MONITORING WAR CRIME TRIALS REPORT FOR 2013

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Documenta – Centre for Dealing with the Past
Centre for Peace, Nonviolence and Human Rights - Osijek
Civic Committee for Human Rights

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The report is edited by:
Mladen Stojanović and Milena Čalić Jelić

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This Report is prepared under the project "War Crime Trials Monitoring in the Process of Dealing With the Legacy of Past and Insuring Sustainability of Judicial Reforms in Croatia"

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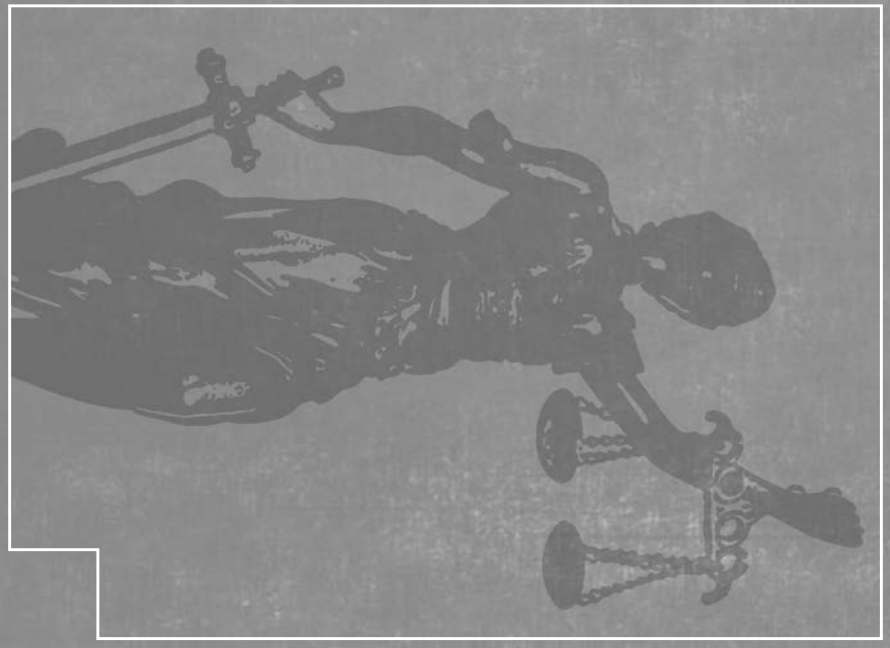
LIST OF ABBREVIATIONS used in the text

BiH	Republic of Bosnia and Herzegovina
DORH	State Attorney's Office of the Republic of Croatia
HV	Croatian Army
HVO	Croatian Defence Council
ICC	International Criminal Court
ICTY	International Criminal Tribunal for the Former Yugoslavia
JNA	Yugoslav People's Army
KZRH or KZ	Criminal Law Act of the Republic of Croatia
MUP (RH)	Ministry of the Interior of the Republic of Croatia
OG	Official Gazette
OKZRH	Basic Criminal Law Act of the Republic of Croatia
PU	Police Administration
RC	Republic of Croatia
RS	Republic of Serbia
RSK	Republic of Serb Krajina
SAO Krajina	Serb Autonomous Region Krajina
SFRY	Socialist Federal Republic of Yugoslavia
TO	Territorial Defence
TRZ	Office of the War Crimes Prosecutor of the Republic of Serbia
USKOK	Office for Prevention of Corruption and Organised Crime, under the DORH
VSRH	Supreme Court of the Republic of Croatia
ZKP	Criminal Procedure Act
ŽDO	County State Attorney's Office

I. INTRODUCTION



A. Project background and mandate

Since 2005, three human rights organisations have jointly monitored war crimes cases before the courts in the Republic of Croatia (hereinafter: the RC). These organisations are: Documenta - Centre for Dealing with the Past, Centre for Peace, Nonviolence and Human Rights-Osijek and Civic Committee for Human Rights (hereinafter referred to collectively as the "Monitoring team").

The objectives of monitoring war crime trials include the following: increasing the effectiveness of war crimes prosecution, improving legal framework for their prosecution, improving the position of victims in criminal proceedings, intensifying regional cooperation, indemnifying all war victims and strengthening judicial independence.

The Monitoring team stresses the importance of efficiency and fairness of judicial system which should respect both the rights of suspects and defendants as well as the rights of victims and witnesses. Therefore, when monitoring trials, our monitors apply the international fair trial standards which serve as a framework for the assessment of court actions.

The Trial Monitoring Programme relates to monitoring all war crime trials conducted before Croatian courts and a number of criminal proceedings that are ongoing before the courts in neighbouring countries (especially those involving war crimes committed in the RC territory). We also monitor indemnification proceedings as well as trials conducted at the International Criminal Tribunal for the Former Yugoslavia (ICTY).

This Annual Report deals with trials and related social and political events which took place throughout 2013.

B. Summary

In the very year in which the Republic of Croatia became a full member of the European Union, the reconciliation process has come to a standstill. Open expression of intolerance towards the Serb ethnic minority has deeply disturbed the inter-ethnic relations.

Public concern over the prosecution of war crimes perpetrators has continued to decrease. In a difficult economic situation, various corruption affairs and news reports on criminal proceedings against an ever-growing number of highly-positioned persons have come to dominate the media and public attention.

Although the relations between Croatian and Serbian state administrations were formally revitalised in 2013, no concrete agreements on cooperation in prosecution of war crimes cases have been signed whatsoever. The majority of leading politicians have failed to put in enough efforts in order to create a legal framework and social atmosphere required for the process of dealing with the past to be based on the consequent condemnation of all war crimes and all war crime perpetrators as well as the condemnation of the very politics which had been allowing the commission of crimes during the 1990s and was covering up those crimes. The social conditions have still been inadequate to allow the witnesses to willingly testify against perpetrators of the crimes committed by "our own side", which would contribute to the more efficient prosecution of crime perpetrators and to achieving the justice for the victims. Subsequent to the announcement of the first-instance court judgement which convicted the leadership of the Herzeg-Bosnia entity and the Croatian Defence Council, the Government of the Republic of Croatia has, unfortunately, missed the chance to distance itself from the crimes committed by Croatian military formations against Muslims and other non-Croat population in the territory of Bosnia and Herzegovina and to distance itself from the previous political stance taken up by the Republic of Croatia in respect of Bosnia and Herzegovina, as was previously done by the former Croatian President Stjepan Mesić.

During 2013, all war crimes cases were delegated to the four county courts and county state attorney's offices which were declared exclusively competent for war crimes in accordance with adoption of the amendments made to *the Law on Application of the Statute of the International Criminal Court and the Prosecution of Criminal Offences against International War Law and Humanitarian Law*. Some criminal proceedings which have been delayed for some ten years or even longer, or were repeated on multiple occasions, have finally been completed.[1] Several convicting judgements were delivered against members of Croatian military formations, which consequently resulted in the significant increase of the total number of the convicted members of Croatian military formations in 2013. However, although the results of a recent analysis of legally valid, final convicting judgments have shown that during the last several years the sentencing and penalties criteria were standardised in respect of sentences adjudged to members of Serb military formations and those adjudged to members of Croatian military formations, still there were several cases in 2013 in which the first-instance courts adjudged significantly harsher sentences

1 The convicting judgement (passed after the third first-instance court proceedings) against the member of Croatian military unit Enes Viteškić for the crime in Paulin Dvor was upheld. The acquittal of the member of Serb military formations Rade Miljević (passed following the two previous (quashed) convicting judgements) was upheld. The convicting judgements against members of Serb military formations Čedo Jović and Petar Mamula (passed subsequent to the completion of the fourth i.e. fifth first-instance court proceedings) were upheld. The convicting judgement against Željko Belina and Dejan Milić, members of Croatian military formations, was upheld. In 1992, the Amnesty Act was erroneously applied to the case against Belina and Milić who were accused of killing the Serb civilians in Novska.

to members of Serb military formations than those adjudged to members of Croatian military formations for the crimes which sustained comparison both in respect of the method of execution of crime and the consequences which occurred after the execution, therefore the Supreme Court of the Republic of Croatia has to continue with its task of standardisation of court practice and reduction of sentencing disparity.

Some specific problems have been conveyed from the previous period, such as the numerous cases of non-prosecuted crimes committed by planting explosive devices into houses of citizens of Serb ethnicity, their systematic evictions and expulsions, inadequate and insufficient prosecution of members of Croatian military formations (only as an exception) accused of crimes which did not result in victims' deaths, as well as non-reporting and consequent non-prosecution of crimes committed by rape. The issue which has remained to be the subject of our deep concern is the large number of non-prosecuted crimes, even more so since the lapse of time has further aggravated the situation with collecting information on the committed crimes and their perpetrators.

Just as was the case in the previous years, several criminal proceedings were dismissed against members of Serb military formations who had previously been prosecuted in absentia. Such practice has pointed to the fact that numerous earlier non-founded accusations/convictions of members of Serb military formations have not been declined, as well as to the fact that the Croatian judiciary is capable of conducting the proceedings in a more professional and unbiased manner than it was done in the recent past.

The victims and witnesses support system was improved in 2013 only by establishing *the National Call Centre* with a free phone line for the victims to call and receive full information on their rights. Unfortunately, the *National Strategy for the Victims and Witnesses Support* still has not been prepared nor the support system has been extended to the county state attorney's offices and the police.

When compared with previous years, in 2013 there were records on the increase of number of persons who were the subject of investigation, however, not a single investigation was initiated in 2013 nor were any indictments laid against members of the Croatian Army or the Ministry of the Interior of the Republic of Croatia.

Almost all members of Serb military formations who were the subject of the investigations initiated in 2013 or who were indicted in the same year - have been unavailable to the Croatian judiciary, and the same is in the case of the majority of members of Serb military formations who were indicted or convicted during the previous years. More effective prosecution of the stated

persons (those who have been unavailable to the Croatian judiciary) has depended on the intensification of cooperation between judicial bodies of the countries in the region. For that purpose, in the first semester of 2013, the Prosecutor's Office of the Republic of Serbia and the State Attorney's Office of the Republic of Croatia signed the protocols on cooperation in war crimes prosecution issues with the Prosecutor's Office of Bosnia and Herzegovina, and the liaison officers were appointed and inaugurated at the prosecutor's offices in Croatia, Serbia, and Bosnia and Herzegovina at the end of 2013. After the first cases were transferred from Bosnia and Herzegovina to Croatia, several investigations were soon initiated against Croatian citizens - in their capacity as former members of the Croatian Defence Council - suspected of crimes in Herzegovina area. Although the very number of cases exchanged between the State Attorney's Office of the Republic of Croatia and the Prosecutor's Office of the Republic of Serbia has not significantly increased, the process of exchange of information and the evidence for the previously transferred cases has significantly increased indeed. However, frequent cases of lack of diligence in cooperation as well as the discrepancies between the legal interpretations and practices (which occur despite the almost identical legal systems) have raised suspicions regarding the goodwill gestures of the entire effort. The said discrepancies between the legal interpretations only serve to encourage the impunity of persons, especially of former Yugoslav National Army officers, whose prosecution has still been avoided by the Serbian judiciary, and who have got away unpunished for the crimes which had been committed by (various) Serb military formations within the Yugoslav National Army zone of responsibility.

During the previous years, the task of providing defence counsel to the Croatian generals accused by the ICTY obviously constituted a part of the state policy of the Republic of Croatia, which could be discerned from the vast amounts of money which were paid for their defence counsels. Moreover, huge amounts were also paid from the state budget which covered the costs of defence counsel for certain members of the Republic of Croatia's Ministry of the Interior who had been accused and tried before the national courts.[2] Such a practice of covering the costs of defence counsels, except its bringing the accused persons into unequal position – depending on the side which they belonged to during the conflict – was also putting the victims in a degrading and stigmatising position. Consequently, some of the victims still have faced the problem of paying civil lawsuit costs and the said problem has not yet been solved in a satisfactory manner. Many plaintiffs/victims' family members, mainly those of Serb ethnicity, who lost civil lawsuits in which they had requested from the Republic of Croatia to compensate them with the non-pecuniary damages incurred by

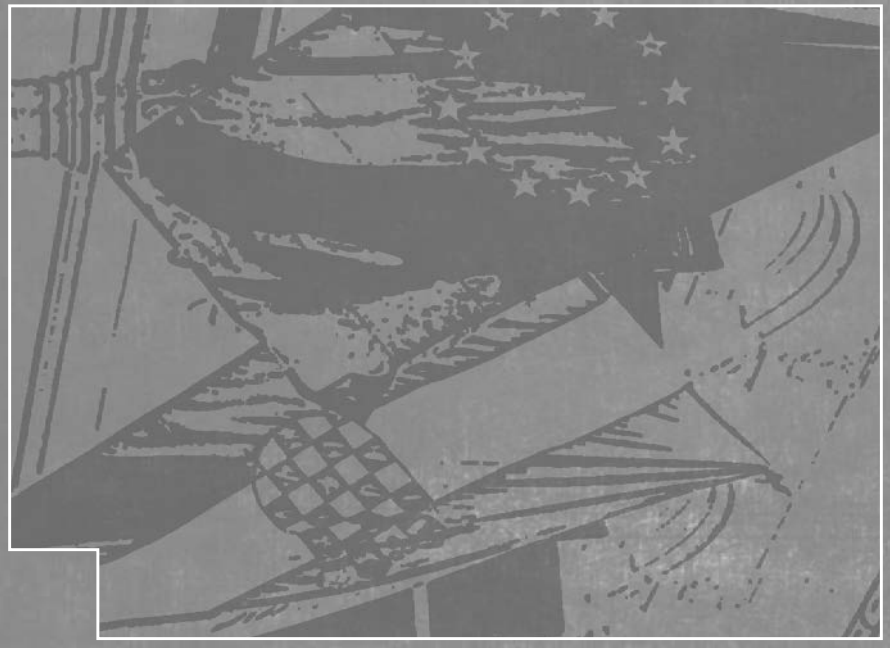
2 According to the statement issued by the Croatian Ministry of the Interior, in 2013 there were no cases of covering legal counsel/defence fees to former or present members of the Ministry of the Interior accused of war crimes.

the killing of their close family members, will not be relieved of the burden of obligation to pay the litigation costs since they do not fulfil the strict property criteria stipulated for the waiving of the debt. Moreover, a subject matter which has continuously caused our deep concern is a total lack of the political will for the systematic solving of the issue of restitution of damages to all civilian victims of war.

Considering the fact that the numerous crimes have still been non-prosecuted, it may be expected that the European Court of Human Rights will determine, in an ever-increasing number of cases received by the European Court of Human Rights, that the Republic of Croatia has indeed violated certain Convention rights of the plaintiffs (family members of the killed persons). The Republic of Croatia should be making settlement deals with the victims' family members and paying them just compensations – the said should be applied not only to the cases submitted to the European Court of Human Rights but also to the cases which have currently been dealt with at the domestic courts.

Concerning the related experiences of the war, post-war reconstruction and joining the European integrations, we expect a lot more active involvement of institutions of the Government of the Republic of Croatia, as well as the institutions of other post-Yugoslav countries, in the promotion of the right to a truth, right to a fair trial, right to compensation of damage and the guarantee of non-recurrence of crime.

II. EXISTING POLITICAL AND SOCIAL CONTEXT IN WHICH WAR CRIME TRIALS ARE TAKING PLACE



The year 2013 in which Croatia became a full EU Member State was marked by deep social and political divisions. Inter-ethnic animosity and intolerance has invaded the public in Croatia.

After the conclusion of negotiations on Croatia's accession to the EU in 2011 and the concluded trial before ICTY against Croatian generals in 2012, interest of the media and the public on the prosecution of war crime perpetrators has been constantly descending. Corruption scandals and initiated proceedings against a growing number of people with high official positions have occupied a great interest of the public which faces grave economic situation.

A. Deep divisions on domestic social and political scene

The centre-left Government, repeatedly referred by the nationalists as "anti-nation", "communist" and "anti-Croatian" does not manage to resolve grave economic situation and serious political issues like: (unnecessary) dispute between the Croatian Government and the European Commission regarding the *Act on Judicial Cooperation in Criminal Matters with the Member States of the European Union* (known in the public as *Lex Perković)* amended only a few days prior to Croatia's entry into the EU; announced comprehensive amendments to the Constitution; the referendum on the constitutional definition of marriage as a life union between a man and a woman only. The abovementioned issues have deeply polarized the Croatian society. Instead of reasoned debates, the mentioned topics are commonly used as an object of daily political squaring of accounts. Moreover, such topics are a serious attempt of destabilizing the current government and the provoking of early elections.

Disputes concerning *the Act on Judicial Cooperation*

Despite the disapproval by the European Commission, Croatia amended *the Act on Judicial Cooperation at the* end of July 2013 so as to stipulate that the Republic of Croatia would apply the European Arrest Warrant (EAW) only to the criminal offences which were committed after 7 August 2002.

Government representatives defended the introduction of time restriction in the application of EAW and pointed out that the purpose of that Act was to protect Croatian war veterans against potential criminal prosecution in the EU Member States which apply the principle of universal jurisdiction. In addition, they persisted in amending the Constitution so as to exempt all murders from the statute of limitation, but they failed in obtaining a sufficient parliamentary support and therefore no amendments to the Constitution were made.

The opposition led by the Croatian Democratic Union (HDZ) claimed that the abovementioned Act was amended so as to prevent the extradition of Josip Perković, former head of Yugoslav and Croatian secret services who is charged by Germany for participation in organizing the murder of Croatian political emigrant Stjepan Đureković, and to prevent the prosecution of political murders from pre-war period. The largest opposition party was willing to support only the amendments to the Constitution which would exempt from the statute of limitation political murders which were committed under the communist regime.

The Croatian Government and the European Commission reached a compromise in September 201, thus enabling tthe application of EAW without a time restriction, as it had been previously stipulated before the problematic June amendments. Josip Perković was extradited to Germany in January 2014. However, Zdravko Mustač, Perković's superior in Yugoslav secret services, is (still) awaiting extradition. Different court decisions in those proceedings, as well as the position of the state attorney's office which was formally represented by German prosecution, that the conditions were not met to act in accordance with the German request, divided not only the political scene but the legal profession as well.

B. Expressing intolerance towards Serb minority has stopped the reconciliation process

Nationalist riots initiated by the so-called *Headquarters for the Defence of Croatian Vukovar* because of the introduction of the Latin-Cyrillic plates in Vukovar

have spread all over Croatia. The events in Vukovar were followed by hate messages towards Serb minority or violent removal of bilingual sign plates in Dubrovnik, Split, Karlovac and Knin areas, Zagreb, Osijek, Rijeka...Death threats, hate speech and insults towards members of Serb minority were addressed at the Serb leader in Croatia and director of the public institution Jasenovac Memorial Site which preserves the memory of the largest Ustasha camp.

At the initiative of *the Headquarters*, enough signatures were collected to call a referendum that aims to increase the proportion of the population of a minority that would guarantee equal implementation of their language and script in the area of a local self-government – instead of one third of the population, as it is stipulated at the moment, to more than a half. This initiative has demonstrated that the society is ready to continue to deny or suspend the rights of minorities, following the referendum of expressed support for the amendments to the Constitution in defining marriage as the exclusive community of man and woman.

Instead of a warning as not to condemn all members of an ethnic group by stripping away its rights guaranteed by the Constitutional Act, leaders of HDZ and certain bishops of the Catholic Church used the phrases that did not contribute to reconciliation, but led to deepening of the conflict.

The divisions culminated in Vukovar on 18 November when, during the Day of Remembrance for the Victims of Vukovar in 1991, *the Headquarters* formed a separate Memorial Column thereby denying the entire state leadership to pay tribute to victims at the Vukovar Memorial Grave.

This halted the already slow process of reconciliation between Croatian and Serb people which, despite its shortcomings, facilitated co-existence without serious incidents. Under the newly-created circumstances of anti-Cyrillic / anti-Serb hysteria launched from Vukovar, the initiation of criminal proceedings for liquidations of Serbs in Vukovar committed in the summer of 1991 and which are still non-prosecuted, gains in importance.

C. Relations between Croatia and Serbia

1. Formal revitalization of relations between the Croatian and Serbian political leadership

Relations between Croatia and Serbia were formally revitalized during 2013. They were disrupted after Tomislav Nikolić, former close associate of Serbian Radicals leader Vojislav Šešelj, was elected Serbian president in mid 2012 and after the formation of the government of Prime Minister Ivica Dačić, former close associate of Slobodan Milošević.

Several meetings at the ministerial level and attendance of Serbian President and Prime Minister at the ceremony of Croatia's accession to the EU preceded the official visit of President Josipović to Serbia. Although the central issues of the meeting between the two heads of state (the issue of missing persons during the war and the position of Serb community in Croatia and of Croatian community in Serbia) indicated the necessity of reconciliation and improving inter-ethnic relations, the meeting did not result in any concrete agreement.[3]

2. Issues of controversy and accusations

a) Mutual lawsuits for genocide

In July 1999, the RC filed a lawsuit against the Federal Republic of Yugoslavia (FRY) for violations of the *Convention on the Prevention and Punishment of the Crime of Genocide* from 1948.[4] The objection to the lawsuit was filed in 2002, but after the International Court of Justice declared its lack of jurisdiction over the issue in 2008, Serbia responded to the Croatian lawsuit in 2009 by filing a counterclaim for genocide against Croatia due to alleged violations of *the Convention* in the military and police action "Storm".[5]

Although in recent years the possibility of withdrawing mutual lawsuits was frequently emphasized, this did not happen. The Croatian side has repeatedly emphasized its readiness to reach an agreement on mutual withdrawal of the lawsuits if the Serbian side forwarded data on persons who went missing during the war. Unfortunately, at the highest political levels, neither Croatia nor Serbia invested enough effort to resolve the fates of the missing persons and expedite proceedings against those responsible for their suffering.

3 Croatian Ministry of Justice forwarded the Draft Agreement on Prosecution of War Crimes to their counterpart in Serbia back at the beginning of 2012.

4 In the lawsuit, the RC set the following requirements: to take effective measures for the prosecutions of Slobodan Milošević and all others who committed crimes against the RC during the Homeland War, to hand over data on missing persons and return cultural treasure.

5 Previously, in 1993, BiH lodged a lawsuit against Serbia with the International Court of Justice for violations of commitments stemming from *the Convention on the Prevention and Punishment of the Crime of Genocide*. In February 2007, it was adjudicated that Serbia was not responsible, i.e. it cannot be imputed the actions committed by the Bosnian Serbs because it was not proven that Serbia had effective control over them. The court also concluded that genocide was committed in Srebrenica area, but not in the wider area of BIH. However, the responsibility of Serbia for non-prevention of genocide and impunity of those responsible was established.

Data on missing persons and necessity of finding them

In January 2014, a total of 1,663 persons who went missing in the Homeland War were still sought. Of this number, 945 persons, mostly of Croat ethnicity, went missing in 1991 and 1992. 718 persons, mainly of Serb ethnicity, went missing in 1995. Croatian media mostly do not report about the latter number and the necessity of revealing their fate.

The finding of mass graves with the bodies of thirteen victims in Vukovar suburb of Sotin in 2013 was frequently cited as an example of successful cooperation between the countries in finding people who went missing. Although the locations where the bodies of killed inhabitants of Sotin had been buried were revealed by one of the two former inhabitants of Sotin who are under investigation in Serbia for committing a crime, the biggest credit for discovering the tombs goes to family members of those killed. Without their dedication, perseverance and delivery of all available data and evidence to the Serbian prosecutor's office, the proceedings in Serbia would not have been initiated nor would have information be gathered about the locations in which the remains of their loved ones had been buried.

b) Croatian Act on Nullity and Serbian Act on the Organization and Competence of Government Authorities in War Crimes Proceedings

The Act Declaring Null and Void certain Legal Documents of the Judicial Bodies of the former JNA, the former SFRY and the Republic of Serbia, which declared null and void and with no legal effect all legal acts of the former JNA, its judicial bodies, judicial bodies of the former SFRY and the Republic of Serbia relating to the Homeland War in Croatia, in which citizens of the RC are the suspects, the accused and / or the convicts for war crimes, is subject to much criticisms of Serbian and a part of Croatian legal experts.[6]

The objections are also addressed at the Serbian *Act on the Organization and Competence of Government Authorities in War Crimes Proceedings* which stipulated that state authorities of the Republic of Serbia are competent to prosecute proceedings of war crimes that were committed in the territory of the former Yugoslavia, regardless of perpetrator's nationality. According to the Croatian side, it has excessively expanded the criminal jurisdiction of the Republic of Serbia.

6 In December 2011, President Josipović requested from the Constitutional Court of the RC to assess the conformity of *the Act on Nullity* with the Constitution, but the Constitutional Court has not yet decided on the President's request.

Application of the *Act on Nullity* in practice

On 12 July 2013, the Bjelovar Municipal State Attorney's Office rejected the request for amicable settlement filed by Ana Slijepčević, the wife of murdered Petar Slijepčević, in which she claimed non-pecuniary damages from the RC for the killing of her husband. The Bjelovar Municipal State Attorney's Office assessed the request of Ana Slijepčević as unfounded because the judgment of the Superior Court in Belgrade, in which in September 2011 member of the Croatian troops Veljko Marić was sentenced to 12 years in prison for a war crime committed by killing Serb civilian Petar Slijepčević, according to the Act on Nullity, has no legal effect in the RC.

Veljko Marić is currently serving a prison sentence in Sremska Mitrovica. Despite his request and dedication by the Croatian state leadership for him to serve time in Croatia, the Serbian judicial authorities do not approve such request because he is in Serbia also suspected of abuse in the premises of the High School Centre in Grubišno Polje and the killing of two persons, in Grubišno Polje and Ivanovo Selo..

Bearing in mind that, according to *the Act of Nullity*, legal acts of the Serbian judicial authorities relating to the war in Croatia are not recognized, we ask the question - on the basis of which judgment would Veljko Marić serve his prison sentence in Croatia?

Despite the efforts invested by prosecutor's offices into strengthening regional cooperation in the prosecution of war crimes, non-resolution of the aforementioned disputes and the absence of specific agreements by the political elites of Croatia and Serbia hamper more effective prosecution of war crimes.

D. Defence of the accused members of Croatian formations - part of the state policy of the RC

According to official data, Croatia allocated 28,145,610.00 EUR for the defence of three persons accused before the ICTY, by far the highest amount of money among the countries that emerged following the disintegration of SFRY. We do not know whether the RC also paid for defences of Bosnian-Herzegovinian Croats indicted for the crimes committed in BIH, who are Croatian citizens.

Expenses of other countries that emerged following the disintegration of SFRY for defences before the Tribunal

According to data published in December 2013 by the BIRN - The Balkan Investigative Reporting Network, besides Croatia, huge funds for defence of its citizens accused before the ICTY was also spent by Macedonia. It is estimated that it allocated 9,480,000.00 EUR for the defence of its two accused citizens.

Other countries have spent much less:

- Serbia did not allocate money for defence but, according to official data from 2004 to 2013, it spent 1,700,000.00 EUR on personal expenses and medical services for the accused and travel expenses of members of their families;

- In BIH, the Republika Srpska spent 640,000.00 EUR while the Federation of Bosnia and Herzegovina, because of the lack of consensus and opposition from the public, did not financially aid defences of Bosnian or Croatian defendants;

- Kosovo did not provide financial assistance to its defendants, but it spent 16,750.00 EUR for the ceremonial welcome of defendants who were released;

Cash was collected through various funds for the purpose of assisting persons charged with war crimes in Croatia, BIH and Kosovo, but it is not known how much money was raised or for what exactly it was spent.

In addition, in previous years the expenses of defence of certain former or current members of the MUP indicted for war crimes before the Croatian courts: Vladimir Milanković, Tomislav Merčep and Željko Sačić were funded by the state budget of the RC.[7]

The MUP found justification for funding their defences in the provision of Article 98 of the *Act on Police Tasks and Powers* which stipulated that a police officer has the right to provision of legal aid at the expense of the MUP when proceedings are initiated against him due to the use of means of coercion and other actions in the performance of police work, even in case his working relationship with the MUP had ceased.

7 According to data from the MUP, a total of 1,518,461.00 HRK was spent for the expenses of their defence during 2011 and 2012 spent. A total of 702,330.00 HRK was spent for defence expenses of Vladimir Milanković, convicted of crimes in Sisak by a first-instance judgment; 672,836.00 HRK was spent for Tomislav Merčep, accused of crimes committed in Pakračka Poljana and at the Zagreb Fair, while 143,295.00 HRK was spent for Željko Sačić, accused of crimes in Grubori and Ramljani.

In the 2012 Report we indicated that we consider interpretation of Article 98 of the *Police Duties and Powers Act* (76/09) in which torturing and/or killing of civilians is considered "the use of means of coercion or other actions in the performance of police work" to be erroneous. This sent wrong message to the society about the special status of this category of defendants, while victims were placed in an unfavourable, stigmatized and degrading position.

Although we have not received an answer as to why funding of defences of the aforementioned defendants has stopped, according to data forwarded during 2013, the MUP had no expenses for their defences.

Paying tribute to units whose members committed atrocities or to war crimes defendants

For years, the usual celebration of anniversaries of certain units took place in the presence of senior state, local, military or police officials, although some of them were linked with several crimes. Thus, for instance, Special Police units are perceived by the society as elite units of the RC. But, except for the crimes in Grubori and Ramljani, in which proceedings are underway against its members, members of Special Police units are also linked with crimes committed in the Medak Pocket. The majority of victims of this crime were killed in the area of responsibility of the Special Police. None of its members has been convicted of any war crime up to now.

Tomislav Merčep, against whom court proceedings are underway for one of the most serious war crimes committed during the war in Croatia, in Pakračka Poljana and at the Zagreb Fair, regularly attends official ceremonies: marking the Police Day, Independence Day, marking the anniversary of the fall of Vukovar. During the last of the aforementioned events, Minister of Veterans Predrag Matić emphasized that he was particularly honoured to have all three commanders of the defence of Vukovar (Dedaković, Borković and Merčep) attend the ceremony. Merčep is still President of the Association of Croatian Homeland War Volunteers (UHDDR), one of the largest veterans' associations.

After the publication of the first-instance judgment on 9 December 2013 by which Vladimir Milanković was sentenced to eight years in prison for the crimes committed in Sisak, his supporters, among whom there was retired general Mladen Mikolčević and President of the Osijek City Council Anto Đapić, sang the national anthem.

On the other hand, state attorney's offices have, for the first time, initiated proceedings against convicted members of Croatian units for reimbursement of funds which the RC paid to victims of war crimes or their family members as non-pecuniary damage.[8]

We believe that, due to inefficient investigations and non-prosecution during the 90s and permitting and / or covering-up the crimes, the RC has the obligation to fairly compensate family members of killed civilians. In cases where perpetrators are convicted, the state has to file reimbursement claims against them.

8 We are familiar with the fact that proceedings were initiated for the reimbursement of funds paid to victims or their families against convicted members of Croatian units: Mirko Norac, Tomislav Duić, Tonči Vrkić and Ivica Petrić.

III. JUDICIAL REFORM STRATEGY AND THE ACTUAL CONDITION

"The result of the implementation of measures from action plans and specific previous activities is the progress made in conducting war crimes trials which are conducted impartially and professionally, regardless of perpetrator's ethnicity. The possibility of testifying via video link was introduced which is increasingly used in other cases, as well. A support system for witnesses and victims of crimes was established, while amendments to the Criminal Code stipulated identity protection for all protected and vulnerable witnesses in terms of provisions of the Criminal Procedure Act" reads the description of the achievements accomplished so far, listed in the Judicial Reform Strategy 2013 - 2018. At the same time, it is the only mention of war crimes prosecution in the document that, on 32 pages, lists the fundamental values and strategic development directions of judiciary in that period.

A. Human and material capacities of courts and state attorney's offices

Following the amendments to the Act on the Application of the Statute of the International Criminal Court, which in 2011 stipulated the exclusive competence of county courts in Osijek, Rijeka, Split and Zagreb to try war crimes cases, the majority of cases was transferred from other county courts to the the four aforementioned courts during 2012 and 2013 (some remaining cases).

War crimes departments were formally organized at those courts and they comprise, with the exception of the Zagreb County Court, almost all judges from criminal departments of those courts. Given that the same judges were also appointed to the departments for USKOK cases and that they also try other criminal cases, true specialization for war crimes cases at those courts did not occur. Although the presidents and judges of the aforementioned courts deemed at the beginning of 2013 that the influx of new cases would lead to overburdening judges and infrastructural capacities of the courts, that is no longer cited as a problem except for the Zagreb County Court which deals with the largest number of cases and the apparent lack of working space.

Special war crimes departments have been established at the state attorney's offices but the large number of non-prosecuted and incoming cases points to a lack of human, material and spatial capacities. State attorney's budgets are at the same level as those from previous years and allow only the performance of basic tasks. The delay in the introduction of IT programmes for monitoring pending cases (CTS - Case Tracking System) in certain state attorney's offices renders difficult the improvement of efficiency and supervision over the work in those state attorney's offices.

Significant amendments to procedural and substantive acts represent additional difficulties in the work of courts and state attorney's offices. Due to the com-

plexity of their application, frequent changes cause frustration and do not contribute to efficiency. The state attorney's offices particularly state that amendments to the Criminal Procedure Act, made after the Constitutional Court quashed 43 provisions of that Act in 2012 because, according to the judgment of the Constitutional Court, they were contrary to the Constitution, i.e. practice of the ECHR, significantly reduce powers of the state attorney in preliminary proceedings, and that those amendments will lead to reduced efficiency, particularly in difficult and complex cases. "*When amending the Act, the priority was not effective procedure in the prosecution of perpetrators of serious crimes, despite the indisputable respect for fundamental rights and freedoms in accordance with the Constitution and jurisprudence of the ECHR"* states the DORH.[9]

B. Support system for victims and witnesses

1. Delay in the development and resistance towards system expansion

Having established departments for victim-witness support at seven county courts (in Vukovar, Osijek, Zagreb, Zadar, Rijeka, Split and Sisak) in the past several years, in 2013 the victim-witness support system did not achieve required and expected progress

For years we have emphasized that the effectiveness of the victim-witness support system depends primarily on the efforts invested by the Croatian Government in quick and efficient expansion of the support system. But, although the Croatian Government way back in January 2010 established the *Committee for Monitoring and Improving the Victim-Witness Support System* with the basic objective of developing the National Victim-Witness Support Strategy, it has still not been drafted

It is necessary to further expand the support system to other courts, state attorney's offices and the police, as well as expand the scope of support to provide victims and witnesses with psychological and legal assistance. Victim-witness support should be provided at the earliest stage of criminal proceedings and ensure its continuity throughout the criminal proceedings, and in particularly serious cases also during the execution of criminal sanctions and after the perpetrator's release from serving the sentence ("lifetime support").

As we were approached by the witnesses concerned about the upcoming releases of war crimes perpetrators from serving their prison sentences, we believe that a restraining order should be considered to prevent a perpetrator from

9 State Attorney's Office of the Republic of Croatia: Report of the State Attorney's Office of the Republic of Croatia for 2012, Zagreb, August 2013.

approaching the witness or the witness's family members. That measure would give both psychological and physical protection to persons who had exposed themselves with their testimonies.

Opposition to expansion of support system to state attorney's offices

Some officials from state attorney's offices argue that the support system should not expand to state attorney's offices due to possible objections by defendant's defence counsels about the impact on the testimonies of victims and witnesses. Although there is currently a principled agreement pursuant to which state attorney's offices may, if necessary, use the services of the departments for support established at the courts, some state attorney's offices do not use them at all.

After the entry into force of the new ZKP, investigations are conducted by state attorney's offices instead of courts, so that victims and witnesses no longer receive support at this stage of the proceedings. It is therefore necessary to choose one of the following two possible manners of expanding the support system:

- to establish special departments at state attorney's offices or

- to establish common services that would provide support to victims and witnesses in pre-investigation procedure, throughout the entire criminal procedure, serving of sentence and upon perpetrator's release from prison.

2. Opening of the National Call Centre for Victims of Crime and Misdemeanour

The National Call Centre for Victims of Crime and Misdemeanour was opened on 16 July 2013. The idea and the realization of this project were made possible by the UNDP and the Ministry of Justice, in cooperation with the Association for Support to Victims and Witnesses.

On free telephone line with the universal European toll-free number 116 006 victims can receive information concerning their rights and the institutions and organizations that may provide them with adequate assistance. Since its establishment in July until the end of 2013, the National Call Centre received a total of 1,738 calls.

About the Association for Support to Victims and Witnesses

The Association for Support to Victims and Witnesses has been active since 2006. The main objective of the Association is to improve the position of victims and witnesses and improve the existing support system. Volunteers of the Association provide immediate assistance to victims and witnesses at county courts in all seven cities in which departments for support have been established. During 2013, the Association founded Reference Centres for the Assessment of Needs of Victims and Witnesses in Vukovar and Osijek, which is in line with the recommendations from the „Directive of the European Commission and the Parliament establishing minimum standards for the rights, protection and support to victims of crime", pursuant to which all Member States are obliged to provide adequate support to victims.

The activities of the Association are mostly based on the work of volunteers. In 2013, 139 volunteers worked for a total of 4,867 volunteer hours, mostly at the National Call Centre and at departments for support at the courts.

3. Logistical support to victims and witnesses following the transfer of cases to four county courts

In the 2012 Report we indicated that witnesses, very often elderly persons residing in rural areas without public transport to the cities in which proceedings take place, were not able to find transportation to come to courts. We recommended that the Ministry of Justice should provide vehicles and equipment to the Independent Sector for Victim-Witness Support or to the departments for support acting at the courts that would allow witnesses to come to courts. In February 2013, the Minister of Justice passed a decision pursuant to which the Sector is entitled to use the vehicles of the Ministry of Justice for this purpose. Employees of the departments and county court judges were informed about the decision.

C. „Anonymization" of data on defendants

In order to inform the public about scheduled dates of public sessions or public hearings, the VSRH and county courts regularly published trial schedules with full names and surnames of the defendants on their web sites.

But, *the Personal Data Protection Agency* in May 2013 issued a decision in which it found that the public disclosure of the names and surnames of the parties, specifying the provisions of the Criminal Code and the date of hearing

on the website of the Karlovac Municipal Court, represented a violation of the right to protection of personal data. The Karlovac Municipal Court was prohibited from disclosing personal data in criminal proceedings, contrary to *the Personal Data Protection Act*.[10]
According to the decision of the Agency, personal data (name and surname, author's note) by its legal nature fall under a special category of personal data, the so-called sensitive data which, according to Art. 8 of *the Personal Data Protection Act,* enjoy special legal protection. It further stated that the ZKP did not stipulate public disclosure of personal information about the participants in criminal proceedings nor is there any reason or legal purpose of such disclosure. Therefore, pursuant to *the Personal Data Protection Act,* disclosure of such data on the Internet is only possible with the consent of the parties to the proceedings.

Despite this decision by *the Agency*, county courts continue to publish trial schedules with full names and surnames of the defendants and the VSRH publish public sessions schedule with anonimyzed data of the defendants. The VSRH started anonymizing decisions published on its website much earlier, in compliance with the internal *Rules of Anonymization of Court Decisions* dated 31 December 2003.

Due to public interest, it is our opinion that in all criminal cases it is necessarily to announce hearings that are publicly held with full name and surname of the defendants. In the situation of numerous everyday reports by print and electronic media from court proceedings, such decision by *the Agency* is illogical and lifeless. Denying the public of the right to be informed about the holding of public sessions or hearings and with court decisions in war crimes cases contributes to denial of truth and does not help the society to confront its recent wartime past.

10 Decision of the Personal Data Protection Agency, Class: UP/I-041-02/13-01/57, No.: 567-02/01-13-01, dated 28 May 2013.

Web site of the ICTY contains, for example, data on all cases, defendants, decisions passed… Public hearings are directly broadcast on the Tribunal's web site. All data are available in English, French, Bosnian, Croatian or Serbian, Albanian and Macedonian languages and this web site has become one of the most comprehensive sources of decisions of importance for the development of international criminal law.

www.icty.org

Web site of the *Centre for Peace, Nonviolence and Human Rights Osijek*, the contents of which are also taken over by *Documenta*, is the most comprehensive publicly available database on war crimes trials in Croatia, but also in the region. It currently contains data on 294 cases, of which 261 were or are conducted in the RC and others conducted in other countries in the region. In addition to data on cases, it contains reports from public hearings, indictments, judgments, opinions on individual cases and periodic reports.

www.centar-za-mir.hr

www.documenta.hr

Valuable sources of information about war crimes trials in Croatia and other countries in the region are web sites of the Vukovar County Court, the DORH, the Office of the War Crimes Prosecutor of the Republic of Serbia, the Humanitarian Law Centre, the Court of BIH…

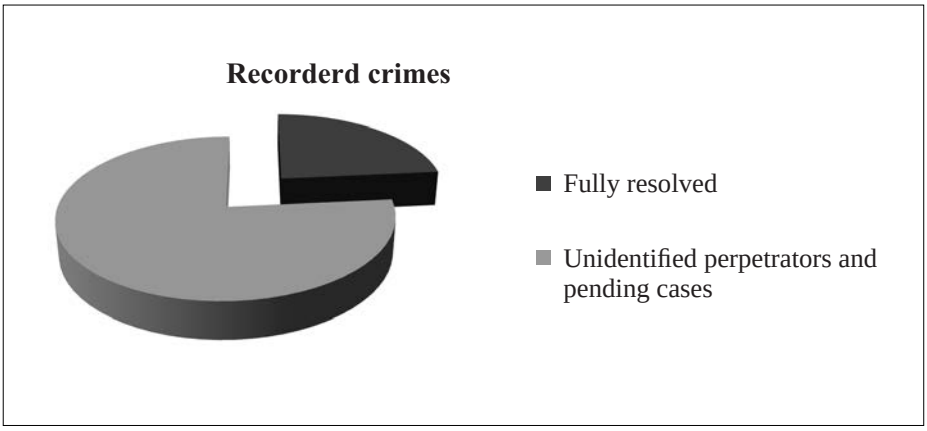
IV. STATISTICAL DATA ON WAR CRIME TRIALS

A. Consolidated data

The Republic of Croatia State Attorney's Office's *Data Base on War Crimes*, created during the past few years, contains the data on crimes, victims, evidence, and identified perpetrators. According to the most recent available data (June 2013), the data base contains records on 490 crimes, with the total of 13,749 victims: 5,979 killed victims; 2,267 severely injured persons; 2,363 tortured persons; 57 raped persons; and 3,086 other victims. Each individual crime contains one file or several files which are logically, geographically and chronologically connected, and they mainly involve a large number of perpetrators and victims. Each crime defined in the said manner may contain one or more cases, against the identified perpetrators as well as against non-identified perpetrators.

Out of 490 recorded crimes, 393 crimes (80%) were committed by members of Serb military formations – the Yugoslav National Army (JNA) or the so-called Serb Autonomous Area of Krajina military formations, 86 crimes (18%) were committed by members of Croatian military formations – the Croatian Army (HV) or the Ministry of the Interior of the Republic of Croatia (MUP RH), 2 crimes (less than 1%) were committed by members of the so-called National Defence of the Autonomous Region of Western Bosnia, and 7 crimes (1.4%) were committed by members of still non-identified military formations.

At the end of 2013, the State Attorney's Office of the Republic of Croatia had information on the perpetrators of 317 crimes. Perpetrators of 173 crimes were still unidentified. However, only 115 crimes (23.47%) have been fully resolved. In each of the few previous years, 3 crimes[11] per year were fully resolved.

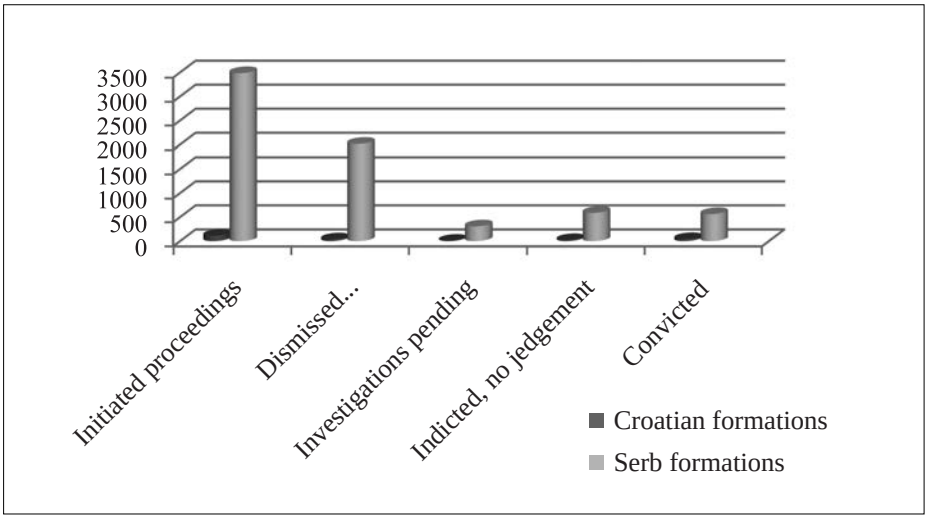


11 According to the data of the State Attorney's Office of the Republic of Croatia, as of 31 May 2011 – 109 crimes were fully resolved, as of 30 September 2012 – 112 crimes were fully resolved, and, as of December 2013 - 115 crimes were fully resolved.

According to the data collected by the State Attorney's Office of the Republic of Croatia in the period **from 1991 to 31 December 2013**, criminal proceedings were initiated against 3,599 persons. Approximately 87% of the proceedings were initiated in absence of the accused. Almost all criminal proceedings *in absentia* were initiated against members of the Yugoslav National Army and members of the so-called Serb Autonomous Area of Krajina military formations.

As of 31 December 2013, the investigation has been conducted in respect of 316 persons, 613 persons have been indicted and the criminal proceedings have been pending, whereas 608 persons have been convicted. After the investigation was conducted or after the indictment was laid, the criminal proceedings were dismissed or the acquitting judgements were delivered in respect of 2,052 persons.

Out of the stated total numbers, the criminal proceedings were initiated against 112 members of the Croatian Army or the Ministry of the Interior of the Republic of Croatia (3.1% persons against whom the proceedings were initiated). Out of that number, the investigation has been pending against 8 members (2.5%) of the Croatian Army or the Ministry of the Interior of the Republic of Croatia, 23 (3.8%) of them were indicted and the criminal proceedings (trial) has been pending, 44 (7.2%) of them were convicted, i.e. 14 more than the previous year[12], whereas 37 (1.8%) of them, i.e. 12 more than the previous year, were acquitted or the criminal proceedings were dismissed/terminated.



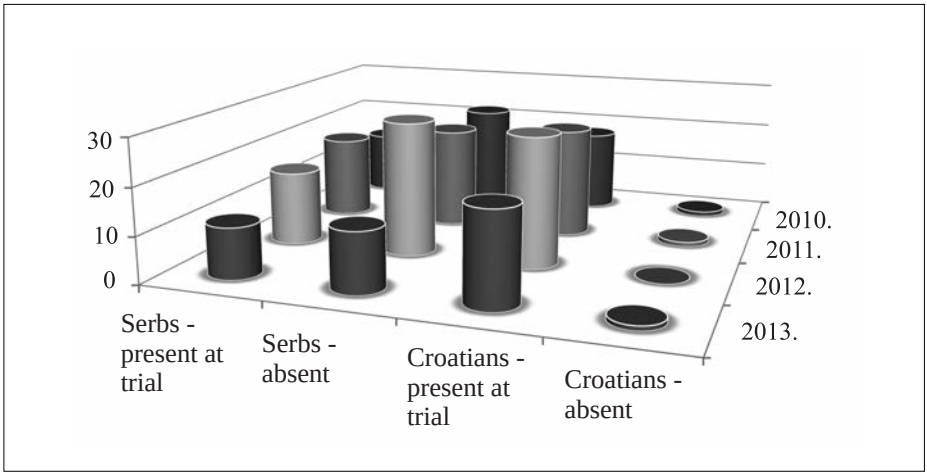
12 The State Attorney's Office of the Republic of Croatia does not have the information whether the first-instance court judgements have become legally valid/final judgements in the meantime. According to the data collected by our three organisations (the project partners), at the end of 2013, the total of 48 members of Croatian military or police formations were convicted, out of which number – 40 persons were convicted according to the legally valid/final court judgment. During the previous year, 31 members of the Croatian Army or the Ministry of the Interior of the Republic of Croatia were convicted and the judgement became legally valid/final/ in the meantime.

B. Data for 2013

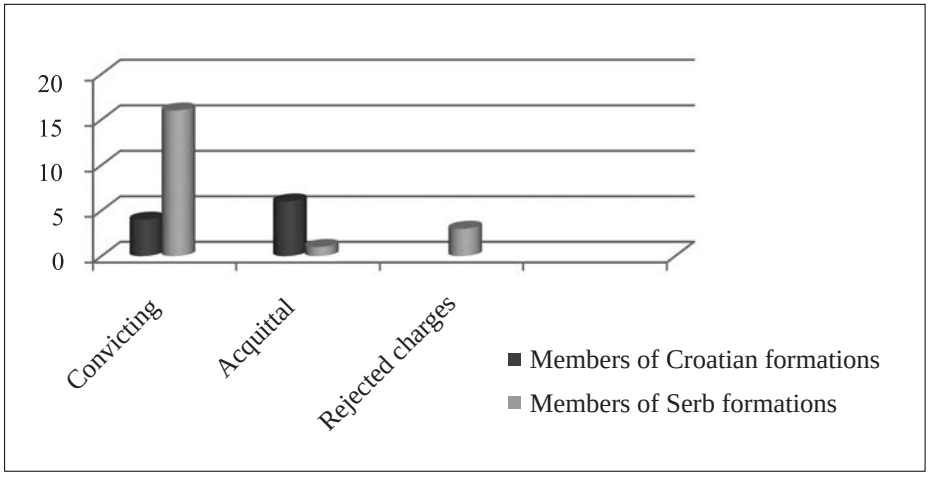
During 2013, main hearings/trials were held before county courts in 24 cases – 13 cases against members of Serb military formations and 11 cases against members of Croatian military formations.

In the stated cases, 45 persons were indicted – 24 members of Serb military formations, out of the 24 of them – 13 were indicted *in absentia;* and 21 members of Croatian military formations, out of whom, 1 person was indicted *in absentia*.

When compared with previous years, in 2013 there is a decrease of the number of members of Serb military formations tried *in absentia*.

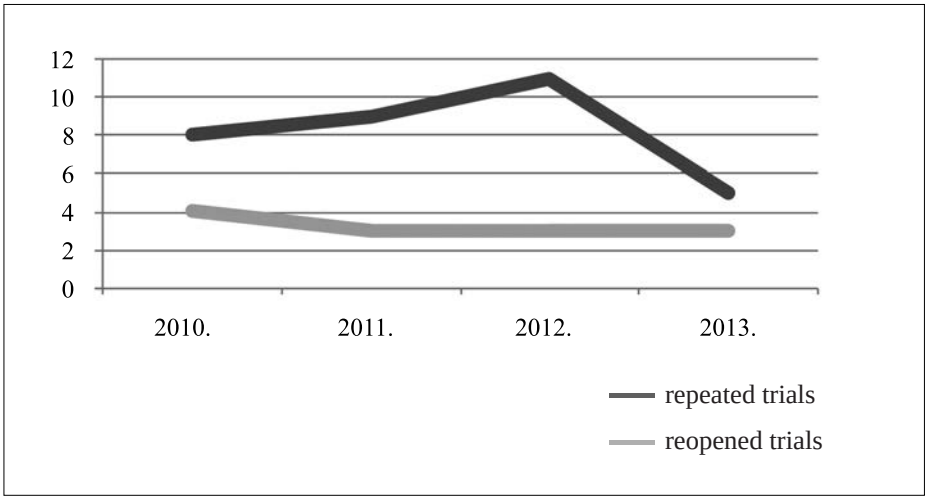


During 2013, the first-instance court judgements were passed in respect of 33 accused persons. Sixteen (16) members of Serb military formations and four (4) members of Croatian military formations were convicted; one (1) member of Serb military formations and six (6) members of Croatian military formations were acquitted, whereas the criminal charges were suspended/rejected in respect of three (3) members of Serb military formations.



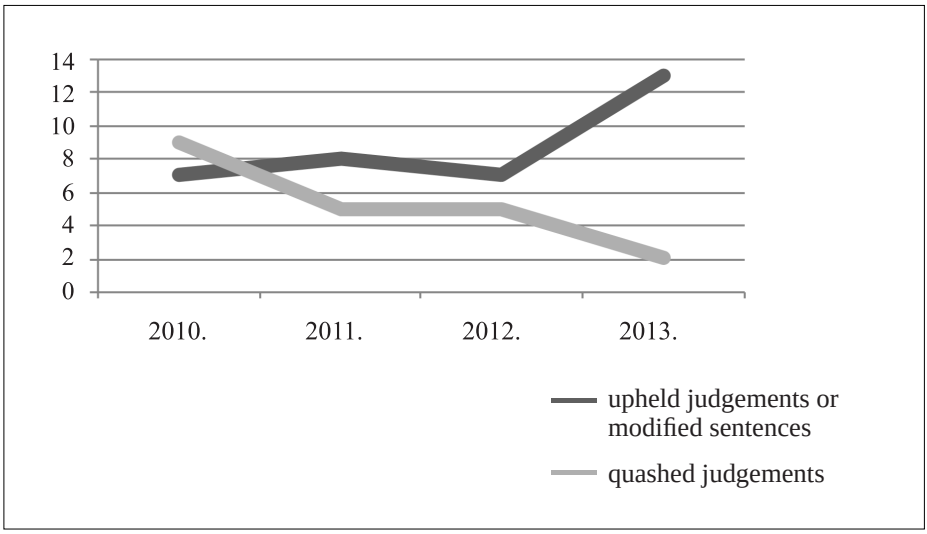
Out of 24 conducted first-instance trials/criminal proceedings, 5 proceedings were repeated since the Supreme Court of the Republic of Croatia quashed the previously delivered first-instance court judgements and reversed the cases to the first-instance courts for retrial. In comparison with a past few years, in 2013 there was an evident decrease in number of proceedings which were repeated before the first-instance courts.

In 2013, three criminal proceedings were reopened after the arrests of persons who had previously been convicted in absence, which was a similar number to those reopened in a past few years.

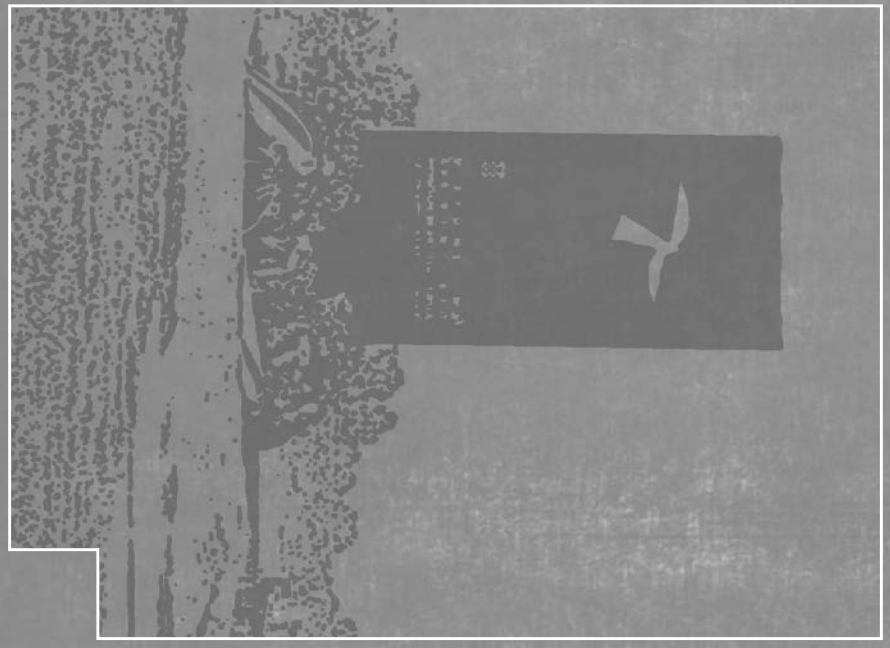


During 2013, the Supreme Court of the Republic of Croatia was upholding the first-instance court judgements far more frequently than in the previous years, or it (the Supreme Court) was modifying only the judgements' ruling

on sentence. As many as 9 first-instance court judgements were upheld, 3 first-instance court judgements were modified in their rulings on sentences, whereas only in two cases the first-instance court judgements were quashed and the cases reversed to the first-instance courts for retrial.



V. REGIONAL COOPERATION



In Croatia, in the majority of cases people were investigated, indictments were issued or judgments were passed in their absence. Due to the need of a more efficient procedure, collection and exchange of evidence and to ensure that perpetrators are convicted and serving their sentences, it is necessary to improve, as much as possible, cooperation between judicial authorities of the countries in the region .

Apart from general agreements, specific agreements on cooperation in the prosecution of perpetrators of war crimes, crimes against humanity and genocide were signed in 2006 between the DORH and the competent prosecutor's offices in Serbia and Montenegro. However, this kind of bilateral agreements did not exist between prosecutor's offices of any country in the region with the competent Prosecutor's Office of BiH until 2013. After years of negotiations and several delays, the protocol on cooperation between the Prosecutor's Office of BiH and the Office of the *War Crimes* Prosecutor of the *Republic of Serbia* (hereinafter: the TRZ) was signed in January 2013, and then in June 2013 the protocol on cooperation in prosecuting perpetrators of war crimes, crimes against humanity and crimes of genocide was signed between the DORH and the Prosecutor's Office of BiH.

In order to improve communication between the prosecutor's offices in the region, liaison officers to the prosecutor's offices in Croatia, Serbia and BiH were determined and appointed during 2013.

A. Cooperation between the DORH and the Office of the *War Crimes* Prosecutor of the *Republic of Serbia*

According to DORH data, 35 cases were forwarded to the TRZ on the basis of the Agreement from 2006, which pertain to a total of 65 defendants. The Serbian prosecutor's office agreed to initiate criminal proceedings against 30 persons, while in relation to 22 persons it refused to do so. Evidence and data pertaining to 12 persons are being reviewed. The TRZ charged 21 persons, of whom 18 were found guilty, 14 of them with a final judgment.

By comparing DORH data from the end of 2011 and 2012, there has been minimal progress achieved in the exchange of cases, i.e. accepting requests for prosecutions and indictments by the Serbian prosecutor's office.

DORH data under the Agreement on Cooperation with the Office of the War Crimes Prosecutor of the Republic of Serbia			
	December 2011	December 2012	December 2013
cases total	30	34	35
persons total	55	63	65
accepted total	23	29	30
rejected total	15	21	22
under consideration	13	8	12
deceased in the meantime	1	1	1

Decisions of the Office of the War Crimes Prosecutor of the Republic of Serbia (DORH data)		
	December 2011	December 2013
investigation ongoing	2	3[13]
indictments	20	2[14]

Decisions of the court in Serbia (DORH data)			
	2011	2012	2013
pronounced guilty	14 persons, of whom 8 with final judgments	18 persons, of whom 14 with final judgments	18 persons, of whom 14 with final judgments[15]
acquitted	1 person	1 person	1 person

However, according to TRZ data, in the last two years there was a significant increase of exchanged information and evidence in cases between the TRZ and the DORH. The exchange of information and evidence has doubled in the period between April 2012 and January 2014.

13 In early February 2013, investigation was initiated against Žarko Milošević and Dragan Lončar, former members of militia and of Sotin TO, on suspicion that during the night of 26 November 1991 and the next day they killed 16 Croatian civilians. During the investigation, one of the defendants showed the locations where bodies of killed inhabitants of Sotin had been buried, as stated earlier in this Report.

14 In mid-March 2013, indictment was issued against Marko Crevar, charged that, as a former member of Vukovar TO, during the interrogation in Sremska Mitrovica on 27 February 1992, he physically abused two prisoners of war. Despite numerous abuses, killings and sexual abuses of Croatian civilians and prisoners in Serbian camps, Crevar is so far the only person who was prosecuted for these crimes by the Serbian judiciary!

15 Former member of the Vukovar TO Petar Ćirić was sentenced by the Higher Court in Belgrade on 1 July 2013 to 15 years in prison for his involvement in abuses and executions of more than 200 prisoners of war at Ovčara near Vukovar on 20/21 November 1991. However, on 12 December 2013, the Constitutional Court of Serbia accepted a constitutional complaint of convict Saša Radak who, in the proceedings conducted against 18 defendants for the crime at Ovčara, was sentenced to 20 years in prison. The Court accepted his claims that his right to a fair trial was violated. The Constitutional Court ordered the Appellate Court in Belgarde to re-assess the complaint lodged by Radak against the first-instance judgment. This decision of the Constitutional Court refers to all other defendants in this specific case. The decision of the Constitutional Court caused huge disappointment among victims' families.

Total number of exchanged information and evidence in cases between the TRZ and the DORH[16]	
April 2012	January 2014
54	121

Despite the statistics indicating a substantial progress in the exchange of information and evidence, some judicial officials point to frequent lack of promptness in cooperation and express doubts about the exchange being conducted in good faith.

Avoiding prosecution of responsible commanders in Serbia

The TRZ refused to act upon the indictments issued by the Osijek ŽDO against senior JNA officers– Aleksandar Vasiljević and Miroslav Živanović for the crimes committed in Serbian camps and against Enes Taso for the crimes committed in Dalj.

The TRZ does not apply the institute of command responsibility as stipulated by the ICTY, because it is not a criminal offence stipulated by the Criminal Code which applies to war crimes proceedings, nor does it prosecute persons in command for not preventing a crime (omission), as the courts in the RC do, "forced" after the transfer of cases of defendants Ademi and Norac from the ICTY.

However, both command responsibility and the prohibition of crimes against humanity were part of the internal legal system during the war conflict in the 90's in all countries that emerged after the disintegration of SFRY, based on ratified international treaties (command responsibility) and customary international law (command responsibility and crimes against humanity). The applicability of the international criminal law in this manner is expressly stipulated in Article 15, Paragraph 2 of *the International Covenant on Civil and Political Rights* and Article 7, Paragraph 2 of *the (European) Convention for the Protection of Human Rights and Fundamental Freedoms*, and is not considered a violation of the principle *nulla crimen sine lege, nulla poena sine lege* trial or punishment of a person for any act or omission which, at the time of the commission, represented a criminal act pursuant to general legal principles as recognized by civilized nations, i.e. general legal principles recognized by the community of nations.

Although the prosecutor's office of each country has the sovereign right to decide whether to initiate criminal prosecution in each individual case, different decisions, adopted in almost identical legal systems of Croatia and Serbia, raise doubts in the conduct devoid of any political influence.

16 http://www.tuzilastvorz.org.rs/html_trz/predmeti_lat.htm

B. Cooperation between the DORH and the *Supreme State Prosecutor's Office of Montenegro*

According to DORH data, under *the Treaty* from 2006, the Montenegrin prosecutor's office was forwarded 3 cases pertaining to 8 defendants. The Montenegrin prosecutor's office agreed to initiate criminal proceedings against 6 persons, while in relation to one person it refused to do so. A case relating to a single person is under consideration. The Supreme State Prosecutor's Office of Montenegro indicted 6 persons, two of whom were acquitted with a final judgment and 4 persons were found guilty by a first-instance judgment.

When comparing DORH data from the beginning and end of 2013, no progress in cooperation with the competent prosecutor's office in Montenegro was achieved during that period.

DORH data on cooperation under the Treaty with the Supreme State Prosecutor's Office of Montenegro		
	January 2013	December 2013
cases total	3	3
persons total	8	8
accepted total	6	6
rejected total	1	1
under consideration	1	1

Decisions of the Supreme State Prosecutor's Office of Montenegro (DORH data)		
	January 2013	December 2013
investigation ongoing	0	0
indictments	6	6

Decisions of the court in Montenegro (DORH data)		
	January 2013	December 2013
pronounced guilty	0	4 (first-instance)
acquitted	2 (final)	2 (final)

Low sentences for abusers in the Montenegrin camp Morinj

After the third (second repeated) first-instance proceedings, on 31 July 2013 the High Court in Podgorica sentenced four defendants for abuse of Croatian civilians and prisoners of war in the Montenegrin camp Morinj. Pronounced sentences are lower than the minimum stipulated for the offences with which they were charged. Ivo Menzalin was sentenced to 4, Špiro Lučić and Boro Gligić to 3 and Ivo Gojnić to 2 years in prison. Previously, Mlađen Govedarica and Zlatko Tarle were acquitted by final judgment.

From the very beginning, former camp prisoners considered the proceedings a judicial farce. *The Human Rights Action*, a Montenegrin civil society organizations that monitored the proceedings, criticized the sentences pronounced as too low and the failure of the Montenegrin judiciary to treat crimes in the camp Morinj as an organized system of ill-treatment of prisoners. Therefore, the persons who were superior officers to direct perpetrators of the crime were not indicted, either.

C. Cooperation between the DORH and the Prosecutor's Office of BiH

The perpetrators of war crimes misused dual citizenship, because the RC and BiH do not extradite their own citizens to other countries, thus perpetrators avoided prosecution by escaping from the country where they committed the crimes. But, after the protocol on cooperation in prosecuting war crimes, crimes against humanity and crimes of genocide was signed in mid-2013 between the DORH and the Prosecutor's Office of BiH, first cases from BiH were forwarded to Croatia and Serbia, so that these countries would prosecute perpetrators of war crimes.

The Protocol has opened a path towards effective prosecution of perpetrators of crimes. On the basis of forwarded cases, investigations against three suspects for crimes committed on the territory of BiH were initiated in Croatia.

In mid-December 2013, the Split County State Attorney's Office ordered an investigation against a former member of the "Convicts' Battalion", led by the ICTY convict Mladen Naletilić Tuta, on suspicion of physically abusing three captured members of the BiH Army, eight Bosnian civilians, one of whom died, and forcing three civilians to mutual intercourse.

A few days later, an investigation was launched against two other members of the HVO, who were suspected of humiliation and physical and psychological abuse of a large number of Muslim civilians in camps, one of whom died from sustained injuries.

According to the Chief Prosecutor of BIH, approximately 80 cases are being prepared to be forwarded to Croatia and Serbia.

VI. VIOLATIONS OF THE INTERNATIONAL STANDARDS OF A FAIR TRIAL

A. Failure to launch criminal investigations and lack of efficient or adequate prosecution

Despite the fact that we registered an improvement in standardisation of criteria of prosecution of members of Croatian military formations and members of Serb military formations during the past few years, still we have spotted the unwillingness to conduct investigations and/or prosecution of certain crimes which had been committed by members of Croatian military formations.

> Numerous cases of planting explosives in the houses or arson of the houses and farms/commercial facilities/ owned by Croatian citizens of Serb ethnicity, still have not been prosecuted, for example in Bjelovar area, which, considering the extent of destruction of property, were obviously a part of the premeditated and efficient plan of intimidation of citizens of Serb ethnicity with an aim to have them expelled from their homes and to reduce the number of Serb citizens. A large number of unlawful evictions of citizens of Serb ethnicity from their flats or family houses, most frequently in large towns: Zagreb, Split, Osijek,…have also remained non-prosecuted to this day.

While the members of Serb military formations have been prosecuted for the war crimes committed by destruction or misappropriation of property, there is only one case we have registered so far in which the members of Croatian military formations have been charged with arson of houses owned by persons of Serb ethnicity, and the stated case was concluded in 2013 with the final judgement of acquittal of the two accused persons – Croatian military commanders.

1. Investigations and accusations – non-prosecution of members of the Croatian Army and the Ministry of the Interior of the Republic of Croatia

According to the data provided by the State Attorney's Office of the Republic of Croatia, during 2013 the investigations were initiated in respect of 39 persons – 36 members of Serb military formations, out of whom nine persons have been available to the Croatian judicial bodies, and 3 members of the Croatian Defence Council (HVO), available to the Croatian judiciary, who have been charged with crimes committed against Bosniak civilians and captured members of the BiH Army in the territory of Herzegovina.[17]

17 According to the data provided by the State Attorney's Office of the Republic of Croatia, in 2011 the investigations of criminal offences of war crimes were launched against 20 suspects, and in 2012 against 16 suspects.

During 2013, indictments were laid against 24 persons – 23 members of Serb military formations, out of whom only one person has been available to the Croatian judiciary, and 1 member of the People's Liberation Army of Yugoslavia, which case has marked the continuation, after more than two decades of recess, of prosecution of crimes committed during the World War II or immediately after the WW II.[18] The criminal prosecution of Josip Boljkovac, charged with arrests and killing of 21 persons who had been suspected of collaboration with the Ustasha authorities, is the first case ever in Croatia that a member of the victorious party has been prosecuted for the war crime committed during or after the World War II.

Unlike the past few years, when, during the process of intensification of accession negotiations between the Republic of Croatia and the European Commission, the investigations were conducted and indictments were issued for some of the most serious crimes committed by members of Croatian military formations, such as the crimes committed in Sisak and its surroundings, crime committed at the Zagreb fairground and Pakračka Poljana, the crime in the village of Grubori…, in year 2013 not a single investigation was initiated nor any members of Croatian military formations or the Ministry of the Interior of the Republic of Croatia were indicted!

2. Consequences of non-prosecution of perpetrators – compromised chance of receiving compensation of non-pecuniary damages

Lack of a legally valid, final judgement of conviction of crime perpetrator(s) has resulted in the failure of victims' family members/plaintiffs who filed lawsuits against the Republic of Croatia for compensation of damages for the death/killing of their close family members. The plaintiffs have won only few lawsuits, based on accountability for the damage caused by members of Croatian military formations and police units, which were preceded mainly by criminal proceedings in which the criminal responsibility of the perpetrator(s) had been established.[19]

However, a step forward in the domestic court practice was made in January 2013, when the Supreme Court of the Republic of Croatia passed the decision that in the case filed by plaintiffs Jovan Berić, Branka Kovač and Nevenka Stipišić, in accordance with *the Law on Responsibility for the Damage caused*

18 According to the data provided by the State Attorney's Office of the Republic of Croatia, during 2012 the indictments for criminal offences of war crimes were laid against 12 accused persons.

19 Documenta has collected and analysed 144 claims for damage compensation. In 77 cases (53%) in which the civil lawsuits were initiated, the criminal proceedings (against perpetrator(s)) still have not been initiated, whereas in 22 cases (15%) the criminal reports were dismissed. Out of 29 (20%) cases in which the legally valid and final judgements were passed, there were 22 accepted claims in lawsuits. Out of the stated number, 13 (59%) judgements were based on a legally valid, final judgement of conviction against a member of Croatian army or police. In several cases, the claims were dismissed since the criminal proceedings had resulted in the acquittal due to a lack of evidence against the accused persons. In 17 cases (12%) in which the lawsuits for damage compensation were initiated, the criminal proceedings have been pending.

by Terrorist Acts and Public Demonstrations, there was indeed an obligation of the damage compensation which existed no matter the status of the crime perpetrator – whether the perpetrator had been identified, or prosecuted, or found guilty. Subsequently, the first-instance courts accepted the submitted claims in two such cases. In both cases, the plaintiffs were the children of the civilians killed in the village of Varivode, in the crime for which no one has been convicted to this day.[20]

During the past few years, the number of claims filed by family members of the victims injured/killed during the war (who claimed that the Republic of Croatia did violate their Convention rights), has significantly increased after the judgements were passed by the European Court of Human Rights in the cases of *Jularić vs The Republic of Croatia* and *Skendžić et al. vs The Republic of Croatia*[21] in 2011, which ordered Croatia to pay the damage compensations to the plaintiffs due to the Republic of Croatia's omission to conduct adequate investigations of the crimes.

The majority of claims were submitted by family members of the killed Serb civilians, whereas fewer claims were submitted by family members of the killed Croats.

Almost all claims have pointed to an ineffective investigation of the committed crimes (Article 2 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms – Right to Life*). Some cases have pointed to the violations of the right of access to the court (Article 6 – *Right to a Fair Trial*); to the violations of the right to protection from torture and inhuman or degrading treatment (Article 3 – *Prohibition of Torture*); to the violations of Article 5 – *Right to Liberty and Security*; violations of Article 13 – *Right to an Effective Remedy*; discriminatory treatment (Article 14 – *Prohibition of Discrimination*), while in cases in which the killed victims' houses had been subsequently burnt down, the violations of the right to respect for home were registered (Article 8 – *Right to Respect for Private and Family Life*) and violations of the right to protection of property (Article 1 of the Protocol).

Considering the fact that a large number of crimes still have not been investigated to this day, it may be expected that the European Court of Human Rights

20 At the Knin Municipal Court on 23 January 2013, the judgement was passed according to which the Republic of Croatia had to pay 540,000.00 HRK of damages to Jovan Berić and to his sisters Branka Kovač and Nevenka Stipišić, whereas at the Zagreb Municipal Court on 29 January 2013, the judgement was passed according to which the Republic of Croatia had to pay 220,000.00 HRK per person to Todor Berić, Živko Berić and Drinka Berić and 440,000.00 HRK to Boško Berić. Their parents - Radivoje Berić and Marija Berić, as well as Marko Berić, Jovo Berić and Milka Berić had been killed in the village of Varivode at the end of September 1995, which was more than a month and a half after the conclusion of the Military Operation "Storm".

21 Jularić vs The Republic of Croatia – *Claim No. 20106/06* and Skendžić vs The Republic of Croatia – *Claim No. 16212/08*.

is to determine, for the majority of cases, that the certain Convention rights of the plaintiffs were violated.

In order to cease further agony of family members of the killed persons, caused by utter ruthlessness of not only the legislative but also the judicial authorities towards the victims' families, the Republic of Croatia should make settlements with the victims' family members, pay them just compensations and cease their further victimisation, as it was done in September 2013 in case of the claimant party J.P. who had submitted a claim against the Republic of Croatia on the basis of violation of the right to life, i.e. on the basis of the lack of effective investigation of the disappearance and execution of her husband in Vukovar in August 1991.[22]

Despite the fact that Croatia has acceded to the EU and has adopted the *Act on the Pecuniary Compensation of Victims of Criminal Offences*, the victims of war crimes still have not been compensated

After its accession to the European Union, the Republic of Croatia has commenced with the implementation of the *Act on the Pecuniary Compensation of Victims of Criminal Offences* (Official Gazette 80/08 and 27/11), passed on the basis of the *European Convention on the Compensation of Victims of Violent Crimes*, which binds the member states to make provisions for compensation of damages in cases of the intentional criminal offences and the killings as the results of commission of violent offences. The compensation based on principles of social solidarity and justice is given by the Republic of Croatia, no matter the fact whether the criminal proceedings have been conducted or not.

The *Act* has prescribed the rights of victims of the criminal offences committed in the territory of the Republic of Croatia after 01 July 2013. Even before the *Act* has come into effect, we organised public discussions with an aim of checking if there was a possibility for the *Act* to encompass the civilian victims of war as well. Unfortunately, the Republic of Croatia has also missed this chance to have the stated category of victims compensated.

22 Ž.P., spouse of the claimant party, had gone missing in Vukovar on 10 August 1991. His body was found in the Danube river near the village of Neštin (Republic of Serbia), where the body was buried as an unidentified (NN) person. The exhumation and identification of the body was done in 2003, and the body was handed over to the family in 2004. Subsequently, the civil lawsuit was initiated; however, the claim was rejected on several occasions due to the statute of limitation in relation to the initiation of the civil lawsuit. In addition to the above stated, the courts set as the start point of the limitation at law - August 1991, and not the very moment of identification of the body in 2003, when the family members of Ž.P. got to know with certainty that Ž.P. had been killed and that it had been a violent death. The perpetrator(s) of the crime still have not been prosecuted.

B. Dismissals/suspensions of criminal proceedings against accused members of Serb military formations – results of the previous biased indictments/convictions

During 2013, there was a continued trend of dismissals of criminal proceedings against members of Serb military formations previously accused in absence, or convicted in absence, and subsequently extradited to Croatia or arrested (at a border-crossing) when entering Croatia.

During 2013, the criminal proceedings were suspended/dismissed in respect of Tihomir Kašanin, in 2001 accused of commission of crime in Baranja, while Milan Španović was acquitted of all charges by the first-instance court judgement (Španović had been sentenced *in absentia* to 20 years in prison in 1993 for commission of war crime in Maja). Both stated persons had been extradited to Croatia from the United Kingdom. Also dismissed was the case against Slobodan Dotlić, a former Yugoslav National Army officer arrested in October 2013 in an attempt of entering Croatia, and who had been tried *in absentia* in 1993, together with other 13 Yugoslav National Army officers, and sentenced to 15 years in prison for shelling civilian targets in Gospić.

In the reopened proceedings, only the court judgement in respect of Radojko Radmilović remained effective according to which Radmilović had been sentenced in absentia in 2004 to 3 years in prison for commission of war crime in Bapska. Radmilović had been extradited to Croatia from Serbia. The extradition was feasible since Radmilović was not a citizen of Serbia.

The stated information has pointed to the fact that not all unfounded previous accusations/convictions are being eliminated and also to the fact that Croatian judicial bodies are capable of conducting trials in a more professional manner and with less bias than in the recent past. It may be expected that the practice of dismissals of trials (due to suspension of charges) will be continued also in the future period in respect of significant number of the arrested and/or extradited persons.

Revision/reopening of criminal proceedings

According to the data provided by the State Attorney's Office of the Republic of Croatia, a total of 129 requests for a new trial/bills of review/ have been submitted (in respect of 129 persons) for those cases in which the accused persons were previously convicted *in absentia*. Out of the stated number, 95 requests have been filed by county state attorney's offices, and 31 requests have been filed by the convicted persons themselves. Thirteen convicted persons have filed the bills of review from other countries (outside of Croatia), while eighteen convicted persons have filed the bills of review following their extradition to Croatia, their arrest or their voluntary surrender. In respect of three convicted persons, the courts have independently passed the rulings on revision while deliberating on the requests in respect of other convicted persons.

After the bills of review were adopted, the criminal proceedings against 89 accused persons have been suspended/dismissed/ and the previous judgements of conviction have been abrogated; 7 accused persons have been convicted again (in a reopened trial); the courts have rejected the bills of review in respect of 5 accused persons; whereas in respect of other accused persons - the criminal proceedings have been pending after the adoption of the bills of review, or the bills of review still have not been decided on.

After adoption of the new *Criminal Procedure Act* in 2008, which provided for the revision/ reopening of cases to be conducted also in absence of convicted persons, very few requests – only 13 of them – have been filed by the convicted *in absentia*. It may be assumed that former members of Serb military formations, who were previously convicted in absence, still have no faith in Croatian courts and their ability to try them in a fair manner.

We have knowledge only on two cases in which the previous judgements of conviction have been suspended following the adoption of bills of review (bills for new trials) which were submitted by convicted persons *in absentia*. The stated cases pertain to Edita Rađen Potkonjak, tried *in absentia* in 1995 and convicted for the crime in Škabrnja, and to Branko Mikelić, former Prime Minister of the so-called Republika Srpska Krajina, tried *in absentia* in 1993 and convicted for the crimes in Petrinja.

According to the Criminal Procedure Act, those members of Serb military formations who, after the arrest and/or extradition to Croatia, spend certain amount of time in the extradition detention facility, or serve their sentence or are kept in custody, they have no right to a compensation of damages caused

by an unfounded arrest or unjustified accusations if the criminal proceedings against them - after the change of legal qualification of the criminal offence stated in the indictment from the war crime into criminal offence of armed rebellion - were dismissed and the charges suspended following the application of the amnesty act.

Although they have been apprehended based on the accusation/conviction for war crime, and they have not been given a chance to deny their participation in the armed rebellion whatsoever, it is questionable whether they will be actually able to realise their right to the compensation of damages - caused by unfounded arrest and by being kept in custody – before the European Court of Human Rights?

***Example of a (similar) proceeding held at the European Court of Human Rights:* Tarbuk vs Republic of Croatia**

On 11 December 2012, the European Court of Human Rights adjudged that there were no violations of Dušan Tarbuk's right to a fair trial in the domestic/national court proceedings, which Tarbuk had initiated against the Republic of Croatia for the compensation of damages.

Dušan Tarbuk was arrested in 1995 based on a reasonable suspicion that he had committed the criminal offence of espionage, whereas the proceedings against him were suspended in 1996 based on the *General Amnesty Act*. Dušan Tarbuk, in accordance with the then effective provisions of the *Criminal Procedure Act*, filed a claim against the Republic of Croatia for the compensation of damages due to the time he unlawfully spent in detention. However, after the claim was lodged, the *Criminal Procedure Act* was amended. Considering the fact that the amendments have prescribed that the provisions and rulings - according to which the perpetrators of criminal offences had been pardoned or granted amnesty for the criminal offences committed in the period from 17 August 1990 to 23 August 1996 - did not constitute the basis for application of the provisions of the *Criminal Procedure Act* on the right to compensation of damages due to unjustified arrest., the Municipal Court in Zagreb dismissed Tarbuk's claim.

The *European Court of Human Rights* has established that the promulgation of the *General Amnesty Act* does not mean that the country has actually confessed to the existence of unlawful arrests of persons to whom the *General Amnesty Act* was applied, however, the European Court of Human Rights has also concluded that the *Act's* promulgation did create a legal void within the *Criminal Procedure Act* which could have been filled only by making amendments to the *Criminal Procedure Act,* which were effective retroactively. Therefore, it has been assessed that there was no violation of the right to a fair trial since it was possible to anticipate that those amendments would be made, and they were actually made prior to the passing of the first-instance court judgement.

The stated judgement passed by the European Court of Human Rights is final.

C. Non-adequate practice of punishing the perpetrators – examples of the sentencing disparity between members of Serb military formations and members of Croatian military formations

The sentencing and penalties is basically a discretionary responsibility of judges, however, it must be exercised justly, without any discrimination. Although

the sentences are individualised and they are adjudged for each specific case, judges must treat everybody in an equal manner and have to be consistent. In other words, for the cases which have the same criminal offences, which have been committed under similar circumstances, the length of pronounced sentences should be similar.

During the 1990s, members of Serb military formations were given much harsher sentences, quite often the maximum sentences. During the past few years, there has been a notable standardisation of the sentences adjudged to (former) members of Croatian military formations and those adjudged to former members of Serb military formations, for the similar situations/circumstances. However, in several cases in 2013, the first-instance courts adjudged significantly harsher sentences to members of Serb military formations than those to members of Croatian military formations for the crimes which were comparable according to the method of execution and the consequences which occurred after the crime. The task of further standardisation of court practice still remains with the Supreme Court of the Republic of Croatia.

Example 1

On 13 June 2013, the War Crime Council of the Split County Court convicted a former member of the Croatian Army Božo Bačelić to a joint sentence of **5 years and 10 months in prison** for shooting and killing Milica Damjanić and Nikola Damjanić, elderly married couple of Serb ethnicity whom he had happened to see in front of their own house immediately after the Military Operation "Storm", and for killing in the same manner the captured member of the so-called Republika Srpska Krajina Army Vuk Mandić.[23]

On 23 September 2013, the War Crime Council of the Rijeka County Court convicted Zdravko Pejić *in absentia* to **15 years in prison** for killing the elderly couple Kata Dumančić and Nikola Dumančić, civilians of Croat ethnicity, by shooting them with an automatic rifle in the courtyard of the Dumančićs' family house in the hamlet of Šolaje on 12 November 1991 after the Serb military formations had occupied the village of Saborsko and other hamlets in the area.

23 Božo Bačelić is the only member of Croatian military formations convicted (following the first-instance court judgement) for the war crime committed during or immediately after the Military Operation "Storm". Still no one has been convicted (following a final judgement) for the war crimes committed during and immediately after the "Storm"!

Example 2

On 07 September 2012, the Chamber of the Supreme Court of the Republic of Croatia passed the non-final verdict of guilty in respect of Mihajlo Hrastov, a member of the Republic of Croatia Ministry of the Interior, and convicted him to **4 years in prison** for shooting and killing 13 captured reserve members of the Yugoslav National Army and severely wounding two captured reserve members of the Yugoslav National Army on the Korana river bridge in Karlovac on 21 September 1991.

On 07 November 2013, the War Crime Council of the Karlovac County Court passed the first-instance court judgement sentencing Marko Bolić, a former member of the so-called Serb Autonomous Area of Krajina military formations, to **9 years in prison** for killing two members of Croatian military formations which he had committed together with his son Rade Bolić, by shooting them with fire-arms on 04 November 1991. Immediately before they had been shot, upon spotting the so-called Krajina Serb Autonomous Area soldiers, the two members of Croatian military formations had laid down their arms and put their hands in the air as a sign of their surrender.

D. Non-resolving of the crimes of sexual abuse

Wars waged in the territory of the former Yugoslavia, which were characterised by numerous crimes committed by sexual violence, have pointed to the need of sanctioning those crime perpetrators. The International Criminal Tribunal for the former Yugoslavia (ICTY) has performed a pivotal role in criminal prosecution of perpetrators of sexual violence in war. Almost a half of all convicted at the ICTY were pronounced guilty of sexual crimes.

At the international level, the awareness has been continuously raised regarding the full scale of sexual crimes committed during a war, the gravity of consequences of sexual crimes and the need for prosecution of the stated crimes. At the end of June 2013, the United Nations' Security Council adopted the Resolution 2016, which has emphasised the need for conducting consistent and rigorous investigations and criminal prosecution of perpetrators of sexual violence in war. In the previous resolutions – Resolution 1820 (adopted in 2008), Resolution 1888 (adopted in 2009) and Resolution 1960 (adopted in 2010) – the Security Council established that the sexual violence, when committed systematically and used as a tool of war, constituted a major threat to the international peace and security which demanded an adequate response.

1. Prosecution of sexual violence committed in war before the domestic judicial bodies

A precise number of raped persons is very difficult to determine, however, it is assumed that the overall extent of the rape in war in Croatia has been significantly lesser than the extent of the rape in wars in Bosnia and Herzegovina and in Kosovo.

According to the information provided by the State Attorney's Office of the Republic of Croatia, the Ministry of the Interior of the Republic of Croatia has established that there is a reasonable suspicion that during the Homeland War 182 persons could have been the victims of war crimes committed by rape or some other forms of sexual abuse. After conducting the additional enquiries it has been determined that some of the potential victims died in the meantime, some of the victims gave statements to county state attorneys saying that they had not been raped or sexually abused in any form which could have been subsumed under any of the characteristics of the criminal offence of war crime committed by inhumane treatment, whereas some of the potential victims declined any possibility of giving their statements. According to the records kept by competent county state attorney's offices, there is the credible information on only 57 victims of war crimes committed by rape, and the majority of victims are female persons. Criminal proceedings have been initiated in respect of 36 victims, out of the total of 57, and those proceedings have currently been in different phases. To this day, 15 perpetrators have been convicted for criminal offence of war crime committed by rape.[24] Lack of support by the state institutions, non-identifying and non-recognition of sufferings of victims of sexual abuse and their social stigmatisation have influenced the low rate of reporting of the said crimes.[25]

24 http://www.dorh.hr/DrzavnoOdvjetnistvoRepublikeHrvatskeAzurirano

25 Information gathered by various international studies has shown that one reported case of rape is followed by 15-20 non-reported cases of rape. Information collected by the research conducted by Ženska soba - Centar za seksualna prava (Women's Room – Centre for Sexual Rights) in 2005 has shown that 17% of all women have experienced the attempt of rape or the rape. Out of the said percentage, only 5% of them have reported the abuse to the police and/or to the county state attorney's office.

During 2013, the investigations were launched in three cases in which the accused persons have been charged with the war crimes committed by rape or sexual abuse.[26] In the third case, the competent county state attorney's office laid the indictment after conclusion of the investigation.[27]

Rape as a method of commission of the criminal offence of war crime against civilians has been defined in Article 120 of *the Basic Criminal Code of the Republic of Croatia*. In court practice, sexual abuse has been treated as a form of torture, i.e. a form of commission of the criminal offence of war crime against prisoners of war stated in Article 122 of *the Basic Criminal Code of the Republic of Croatia*. However, in 2013, the Supreme Court of the Republic of Croatia applied to the accused persons in one case the new *Criminal Code* (Official Gazette 125/11 and 144/12), which came into effect on 01 January 2013, since the Court considered it as more favourable to the crime perpetrators in the particular case.

26 The Osijek County State Attorney's Office launched investigations in respect of :
- one absent/unavailable/ person accused following a reasonable suspicion that he, together with another member of Serb paramilitary formations, had raped two female civilian persons in Vukovar in February 1992;
- one absent/unavailable/ person, citizen of the Republic of Serbia, accused following a reasonable suspicion that he had raped one female person on multiple occasions in Opatovac at the end of 1991;
- fifteen persons, out of whom only nine persons have been available to the Croatian judiciary, accused following a reasonable suspicion that they, in their capacity as members of the Trpinja Territorial Defence and the Militia of the so-called Serb Autonomous Area of Krajina, had unlawfully arrested, detained, physically-, mentally-, and sexually abused, and killed the civilians and prisoners of war.

27 The Split County State Attorney's Office laid the indictment against seven former members of the Yugoslav National Army, unavailable to the Croatian judiciary, for the abuse of a married couple, rape and plunder in the occupied town of Drniš.

At the end of January 2013, the Supreme Court of the Republic of Croatia, in its ruling on sentence, commuted the sentence passed by the Osijek County Court in September 2012 according to which Rade Ivković and Dušan Ivković had been convicted for the rape of one female person in Vukovar in 1991. Rade Ivković's sentence was reduced from 8 to 6 years in prison, whereas Dušan Ivković's penalty was increased by 6 months, which meant that he was also sentenced to 6 years in prison.

The Supreme Court of the Republic of Croatia applied Article 91, Paragraph 2 of the new *Criminal Code*, according to which, the perpetrator of war crime committed either by rape, or sexual enslavement, by coercion into prostitution, forced pregnancy, forced sterilisation, or any other form of sexual violence will be punished with a prison sentence of at least 3 years. The stated *Code* has been more lenient towards the said perpetrators than the *Basic Criminal Code of the Republic of Croatia* which had a higher prescribed minimum sentence (5 years in prison) for the criminal offence of war crime against civilians stated in Article 120, Paragraph 1.

According to the new *Criminal Code*, only if the criminal offence is committed against a large number of persons or the crime is executed in an extremely cruel or mean manner, the perpetrator will be punished with a prison sentence prescribed in Article 91, Paragraph 1 – of minimum 5 years or a long-term prison sentence.

In that way, the rape in its non-qualified forms is not being considered as an inhumane treatment and infliction of great suffering as stated in Article 91, Paragraph 1, Items 2 and 3 of the *Criminal Code*, which is in a direct contradiction with Article 27, Paragraph 2 of *the 4th Geneva Convention on the Protection of Civilian Persons in Time of War* dated on 12 August 1949, which prescribes, *inter alia*, that "Women shall be especially protected against any attack on their honour, in particular against rape…"

Unfortunately, the new legislation does not follow the footsteps of the ICTY's practice and achievements in prosecution of the sexual violence, which treats/characterises the rape as a form of torture.[28]

28 In the case of *Mucić et al.* the rape was characterised as a form of torture. On the occasion of announcement of the judgement in the said case in 1998, the ICTY judges stated the following: "It is undisputable that the act of rape may be viewed as the torture according to the international customary law (…) The Trial Chamber considers the rape of any person to be a despicable act which strikes at the very core of human dignity and physical integrity".

As in case of all other criminal proceedings in which the suspects have been unavailable to the Croatian authorities, the efficient prosecution will also depend on cooperation between the judicial bodies of the countries in the region and on standardisation/coordination of legal interpretations and practices used by the countries involved in the cooperation. The War Crimes Prosecutor's Office of the Republic of Serbia has refused to act on the requests submitted by the State Attorney's Office of the Republic of Croatia regarding several cases, since the Prosecutor's Office considered that those cases were not the war crimes committed by rape but (common) criminal offences of rape, and the common offences of rape have been the subject of the limitation in law which has come into effect in the meantime.

2. Announcement of adoption of the act on rights of the Homeland War victims of sexual abuse

In order to prescribe the obligations of competent bodies and other actors who participate in identification and prevention of sexual violence and in providing assistance and protection to persons exposed to sexual violence, as well as to prescribe the methods of their cooperation, the Government of the Republic of Croatia adopted the *Protocol on Dealing with the Cases of Sexual Violence* at the end of November 2012. In January 2013, the Government of the Republic of Croatia also announced the adoption of the act on rights of victims of sexual abuse suffered during the Homeland War.

Neither in Croatia, nor in other countries created subsequent to the dissolution of the Socialist Federative Republic of Yugoslavia, there has been an adequate criminal prosecution of perpetrators or an (adequately) resolved issue of compensation of the said category of victims.[29] Only a few persons who suffered a form of sexual abuse during the Homeland War have been able to protect their rights. Based on the existing *Act on the Rights of Croatian Homeland War Veterans and their Family Members* and the *Act on Protection of Military and Civilian Persons Disabled in War,* only 16 victims of rape have obtained the status of Croatian (military) veteran disabled in war (4 women and 2 men) or the status of Croatian civilian person disabled in war (10 women).

The new law should enable the victims of rape and sexual abuse to re-integrate into the society; it should free them of the stigma of "the raped" and "the forgotten"; it should provide for a better psycho-social support and more substantial financial support. In that way, the victims should regain their sense of belonging to the society and restore their trust in the system. The support, primarily a psycho-social support, should be provided also to members of

29 The excerpt from the Resolution 1670 of the Parliamentary Assembly of the Council of Europe, adopted in 2009.

their families. All the stated facts should encourage the victims to speak up about the committed crimes; the said should improve the prosecution of perpetrators and enhance the restoration of dignity of victims and the quality of their life.

Public discussion about the stated law was supposed to be concluded in December 2013, however, that did not happen. The discussion has commenced in March 2014 and it will last until May 2014.

VII. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

A. ICTY's credibility undermined by a number of acquittals and internal doubts and accusations

During 2012 and 2013, the confidence that the post-Yugoslav societies, victims' associations and organizations for the protection and promotion of human rights had in the Tribunal was seriously undermined. A series of acquittals: Croatian Generals Ante Gotovina and Mladen Markač, leaders of the Kosovo Liberation Army, Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj, Chief of the Genaral Staff of the Yugoslav Army Momčilo Perišić and heads of the State Security Service of Serbia, Jovica Stanišić and Franko Simatović, sharp tones that judges used in dissenting opinions in some of these cases and the statements of judge Frederik Harhoff on impermissible influences of the ICTY President Theodor Meron on judges to render politically motivated decisions discredited the Tribunal and its achievements.

Despite the crumbling confidence, there is no doubt that this is an institution that made enormous progress in the development of international humanitarian law by prosecuting 161 persons, among them heads of states, governments, heads of the General Staff, ministers of the interior and many other political, military and police officials of high and mid-level rank on various sides in the conflict. The Tribunal contributed to the establishment of historical facts about the wars in the former Yugoslavia, fought against (always present) denial of the truth and tried to assist the societies of newly-emerged countries to cope with their recent wartime past.

The Tribunal must necessarily take advantage of the last stage of its work to regain the confidence of victims' associations and civil society and leave the impression that, through its work, justice for the victims has been achieved.

Hague indictments							
members of political or military structures	convicted	acquitted	proceedings suspended because of death	indictment withdrawn	ongoing (trial or appellate procedure)	transferred to national courts	total
HV	nobody	3 – Ivan Čermak, Ante Gotovina and Mladen Markač	1– Janko Bobetko	nobody	nobody	2 – Rahim Ademi – acquitted; Mirko Norac – convicted	6
„RSK“	2 – Milan Babić and Milan Martić	nobody	1 – Slavko Dokmanović	nobody	1 – Goran Hadžić	nobody	4
BiH –BiH Army	5 – Rasim Delić, Enver Hadžihasanović, Amir Kubura, Hazim Delić and Esad Landžo	3 – Sefer Halilović, Zejnil Delalić and Naser Orić	1 – Mehmed Alagić	nobody	nobody	nobody	9
BiH – RS and the RS Army	41 – Milan Lukić, Sredoje Lukić, Ljubomir Borovčanin, Predrag Banović, Vidoje Blagojević, Dragan Jokić, Radoslav Brđanin, Ranko Češić, Miroslav Deronjić, Dražen Erdemović, Stanislav Galić, Goran Jelisić, Momčilo Krajišnik, Milorad Krnojelac, Radislav Krstić, Dragoljub Kunarac, Radomir Kovač, Zoran Vuković, Miroslav Kvočka, Dragoljub Prcać, Milojica Kos, Mlađo Radić, Zoran Žigić, Dragomir Milošević, Darko Mrđa, Dragan Nikolić, Momir Nikolić, Dragan Obrenović, Biljana Plavšić, Duško Sikirica, Damir Došen, Dragan Kolundžija, Blagoje Simić, Miroslav Tadić, Simo Zarić, Milan Simić, Milomir Stakić, Duško Tadić, Stevan Todorović, Mitar Vasiljević and Dragan Zelenović	nobody	10 – Milan Gvero, Đorđe Đukić, Milan Kovačević, Simo Drljača, Nikica Janjić, Slobodan Miljković, Goran Borovnica, Momir Talić, Janko Janjić and Dragan Gagović	14 – Zdravko Govedarica, Gruban (name unknown), Predrag Kostić, Nedjeljko Paspalj, Milan Pavlić, Milutin Popović, Draženko Predojević, Željko Savić, Mirko Babić, Nenad Banović, Nedjeljko Timarac, Goran Lajić, Dragan Kondić and Dragomir Šaponja	10 – Radovan Karadžić, Ratko Mladić, Mićo Stanišić, Stojan Župljanin, Zdravko Tolimir, Vujadin Popović, Ljubiša Beara, Drago Nikolić, Radivoje Miletić and Vinko Pandurević	9 – Željko Mejakić, Momčilo Gruban, Dušan Fuštar, Duško Knežević, Gojko Janković, Radovan Stanković, Mitar Rašević, Savo Todović and Milorad Trbić – all convicted	84
BiH – „Herceg-Bosna“ and HVO	12 – Zlatko Aleksovski, Tihomir Blaškić, Miroslav Bralo, Anto Furundžija, Dario Kordić, Mario Čerkez, Drago Josipović, Vladimir Šantić, Mladen Naletilić, Vinko Martinović, Ivica Rajić and Zdravko Mucić	4 – Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić and Dragan Papić	1 – Stipe Alilović	4 – Ivan Šantić, Pero Skopljak, Marinko Katava and Zoran Marinić	6 – Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić	1 – Paško Ljubičić – convicted	28
SRJ, Serbia, JNA, Yugoslav Army	10 – Vlastimir Đorđević, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, Sreten Lukić, Miodrag Jokić, Mile Mrkšić, Veselin Šljivančanin and Pavle Strugar	3 – Momčilo Perišić, Milan Milutinović and Miroslav Radić	3 – Vlajko Stojiljković, Slobodan Milošević and Željko Ražnatović “Arkan”	1 – Milan Zec	3 – Vojislav Šešelj, Jovica Stanišić and Franko Simatović	1 – Vladimir Kovačević – proceedings suspended due to illness	21
Kosovo Liberation Army	2 – Lahi Brahimaj and Haradin Bala	4 – Ramush Haradinaj, Idriz Balaj, Fatmir Limaj and Isak Musliu	nobody	1 – Agim Murtezi	nobody	nobody	7
Macedonia	1 – Johan Tarčulovski	1 – Ljube Boškoski	nobody	nobody	nobody	nobody	2
total	73	18	17	20	20	13	161

B. Judgments relevant for Croatia rendered during 2013

During 2013, the ICTY rendered two first-instance judgments and one judgment of the Appeals Chamber relevant for Croatia.

Momčilo Perišić

On 28 February 2013, the Appeals Chamber acquitted Momčilo Perišić, former Chief of the General Staff of the Yugoslav Army, previously sentenced to 27 years in prison by the judgment of the Trial Chamber for aiding and abetting the artillery and sniper attacks on civilians in Sarajevo from the military positions of the Army of Republika Srpska between 1993 and 1995, killing of approximately 7,000 Muslims and displacement of the population of Srebrenica in July 1995 and not preventing or punishing the perpetrators of rocket attacks on Zagreb in May 1995 in which seven civilians were killed.

Jadranko Prlić et al.

On 29 May 2013, the Trial Chamber rendered a first-instance judgment sentencing six leaders of Herceg-Bosna and the HVO: Jadranko Prlić to 25, Bruno Stojić, Slobodan Praljak and Milivoj Petković to 20, Valentin Ćorić to 16 and Berislav Pušić to 10 years in prison for their participation in a joint criminal enterprise led by the-then President of Croatia Franjo Tuđman, whose aim was to enslave Muslims and other non-Croats who lived in the areas of Bosnia and Herzegovina which were claimed to belong to the Croatian community (later Republic) of Herceg-Bosna so that they would be expelled from these areas and to establish Croatian territory within the boundaries of the Croatian Banovina from 1939. The crimes included detaining people in camps, rape, murder, robbery, unlawful evictions and destruction of cultural heritage.[30]

30 In Croatia, this judgment was met with criticism by the Prime Minister Milanović and condemnation by mainly right-wing politicians, as well as a large part of the public. President Josipović was much more moderate, assessing relations between Croatia and BiH during the war as "ambivalent" and pointing out that there were mistakes in Croatian policy towards BiH.

Jovica Stanišić and Franko Simatović

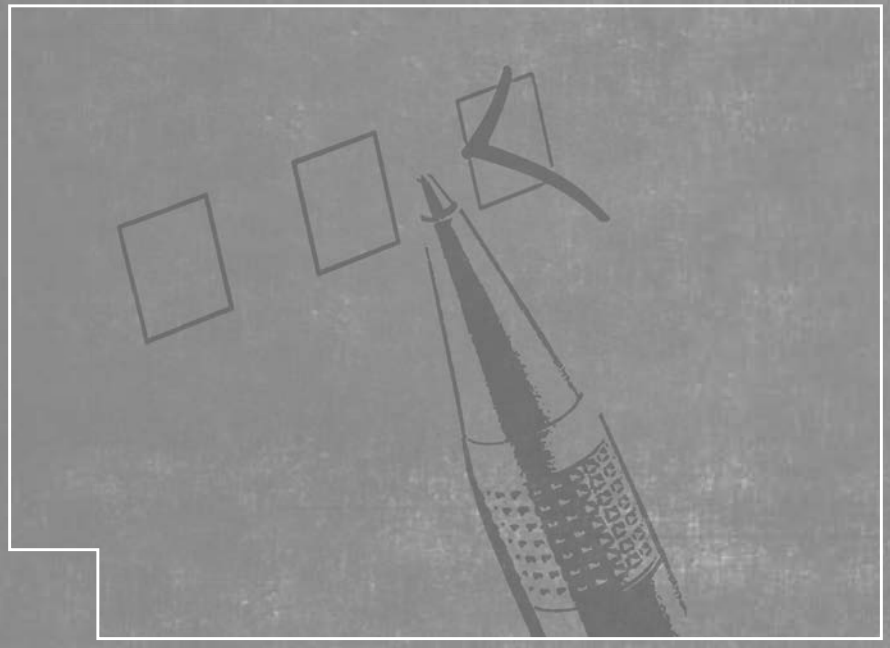
On 30 May 2013, the Trial Chamber issued a first-instance judgment acquitting the leaders of the Serbian State Security Jovica Stanišić and Franko Simatović for the crimes committed against non-Serbs in Croatia and Bosnia and Herzegovina between 1991 and 1995. The crimes that were, beyond reasonable doubt, committed by members of the State Security units for special purposes of Serbia (Red Berets), Scorpions, Serbian Volunteer Guard and the SAO Krajina, were not attributed to the accused leaders of the State Security of Serbia.

After Perišić was acquitted by a final judgment and the first-instance acquittal of Stanišić and Simatović, the devastating fact remains that none of the members of the state leadership of the FRY and Serbia and the leadership of the JNA, except for lower-ranking commanders (Miodrag Jokić and Pavle Strugar for the crimes committed on the territory of Dubrovnik, Mile Mrkšić and Veselin Šljivančanin for crimes in Vukovar), were sentenced by the ICTY for the crimes committed on Croatian territory. Only the first-instance decision in the case of leader of Serbian Radicals Vojislav Šešelj is still expected.

For the crimes committed in Croatia, except for the abovementioned medium- or lower-ranking JNA officers, the ICTY sentenced only Krajina leaders Milan Martić and Milan Babić, while proceedings against Goran Hadžić are ongoing.

Bearing in mind that the last indictments by the ICTY were issued back in 2004, the responsibility for investigating and prosecuting war crimes during the last ten years rested exclusively on national jurisdictions of countries in the region. However, the Hague investigators conducted numerous investigations after which the ICTY's Office of the Prosecutor failed to issue indictments because the Hague prosecution mainly focused on charging top-ranking members of military and civilian authorities of warring parties. With regard to the possibility of using evidence collected by ICTY bodies in proceedings before national courts, further prosecutions depend on the efforts of local prosecutor's offices and the possibilities of obtaining data from the ICTY.

VIII. RECOMMENDATIONS



Below we reiterate recommendations cited in our previous reports which have not been implemented:

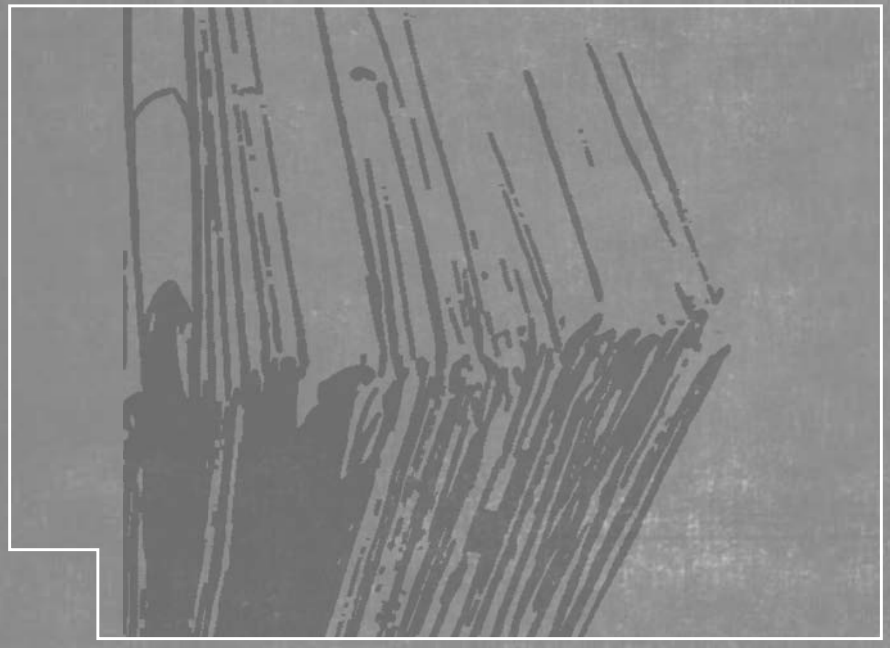
- Due to increased workload, it is necessary to provide a larger number of adequate courtrooms at the Zagreb County Court which could accommodate all interested public members;
- The Croatian Government must urgently adopt *the National Strategy for the Development of Victim-Witness Support System* in order to expand the existing support system and increase its capacity;
- The Croatian Government should adopt a Decision whereby litigation costs of all plaintiffs/injured parties who failed with their lawsuits for compensation of non-pecuniary damage due to the death of a close person would be undoubtedly written off, while refund would be provided to those who already paid litigation costs or whose property was seized;
- It is necessary to adopt the National Programme and the Act on the Establishment of a Fund for Indemnification of all War Victims which would regulate damage compensation in accordance with the *Basic Principles and Guidelines on the Right to Remedy and Reparation of Victims of Gross Violations of the International Human Rights Law and Serious Violations of International Humanitarian Law of the UN*;
- It is necessary to abrogate *the Act Declaring Null and Void certain Legal Documents of the Judicial Bodies of the former JNA, the former SFRY and the Republic of Serbia*, a harmful act that undermines relations between Croatia and Serbia;
- It is necessary to sign a contract between the countries in the region with a view to more effectively prosecute crime perpetrators and avoid politicization of war crimes trials;
- It is necessary to adopt a new or amend the existing *Act on the Protection of Military and Civilian War Invalids* and adopt the announced Act on the Rights of Victims of Sexual Abuse in the Homeland War so that rape victims, as well as all other civilian war victims, could exercise their rights;
- In order to improve support for victims of war crimes committed by sexual abuse, it is necessary to, as soon as possible, establish teams and educate employees at all government agencies dealing with victims of crimes of sexual abuse.

The new recommendations are listed below:

- It is necessary to enhance regional cooperation by forming joint investigation teams in cases which require coordinated effort and/or investigations in several countries;
- It is necessary to amend Article 91 of the new Criminal Code and equate rape and other forms of sexual abuse, in terms of stipulated sentence, with war crimes committed by torture and inhuman treatment, thereby following the practice and achievements of the ICTY;

- Due to links between numerous war crimes and appropriation of victims' property, it is necessary to investigate the origin of assets of all persons convicted of war crimes;
- It is necessary to deprive judicial officers of any political influence and facilitate the harmonization of standards in treatment between the judicial bodies of countries in the region, so that as many as possible perpetrators and persons with command responsibility would be brought to justice, but also to end the persecution of persons for whom there is no evidence that they were perpetrators or abrogate judgments against those convicted in an unjustified manner;
- It is necessary to break with the anonymization of personal data (names) of those convicted of war crimes – due to importance of prosecuting war crimes for the society in Croatia and other post-Yugoslav countries, priority must be given to the right of the general public to be informed about the ongoing proceedings and the identity of those convicted of war crimes.

IX. ANNEXES



Do the courts in the Republic of Croatia tend to punish more severely Serb war criminals than Croat ones? (Analysis of the statutory and judicial policy of punishing war crimes perpetrators)

Marko Sjekavica, Jelena Đokić Jović and Maja Kovačević Bošković[31]

Introduction

In order to determine the accuracy of the initial premise of our study, that courts in the Republic of Croatia, when imposing criminal sanctions against perpetrators of war crimes, are not ethnically indifferent but there is a difference in degree of the pronounced prison sentences associated with the ethnicity of perpetrators of criminal offence and damaged parties, we analyzed war crime cases in which final judgments were rendered by Croatian courts[32] in the period between 2000 and today. With regard to the subject of our interest, we took into account only convictions, which in most of the cases were decided upon by the Supreme Court of the Republic of Croatia (VSRH) as the court of appeal.[33] We excluded from our observations judgments rendered *in absentia* because in those cases courts did not have at their disposal all information relevant for imposing a sentence.[34]

We started the analysis of the judicial practise with the assumption that the facts in the dictum of the judgements upheld by the VSRH were properly established and we did not assess evidence. Namely, we did not deem evidence assessment to be crucial for determining whether criminal sanctions were adequately applied with regard to proven facts of the event in question. Our focus was on determining the relation between the legal framework and the judicial individualization of pronounced criminal sanctions. In that context we put under scrutiny precisely ethnic affiliation of the convicts and damaged parties because, over many years of systematic monitoring of war crime trials in the Republic of Croatia and through analyzing relevant criminal proceedings *prima faciae,* we noticed significant deviations in judicial policy when punishing Croat and Serb perpetrators, whereby the latter ones were more stringently punished. After examining the parts of the reasoning of analyzed

31 The authors would like to thank to Professor Petar Novoselec, Ph. D. and Docent Maja Munivrana Vajda, Ph. D., for their kind contribution with their advices and expert opinions.

32 All the county courts in Croatia used to have ratione materiae jurisdiction in war crime cases until 2011, when amendments to the *Act on the Application of the Statute of the International Criminal Court* (OG 125/11) stipulated exclusive jurisdiction of the four county courts: Zagreb, Osijek, Rijeka and Split.

33 There were also cases in which no appeal was lodged against the first instance judgment, thus the Supreme Court did not have a chance to provide an opinion.

34 The Split County Court took such a stance in relation to inability to determine mitigating circumstances due to the absence of the defendant in the judgment K-98/09 of 29 December 2009, p. 9.

judgements which treat dispensing of a criminal sanction, one gets the impression that courts often approach this important part of administration of justice which should be „equally important, if not more important than the part dealing with determination of criminal liability“[35] in an arbitrary manner and by using generalized formulations. With this very analysis we wanted to confirm the aforementioned assumptions and strengthen them or on the other hand refute them. The text below presents the results and conclusions with accompanying explanations.

„Assessments on penal policy (particularly judicial) need to be based on exact indicators – statistical data about the values we investigate.“[36] Thus we drew our conclusions exclusively from detailed examination of the case files of 74 criminal cases (that resulted in convictions in relation to 109 persons) that should represent all finally adjudicated war crime cases[37] tried before the courts of the Republic of Croatia in the period between 1 January 2000 and 1 January 2014.

Theoretical review of the purpose of criminal sanctions

Briefly explained, the purpose of the punishment consists of a special and general prevention and retribution of society towards perpetrators of criminal offences. In modern legal systems of the Western type, the focus has shifted to the preventive element of punishment with the objective of deterring commission of future offences and with the aspiration towards re-socialisation of perpetrators of criminal acts, although the very punishment, in the sense of retribution, remains an integral part of criminal sanctions.

Determining an appropriate sentence against an individual perpetrator of a criminal offence is a complex intellectual process that requires from persons performing judicial duty a careful assessment of all aggravating and mitigating circumstances that exist on the side of the defendant, both at the time of commission of crime, as well as at the time of pronouncement of the criminal sanction. The underlying issue here is actually individualization of punishment, which should not be understood as a “mechanical process of applying a legal norm in relation to a particular defendant.”[38] When imposing a sentence, one

35 Kos, Damir, General Rule on the Choice of Type and Severity of Punishment, in: Penal Code in Practical Application, Informator, 2004, p. 1.

36 Svedrović, Marijan, Extraordinary Mitigation of Punishment in the Republic of Croatia, Croatian Journal of Criminal Law and Practice, Zagreb, Vol. 11, No. 2/2004, p. 783-839, p. 784.

37 This pertains to the database of three organizations for the protection of human rights: the Centre for Peace, Nonviolence and Human Rights - Osijek, Documenta - Centre for Dealing with the Past and the Civic Committee for Human Rights, which monitor war crimes trials. The database is regularly updated with data from the Office of the State Attorney and it is harmonized with the database of the former OSCE Mission to Croatia (2008-2012 OSCE Office in Zagreb).

38 Kos, *op. cit.*, p. 2 of this paper.

of the important circumstances that Court should take into consideration is the degree of social danger of certain prohibited conduct. In the case of war crimes, this impact of criminal behaviour of the perpetrator on the society as a whole is unquestionably strong.

Courts should not impose sentences arbitrarily, but should remain within the boundaries set forth by the legal minimum and maximum of the prescribed sentences. Still, judicial discretion allows that, in the process of applying an abstract legal norm against an individual perpetrator, the court creates a penal policy which reflects the actual use of the legislative penal policy through individual application of the law. The latter is determined not only by the Special Part of the Penal Code that stipulates the minimum and maximum sentence for each criminal offence in its basic and qualified form, but also by the criteria of the General Part of the Penal Code. These criteria are taken into account by the court when imposing a sentence and they refer to the expressly stipulated possibility to mitigate a sentence (statutory mitigation)[39] and to the exemption from punishment, in which case the court has also the possibility of mitigation of sentence. In addition to the general rules on the choice of type and severity of the punishment, which include an assessment of: the degree of perpetrator's guilt, the level of danger of the offence and the possibility of achieving the purpose of punishment, it is also essential for the court to carefully evaluate all aggravating and mitigating circumstances found on the side of the defendant.

When the court applies the institute of sentence mitigation as an exceptional power, i.e. imposes a sentence below the minimum stipulated for a certain criminal offence, based on its discretion that particularly mitigating circumstances have been created - **court mitigation** – the court shall specifically highlight the reasons upon which it found that the established mitigating circumstances were "particularly mitigating' (particularly mitigating circumstances[40]) and that, because of them, the sentence should be mitigated, whereupon the purpose of punishment will be achieved as well. In practice, it is often not the case, but the court approaches this part of the reasoning of the judgment[41] in a generally poor and patterned manner.

39 For instance, in cases of commission of an offence by omission, and it is not a criminal offence that can be committed only by omission, for offences in attempt, aiding and abetting as a form of commission of an offence, exceeding the limits of necessary defence, considerably diminished mental capacity of the defendant and the like, where the law stipulates the possibility to impose a more lenient sentence.

40 Garačić, Ana, Mitigation of Sentence by the Sixth Novel of the Penal Code, Croatian Journal of Criminal Law and Practice (Zagreb), Vol. 13, No. 2/2006, p. 451-467, p. 459.

41 "The court of first instance correctly found that the defendant had not come into conflict with the law before, that he is father of a minor, he has unstable family situation and, so far, his behaviour has been positive. These are mitigating circumstances and the court should have assessed them, but the court of first instance overestimated them and erroneously concluded that they, in their totality, represent particularly mitigating circumstances." (From the Supreme Court's decision Kž-13/88 of 8 June 1988)

Can command responsibility (committing a war crime by omission) be the basis for statutory mitigation of sentence?

Since the Basic Penal Code of the Republic of Croatia (OKZRH), which is applied in war crime cases, as the substantive law which was relevant at the time of their commission, did not prescribe the possibility of punishing persons for command responsibility for the crimes committed, this legal gap, caused by the prohibition of retroactive application of criminal law, is bridged by invoking the provision of Art. 28 of the OKZRH which deals with commission of crimes by omission.

The OKZRH did not prescribe the possibility of a more lenient punishment of perpetrators who committed a criminal offence by omission.

This possibility, in the form of one of the bases of statutory mitigation of punishment for a perpetrator found guilty of a criminal offence committed by omission, was introduced by the Penal Code from 1997. The exception from mitigation is, of course, an offence that can be committed only by omission (omissive offence), because in that case the omission represents a part of the legal definition of the crime and therefore it could not be re-taken into account as a mitigating circumstance (for instance, criminal act of "Failure to provide assistance": there is no sense in taking the omission, which makes part of the legal definition of this criminal offence, into consideration when deliberating upon mitigating circumstances).

In case of command responsibility, it is a textbook example of the omissive conduct on the part of the defendant[42]. Legal reasoning could suggest the application of the provisions of the more recent Penal Code in the segment of statutory mitigation for criminal offences committed by omission, as a more favourable to the defendant. However, the more recent legislation (both the PC from 1997 and the one from 2013[43]) excludes the possibility of mitigating a sentence in cases of command responsibility. It is stipulated that the *de iure* or *de facto* commander, who failed to prevent illicit behaviour of his subordinates, would receive the same sentence as the perpetrator himself. Therefore courts should, when imposing a sentence, without entering debate of mitigating and aggravating circum-

42 It is clear that a commander can command as a superior to his subordinates to commit a crime, or even commit a crime himself; however these would not be the cases of command responsibility in its real legal sense, but rather the cases of individual criminal responsibility of a perpetrator for his own deeds.

43 In the Penal Code from 1997 and in the new Penal Code, which entered into force on 1 January 2013, in the Separate Section, command responsibility is defined as a separate offence (Article 167a introduced to the Penal Code from 1997, by the Amendment from 2004), i.e. commander's responsibility (Article 96 of the CC), although from the perspective of the part of legal scholars and jurisprudence of international criminal tribunals this is not a separate criminal offence but a form of criminal liability. In Croatian penal system, even though it is prescribed in the Special and not the General Part of the Penal Code, command responsibility is regulated as a special mode of criminal liability (paragraph 1), whereas paragraphs 2 and 3 of the same article of the Penal Code treat command responsibility as a separate type of criminal offence.

stances which may be substantially different for direct perpetrator of a war crime and for the commander, have before them the same legal framework for punishment of persons indicted for direct perpetration and for command responsibility.

Legal framework for punishment of war crimes' perpetrators

The *tempore criminis* applicable law was the Basic Penal Code of the Republic of Croatia which stipulated prison sentence ranging from 5 to 15 years or a prison term of 20 years for three kinds of war crime (against civilian population - Art. 120, against the wounded and sick - Art. 121 and against prisoners of war - Art. 122).

We wish to point out that the new Penal Code, which entered into force on 1 January 2013, differently regulated war crime - as a single offence which has its basic and milder form. For the basic form (Article 91, par. 1) criminal sanction is stipulated in the duration of 5-20 years and long-term imprisonment in the duration of 21 to 40 years and exceptionally in cases of a merger of criminal offences, the joint sentence of long-term imprisonment in the duration of 50 years. However, prison sentence in the duration of three (to 20 years) is stipulated for a milder form (Article 91, par. 2).[44] Since, in some cases, the legally stipulated minimum criminal sanction is lower, this law applies to persons indicted for war crimes because it is milder (*lex mitior*) and thus more favourable for them.[45] Bearing in mind that such a difference in stipulated penalties, applicable to perpetrators of war crimes prosecuted before and after the entry into force of the new Penal Code (1st of January 2013), would be reflected on the results of this analysis because we would then have to take this circumstance into account when comparing individual criminal cases, we note that among the analyzed criminal cases there were not those in which newly stipulated special minimums would apply.[46]

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44 *De lege ferenda*, we deem such standardization of war crimes is bad because it produced a gargantuan and vast legal article with a detailed description of different modalities of the underlying offence. A milder criminal sanction stipulated by the second paragraph, which actually introduces a milder form of the basic offence, is prescribed for some extremely serious modalities of committing war crimes such as rape, treacherous murder of 'members of the enemy nation' or prisoners of war, mutilation, attack on civilian population and on civilian targets, culturecide, ethnic cleansing, etc.

45 Criminal proceedings against defendant Milan Španović before the Zagreb County Court resulted in the first instance acquittal, judgement No 9 K-Rz-12/12, dated 14 March 2013, due to application of a more lenient law for the defendant (the Penal Code NN 125/11 and 144/12 came into force on 1 January 2013). The defendant's actions, through which he "applied the acts of deterrence and terror", are no longer prescribed by the new Penal Code as a modality of perpetration of the criminal offence of war crime. "Plunder of cities and settlements" is now prescribed as a milder form of war crime and therefore it is less severely punished. However, the Court has found that even though the defendant's deeds of "plunder of the civilian population's property" represented a part of the legal description of the charged criminal offence, it did not reach the level, that the standpoint of the Supreme Court No. Su - IV k-4/2012 of 27 December 2012 on the census value of destroyed and plundered property, required for the establishment of criminal liability of the perpetrator of a war crime. Despite the fact that the quoted case is non-final and not directly encompassed by this study, we present it here in order to illustrate the above- mentioned issue.

46 In fact no such criminal proceedings have been completed by the end of the study period.

In relation to the previously elaborated institute of sentence mitigation, we would like to point out that the same is regulated in *tempore criminis* applicable Art. 38, par. 2 and Art. 39 of the OKZRH. In this regard, the Supreme Court in its legal interpretation of the Extended Session of the Criminal Division of 17 June 1985 clearly stated that the court is obliged, when mitigating a sentence, "to specifically state the reasons upon which it found that the identified mitigating circumstances were 'particularly mitigating' and that the sentence should be mitigated because of them."

Comparative overview of the ICTY jurisprudence

The most important factor in the process of imposing a sentencing before the International Criminal Tribunal for the former Yugoslavia is the severity of perpetrator's acts that constitute a criminal offence.[47] It is estimated in the context of the nature of the crime, the extent and manner in which it was committed and the form and degree of criminal responsibility (the ICTY uses the term *mens rea*). The above listed elements, if taken as the basis in the process of imposing a sentence as a part of the legal description of the criminal offence, cannot be further valorised as aggravating circumstances.

We briefly compared the length of sentences pronounced by the ICTY (which legally qualified respective charges not only as war crimes but also as crimes against humanity) and Croatian courts, partly because of the ICTY's position that there is no difference in severity between the similar kind of crime against humanity and war crime.[48]

In the process of imposing a sentence the court assesses mitigating circumstances (while the defence presents arguments in favour of the existence of these circumstances) as well as aggravating circumstances, the existence of which the Chamber shall determine beyond a reasonable doubt.

Voluntary surrender, guilty plea, significant cooperation between the defendant and the prosecution, the defendant's youth at the time of committing the crime (*e. g.* defendants Dražen Erdemović, Anto Furundžija, Goran Jelišić - with the council's explanation in the latter case that this was a *de minimis* effect of this mitigating circumstance), the defendant's age (defendant Biljana Plavšić was 72 years old at the time of the indictment), remorse and empathy, especially in the context of a guilty plea (cases Erdemović, Todorović, Plavšić, Banović,

47 Such position became clear through judgments rendered by the appeals chambers in the case of the crime in Čelebići camp, Aleksovski case etc.

48 Judgments rendered by the appeals chambers in the Tadić case (January 2000) and Furundžija case (July 2000) in which the Tribunal, according to customary international law, state equal severity of crimes against humanity and war crimes. Only persecution, as a form of crime against humanity, is treated as a more serious offence than war crimes and other crimes against humanity due to its discriminatory intent.

Obrenović, Dragan Nikolić, Deronjić, Mrđa, Babić, Miodrag Jokić etc.), reduced sanity, saving lives or reducing the suffering of victims, coercion, good character and lack of criminal record (exceptionally in Obrenović case) are all mitigating circumstances which the Tribunal has taken into account in order to mitigate the sentence.

The most important aggravating circumstance is the abuse of a superior position, whereby the Tribunal does not look for cumulative fulfilment of the conditions necessary for a conviction on the basis of command responsibility (Article 7 (3) of the Statute). Youth, vulnerability of the victim, a large number of victims, commission of the crime over a long period of time, sadism and perversity of perpetrator, verbal abuse of victim before the commission of the criminal offence, discriminatory attitude, refusal of assistance to individuals in distress, continuous suffering of survived victims due to trauma are also circumstances that have an effect on the sentence. It is important to mention that the Tribunal, under the circumstances, outside the context of the commission of criminal offence, assesses defendant's higher education and intelligence as an aggravating circumstance (the case of Blagoje Šimić *et al.*, October 2003, Stakić case, July 2003).

Article 24 (1) of the Statute stipulates that, when determining a sentence of imprisonment, the Tribunal shall take into consideration the general practice of imposing prison sentences in the courts of the former Yugoslavia, but that does not mean that the Tribunal is bound by these legal practices. Moreover, the ICTY can render a sentence which is above the maximum penalty stipulated for the same offence in the relevant law on the territory of ex-Yugoslavia. The position of the Tribunal is that this does not represent a violation of the principle of non-retroactivity and that there is no *restitutioni in peius*[49], since there was death penalty prescribed for such criminal offences *tempore criminis* in Yugoslavia. Likewise, the principle *lex mitior* applies only to the law of the ICTY, thus alleviating domestic substantive legal norms has no effect on defendant's position before the ICTY.

By comparing the jurisprudence of the ICTY and domestic courts, the conclusion arises that the Hague Tribunal imposes more stringent sanctions than domestic courts. On the one hand it has to do with the fact that the Tribunal has mostly prosecuted the highest-ranking military and political officials of the warring countries of the former Yugoslavia, while domestic courts mostly tried lower-ranking persons. Furthermore, according to its Statute the ICTY has the option of imposing the sentence of life imprisonment, which was rendered in some cases of genocide. Nevertheless, our conclusion is that domestic courts are more lenient towards perpetrators of war crimes, especially when they try

49 This legal issue was discussed in Stakić case, where the trial chamber rejected the objection of non-retroactivity.

perpetrators of their own side in the conflict or in cases of conviction under the principle of command responsibility.[50]

Analysis of the relevant case law in Croatia from 2000 to 2014

The use of the prescribed penal framework for war crimes in the examined sample of 109 persons convicted by final judgments[51] (39 or 35,78% of convicts from the Croatian side, 68 or 62,39% from the Serb side[52] and two convicts from the Bosniac side[53]) included in this analysis, has shown that prison sentence imposed against perpetrators ranged from 1 to 15 years and 20 years in prison, respectively, as follows:

- 77 persons or 70,64% (44 members of Serb formations, 2 members of Bosniac and 31 members of Croatian formations) were sentenced to 5-15 years in prison;
- The maximum long-term imprisonment sentence in the duration of 20 years was pronounced to two members of Serb formations, which makes 1,83% of the total number of perpetrators;
- 30 persons or 27,53% (of which 22 were members of Serb and eight members of Croatian formations) were rendered a sentence below the legally stipulated minimum of five years.

When processing data we did not take into account the difference between a war crime against civilians, against the sick and wounded and against prisoners of war, since stipulated sentences for these criminal offences against the values protected by the international law are the same.

War crimes can be committed through various alternative statutory stipulated modalities, some of which can result in death, while others do not have fatal outcome.

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50 The Israeli District Court in Jerusalem, in its judgment against defendant Adolf Eichmann of 11 December 1961, also states the legal opinion that in cases of mass crimes, higher rank in the chain of command also carries a higher degree of responsibility of a perpetrator: "For these crimes were committed en masse, not only in regard to the number of the victims, but also in regard to the numbers of those who perpetrated the crime, and the extent to which any one of the many criminals were close to, or remote from, the actual killer of the victim, means nothing as far as the measure of his responsibility is concerned. On the contrary, in general, the degree of responsibility increases as we draw further away from the man who uses the fatal instrument with his own hands and reach the higher ranks of command..." - Chapter 197 of the Trial Judgement. The higher degree of criminal responsibility of higher ranking commanders depends also on the mode of command responsibility. It refers to cases where commander acted with intent, having known for crimes committed and having done nothing to prevent them. Therefore it cannot be applied to cases where commander acts in negligence regarding his security guarantor's duties or he fails to punish his subordinates for their unlawful deeds.

51 The study includes 74 criminal cases.

52 Members of: Territorial Defence (TO), paramilitary formations of the so-called Republic of Srpska Krajina (VRSK), the Yugoslav People's Army (JNA).

53 These were officials of the para-state creation on the territory of BiH, the so called Autonomous Province of Western Bosnia.

Of the total number of convicts, in 60,55% of cases the issue at stake was a war crime that resulted in deaths of one or more persons (66 defendants, of whom 39 members of Croatian, 26 members of Serb and one member of Bosniac formations). In this segment of the analyzed sample there were 59,09% of Croatian and 39,39% of Serb perpetrators.

Guided by the principles of probability theory and principles of statistical data processing, regardless of different absolute number of Croatian and Serb perpetrators in this category, bearing in mind that the tested sample is large enough that we have on both sides, so to speak, minor and major crimes, we reached data that the average sentence imposed against Serb perpetrators was 9,88 years and 7,95 years against Croatian perpetrators. Thus, there was no significant deviation. The average sentence imposed on perpetrators of war crimes resulting in death was 8,82 years in prison.

In war crime cases without fatal outcome for the victims, which generally can be considered a less harmful form of committing this criminal offence and which constitute 39,45% of the tested sample, the only sentenced persons were Serb perpetrators (with one Bosniac). This means that, in this category, perpetrators from the Croatian side were either not prosecuted or criminal proceedings against them resulted in acquittals. Therefore we concluded that (in the respective period and regarding final judgements) there was neither prosecution nor sanctioning of Croatian perpetrators of war crimes that did not have fatal outcome. It is not questionable that such crimes, in which civilian property of the Serb population was largely destroyed and plundered whereas Serb civilians were persecuted by Croatian forces, were committed[54].

In individual, mutually comparable cases, members of Serb forces were sentenced to longer imprisonment[55] than members of Croatian forces. While precisely such cases prompted us to investigate penal policy in war crimes cases, having studied the analyzed sample, we were not able to derive a general conclusion that the courts in Croatia tend to punish Serb war criminals more severely compared to Croatian ones. Relevant conclusions about the adequacy of the sentences imposed are only possible if we take into account for each perpetrator individually the severity and mode of commission of the offence

54 One of the most illustrative examples are many unprosecuted crimes committed against Serb citizens of the Republic of Croatia during and in the aftermath of the Military Operation "Storm" (VRS "Oluja") – some of which *nota bene* resulted in mass killings of civilians.

55 In the case of killing of Grgić family, whereby mother, father and two minor children were killed, defendant Branislav Miščević, member of Serb paramilitary forces, was sentenced to a maximum prison term of 20 years. In another case, defendant Željko Gojak who, as a member of the Croatian Army, killed three civilians, members of the Roknić family, one of whom was a minor girl, was sentenced to nine years in prison. We also compared the case of the crime in the "Velepromet" warehouse in Vukovar, where defendant Dušan Čučković, member of Serb paramilitary units, was sentenced to 20 years in prison for the killing of three civilians. Defendants Željko Belina and Dejan Milić, members of the Croatian Army, were sentenced to imprisonment for a period of 10 and 9 years, respectively, for the killing of three civilian women, abuse of civilians and wounding of one male civilian in the town of Novska.

which differed from one case to another. These are complex criminal cases with multiple defendants, who were charged with different incriminations, on multiple forms of commission of the criminal offence, as well as varying degrees of violation of protected persons and objects and determined aggravating and mitigating circumstances. Therefore, to compare all analyzed cases and reduce them to common parameters, which would enable reaching a generalized conclusion that the courts are not ethnically indifferent, was not possible.

Imposed sentences are not consistent when it comes to members of Croatian forces, either.[56] The same can be said of members of Serb forces, after comparing their rendered sentences.[57]

Having examined the case files, we came to the conclusion that courts in war crime cases generally impose milder penalties than in cases of common criminal offences. In the latter cases judicial sentencing policy is also mild and the rendered sentences remain in the lower third of the statutory framework.[58] Part of the reason for such practice may be a significant time lapse between the pronouncement of a criminal sanction and the moment when the crime itself was committed, which can be reflected in the severity of sentence. Thus a large time lapse, taken as a mitigating circumstance, in the opinion of courts has an impact on the aim of punishment in relation to an individual perpetrator, as well as on achieving social condemnation of the offence. Belated prosecution of war crimes is often the result of a lack of political will to investigate some crimes (especially those committed by and on behalf of the State) and appropriately punish their perpetrators. Time lapse of criminal proceedings with regard to the commission of the offence can also be seen as additional suffering in relation to the victims who have been unsuccessfully seeking for justice for years, not as a mitigating circumstance, especially when one takes into account that war crimes do not fall under the statute of limitations.

In order to get accurate and complete picture of the judicial policy of punishment in war crime cases, we analyzed the totality of aggravating and mitigating circumstances which the courts assessed when imposing sentences. In particular, we took into account particularly mitigating circumstances that in almost 30% of all analyzed cases lead to mitigating the sentence below the prescribed minimum. Although the more recent Croatian criminal codes tightened the borders of sentence mitigation in the sense that the lower limit cannot be less than two years by applying statutory mitigation or three years by applying judicial

56 Defendant Ivica Mirić killed one civilian in Brezovica forest and was sentenced to nine years in prison. Defendant Tihomir Valentić was sentenced to four years and six months in prison for the killing of two civilians in Osijek and an attempted murder of one civilian upon the command of Branimir Glavaš.

57 Compare the case of defendant Dušan Čučković, sentenced to 20 years in prison for the killing of three persons and defendant Zoran Obradović, sentenced to five years in prison for the killing of two persons.

58 This conclusion derives from the comprehensive research and analysis of the expert project of the Croatian Association for Penal Science and Practice and the Croatian Academy of Legal Sciences entitled "Statutory and Judicial Penal Policy in the Republic of Croatia".

mitigation (Article 57, paragraph 2, item d, KZ/97), the OKZRH allows, in relation to the underlying criminal offences, statutory and judicial mitigation of a sentence to a minimum of one year in prison (Article 39, paragraph 1, Item 1 of the OKZRH). We have also noted cases in which courts imposed the lowest possible sentence on perpetrators of war crimes, which the Supreme Court upheld as the court of appeals whereby, in our opinion, the gravity of the offence and the purpose of punishment were completely ignored.

As mitigating circumstances, courts mostly took into account previous lack of convictions, parenting minor children, lapse of time from the moment of commission of the offense, exemplary conduct before the court, exemplary family relations, which were equally assessed in relation to both Serb and Croatian defendants. On the contrary, participation in the Homeland War, multiple decorations, contribution to the defence of the Homeland and PTSD are regarded as mitigating circumstances exclusively for Croat defendants. While it is clear that participation in the Yugoslav People's Army and Serbian paramilitary forces could not be assessed as a mitigating circumstance for the defendants (as the courts render justice in the name of the Republic of Croatia and the aforementioned military forces attacked Croatia), the question is why the courts did not assess PTSD as a mitigating circumstance for Serbian defendants in any given case because it is logical that they too, as a result of participation in traumatic war events, could suffer from mental problems. We also deem it problematic that participation in the Homeland War *per se* and unspecified contribution to defence of the Homeland is assessed as a mitigating circumstance[59] when it comes to members of Croatian forces.

In one third of the cases in which the sentence imposed was lower than the minimum sentence, the courts insufficiently and without argumentation, referring only to general formulations, noted that the established mitigating circumstances "justify the application of the provisions on sentence mitigation."[60] In

59 On the contrary, recommended jurisprudence shows that "contribution to the Homeland War, whatever it might be, cannot lead to the shifting of the stipulated prison sentence from the general and special minimum ... because of the bestiality and monstrosity of the crime. Lack of prior convictions does not constitute a mitigating circumstance because this is not some unexpectedly good behaviour that should be 'rewarded', but a normal and expected behaviour", judgment of the Vukovar County Court K-5/07 of 12 February 2008, defendant Madi et al., upheld by the Supreme Court's judgement I Kz 910/08-10 dated 25 March 2009. *Mutatis mutandis*, the latter could also be applied to other mitigating circumstances noted in the analyzed cases. The Sisak County Court in the case against defendant Banović et al. noted that in war crimes there is "highly expressed need to use as stringent sentences as possible to raise awareness in others about legal and civilization inadmissibility of such conduct" and therefore did not find any meaningful application of the provisions on sentence mitigation.

60 Although the courts described them as particularly mitigating circumstances, as the basis for judicial mitigation of sentence, they often quoted common circumstances such as: a family man, father of several children, no property, no criminal record, at the time of commission of the offence he was a minor / immature / thoughtless / of younger age, family and material circumstances of the defendant, the lapse of time since the commission of the offence, appropriate behaviour before the court, did not contribute to delays in the proceedings, degree of endangering protected values, participant in the Homeland War, a highly-decorated, voluntary surrender, acting on someone else's orders, unemployment, social situation.

some cases the identified mitigating circumstances, with their specificities and in their entirety, indeed justified the status of particularly mitigating circumstances because they indicated a specific relation between the defendant and his criminal offence and protected values, and were not just a list of generalized statements.[61]

Although the ICTY treats the position of authority (a superior)[62] as an aggravating circumstance[63], in court practice in Croatia this fact has no bearing on the degree of punishment. As aggravating circumstances, the courts took, for instance, cruel treatment, danger of the act, ruthlessness, perseverance, insensitivity, but it ultimately did not correspond to the degree of imposed criminal sanction. Although many crimes committed, in their dreadfulness show the complete rupture with the concept of civilization and in words of Hannah Arendt they constitute "an attack on human diversity as such, that is the essential feature of 'human status' without which the terms 'mankind' and 'humanity' lose all meaning"[64], only in two of all the examined war crime cases we found the imposition of the maximum long-term imprisonment in the duration of 20 years.

Conclusion

The role of the Supreme Court as a guarantee of ensuring uniform application of the law and equality of all in its application, stipulated by the Constitution of the Republic of Croatia (OG 76/10, Art. 116) and the Courts Act (OG 28/13, Art. 20, par. 1), can be directly applied to the judicial policy of punishment. As the highest judicial instance in Croatia and the appellate court in war crimes cases, the Supreme Court has a duty to provide a uniform and harmonized punishment of all perpetrators of criminal acts. It would also mean elimination of all significant deviations in imposing criminal sanctions which *ipso facto* lead to citizens' inequality in the application of the law, if prison sentences in significantly different duration would be pronounced for the same or similar criminal offences.

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61 For instance: contribution after leaving the JNA by joining the Croatian Army, he did not want to shoot at.... but did not muster personal courage to jump out of the chain of command; helped other soldiers to leave the JNA; taking things of no great value; terror and intimidation did not cause the most serious consequences; under certain circumstances he was "good to the prisoners"; assisted a civilian not to be further endangered; he was a member of the transitional police under the jurisdiction of the UN and later of the Croatian MUP (Ministry of Interior); assisted people of non-Serb ethnicity; contribution in revealing who committed a crime; he was forced to join territorial defence (enemy) units; person of modest education; weak physical constitution, he was unable to resist; at the relevant time he protected persons of Croat ethnicity; when committing the crime, only one person was affected by violence (the amount of criminal deeds was not high); the offence he committed did not leave lasting consequences in the form of death or impairment of health; returned to Croatia with his family deeming it to be his homeland; leaves retirement check to children from his first marriage and in a new marriage he got a child that he had to abandon when the child was only a few months old.

62 This does not pertain to cases where commanding position is a part of statutory definition of the criminal offence.

63 ICTY trial chamber judgements in Krstić and Blaškić cases.

64 Arendt, Hannah, Eichmann in Jerusalem – A report on the Banality of Evil, Politička kultura, Zagreb, 2002, p. 247.

Despite some examples which strikingly pointed to the fact that, for comparable and in its severity and manner of commission similar criminal offences, the courts rendered significantly higher sentences to Serb than to Croatian perpetrators of war crimes[65], a detailed insight and analysis of all the available case files of proceedings completed with final judgments in the period between 2000 and 2014 did not lead us to the conclusion that this was a part of some general judicial practice. There were individual cases which differed significantly from the average and in which, on the one hand, Croatian perpetrators were not harshly punished, while on the other hand Serb perpetrators of these specific offences were punished too harshly. In addition, we came to the conclusion that courts in general excessively and arbitrarily determine the existence of mitigating and particularly mitigating circumstances and impose too lenient criminal sanctions against perpetrators (who are, in the theory of the international criminal and humanitarian law, rightly considered *hostis generis humanis*) of these extremely serious offences with particularly hazardous and, for the society as a whole, far-reaching destructive consequences.[66]

While doing so, courts are not obeying the legal opinion of the Supreme Court on their duty to reason the existence of particularly mitigating circumstances. When members of Croatian troops are concerned, defendants' participation in the Homeland War *per se* is taken as a mitigating circumstance. Although courts rule on behalf of the Republic of Croatia and members of Croatian forces represented and defended the interests of that same Republic of Croatia during the war, it is somewhat logic that this circumstance is taken into account as mitigating, still in the large majority of cases courts approached it uncritically, not taking into consideration specific contribution of a defendant to the protection of certain protected values that he could accomplish during the war as a member of Croatian forces (for instance, by rescuing or by protecting civilians in an attack etc.). Contribution to the defence of Croatia itself was valued as a mitigating circumstance, whereby members of Croatian forces were placed in an advantageous position compared to members of Serb and other forces, whose participation in the war on the enemy side certainly was not assessed as a mitigating circumstance.[67]

65 See footnote 55.

66 Mild sentences imposed against perpetrators of the most serious crimes, viewed from a historical point of view, is not a novelty. German courts after the World War II pronounced stunningly low sentences to some Nazi military and political officials. For example, Emanuel Schafer, commander of the Nazi Security Police (Gestapo) in Serbia was sentenced to six years and six months in prison for the killing of 6,280 Jewish women and children in mobile gas chambers.

67 An exception with this regard is the judgment of the Zagreb County Court against Željko Gojak, K-rz-2/10 7 of 28 February 2012, upheld by the Supreme Court, in which the Court did not find that the defendant's participation in the Homeland War in itself constituted a mitigating circumstance because the perpetrator damaged the reputation of the armed forces of the Republic of Croatia with his prohibited conduct, as the presiding judge pointed out during the pronouncement and oral explanation of the judgment. Unfortunately, he did not repeat it in the written judgment and thus missed the opportunity to light up the path to new and high quality jurisprudence.

Compared to numerical indicators and presented conclusions of the study, one should bear in mind that the analyzed cases were completed with final sentences in the period after 2000 when the socio-political context of war crime trials changed and evolved from the disgraceful thesis by the former President of the Supreme Court Milan Vuković, stating that Croatian soldiers could not commit war crimes in a defensive war, towards a standpoint that war crimes should be prosecuted equally, regardless of the ethnicity of their perpetrators and victims. Likewise, one should take into account that many members of Serb military and paramilitary forces were tried *in absentia* because of their unavailability to Croatian law enforcement authorities and, as such, they did not enter the scope of our study.

Lastly, it is important to highlight that courts should pay more attention to careful determination and assessment of mitigating and aggravating circumstances on the part of the defendant charged with war crimes and should become more aware of a serious social danger of such criminal acts to the society as a whole and should refrain, except in truly exceptional cases, from imposing sentences below the prescribed minimum. Having reviewed the minutes from the main hearings, as well as judgments of respective criminal cases, we found that judicial councils and parties to the proceedings were predominantly engaged in establishing defendants' guilt, while neglecting the circumstances related to sentencing. Similar is the situation before the ICTY, whose judgments nevertheless pay more attention to the penal segment than is the case with judgments of national courts. In order to find an efficient solution to the problem of neglecting this important role of the judiciary, a trend arose in international criminal law, in proceedings before the International Criminal Court and the Special Tribunal for Sierra Leone, taken from the common law legal tradition, that the sentencing proceeding is separated from the rest of the criminal proceedings in which defendant's guilt is established.

One of the fundamental elements of any criminal justice system is consistency in punishment, which does not mean that trial and appeals chambers are bound by the degree of sentences imposed in other cases simply because the circumstances of the cases were similar. The courts should take into account such cases with similar circumstances on the defendant's side and similar incriminations, as well as patterns of sentences pronounced when creating their punishment policy.[68] The Supreme Court should stick to its task of unification of jurisprudence when deciding upon appeals in these, in many ways specific criminal cases, by having a complete insight into the trials for respective criminal acts, for the more efficient prosecution of which even special departments of county courts have been established.

68 Such a standpoint was assumed by the Appeals Chamber of the ICTY in Čelebići case.

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TABLE OVERVIEW OF THE MONITORED WAR CRIME TRIALS BEFORE CROATIAN COUNTY COURTS IN 2013

Trials in which first instance judgments were rendered by county courts

	CASE / STATUS	INDICTMENT / CRIMINAL OFFENCE / PROSECUTION	COURT / COUNCIL (JUDGES' PANEL)	DEFENDANTS / MEMBERS OF CROATIAN/SERB FORMATIONS / DETENTION	JUDGMENT	VICTIM(S)	REMARKS / FAIR TRIAL RELATED ISSUES
1	CRIME IN NOVSKA II The repeated trial at first instance is concluded. Previously, on 10 July 2012, the VSRH quashed the Sisak County Court's Judgment of 16 April 2010 wherein Damir Vid Raguž was sentenced to 20 years in prison and Željko Škledar was acquitted.	Indictment No. K-DO -16/09 of 15 January 2010 issued by the Sisak ŽDO[69], amended in April 2010. War crime against civilians Prosecution: Jadranka Husić, County Deputy State's Attorney in Sisak	County Court Zagreb War Crimes Council: judge Tomislav Juriša, Council President; judges Mirko Klinžić and Petar Šakić, Council Members	Damir Vid Raguž and Željko Škledar Members of Croatian formations Damir Vid Raguž is a fugitive. Trial against him was conducted in his absence. Željko Škledar attends the trial and is not detained. He was detained only until the pronouncement of the first instance judgment in the previous trial.	On 7 March 2013, the Zagreb County Court's War Crimes Council rendered the judgment of acquittal.	Victims – tortured and killed: Sajka Rašković, Mišo Rašković, Mihajlo Šeatović and Ljuban Vujić	One of the cases in which the Amnesty Act had been incorrectly applied during the 90s. Namely, the trial was conducted in 1992 in respect of the relevant event. The trial was conducted against defendant Raguž and now-deceased Dubravko Leskovar. The Military Prosecution in Zagreb legally qualified this offence as a murder. However, the Military Court in Zagreb discontinued the criminal proceedings by applying the Act on Amnesty from Criminal Prosecution and Procedures for Criminal Offences Committed in Armed Conflicts and in the War against the Republic of Croatia.

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

2	CRIME IN NOVSKA III The final judgment is rendered and thus the trial is completed. Previously, on 21 February 2012, the VSRH quashed the Sisak County Court's first instance judgment wherein the VSRH rejected the charge against Željko Belina and Dejan Milić and confirmed the part of the first-instance judgment in which the charge against Ivan Grgić and Zdravko Plesec was rejected.	Indictment No. K-DO-35/08 of 9 July 2010 issued by the Sisak ŽDO, amended by the Zagreb ŽDO (K-DO-254/12) War crime against civilians Prosecution: Jadranka Huskić, County Deputy State's Attorney in Sisak	County Court Zagreb War Crimes Council: judge Marijan Garac, Council President; judges Petar Šakić and Zdravko Majerović, Council Members	Željko Belina and Dejan Milić Members of Croatian formations They attend the trial undetained.	On 8 March 2013, the Zagreb County Court's War Crimes Council pronounced the first instance judgment in which the defendants were found guilty and sentenced to prison. Defendant Željko Belina was sentenced to 10 and Dejan Milić to 9 years in prison. On 29 October 2013, the VSRH upheld the conviction at first instance.	Victims: - killed: Goranka Mileusnić, Vera Mileusnić and Blaženka Slabak - maltreated and wounded: Petar Mileusnić	One of the cases in which the Amnesty Act had been incorrectly applied during the 90s. Namely, the investigation was carried out in respect of the relevant event in 1992 against Željko Belina, Ivan Grgić, Dubravko Leskovar, Dejan Milić and Zdravko Plesec for murder and attempted murder. After the investigation, the Military Prosecution in Zagreb dropped charges against Grgić and Plesec, while in respect of Belina, Leskovar and Milić the trial continued before the Zagreb Military Court and ended on 2 November 1992. The decision was issued on discontinuation of the criminal proceedings by applying the Amnesty Act. Later on, the injured parties lodged a criminal report against the same persons for the mentioned event but for the commission of a war crime against civilians.

3	CRIME IN BAĆIN The trial at first instance is concluded.	Indictment No. KT-89/94 of 29 October 2010 issued by the Sisak ŽDO. War crime against civilians Prosecution: Doris Hrast, County Deputy State's Attorney in Rijeka	Rijeka County Court (the case was delegated from the Sisak County Court) War Crimes Council: judge Ika Šarić, Council President; judges Zoran Sršen and Srebrenka Šantić, Council Members	Branko Dmitrović, Slobodan Borojević, Milinko Janjetović, Momčilo Kovačević, Stevo Radunović, Veljko Radunović, Katica Pekić, Marin Krivošić and Stevan Dodoš Members of Serb formations Marin Krivošić is the only defendant available to the court. He was extradited from Montenegro and detained until the judgment pronouncement. Other defendants are tried in their absence.	On 11 March 2013, the Rijeka County Court's War Crimes Council sentenced seven defendants to the following prison sentences: Milinko Janjetović, Momčilo Kovačević, Stevo Radunović and Veljko Radunović to 20, and Branko Dmitrović, Slobodan Borojević and Stevan Dodoš to 15 years in prison each. The charge was rejected in respect of defendants Dragica Pekić and Marin Krivošić. In the amended indictment, the two of them were charged with armed rebellion and thus the provisions of the Amnesty (General Pardon) Act were applied in their case.	Victims – killed (minimum 56 persons): Antun Švračić, Marija Švračić, Josip Antolović, Marija Batinović, Nikola Lončarić, Soka Pezo, Mijo Čović, Ana Ferić, Stjepan Sabljar, Terezija Kramarić, Filip Jukić, Antun Djukić, Marija Djukić, Ana Dikulić, Mijo Krnić, Antun Mucavac, Katarina Vladić, Marija Milašinović, Marija Jukić, Marija Šestić, Antun Krivaić, Ana Tepić, Veronika Jukić, Soka Volarević, Kata Lončar, Marija Antolović, Katarina Alavančić, Kata Ferić, Juraj Ferić, Terezija Alavančić, Barbara Kropf, Ana Piktija, Pavao Kropf, Ruža Dikulić, Veronika Stanković, Ivan Kulišić, Sofija Dikulić – all from Hrvatska Dubica; Ana Blinja, Andrija Likić, Ana Lončar, Josip Blinja, Kata Blinja – all from Cerovljani; Mara Čorić from Predor and 13 still not identified persons.	The witnesses could not come to Rijeka to be heard and, therefore, the Council President heard the mentioned witnesses at the Municipality Court in Hrvatska Kostajnica. Only one defendant is available to the court. The indictment's quality is doubtful. In the end, the prosecution amended the factual description, and for certain defendants also the legal description and legal qualification, of the offence.
4	CRIME IN BARANJA (defendant Tihomir Kašanin) The final judgment is rendered and thus the trial is completed.	Indictment No. KT-136/94 issued by the Osijek ŽDO, amended on 26 February 2013 and 11 March 2013, when the factual description and the legal qualification of the offence was modified into armed rebellion under Article 235, paragraph 1 of the KZRH. War crime against civilians Prosecution: Miroslav Dasović, County Deputy State's Attorney in Osijek	Osijek County Court War Crimes Council: judges Zvonko Vekić, Council President, judges Nikola Sajter and Damir Krahulec, Council Members	Tihomir Kašanin Member of Serb formations The defendant was extradited from Great Britain, the citizenship of which he holds. He was released from the custody following the pronouncement of the judgment.	On 11 March 2013, the Osijek County Court's War Crimes Council applied the Amnesty (General Pardon) Act and rendered the judgment rejecting the charge.	Victims - maltreated: Mato Filipović and Franjo Verner	The defendant is charged with the commission of war crime against civilians. After issuing the international APB, he was extradited from the Great Britain but, following the conducted presentation of evidence, the prosecution modified the factual description and legal qualification of the criminal offence into armed rebellion.

5	CRIME IN MAJA The repeated trial at first instance is concluded. Previously, on 28 September 2010 the VSRH quashed the Sisak County Court's judgment of 13 November 2009 wherein, following the conducted reopened trial, Španović was sentenced to 3 years and 5 months in prison.	Indictment No. KT-53/93 of 13 August 1993 issued by the District State Attorney's Office in Sisak. War crime against civilians Prosecution: Marijan Zgurić, County Deputy State's Attorney in Sisak	County Court Zagreb War Crimes Council: judge Marijan Garac, Council President; judges Petar Šakić and Ratko Šćekić, Council Members	Milan Španović Member of Serb formations He attends the trial undetained. On 19 August 2009, Great Britain extradited him to Croatia. He spent three years and five months in extradition detention unit in the UK and in the Sisak's prison and detention unit. His detention was vacated after the pronouncement of the judgment on 13 November 2009.	On 14 March 2013, the Zagreb County Court's War Crimes Council quashed in its entirety the prior final judgment rendered by the Sisak County Court on 17 November 1993 in which the defendant was found guilty and sentenced to 20 years in prison, and acquitted the defendant.	Shooting houses belonging to: Anka Goršeta, Šime Goršeta, Stjepan Lamza and Milka Mičija; Alienated: corn picker owned by Marko Lamza.	This is an example of unprofessional and biased bringing charges in the 90s. Španović was, among other 18 defendants unavailable to Croatian judiciary, found guilty and sentenced to 20 years in prison in the judgment rendered by the Sisak County Court. Court appointed defence counsel, who represented all defendants and did not lodge a complaint against the first-instance judgment. The explanation in the judgment according to which 19 persons were sentenced to 20 years in prison each, was drafted in only two pages. After extradition from the UK and reopened trial, he was sentenced to prison for the period which exactly corresponded the period which he already spent in extradition detention in the UK and in prison and detention ward in Sisak. The trial against other defendants was reopened and then discontinued in the course of several years. In the repeated trial, the defendant was acquitted because the court applied the Criminal Code which is more favourable to the defendant, which entered into force on 1 January 2013.

6	CRIME IN BAPSKA (defendant Radojko Radmilović) The final judgment is rendered and thus the trial is completed.	Indictment No. KT-86/95 of 14 June 1996 issued by the Osijek ŽDO, taken over from the Vukovar ŽDO under No. DO-K-53/99, specified by a memo of 16 July 2002 and on 25 October 2004, presently No. K-DO-3/13 of 9 January 2013 of the Osijek ŽDO. War crime against civilians Prosecution: Vlatko Miljković, County Deputy State's Attorney in Vukovar	Osijek County Court War Crimes Council: judge Darko Krušlin, Council President; judges Mario Kovač and Zvonko Vrban, Council Members	Radojko Radmilović Member of Serb formations In December 2011, Radmilović was apprehended in the village of Martinci near Sremska Mitrovica in the Republic of Serbia where he was living as a refugee. In 2012, he was extradited to the Republic of Croatia. Detained.	On 20 March 2013, after the reopened trial, the Osijek County Court partially quashed in the factual part the prior judgment rendered in 2004 by the Vukovar County Court, which had been confirmed by the VSRH judgment. However, the Osijek County Court left in force Radmilović's three-year prison sentence. On 4 September 2013, the VSRH confirmed the first instance judgment.	Victims: - intimidated or plundered: Marija Adamec, Marinko Kovačić and Andrija Kovačić - expelled: 69 inhabitants of Croat ethnicity living in Bapska	The defence counsel suggested no presentation of evidence before the court. Considering the fact that the defendant was a young adult at the time when the crime was committed, we are of the opinion that a psychiatric expertise should have been carried out to determine whether the defendant was able at that time to comprehend and manage his own actions.
7	CRIME IN THE VILLAGES ALONG THE UNA RIVER NEAR HRVATSKA KOSTAJNICA The third (second repeated) trial at first instance is concluded. Previously, on 5 September 2012, the VSRH quashed the Zagreb County Court's judgment wherein, following the conducted repeated trial, the defendants were found guilty and sentenced: Pero Đermanović to 9, Dubravko Čavić to 7 and Ljubiša Čavić to 2 years of imprisonment.	Indictment No. K-DO-10/09 of 5 November 2009 issued by the Sisak ŽDO. War crime against civilians Prosecution: Robert Petrovečki, County Deputy State's Attorney in Zagreb	County Court Zagreb War Crimes Council: judge Zdravko Majerović, Council President; judges Tatjana Ivošević Turk and Tomislav Juriša, Council Members	Pero Đermanović, Dubravko Čavić and Ljubiša Čavić Members of Serb formations Defendant Pero Đermanović was in custody from 6 May 2009 until 12 November 2012. On 26 March 2013, obligatory detention was ordered against him after the pronouncement of the conviction. Dubravko Čavić is a fugitive from justice and thus is tried in his absence. Ljubiša Čavić attends the trial undetained.	On 26 March 2013, the Zagreb County Court's War Crimes Council pronounced the first instance judgment wherein defendants Pero Đermanović, Dubravko Čavić and Ljubiša Čavić were found guilty and sentenced as follows: Đermanović to 9, Dubravka Čavić to 7, and Ljubiša Čavić to 2 years of imprisonment. On 9 October 2013 the VSRH quashed the first instance judgment and remanded the case back to the first instance court for a retrial, but before completely changed composition of the court council.	Victims: - unlawfully detained, tortured and killed: Vladimir Letić - burned houses belonging to: Stevo Karanović and Ivo Karanović	The VSRH quashed two times the first-instance judgments in which the defendants were found guilty. This is already the third time that they were found guilty. When pronouncing judgment, the Council President did not present any judgment arguments. He stated that he was not obliged to provide the arguments of the judgment to the public because the defendants were not present at the judgement pronouncement. It was obvious that he was referring to war crime trials monitors, because they were the only ones present as the public at the pronouncement of the judgement.

8	CRIME NEAR MRKONJIĆ GRAD The trial at first instance is concluded.	Indictment No. K-DO -K-DO-200/11 of 29 July 2011 issued by the Zagreb ŽDO. War crime against civilians Prosecution: Robert Petrovečki, County Deputy State's Attorney in Zagreb	County Court Zagreb War Crimes Council: judge Tomislav Juriša, Council President; judges Petar Šakić and Jadranka Mandušić, Council Members - from 31 January 2013 judge Lidija Vidjak replaced Petar Šakić; and from 20 May 2013 Petar Šakić replaced judge Vidjak.	Tihomir Šavorić, Ivica Krklec and Alen Toplek Members of Croatian formations Defendant Tihomir Šavorić is under custody on the basis of first instance judgment rendered by the Zagreb County Court on 24 October 2011 in which he, in his capacity as the 2nd defendant in the trial against Emil Črnčec et al., was found guilty and sentenced to 6 years in prison for the commission of war crime against prisoners of war. Defendants Ivica Krklec and Alen Toplek attended the trial and were not detained.	On 23 May 2013, the Zagreb County Court's War Crimes Council rendered the judgment of acquittal.	Victims – maltreated and killed: Two unidentified female persons, two unidentified men.	On 15 May 2012, the trial council separated from the court file the 2nd defendant's deposition provided to police authorities in which he confessed the crime, because this trial council viewed it as inadmissible evidence. On 11 September 2012, based on the prosecution's appeal, the VSRH quashed such decision of the mentioned trial council.

9	CRIME IN PROKLJAN AND MANDIĆI The repeated trial at first instance is concluded. Previously, on 5 April 2007 the VSRH quashed the Šibenik County Court's judgment of 11 September 2002 wherein the defendants were acquitted.	Indictment No. K- DO-45/01 of 1 March 2002 and 11 May 2007 issued by the Šibenik ŽDO. War crime against civilians and war crime against prisoners of war Prosecution: Zvonko Ivić, County Deputy State's Attorney in Šibenik	Split County Court (the case was delegated from the Šibenik County Court) War Crimes Council: judge Ivona Rupić, Council President; judges Stanko Grbavac and Mlađan Prvan, Council Members	Božo Bačelić, Ante Mamić, Luka Vuko and Jurica Ravlić Members of Croatian formations Božo Bačelić is in custody. He was arrested in Germany in February 2012 and extradited to Croatia in April 2012. Other defendants attend the trial undetained. They were kept in custody until the expiry of maximum detention period and after that, detention against them was vacated.	On 13 June 2013, the Split County Court's War Crimes Council pronounced the first instance judgment wherein Božo Bačelić was sentenced to an aggregate sentence of five years and ten months of imprisonment. Ante Mamić and Jurica Ravlić were acquitted of the charge that they participated in the killing of POW, whilst the charge for aiding and abetting the perpetrator after the killing of two civilians (charged were Mamić, Ravlić and Vuko) was rejected because it came to the statue of limitations.	Victims - killed: Milica Damjanić and Nikola Damjanić (civilians) and Vuk Mandić (POW)	This trial has been conducted since 2001. The defendants were detained until the pronouncement of the acquittal at first instance. The VSRH quashed it and as a consequence defendants Mamić, Vuko and Ravlić were detained again whilst Bačelić ran away. The trial against Mamić, Vuko and Ravlić was not conducted because neither the decision on trial in absence of Božo Bačelić nor the decision on separation of the trial was issued. Bačelić received minimum sentences for the commission of war crime against civilians and against POWs. This was not well accepted by the families of the killed and missing civilians during and after the Military Operation „Storm". However, this punishment can be also observed in the context of low sentences in general, when pronounced for war crimes.
10	RAPE CRIME IN DALJ The trial at first instance is concluded.	Indictment issued by the Osijek ŽDO War crime against civilians Prosecution: Miroslav Dasović, County Deputy State's Attorney in Osijek	Osijek County Court War Crimes Council: judge Zvonko Vekić, Council President; judges Ninoslav Ljubojević and Miroslav Rožac, Council Members	Ljubinko Radošević and Vojislav Grčić Members of Serb formations Detained	On 4 September 2013, the Osijek County Court's War Crimes Council rendered the judgment wherein each defendant was sentenced to 12 years in prison.	Victim - raped: one female person	The trial hearing sessions were closed to the public. Despite that, the media was publishing what was going on at those trial sessions and disclosing the witness names, mainly of the injured party family members who were heard at the hearing.

11	CRIME IN SABORSKO The trial at first instance is concluded.	Indictment No. K-DO-4/03 of 22 December 2011 issued by the Karlovac ŽDO. War crime against civilians Prosecution: Nenad Bogosavljev, County Deputy State's Attorney in Rijeka	Rijeka County Court War Crimes Council: judge Ika Šarić, Council President; judges Zoran Sršen and Srebrenka Šantić, Council Members	Zdravko Pejić Member of Serb formations Unavailable	On 23 September 2013, the Rijeka County Court's War Crimes Council pronounced defendant Pejić guilty and sentenced him to 15 years in prison.	Victims – killed: Nikola and Kata Dumančić	Pejić's habitual residence is unknown and thus he was tried in his absence. According the allegations contained in the indictment, his last known residence was in Kotor Varoš, in Bosnia and Herzegovina. The pronounced sentence was considerably higher than the sentences against individual members of Croatian formations, for the offences when comparing the way of commission and the consequences.
12	CRIME IN PODVOŽIĆ The trial at first instance is concluded.	Indictment No. K-DO-33/10 of 18 April 2011 issued by the Karlovac ŽDO. Unlawful killing and wounding the enemy Prosecution: Gordana Križanić, County State's Attorney in Karlovac	Karlovac County Court War Crimes Council: judge Ante Ujević, Council President; judges Alenka Laptalo and Denis Pancirov, Council Members	Marko Bolić Member of Serb formations Attends the trial. At the beginning of 2013, having spent two and a half years in custody, detention against him was vacated.	On 7 November 2013, the Karlovac County Court's War Crimes Council pronounced defendant Marko Bolić guilty and sentenced him to 9 years in prison.	Victims – killed: Marijan Jakšić and Darko Tuškan	The main hearing had to start anew on several occasions because long recesses were occurring frequently. The longest recess was more than a year (from November 2011 until January 2013). During that time, certain witnesses were heard in Serbia by court request because the Karlovac Court was not equipped with a video-link. The whole time, the defendant was kept in custody. The pronounced sentence was considerably higher than the sentences against individual members of Croatian formations, for the offences when comparing the way of commission and the consequences.
13	CRIME IN KNIN The reopened trial at first instance is concluded. In 1993, the defendant was sentenced in absentia to 6 years in prison.	Indictment No. KT-15/92 of 2 June 1992 issued by the District State's Attorney Office in Šibenik. War crime against prisoners of war Prosecution: Branko Čvrljak, County Deputy State's Attorney in Split	Split County Court War Crimes Council: judge Ivona Rupić, Council President; judge Ljiljana Stipišić and Vladimir Živaljić, Council Members	Nikša Beara Member of Serb formations Detained	After the conducted reopened proceedings, defendant Nikša Beara was found guilty and sentenced to 3 years and 10 months in prison.	Victims – physically maltreated: Željko Mrkonjić, Mirko Gogić, Ante Cvitković and Ante Topić	On 29 September 1993, the Šibenik District Court sentenced Petar Krivić, Nikša Beara, Željko Bjedov and Dušan Novaković for the maltreatment of POWs in the Knin prisons. Krivić, Beara and Bjedov received sentences in the duration of 6, and Novaković of 10 years of imprisonment. Later on, Bjedov was acquitted in the reopened trial.

14	CRIME IN SISAK The trial at first instance is concluded.	Indictment No. K-DO-53/11 of 16 December 2011 issued by the Osijek ŽDO. War crime against civilians and war crime against prisoners of war Prosecution: Miroslav Kraljević, County Deputy State's Attorney in Osijek	Osijek County Court War Crimes Council: judge Zvonko Vekić, Council President; judges Ružica Šamota and Ante Kvesić, Council Members	Vladimir Milanković and Drago Bošnjak Members of Croatian formations Vladimir Milanković is kept in custody. Darko Bošnjak was kept in custody until the pronouncement of the acquittal verdict at first instance.	On 9 December 2013, the first instance judgment was pronounced wherein Vladimir Milanković was found guilty for war crime against civilians and sentenced to 7 years in prison, and for war crime against prisoners of war to 2 years. Therefore, he received an aggregate sentence to 8 years of imprisonment. Drago Bošnjak is acquitted.	Victims: - killed/missing: Vlado Božić, Zoran Vranešević, Branko Oljača, Željko Vila, Evica Vila, Marko Vila, Dušan Vila, Mlađo Vila, Nikola Trivkanović, Zoran Trivkanović, Berislav Trivkanović, Jovan Crnobrnja, Rade Španović, Stevo Ratković, Ljubica Solar, Milan Cvetojević, Petar Pajagić, Vojislav Trbulin, Stanko Martinović, Stevo Borojević, Miloš Čalić, Vaso Jelić, Nikola Drobnjak, Miloš Brkić and Dragan Miočinović - unlawfully apprehended and/or maltreated: Stevo Brajenović, Dmitar Brajenović, Milan Slavulj, Miodrag Stojaković, Sveto Mijić, Gojko Lađević, Nenad Tintor, Živko Živanović, Obrad Štrbac, Milan Davorija, Stevo Miodrag, Mićo Mitrović, Pero Dragojević, Ivica Bišćan, Dobrila Crnobrnja, Milorad Ratković, Blažana Ratković, Danica Ratković, Dragica Subanović, Branko Subanović, Lazo Ostojić, Danica Ostojić, Dragan Ostojić, Mirko Drageljević, Neđeljka Drageljević, Nikola Batula, Milica Batula, Đuro Cvetojević, Dragomir Cvetojević, Mihajlo Mrkonja, Živko Goga, Milan Vasiljević, Nikola Arnautović, minor Živko Vujanić, Ranko Davidović, Ratko Miljević, Miloš Gojić, Blagoje Savić, Radivoj Crevar, Ljuban Vukšić, unidentified civilian aged about 45, Boško Subotić	The transport issue of witnesses from Sisak to Osijek is not resolved – this is one of the reasons why only few witnesses responded to the summons for the main hearing. At certain trial hearing sessions, not a single question was addressed to the witnesses who arrived from places, some of which were more than 200 km away from Osijek. The Council requested several times from the prosecution and the defence to state whether all witnesses need to be summoned or reading before court their previous dispositions would be sufficient, for the trial to be efficient and cost-effective.

Trials with ongoing main hearings

	CASE/ STATUS	INDICTMENT / CRIMINAL OFFENCE / PROSECUTION	COURT / COUNCIL (JUDGES' PANEL)	DEFENDANTS / MEMBERS OF CROATIAN/SERB FORMATIONS / DETENTION	VICTIM(S)	REMARKS / FAIR TRIAL RELATED ISSUES
1	CRIME IN GRUBORI The trial at first instance is ongoing. The main hearing began on 24 November 2011.	Indictment No. K-DO-358/09 of 15 December 2010 issued by the Zagreb ŽDO. War crime against civilians Prosecution: Robert Petrovečki, County Deputy State's Attorney in Zagreb	County Court Zagreb War Crimes Council: judge Zdravko Majerović, Council President; judges Mirko Klinžić and Marijan Garac, Council Members	Frano Drljo and Božo Krajina Members of Croatian formations They attend the trial undetained. They were kept in custody, but during the hearing detention against them was vacated.	Victims – killed: Milica Grubor, Marija Grubor, Jovo Grubor, Jovan Grubor of late Damjan, Miloš Grubor and Đuro Karanović	The indictment was also laid against Igor Beneta but the trial against him had to be discontinued due to his death. It was disputable whether he committed suicide or not, and MUP established later on that he committed suicide. Appointed defence counsel representing the 2nd defendant, due to her absence at court hearings, frequently appointed defence counsels to replace her. However, often they were inactive, and thus the defendant was rising by himself self-incriminating questions. Therefore, despite the fact that the defendant's right to defence was formally-legally satisfied, we use this example to point out to the omission in the representation.
2	CRIME IN PAKRAČKA POLJANA AND AT ZAGREBAČKI VELESAJAM The trial at first instance is ongoing. The main hearing began on 9 February 2012.	Indictment No. K-DO-406/10 of 8 June 2011 issued by the Zagreb ŽDO. War crime against civilians Prosecution: Silvio Sušec, County Deputy State's Attorney in Zagreb	County Court Zagreb War Crimes Council: judge Zdravko Majerović, Council President; judges Petar Šakić and Ratko Šćekić, Council Members	Tomislav Merčep Member of Croatian formations He attends the trial undetained. He was kept in custody until 5 July 2012. Detention against him was vacated because the Zagreb County Court's extra-trial chamber was of the opinion that the defendant, considering the conditions in the Hospital for persons held in custody, could not be provided with adequate medical care and necessary physical therapy.	Victims: - killed: M.C., P.I., O.S., S.I., M.V., Lj.V., Lj.H., T.K., B.V., M.I., R.P., M.G., V.M., M.M., V.S., unknown male person nicknamed S., M.Z., M.Z., A.Z. and 24 unidentified person; - maltreated and missing: P.R., K.R. and M.R. - maltreated: Đ.G., N.M., D.M., S.B., N.P. and B.V.	It was often the case that the main hearing was held in the court-room which was too small. Certain witnesses-injured parties were not cautioned about the possibility to file a pecuniary claim.

3	CRIME AT OLAJNICA IN VUKOVAR The trial at first instance is ongoing. The main hearing began on 3 June 2013.	Indictment No. K-DO-88/12 of 18 February 2013 issued by the Osijek ŽDO. War crime against civilians Prosecution: Miroslav Šarić, County Deputy State's Attorney in Vukovar	Osijek County Court War Crimes Council: judge Krunoslav Barkić, Council President; judges Ninoslav Ljubojević and Zvonko Vekić, Council Members	Milan Đekić Member of Serb formations Detained	Victim - killed: Aleksandar Laba	
4	CRIME AT MILJEVAC PLATEAU The trial at first instance is ongoing. The main hearing began on 2 October 2012.	Indictment No. K-DO-16/02 of 6 June 2011 issued by the Šibenik ŽDO. War crime against prisoners of war Prosecution: Sanda Pavlović Lučić, County Deputy State's Attorney in Šibenik	Split County Court War Crimes Council: judge Bruno Klein, Council President; judges Davor Svalina and Marica Šćepanović, Council Members	Ante Babac and Mišo Jakovljević Members of Croatian formations Detained	Victim - killed: Miroslav Subotić	
5	CRIME IN OSIJEK The trial at first instance is ongoing. The main hearing began on 29 October 2012. Due to incapacity of the defendant Sivić to stand trial because of his illness, the case had been separated from the trial against Branimir Glavaš et al., who already received final sentences.	Indictment No. K-DO-2/11 of 16 April 2007 issued by the Osijek ŽDO, amended in respect of defendant Sivić on 27 October 2011. War crime against civilians Prosecution: Miroslav Kraljević, County Deputy State's Attorney in Osijek	Osijek County Court War Crimes Council: judge Krunoslav Barkić, Council President; judges Miroslav Rožac and Darko Krušlin, Council Members	Mirko Sivić Member of Croatian formations He attends the trial undetained	Victims - killed: not identified male person and Alija Šabanović	

6	CRIME IN THE MEDAK POCKET The trial at first instance is ongoing. The main hearing began on 5 March 2013.	Indictment No. K-DO-84/12 of 31 August 2012 issued by the Zagreb ŽDO. War crime against civilians Prosecution: Jurica Ilić, County Deputy State's Attorney in Zagreb	Zagreb County Court War Crimes Council: judge Ivan Turudić, Council President; judges Zdenko Posavec and Ratko Šćekić, Council Members	Velibor Šolaja Member of Croatian formations He attends the trial undetained	Victim - killed: one female person	
7	CRIME IN THE MEDAK POCKET The trial at first instance is ongoing. The main hearing began on 17 June 2013.	Indictment No. K-DO-84/12 of 20 December 2012 issued by the Zagreb ŽDO. War crime against civilians and war crime against prisoners of war Prosecution: Jurica Ilić, County Deputy State's Attorney in Zagreb	Zagreb County Court War Crimes Council: judge Ratko Šćekić, Council President; judges Petar Šakić and Zdenko Posavec, Council Members	Josip Krmpotić Member of Croatian formations He attends the trial undetained	Victims - killed: four unidentified members of the so-called RSK Army	It was stated in the Indictment that the incriminating event took place in September 1993 – during the Military Operation "Pocket 93" – however, no exact date was stated. The Operation "Pocket 93" was carried out from 10 to 17 September 1993, according to the finding of the final verdict in the case of Rahim Ademi and Mirko Norac.
8	CRIME IN DRINOVCI The trial at first instance is ongoing. The main hearing began on 11 September 2013.	War crime against civilians Prosecution: Zvonko Ivić, County Deputy State's Attorney in Šibenik	Split County Court War Crimes Council: judge Zoran Kežić, Council President; judges Mlađan Prvan and Davor Svalina, Council Members	Boban Arsić Member of Serb formations Unavailable	Victims: - killed: Mate Bačić and Marija Bačić - maltreated: Ana Bačić of the late Jakov; Milka Bačić of the late Ante; and Ana Bačić of late Pavle	The Court conducted the trial against defendant Arsić in his absence.
9	CRIME AT THE BRŠLJENOVICA HILL NEAR PLAŠKI On 14 January 2014, the Rijeka County Court's War Crimes Council pronounced Dušan Kovačević guilty and sentenced him to 15 years in prison.	Indictment No. K-DO-9/02 of 8 June 2011 issued by the Karlovac ŽDO. War crime against wounded and sick Prosecution: Doris Hrast, County Deputy State's Attorney in Rijeka	Rijeka County Court War Crimes Council: judge Ika Šarić, Council President	Dušan Kovačević Member of Serb formations Unavailable. The trial is conducted in his absence.	Victim - killed: Zdravko Bionda	On 29 January 2013, the VSRH rejected the appeal lodged by the defence and upheld the decision of the Rijeka County Court wherein it was decided that the defendant would be tried in absentia.

10	CRIME IN ČANAK The trial at first instance is ongoing.	Indictment No. KT-23/97 of 16 October 2009 issued by the Gospić ŽDO. War crime against civilians	Rijeka County Court War Crimes Council: judge Ika Šarić, Council President	Željko Žakula Member of Serb formations Unavailable	Victim - killed: Blaž Grbac	
11	MURDER IN BUDAČKA RIJEKA[70] On 16 January 2014, the Karlovac County Court, after the change of legal qualification to armed rebellion, by applying the Amnesty (General Pardon) Act, discontinued the criminal proceedings against defendant Dakić. The defendant was earlier sentenced in absentia to 20 years in prison.	Indictment No. Kt-12/97 of 17 June 1999 issued by the Karlovac ŽDO. Instigating another person to commit a murder, Article 34 paragraph 2, item 5 of the KZRH, in conjunction with Article 21 Prosecution: Mladen Krajačić and Gordana Križanić, Deputy and County State's Attorney in Karlovac	Karlovac County Court Judges' panel: judge Ante Ujević, Council President; judge Mladen Kosijer, Council Member; lay judges Jasna Požar, Ivan Brozović and Ivan Gradišar, members	Mile Dakić He was arrested on 26 May 2011 pursuant to the international APB in the BiH and extradited to Croatia on 10 August 2011.	Victims: - killed: Mile Butina, Josip Milčić and Zlatko Škrlec - sustained serious bodily harm: Nikola Rakocija	Because of the changed composition of the Council or longer intervals when no sessions were held, the main hearing had to commence several times from the beginning. The defendant was kept in custody. Later on, the defendant was released and precautionary measures against him were set instead.

70 Although the criminal offence in this trial is not legally qualified as a war crime, we are monitoring it because it is connected to the beginnings of war events in the wider area of Vojnić.

TABLE OVERVIEW OF THE MONITORED VSRH APPEALS CHAMBERS' SESSIONS/HEARINGS REGARDING WAR CRIME TRIALS IN 2013

	CASE/ STATUS	INDICTMENT / CRIMINAL OFFENCE / PROSECUTION	COURT / COUNCIL (JUDGES' PANEL)	DEFENDANTS / MEMBERS OF CROATIAN/SERB FORMATIONS / DETENTION	JUDGMENT / DECISION	VICTIM(S)	REMARKS / FAIR TRIAL RELATED ISSUES
1	RAPE IN VUKOVAR On 23 January 2013, the VSRH Appeals Chamber held its session deciding on the appeal against the judgment rendered by the Osijek County Court's War Crimes Council of 4 September 2012 wherein the defendants were found guilty and sentenced: Rade Ivković to 8 year and Dušan Ivković to 5 years and 6 months of imprisonment.	Indictment No. K-DO-17/02 of 11 November 2002 issued by the Vukovar ŽDO, amended on 2 July 2009. War crime against civilians Prosecution: Jasmina Dolmagić, Deputy State's Attorney General of the Republic of Croatia	Supreme Court of the Republic of Croatia The Chamber: judge Dražen Tripalo, presiding; judge rapporteur Vesna Vrbetić; judges Žarko Dundović, Lidija Grubić Radaković and Marin Mrčela, members	Rade Ivković and Dušan Ivković Members of Serb formations Rade Ivković is tried in his absence. Dušan Ivković attended the trial and was not detained.	On 23 January 2013, the VSRH modified the judgment rendered by the Osijek County Court in the sentence section, and hence, both defendants were sentenced to 6 years in prison each.	Victim: one female person raped (identity not disclosed)	The obligation to punish the perpetrator was put in jeopardy – one of the defendants was tried in his absence whilst the other one fled out of the Republic of Croatia just before the judgment pronouncement. Namely, Dušan Ivković attended the main hearing but did not come to the court on the first-instance judgment pronouncement when he was sentenced to 5 years and 6 months in prison. After the verdict pronouncement, detention order against him was determined but the defendant already left the territory of the Republic of Croatia.
2	CRIME IN SLUNJ AND SURROUNDING PLACES On 30 January 2013, the VSRH Appeals Chamber held its session deciding on the appeal against the Rijeka County Court's judgment of 23 December 2011 wherein, following the third (second repeated) trial, the defendant was found guilty and sentenced to 4 years in prison.	Indictment No. KT-36/95 of 30 July 2009 issued by the Karlovac ŽDO, amended at the main hearing held on 4 May 2010 and 4 October 2011. War crime against civilians	Supreme Court of the Republic of Croatia Chamber: judge Vesna Vrbetić, presiding; judges Dražen Tripalo, Žarko Dundović, Damir Kos and Zdenko Konjić, members	Mićo Cekinović Member of Serb formations He is kept in custody from 6 July 2009. Previously, he was kept in extradition detention from 16 April 2009.	The VSRH Appeals Chamber upheld the first instance judgment of 23 December 2011 wherein the defendant, after the conducted third (second repeated) trial, was found guilty and sentenced to 4 years in prison.	Victims: - killed: Pavo Ivšić - physically maltreated: Tomo Kos and Milan Kos (detained and beaten)	Although the main hearing in the third (second repeated) trial began before the Karlovac County Court – Office in Gospić, the case was delegated to the Rijeka County Court. The VSRH quashed two times the first-instance convictions. While being kept in custody, the accused person served almost the entire sentence, which he received according to the final judgment.

3	CRIME IN PAULIN DVOR On 12 February 2013, the VSRH Appeals Chamber held its session deciding on the appeal against the Osijek County Court's judgment of 17 May 2012 wherein, following the third (second repeated) trial, the defendant was found guilty and sentenced to 11 years in prison.	Indictment No. K-DO-68/2002 of 12 March 2003 issued by the Osijek ŽDO, amended at the hearing held on 5 April 2004. War crime against civilians Prosecution: Jasmina Dolmagić, Deputy State's Attorney General of the Republic of Croatia	Supreme Court of the Republic of Croatia Chamber: judge Ana Garačić, presiding; judge rapporteur Damir Kos, judges Miroslav Šovanj, Ranko Marijan and Branko Brkić, members	Enes Viteškić Member of Croatian formations He attended the trial undetained during the repeated first instance trials. He was kept in custody from the pronouncement of the first instance convicting judgment of 17 May 2012.	On 12 February 2013, the VSRH upheld the judgment of the Osijek County Court in which defendant Viteškić was sentenced to 11 years in prison.	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 and Marija Sudžuković	The trial has been ongoing since 2002. The VSRH quashed two times the first instance acquittals rendered by the Osijek County Court.
4	CRIME IN DALJ IV On 20 February 2013, the VSRH Appeals Chamber held its session deciding on the appeal against the Osijek County Court's judgment of 1 June 2012 wherein, following the fourth (third repeated) trial, the defendant was found guilty and sentenced to 5 years in prison.	Indictment No. K-DO-52/08 of 4 November 2008 issued by the Osijek ŽDO, amended on 31 March 2009 and 14 March 2011. War crime against civilians	Supreme Court of the Republic of Croatia Chamber: judge Vesna Vrbetić, presiding; judge rapporteur Žarko Dundović; judges Damir Kos, Dražen Tripalo and Marin Mrčela, members	Čedo Jović Member of Serb formations Detained from 7 July 2008.	On 20 February 2013, the VSRH upheld the Osijek County Court's judgment in which defendant Jović was found guilty and sentenced to 5 years in prison.	Victims: - killed: Antun Kundić - physically maltreated: Ivan Horvat, Ivan Bodza, Karol Kremerenski, Josip Ledenčan and Emerik Hudik	The VSRH quashed three times the first instance conviction wherein the defendant was sentenced each time to 5 years in prison, for procedural defects or incomplete establishment of facts. While being kept in custody, the accused person served almost the entire sentence, which he received according to the final judgment.
5	CRIME IN PERUŠIĆ On 20 February 2013, the VSRH Appeals Chamber held its session deciding on the appeal against the Split County Court's judgment of 30 November 2012 wherein, following the repeated trial, defendant Munjes was found guilty and sentenced to 5 years in prison.	Indictment No. KT-9/95 of 27 June 1995 issued by the District State's Attorney Office in Zadar. War crime against civilians Prosecution: Jasmina Dolmagić, Deputy State's Attorney General of the Republic of Croatia	Supreme Court of the Republic of Croatia Chamber: judge Dražen Tripalo, presiding; judge rapporteur Vesna Vrbetić; judges Damir Kos, Žarko Dundović and Marin Mrčela, members	Nikola Munjes Member of Serb formations Detained from 20 October 2010. Extradited from Montenegro.	On 20 February 2013, the VSRH upheld the Split County Court's judgment of 30 November 2012 in which defendant was found guilty and sentenced to 5 years in prison.	Victims – maltreated: Duje Pešut and Grgo Pešut	

6	CRIME IN ZRIN On 7 March 2013, the VSRH Appeals Chamber held its session deciding on the appeal against the Sisak County Court's judgment of 5 September 2011 wherein the defendant was found guilty and sentenced to 7 years in prison.	Indictment No. K-DO-37/10 of 13 December 2010 issued by the Sisak ŽDO, amended on 16 May 2011 and 5 September 2011. War crime against prisoners of war Prosecution: Jasmina Dolmagić, Deputy State's Attorney General of the Republic of Croatia	Supreme Court of the Republic of Croatia Chamber: judge Ileana Vinja, presiding; judges Zlata Junek-Bosanac, Melita Božičević-Grbić, Branko Brkić and Damir Kos, members	Jablan Kejić Member of Serb formations Detained	On 7 March 2013, the VSRH modified the first instance judgment in the sentence section and hence sentenced the defendant to 5 years in prison.	Victim (killed): Šefik Pezerović, POW	
7	CRIME IN MLINIŠTE On 6 May 2013, the VSRH Appeals Chamber held its session deciding on the appeals against the Zagreb County Court's judgment of 24 October 2011 wherein Tihomir Šavorić and Nenad Jurinec were sentenced to 6 and Antun Novačić to 5 years in prison for a war crime against prisoners of war, Robert Precehtjel and Robert Berak to 2 years in prison each for aiding and abetting, whereas Emil Črnčec and Goran Gaća were acquitted.	Indictment No. K-DO-287/09 of 18 June 2010 issued by the Zagreb ŽDO. War crime against prisoners of war Prosecution: Jasmina Dolmagić, Deputy State's Attorney General of the Republic of Croatia	Supreme Court of the Republic of Croatia Chamber: judge Ana Garačić, presiding; judge rapporteur Miroslav Šovanj; judges Damir Kos, Ranko Marijan and judge Marijan Svedrović, members	Emil Črnčec, Tihomir Šavorić, Antun Novačić, Robert Precehtjel, Nenad Jurinec, Goran Gaća and Robert Berak Members of Croatian formations All defendants were kept in custody from 28 October 2009 until the pronouncement of non-final judgment on 24 October 2011. Detention against Šavorić, Jurinec and Novačić was extended after the pronouncement of the first-instance judgment. Detention was vacated against Precehtjel and Berak, as well as acquitted Črnčec and Gaća, following the pronouncement of the judgment.	The VSRH upheld the judgment rendered on 24 October 2011 by the Zagreb County Court's War Crimes Council.	Victims - killed: Radoslav Lakić, Pero Vidović, Petar Jotanović, Dragoslav Mutić, Borislav Vukić and one male persons – identity not determined	

8	CRIME IN BARANJA On 15 May 2013, the VSRH Appeals Chamber held its session deciding on the appeal against the Osijek County Court's judgment of 10 February 2012 wherein, following the fifth (fourth repeated) trial, the defendant was found guilty and sentenced to 3 years and 6 months in prison.	Indictment No. KT-136/94 of 3 April 2001 issued by the Osijek ŽDO, amended on 14 March 2002, 4 May 2006 and 23 March 2011. War crime against civilians	Supreme Court of the Republic of Croatia Chamber: judge Senka Klarić Baranović, presiding; judge rapporteur Marijan Svedrović; judges Miroslav Šovanj, Zdenko Konjić and Branko Brkić, members	Petar Mamula Member of Serb formations He was kept in custody from 6 October 2000 until 7 May 2003. After that, he attends the trial undetained.	On 15 May 2013, the VSRH upheld the judgment of the Osijek County Court in which defendant Mamula was found guilty and sentenced to 3 years and 6 months in prison.	Victim – maltreated: Antun Knežević	The VSRH quashed four times the convictions rendered at first instance. The trial was unreasonably time consuming – more than a decade. According to Article 6, paragraph 1 of the European Convention on Human Rights, the defendant's right to a trial within a reasonable time has been violated. The injured party was repeatedly traumatised by frequent summons and questioning.
9	CRIME IN THE KARLOVAC SETTLEMENT OF SAJEVAC On 16 May 2013, the VSRH Appeals Chamber held its session deciding on the appeal against the Zagreb County Court's judgment of 28 February 2012 wherein, following the first-instance trial, the defendant was found guilty and sentenced to 9 years in prison.	Indictment No. K-DO-188/10 of 22 November 2010 issued by the Zagreb ŽDO, amended on 28 February 2012. War crime against civilians	Supreme Court of the Republic of Croatia Chamber: judge Zlata Junek-Bosanac, presiding; judges Melita Božičević, Ileana Vinja, Žarko Dundović Tripalo and Marijan Svedrović, members	Željko Gojak Member of Croatian formations Detained	On 16 May 2013, the VSRH upheld the Zagreb County Court's judgment in which defendant Gojak was found guilty and sentenced to 9 years in prison.	Victims - killed: Marko Roknić, Dragica Ninković and minor Danijela Roknić - defendant Gojak was not convicted for the killing of Marko Roknić	We noted a problem of storing and keeping material evidence. After performing the analysis of material evidence, the ballistic expert did not return it to the court.

10	CRIME IN BAPSKA On 4 September 2013, the VSRH Appeals Chamber held its session deciding on the appeal against the Osijek County Court's judgment of 20 March 2013 wherein, following the completed reopened trial at first instance, the defendant was found guilty and sentenced to 3 years in prison.	Indictment No. KT-86/95 of 14 June 1996 issued by the Osijek ŽDO, taken over from the Vukovar ŽDO under No. DO-K-53/99, specified by a memo of 16 July 2002 and 25 October 2004, presently No. K-DO-3/13 of 9 January 2013 of the Osijek ŽDO. War crime against civilians	Supreme Court of the Republic of Croatia Chamber: judge Senka Klarić-Baranović, presiding; judges Marijan Svedrović, Branko Brkić, Damir Kos and Lidija Grubić Radaković, members	Radojko Radmilović Member of Serb formations Detained	On 4 September 2013, the VSRH upheld the Osijek County Court's judgment in which defendant Radmilović was found guilty and sentenced to 3 years in prison.	Victims: - intimidated or plundered: Marija Adamec, Marinko Kovačić and Andrija Kovačić - expelled: 69 inhabitants of Croat ethnicity from Bapska	
11	CRIME IN KORENICA On 18 September 2013, the VSRH Appeals Chamber held its session deciding on the appeals against the Rijeka County Court's judgment of 12 June 2012 wherein, following the completed repeated trial, the defendants were found guilty and sentenced: Željko Šuput to 4 and Milan Panić to 3 years and 6 months in prison.	Indictment No. K-DO-24/06 of 31 January 2007 issued by the Gospić ŽDO, amended by the Rijeka ŽDO on 2 October 2008 and 26 April 2012. War crime against civilians	Supreme Court of the Republic of Croatia Chamber: judge Senka Klarić-Baranović, presiding; judges Branko Brkić, Marijan Svedrović, Lidija Grubić-Radaković and Ileana Vinja, members	Željko Šuput and Milan Panić Members of Serb formations They attend the trial undetained	On 18 September 2013, the VSRH modified the judgment of the Rijeka County Court in the sentence section and hence defendant Šuput was sentenced to 3 years, and defendant Panić to 2 years and 6 months in prison.	Victims – unlawfully apprehended and maltreated: Nikola Nikolić, Mile Lukač and Perica Bičanić	

12	CRIME IN THE VILLAGES ALONG THE UNA RIVER NEAR HRVATSKA KOSTAJNICA On 9 October 2013, the VSRH Appeals Chamber held its session deciding on the appeals against the Zagreb County Court's judgment of 26 March 2013 wherein, following the third (second repeated) trial at first instance, the defendants were found guilty and sentenced: Pero Đermanović to 9, Dubravko Čavić to 7 and Ljubiša Čavić to 2 years in prison.	Indictment No. K-DO-10/09 of 5 November 2009 issued by the Sisak ŽDO. War crime against civilians	Supreme Court of the Republic of Croatia	Pero Đermanović, Dubravko Čavić and Ljubiša Čavić Members of Serb formations Defendant Pero Đermanović was kept in custody from 6 May 2009 until 12 November 2012. Obligatory detention was ordered against him after the pronouncement of the conviction on 26 March 2013. It was vacated, however, after the VSRH quashed the judgement at first instance on 9 October 2013. Dubravko Čavić is a fugitive from justice. The trial is conducted in his absence. Ljubiša Čavić attends the trial undetained.	The VSRH quashed the first instance judgment and remanded the case back to the first instance court for a retrial but before completely changed composition of the court council.	Victims: - unlawfully apprehended, maltreated and killed: Vladimir Letić - burned houses belonging to: Stevo Karanović and Ivo Karanović	The VSRH quashed three times the conviction rendered at first instance. When pronouncing the last judgment at first instance (on 26 March 2013), the Council President did not present any judgment arguments. He stated that he was not obliged to provide the arguments of the judgment to the public. It was obvious that he was referring to war crime trials monitors, because they were the only ones present as the public at the pronouncement of the judgement.

13	CRIME IN NOVSKA III On 29 October 2013, the VSRH Appeals Chamber held its session deciding on the appeals against the Zagreb County Court's judgment wherein, following the repeated trial, the defendants were found guilty and sentenced to prison. Defendant Željko Belina was sentenced to 10 and Dejan Milić to 9 years in prison. Previously, on 21 February 2012 the VSRH quashed the Sisak County Court's first-instance judgment wherein the charge against Željko Belina and Dejan Milić was rejected, and confirmed the part of the first-instance judgment in which the charge against Ivan Grgić and Zdravko Plesec was rejected.	Indictment No. K-DO-35/08 of 9 July 2010 issued by the Sisak ŽDO, amended by the Zagreb ŽDO (K-DO-254/12) War crime against civilians	Supreme Court of the Republic of Croatia	Željko Belina and Dejan Milić Members of Croatian formations They attended the trial undetained. Obligatory detention was ordered against them after the pronouncement of the first instance conviction.	The VSRH upheld the judgment rendered by the Zagreb County Court's War Crimes Council in which the defendants were found guilty and sentenced to imprisonment: Željko Belina to 10 and Dejan Milić to 9 years in prison.	Victims: - killed: Goranka Mileusnić, Vera Mileusnić and Blaženka Slabak - maltreated and wounded: Petar Mileusnić	One of the cases in which the Amnesty Act had been incorrectly applied during the 90s. Namely, the investigation was carried out in respect of the relevant event in 1992 against Željko Belina, Ivan Grgić, Dubravko Leskovar, Dejan Milić and Zdravko Plesec for murder and attempted murder. After the investigation, the Military Prosecution in Zagreb dropped charges against Grgić and Plesec while in respect of Belina, Leskovar and Milić the trial continued before the Zagreb Military Court and ended on 2 November 1992. A decision on discontinuation of the criminal proceedings by applying the Amnesty Act was issued. Later on, the injured parties lodged a criminal report against the same persons for the mentioned event but for the commission of a war crime against civilians.
14	ARSON IN PUŠINA AND SLATINSKI DRENOVAC On 31 October 2013, the VSRH Appeals Chamber held its session deciding on the appeal against the Bjelovar County Court's judgment of 24 May 2011 wherein the defendants were acquitted.	Indictment No. K-DO-6/06 of 23 September 2008 issued by the Bjelovar ŽDO. War crime against civilians Prosecution; Milorad Cuculić, Deputy State's Attorney General of the Republic of Croatia	Supreme Court of the Republic of Croatia Chamber: judge Zlata Junek-Bosanac, presiding; judges Melita Božičević-Grbić, Ileana Vinja, Zdenko Konjić and Marijan Svedrović, members	Ivan Husnjak and Goran Sokol Members of Croatian formations They attend the trial undetained	On 31 October 2013, the VSRH upheld the Bjelovar County Court's judgment of 24 May 2011 in which the defendants were acquitted.	Injured parties – owners and possessors of destroyed facilities: - in Pušina 17 houses were destroyed and one Orthodox church tower destroyed; - in Slatinski Drenovac 19 houses were destroyed; - the hunting lodge was destroyed between Pušina and Slatinski Drenovac	

15	CRIME IN SUNJSKA GREDA On 12 November 2013, the VSRH Appeals Chamber held its session deciding on the appeal against the Zagreb County Court's judgment of 17 April 2012 wherein the defendant was sentenced to 6 years in prison.	Indictment No. K-DO-36/08 of 20 September 2010 issued by the Sisak ŽDO. War crime against civilians	Supreme Court of the Republic of Croatia	Milenko Vidak Member of Serb formations The defendant was extradited to Croatia pursuant to the decision of the Trabzone Criminal Court of the Republic of Turkey. As of 4 August 2009 he is kept in custody.	The VSRH quashed the first instance judgment and remanded the case back to the first instance court for a retrial.	Victim - killed: Stjepan Sučić	The VSRH quashed two times the conviction rendered at first instance.

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