 October 2010	Indictment No. KT-36/95 of 30 July 2009 issued by the Karlovac ŽDO, amended at the main hearing held on 4 May 2010. **Prosecution:** Zdravko Car, Karlovac County Deputy State's Attorney	
4	**CRIME IN BREZOVICA FOREST** The VSRH quashed the Sisak County Court's verdict of 26 August 2009 by which the defendant was found guilty and sentenced to 9 years in prison.	War crime against civilians The VSRH public session was held on 13 April 2010	Indictment No. K-DO-4/09 of 1 April 2009 issued by the Sisak ŽDO Prosecution: Marijan Zgurić, Sisak County Deputy State's Attorney	
5	**CRIME IN BREZOVICA FOREST** After the repeated trial, the War Crimes Council of the Sisak County Court rendered a verdict on 10 June 2010 and again found the defendant guilty sentencing him to 9 years in prison. On 7 December 2010, the VSRH Appeals Chamber upheld entirely the first instance verdict.	War crime against civilians The VSRH public session was held on 7 December 2010.	Indictment No. K-DO-4/09 of 1 April 2009 issued by the Sisak ŽDO. **Prosecution:** Marijan Zgurić, Sisak County Deputy State's Attorney	

	Defendants	Names of victims
	Damir Kufner, Davor Šimić, Pavao Vancaš, Tomica Poletto, Željko Tutić and Antun Ivezić Members of Croatian formations Detention against defendants Davor Šimić and Pavao Vancaš was vacated at the main hearing; while it was vacated to Damir Kufner in the course of pronouncement of the verdict. Other defendants are still in detention.	**Victims:** **- abused and tortured:** Branko Stanković, Mijo and Jovo Krajnović (inhabitants of the village of Kip); Milka Bunčić, Jeka Žestić and Nikola Ivanović (inhabitants of the village of Klisa) **- abused, tortured and killed:** Pero Novković, Mijo Danojević, Gojko Gojković, Savo Gojković, Branko Bunčić, Nikola Gojković, Mijo Gojković, Filip Gojković, Jovo Popović – Tein, Petar Popović, Nikola Krajnović, Milan Popović (inhabitants of the village of Kip); Jovo Žestić, Jovo Popović Simin, Slobodan Kukić, Rade Gojković, Savo Maksimović, Josip Cicvara (inhabitants of the village of Klisa)
	Mićo Cekinović Member of Serb formations In detention as of 16 April 2009.	**Victims:** - **killed:** Pavo Ivšić - **maltreated and unlawfully detained:** Tomo Kos - **expelled**: all inhabitants of Croatian ethnicity
	Mićo Cekinović Member of Serb formations In detention as of 16 April 2009.	**Victims:** - **killed:** Pavo Ivšić - **maltreated and unlawfully detained:** Tomo Kos - **expelled:** all inhabitants of Croatian ethnicity
	Ivica Mirić Member of Croatian formations In detention	**Victim (killed):** Miloš Čalić
	Ivica Mirić Member of Croatian formations In detention	**Victim (killed):** Miloš Čalić

* According to our data, the VSRH Appeals Chambers held a total of 16 sessions. It concerns 14 criminal cases. The VSRH was deciding two times in the Mićo Cekinović case (Crime in Slunj and surrounding villages) and in the Ivica Mirić case (Crime in the Brezovica forest) following the first instance verdicts.

	Case	Criminal offence / Court	Indictment No. /ŽDO	
6	**CRIME IN OSIJEK** On 2 June 2010, the VSRH reduced prison sentences that had been pronounced to the defendants by the first instance verdict. Thus, the VSRH sentenced Branimir Glavaš to 8 years in prison, Ivica Krnjak to 7 years, Gordana Getoš Magdić to 5 years, Dino Kontić to 3 years and 6 months, Tihomir Valentić to 4 years and 6 months and Zdravko Dragić to 3 years and 6 months in prison. *Previously, on 8 May 2009, the War Crimes Council of the Zagreb County Court pronounced the defendants guilty. Defendant Glavaš received prison sentences in the duration of 5 and 8 years and was pronounced a joint prison sentence in the duration of 10 years, defendant Krnjak received a prison sentence in the duration of 8 years, defendant Getoš Magdić in the duration of 7 years, while defendants Kontić, Valentić and Dragić in the duration of 5 years each.*	War crime against civilians The VSRH public session was held on 31 May, 1, 2 and 4 June 2010.	Indictments: No. K-DO-76/06 of 16 April 2007 issued by the Osijek ŽDO, and No. K-DO-105/06 of 9 May 2007 issued by the Zagreb ŽDO, amended and merged into a single Indictment No. K-DO-105/06 of 30 September 2008. **Prosecution:** Jasmina Dolmagić, Zagreb County Deputy State's Attorney and Miroslav Kraljević, Osijek County Deputy State's Attorney (assigned to Zagreb ŽDO to perform the tasks of Zagreb County Deputy State's Attorney)	
7	**CRIME IN BARANJA** The VSRH quashed the verdict rendered on 7 April 2009 by the War Crimes Council of the Osijek County Court after the third (second repeated) trial against the defendant finding him guilty and sentencing him to 4 years and 10 months in prison. The case was reversed to the first-instance court for a retrial, this time before an entirely changed composition of the Council.	War crime against civilians The VSRH public session was held on 3 August 2010.	Indictment No. KT-136/94 of 3 April 2001 issued by the Osijek ŽDO, amended on 14 March 2002 and 4 May 2006 **Prosecution:** Zlatko Bučević, Osijek County Deputy State's Attorney	
8	**CRIME IN PAULIN DVOR** The VSRH quashed the verdict rendered after the repeated trial by the Osijek County Court on 29 January 2007 in which the defendant was acquitted of charges. The case was reversed to the first instance court for a retrial, but this time before an entirely changed Council. Previously, on 8 April 2004, the Osijek County Court rendered a verdict in which it found defendant Nikola Ivanković guilty and sentenced him to 12 years in prison, whereas defendant Enes Viteškić was aquitted of charges. However, on 10 May 2005, the VSRH modified the first instance verdict in respect of defendant Ivanković, in the section determining the sentence, and sentenced Ivanković to 15 years in prison. In respect of defendant Viteškić, the VSRH quashed the verdict and reversed the case to the first-instance court for a retrial.	War crime against civilians The VSRH public session was held on 7 September 2010.	Indictment No. K-DO-68/2002 of 12 March 2003 issued by the Osijek ŽDO, partially amended at the hearing held on 5 April 2004 **Prosecution:** Željko Krpan, Osijek County Deputy State's Attorney	

	Defendants	Names of victims
	Branimir Glavaš, Ivica Krnjak, Gordana Getoš-Magdić, Dino Kontić, Tihomir Valentić and Zdravko Dragić The proceedings against defendant Mirko Sivić were separated in June 2008 due to illness and his subsequent procedural incapacity Members of Croatian formations The defendants were detained until the request for detention was denied by the Croatian Parliament in January 2008 (for defendant Glavaš), i.e. until the decision of the Constitutional Court in September 2008 (for other defendants). Defendant Krnjak was again detained on 21 April 2009, while other defendants were again detained after the verdict was pronounced, with the exception of defendant Glavaš who is a fugitive from justice. He resides in Bosnia and Herzegovina, of which he is a citizen, which renders impossible his extradition to the RC. On 20 September 2010, the BiH Court upheld the sentence rendered by the VSRH and confirmed the length of the sentence. The BiH Court took over the execution of the verdict and issued a detention order – on the basis of which Glavaš was arrested. On 14 December 2010, the Appellate Chamber of the Court of Bosnia and Herzegovina upheld the first instance verdict which became final (non-appealable) in BiH. Glavaš serves his sentence in the Zenica prison (closed-type).	**Victims – killed:** Branko Lovrić, Alija Šabanović, Jovan Grubić, Dr. Milutin Kutlić, Svetislav Vukajlović, unidentified female person, Bogdan Počuča, Čedomir Vučković and Đorđe Petković **Victim – maltreated and wounded:** Radoslav Ratković **Victim – maltreated:** Nikola Vasić The amended and merged Indictment No. K-DO-150/06 of 30 September 2008 excluded from the factual description incriminations referring to the torture of two unidentified civilians who were detained in a garage at the National Defence Secretariat, torture of Smilja Berić, Rajko Berić and Snežana Berić in the premises of the National Defence Secretariat, and arrest and murder of Petar Ladnjuk, Milenko Stanar and an unidentified male person.
	Petar Mamula Member of Serb formations Was in detention from 6 October 2000 to 7 May 2003. Presently attends the trial undetained.	**Victims:** **- maltreated:** Antun Knežević, Veljko Salonja and Jovan Narandža
	Enes Viteškić Member of Croatian formations Attends the trial undetained (he was in detention from 13 September 2002 until 8 April 2004).	**Victims (killed):** Milan Labus, Spasoja Milović, Boja Grubišić, Božidar Sudžuković, Bosiljka Katić, Dragutin Kečkeš, Boško Jelić, Milan Katić, Dmitar Katić, Draginja Katić, Vukašin Medić, Darinka Vujnović, Anđa Jelić, Milica Milović, Petar Katić, Jovan Gavrić, Milena Rodić, Marija Sudžuković

	Case	Criminal offence / Court	Indictment No. /ŽDO	
9	**CRIME IN VELIKA KLADUŠA** The VSRH Appeals Chamber upheld the first instance verdict rendered on 25 March 2009 by the War Crimes Council of the Rijeka County Court in which defendant Zlatko Jušić was acquitted of charges, while defendant Ibrahim Jušić was found guilty and sentenced to 7 years in prison.	War crime against civilians The VSRH public session was held on 19 September 2010.	Indictment No. K-DO-90/07 of 19 March 2008 issued by the Rijeka ŽDO, amended at the main hearing held on 16 December 2008 (in respect of the 1st defendant) and on 20 March 2009 (in respect of the 2nd defendant) **Prosecution**: Darko Karlović, Rijeka County Deputy State's Attorney	
10	**CRIME IN MAJA AND SVRAČICA** The VSRH quashed the verdict rendered on 13 November 2009 by the War Crimes Council of the Sisak County Court in which, after the repeated trial, the defendant was found guilty and sentenced to 3 years and 5 months in prison. Thus, the VSRH reversed the case to the first instance court for a retrial. Previously, the defendant was tried in his absence in 1993 and sentenced to 20 years in prison.	War crime against civilians The VSRH public session was held on 28 September 2010.	Indictment No. KT-53/93 of 13 August 1993 issued by the Sisak District Attorney's Office. **Prosecution:** Marijan Zgurić, Sisak County Deputy State's Attorney	
11	**CRIME IN LETOVANIĆ** The VSRH upheld the 12 May 2010 verdict of the Sisak County Court in which the defendants were found guilty and sentenced to 7 years in prison each.	War crime against civilians The VSRH public session was held on 12 October 2010.	Indictment No. K-DO-22/2009 of 3 December 2009 issued by the Sisak ŽDO **Prosecution**: Marijan Zgurić, Sisak County Deputy State's Attorney	
12	**CRIME IN DALJ IV** Because of procedural errors, the VSRH quashed the first instance verdict rendered on 8 April 2009 in which the defendant was found guilty and sentenced to 5 years in prison. Subsequently, in the repeated trial the War Crimes Council of the Osijek County Court rendered a verdict on 18 February 2010 in which it again found the defendant guilty and sentenced him to 5 years in prison. However, the VSRH again quashed this convicting verdict rendered by the Osijek County Court.	War crime against civilians The VSRH public session was held on 13 October 2010.	Indictment No. K-DO-52/08 of 4 November 2008 issued by the Osijek ŽDO, amended (specified) on 31 March 2009 **Prosecution**: Dragan Poljak, Osijek County Deputy State's Attorney	

	Defendants	Names of victims
	Zlatko Jušić and Ibrahim Jušić Prime Minister (1st defendant) and police member/Head of the Security Service (2nd defendant) of the so-called Autonomous Region of Western Bosnia Both defendants were in detention from 25 September 2007. On 16 December 2008, after the amendments to the indictment, detention in respect of the 1st defendant was vacated. The 2nd defendant is still in detention.	**Victims – unlawfully detained and/or maltreated:** **- according to the amended indictment of 16 December 2008 in relation to the first defendant:** Alija Feriz, Mujo Milak, Šemsudin Husić, Emin Redžić, Husein Mušić, Aziz Abdilagić, Hasib Delić a.k.a. „Heba“, Mehmed Jušić, Mehmed Sijamhodžić, Kasim Ćano, Đeko Bibuljica, Hasan Đanić, Rasim Erdić (died as a result of maltreatement), Asja Galijašević, Beiza Kekić, Fatima Dorić, Nura Salkić, Fata Omeragić, Zuhra Hozanović **- according to the amended Indictment of 20 March 2009 in relation to the second defendant:** Smail Huskić, Mirsad Šakinović, Rasim Ićanović, Hasib Keserović, Zlatko Balić, Safija Huskić, Zuhdija Alagić, Alema Grahović, Omer Murgić, Mehmedalija Miljković, Rifet Đogić, Osman Galijašević, Bešir Dautović, Almadin Trgovčević, Mirsad Mušić
	Milan Španović Member of Serb formations From 19 August 2009 - the date when he was extradited from Great Britain until the pronouncement of the first-instance verdict on 13 November 2009 – he was in the Sisak prison.	**Victims:** - **beaten**: Ivo Matijević - **burned farming and/or housing facilities and/or appropriated belongings:** Katarina Brdarić, Ivo Brdarić, Mirko Brdarić, Marijan Nogić, Marko Lamza, Matija Davidović, Slavko Davidović, Mijo Tonči, Stevo Davidović, Milan Lončarić and Mate Mladenović
	Ivica Kosturin and Damir Vrban Members of Croatian formations Kosturin is in detention as of 30 September 2009, and Vrban as of 2 October 2009.	**Victim (tortured and killed):** Slavko Ivanjek
	Čedo Jović Member of Serb formations In detention as of 7 July 2008.	**Victims:** - **killed:** Antun Kundić - **physically maltreated:** Ivan Horvat, Ivan Bodza, Karol Kremerenski, Josip Ledenčan and Emerik Huđik

	Case	Criminal offence / Court	Indictment No. /ŽDO	
13	**CRIME IN RAVNI KOTARI** The VSRH upheld the 15 March 2010 verdict reached by the War Crimes Council of the Zadar County Court in which the defendant was found guilty and sentenced to 6 years in prison. The sentence included the time which the defendant had spent under arrest and the time he served in prison on the basis of a final verdict reached by the Banja Luka Military Court. Namely, the defendant was sentenced in 1992 in respect of the events in question by a legally binding (final) verdict to two years in prison, reached by the Banja Luka Military Court. The defendant's conduct had been determined to have a legal qualification of a robbery, of damaging another persons' property and endangering life and property by dangerous public acts or means.	War crime against civilians The VSRH public session was held on 20 October 2010.	Indictment No. KT-23/96 of 3 August 2009 issued by the Zadar ŽDO **Prosecution**: Radovan Marjanović, Zadar County Deputy State's Attorney	
14	**CRIME IN NOVSKA** On 13 October 2010, the VSRH upheld it its entirety the first instance verdict rendered on 24 October 2008 by the Sisak County Court in which defendant Mišćević was found guilty and sentenced to 20 years in prison; while defendant Vrljanović was acquitted of charges. On 22. prosinca 2010, in respect of defendant Mišćević, the VSRH Appeals Chamber held its session (third instance). We are not yet familiar with the decision of the VSRH.	War crime against civilians The VSRH session (at the third instance) was held on 22 December 2010.	Indictment No. K-DO-15/06 of 12 May 2008 issued by the Sisak ŽDO **Prosecution**: Marijan Zgurić, Sisak County Deputy State's Attorney	
15	**CRIME IN THE VILLAGES ALONG UNA NEAR HRVATSKA KOSTAJNICA** The VSRH quashed the first instance verdict rendered on 23 April 2010 by the Sisak County Court in which the defendants were found guilty and sentenced to the following prison terms: Pero Đermanović (11 years), Ljuban Bradarić (1 year) Dubravko Čavić (9 years) and Ljubiša Čavić (2 years). The case was reversed to the first instance court for a retrial	War crime against civilians The VSRH session was held on 22 December 2010.	Indictment No. K-DO-10/09 of 5 November 2009 issued by the Sisak ŽDO **Prosecution**: Ivan Petrkač, Sisak County Deputy State's Attorney	
16.	**CRIME IN POPOVAC** The VSRH upheld the verdict reached by the Osijek County Court in which, after the repeated trial on 7 July 2009, the defendants were found guilty and sentenced to the following prison terms: defendants Pavlović (3 years), Urukalo (2 years), Berberović (1 year and 6 months).	War crime against civilians The VSRH session was held on 9 February 2010.	Indictment No. K-DO-8/2003 of 12 May 2003, issued by the Sisak ŽDO; amended on 19 March 2004 **Prosecution:** Dražen Križevac, Osijek County Deputy State's Attorney	

	Defendants	Names of victims
	Nedjeljko Janković Member of Serb formations Arrested on 12 August 2008, extradited, in detention in Zadar as of 22 April 2009.	**Victims – seized money and/or destroyed property:** Jandra Žepina, Ika Žepina, Ružica Žepina, Zorka Žepina, Branko Kovačević, Boris Guša, Branko Guša and Duje Žepina
	Branislav Miščević and Željko Vrljanović Members of Serb formations Both defendants were in detention until the detention in respect of the 2nd defendant was vacated when the first instance was pronounced.	**Victims – killed members of the Grgić family:** Stjepan Grgić, Tomislava Grgić, Ivan Grgić and Anamarija Grgić
	Pero Đermanović, Ljuban Bradarić, Dubravko Čavić and Ljubiša Čavić Members of Serb formations Defendant Pero Đermanović is in detention, defendant Ljuban Bradarić attends the trial undetained, defendant Dubravko Čavić is unavailable to the Croatian judiciary and thus is tried in absentia, while defendant Ljubiša Čavić attends the trial undetained following the pronouncement of the first instance verdict.	**Victims:** - **unlawfully detained, tortured and killed:** Vladimir Letić - **burned houses:** Stevo Karanović and Ivo Karanović - **intimidated**: Danica Devedžija
	Stojan Pavlović, Đuro Urukalo and Branko Berberović Members of Serb formations During the repeated trial, the defendants attended the trial (previously, during the first trial, they were detained from 5 March 2003 until 8 April 2004).	**Victims (according to the verdict):** - **physically and mentally maltreated:** Stjepan Šumiga, Zvonko Arlavi, Dragutin Posavec, Slavica Gudlin, Dragica Žganjer, Stjepan Hertarić, Ivan Blešć - **unlawfully detained:** Proka Radivojević - **forced to manual labour:** Ivan Plešć, Stjepan Šumiga, Željko Jurčec, Robert Gajšek, Franjo Androić, Stjepan Jug, Valent Žganjer, Dragica Žganjer, Josip Kunović i Stevan Čizmar

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