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

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

---

Quarterly Report on War Crime Trials Monitoring

Reporting period: April – June 2013

July 2013

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

CONTENTS

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

I SUMMARY

The period covered by this report immediately precedes the 01 July 2013 – the day of accession of the Republic of Croatia to the European Union.

Despite fulfilling numerous pre-accession criteria required for joining the European Union, the Republic of Croatia has failed to resolve some important issues in relation to war and post-war period: there is a large number of non-prosecuted war crime cases, the refund of the costs of lost litigations to the families of killed persons has not been adequately resolved and the civilian victims of war have not received an adequate restitution.

At the end of June 2013 the *Law on Judicial Cooperation in Criminal Matters with the European Union Member States* was amended. In principle, we believe that all perpetrators of criminal offences should be brought to justice. We do not deem it justifiable to impose any time limits for application of the European arrest warrant.

The weaknesses of the new *Criminal Law Act* have appeared in court practice and, in comparison with the previous *Criminal Law Act*, the new *Act* may be more lenient to perpetrators of the war crime which includes the guilty act of rape, therefore we request the legislator to consider its amendment.

Still no one has received a conclusive, legally valid verdict of guilty for war crimes committed during and immediately after the Military Operation "Storm". Although the first first-instance court verdict of guilty was passed in June 2013 for the war crime committed before or immediately after the Military Operation "Storm", the pronounced sentence in the mentioned case surely will not contribute to the satisfaction of family members of numerous victims of the "Storm".

On the other hand, we view as a positive step the improvement of relations between Croatian and Serbian authorities, which may contribute to an efficient prosecution of war crimes, as well as the signing of the *Protocol on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Crimes of Genocide* which has been signed by the State Attorney's Office of the Republic of Croatia and the Prosecutor's Office of Bosnia and Herzegovina.

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

II THE WIDER CONTEXT

A. Improvement of relations between Croatian and Serbian authorities

In order to reduce the impunity of crime perpetrators, it is necessary to make progress in cooperation among the judicial bodies of the countries in the region. Cooperation among the most important political actors is a prerequisite for effective cooperation in all spheres, and therefore also in cooperation in war crimes prosecution. During the second trimester of 2013, the progress was achieved in political relations between the Republic of Croatia and the Republic of Serbia: by the April's visit of the Vice President of Serbian Government Aleksandar Vučić to Croatia, instigated by the discovery of (the long searched for) mass graves in Vukovar's suburban settlement of Sotin and by the need for resolving the issue of missing persons, and by attendance of the President and the Prime Minister of the Republic of Serbia Tomislav Nikolić and Ivica Dačić to the ceremony on occasion of accession of the Republic of Croatia to the European Union.

On 18 April 2013, one of the two former inhabitants of Sotin, against whom the investigation has been conducted in Serbia due to suspicion that they had killed 16 civilians of Croat ethnicity in Sotin in 1991, pointed at the locations where bodies of the killed Sotin inhabitants had been buried. The mortal remains of thirteen victims were found on two locations.

In 2006, the Croatian State Attorney's Office issued the indictment against 17 accused persons for commission of the crime in Sotin, however, nobody has been convicted to this day. Due to inefficient prosecution of the Sotin crimes carried out by the Croatian judiciary, the victims' family members have turned to the War Crimes Prosecution Office of the Republic of Serbia. Without the dedication of the victims' family members, without persistence and submission of all available information and evidence to the Serbian Prosecutor's Office, the proceedings would not have been instigated in Serbia and thus nothing would have led to the information on the very locations of burial sites of the victims' mortal remains.

B. Perplexing decisions made by the Government of the Republic of Croatia

1. European arrest warrant

At the end of June 2013, the *Law on Judicial Cooperation in Criminal Matters with the European Union Member States* was amended. Despite the disapproval of the European Commission, the amendments prescribed that the Republic of Croatia would execute the European arrest warrant and apply it only in cases of criminal offences committed after 07 August 2002.[1] The amendments to the *Law on Judicial Cooperation in Criminal Matters with EU Member States*, passed even before the *Law* itself has come into force, are even more surprising due to the fact that the *Law* had been unanimously adopted by the Croatian Parliament in July 2010.

[1] The date when the Framework Decision of the Council No: 2002/584/PUP, dated on 13 June 2002, has come into force, and according to which this form of judicial cooperation was established.

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

The opposition, led by the HDZ (Croatian Democratic Union), blamed the ruling coalition for using the time limit for application of the European arrest warrant in order to prevent the prosecution of political murders committed during the time of the SFRJ (Socialist Federative Republic of Yugoslavia). While explaining the proposed amendments, the ruling coalition stated that the time limit had been introduced due to a reasonable prospect of onset of limitation in law pertaining to the criminal prosecution or the execution of sentence for criminal offences committed before the defined date, however, they were publicly emphasising that the main reason for introduction of time limit was actually the protection of Croatian Homeland war veterans from criminal prosecution, due to the universal jurisdiction of some EU member states.

In principle, we believe that all perpetrators of criminal offences should be brought to justice. We do not deem it justifiable to impose any time limits for application of the European arrest warrant. Accession of the Republic of Croatia to the European Union should contribute to an improved cooperation among the judicial bodies of the Republic of Croatia and other EU member states, whereas during the period of accession of other countries in the region to the European Union it is necessary to resolve the disputable issues by signing inter-state agreements, and to prevent potential conflict situations and improve the cooperation in order to bring to justice as many war crimes perpetrators as possible.

Among the general public, the introduction of the time limit has been directly linked to the case of Josip Perković, head of the former Yugoslav and Croatian secret services, who was charged by the judicial bodies of the Federal Republic of Germany for organising the murder of Croatian political émigré Stjepan Đureković in 1983.

Despite the fact that no criminal proceedings whatsoever have been conducted against Josip Perković in the Republic of Croatia, Perković has been linked with the crimes in criminal proceedings for war crime against prisoners of war committed in prisons in Gajeva street in Zagreb and in the Kerestinec (def. Stjepan Klarić et al.). While giving his testimony at the mentioned trial, the injured party Dobroslav Gračanin stated that he had been brutally beaten up by Josip Perković in the prison in Gajeva street in Zagreb. Perković, *tempore criminis* Assistant to the Minister of Defence of the Republic of Croatia, and Chief of Administration of Croatian Security-Information Service, was heard in his capacity as witness. Perković stated that, at the beginning of spring of 1992, he had received information about the abuse in Kerestinec prison. The commission which had been subsequently formed by Perković himself confirmed the existence of the abuse. He had informed Minister of Defence Šušak, President Tuđman and Josip Manolić about the whole thing. Through Mate Laušić, Perković had ordered that the prison guards be immediately relieved of their post, which had been done so. Perković was not familiar with the fact that Mate Laušić had promoted the first-accused Stjepan Klarić to the rank of company commander on 27 April 1992.

2. Reluctance to fully resolve the issue of refund of litigation costs

The issue of obliging family members of killed persons, mostly of Serb ethnicity, to pay litigation costs for the lost lawsuits in which they requested compensation of non-pecuniary damage from the Republic of Croatia due to the killing of their close relatives is still not resolved in a satisfactory manner.

The *Regulation on criteria, standards and the procedure for postponement of payment, debt repayment in instalments, and sale, write-off of debt or partial claim write-off*, introduced on 05 July 2012, which provided for the possibility of the Republic of Croatia's write-off of its claims towards socially-handicapped

debtors, has not proved to be an appropriate means of solving the problems faced by all plaintiffs/victims who had lost their civil lawsuits against the Republic of Croatian requesting the restitution of non-pecuniary damage for the death (killing) of their close family members. Namely, since its adoption, we have not recorded a single case in which the Ministry of Finance has written off its claim towards the stated category of debtors.

Although the amendments of the *Regulation*, dated on 25 April 2013, have alleviated the property criteria, which have caused the increase of the number of debtors whose debts towards the Republic of Croatia are to be written-off, we believe that the problem faced by all persons who lost the civil lawsuits requesting the restitution of non-pecuniary damages will not be resolved. It is necessary for the Government of the Republic of Croatia to pass a special ruling which would, in a clear and unambiguous way, write-off the costs of lost litigations to all plaintiffs who did not succeed in winning their civil lawsuits and which would provide for the refund to those who had already paid the costs or to those whose property had been forfeited. In this way, this urgent matter would be resolved and additional victimisation of victims would be ceased.

III COURT PROCEEDINGS

A. Non-final verdicts passed by trial chambers of the International Criminal Tribunal for the former Yugoslavia

On 29 May 2013, the ICTY Trial Chamber passed the first-instance (still non-final) court verdict according to which **six high-ranking officials of Herzeg-Bosnia and the Croatian Defence Council (HVO) were found guilty**.[2] The ICTY Trial Chamber had established the existence of individual criminal responsibility of the accused persons based on the concept of joint criminal enterprise with a goal of subjugation of Muslims and other non-Croat population who lived on the territories of Bosnia and Herzegovina that had been claimed to belong to the Croatian community (later on known as the Republic of Herzeg-Bosnia) of Herzeg-Bosnia in order to expell Muslims and other non-Croat population from the mentioned area and to establish the Croatian territory within the boundaries of the Croatian Banovina as it had existed in the period of 1939. The crimes included detention of non-Croat population in detention camps, rapes, killings, looting, illegal evictions, and destruction of cultural heritage. The then president of the Republic of Croatia - Franjo Tuđman had acted as the head of the joint criminal enterprise.

In Croatia, such a verdict came under Prime Minister Milanović's criticism and drew condemnation from mainly right-oriented politicians as well as from the vast majority of the public. The President of the Republic of Croatia Ivo Josipović was more moderate in his expression and assessed the war-time relations between Croatia and Bosnia and Herzegovina as "ambivalent", emphasising that indeed there had been some mistakes made by Croatian politics towards Bosnia and Herzegovina. It is our opinion that also the present Government of the Republic of Croatia should take a clear stance on the issue of crimes committed against Muslim population and other non-Croats, as was previously done by former Croatian president Stjepan Mesić who had clearly distanced himself from the (war-time) politics towards the BiH.

[2] Jadranko Prlić was sentenced to 25 years in prison, Bruno Stojić was sentenced to 20 years in prison, Slobodan Praljak and Milivoj Petković were sentenced to 20 years in prison each, Valentin Ćorić received a 16-year prison sentence and Berislav Pušić was given a 10-year prison sentence.

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

One day after passing the verdict against the Herzeg-Bosnia top officials, on 30 May 2013 the **ICTY Trial Chamber passed the first-instance (still non-final) court verdict which acquitted former top officials of the Serbian State Security Service** Jovica Stanišić and Franko Simatović of charges of the crimes committed against non-Serbs in Croatia and in Bosnia and Herzegovina from 1991 until 1995. The crimes which, beyond any reasonable doubt, had been committed by members of the Special Purpose Units of the Serbian State Security (Crvene beretke – "Red Berets"), Škorpioni ("Scorpions"), the Serb Voluntary Guard and the SAO Krajina (Serb Autonomous Area of Krajina) Police, were not attributed to the above-named accused top officials of the Serbian State Security Service.

The stated verdict of acquittal caused shock and disbelief in Croatia and in Bosnia and Herzegovina but also among the part of the general public in Serbia not inclined to the former Milošević's regime[3].

In her dissenting opinion, enclosed to the verdict, the ICTY's Trial Chamber judge Michele Picard stated that she believed that the very "firm support" and "close connections", which the accused persons had held with the units which had been committing the crimes, actually showed their "crucial role" in the process of ethnic cleansing of the area which the Serbs deemed as their own; that the accused persons actually had control over the persons who were "directly responsible for ethnic cleansing" - persons like Hadžić, Martić and Arkan; and that the accused persons had actively been cooperating with Karadžić and Mladić in the way that the accused persons had been training Karadžić's and Mladić's troops for the attacks in which the non-Serb population had been expelled. The accused persons had been doing everything and acting with full consciousness that the crimes had been committed and that the crimes would be committed. If the court, in spite of everything stated above, was to remain with the conclusion that Stanišić and Simatović had not been assisting and supporting the crimes in Croatia and in Bosnia and Herzegovina, in that case, according to the judge Picard, the international law would enter the "dark area" in which "the law would intimidate only the common, ordinary people and the law would deal only with petty misdemeanour".

The dissenting opinion by the ICTY judge Picard, harsh tones used by judges Pocar and Agius in their dissenting opinions in respect of the appeal proceedings in the case against Gotovina and Markač, as well as the allegations made by judge Frederik Harhoff on an undue influence exerted by the ICTY President Theodor Meron on the Tribunal judges in order to compel them to pass politically motivated judgments have all made more than a hundred persons from public sphere, representatives of the media and civil society organisations from the countries in the region into addressing and sending an open letter to the UN Secretary General requesting an investigation into the events at the ICTY.

It is a defeating conclusion that not a single member of the Serbian political or military leadership, with the exception of lower-ranking JNA (Yugoslav National Army) commanders[4], has been convicted for the crimes committed on the territory of Croatia. The first-instance court verdict in case against the accused Vojislav Šešelj is the only one left and its announcement in October 2013 is still expected.

[3] For instance, immediately after the ICTY had announced the verdict of acquittal, Žarko Korać, Vice-President of the Serbian National Assembly and a leader of the opposition party – the Social-Democratic Union, stated in a press release for the Croatian television (HRT) that he considered both Stanišić and Simatović as being "the heart of darkness of Milošević's regime" and as "the persons who had organised everything that had been happening in Croatia and in BiH".

[4] Miodrag Jokić and Pavle Strugar were convicted for the crimes committed in the Dubrovnik area whereas Mile Mrkšić and Veselin Šljivančanin were convicted for the crimes committed in the Vukovar area.

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

B. Crimes prosecution in the region: Protocol on cooperation between the State Attorney's Office of the Republic of Croatia and the Prosecutor's Office of Bosnia and Herzegovina – clearing a path towards the efficient prosecution of crime perpetrators

After several years of negotiations and several postponements, the Protocol on Cooperation between the War Crimes Prosecutor's Office of the Republic of Serbia and the Prosecutor's Office of Bosnia and Herzegovina was signed on 31 January 2013. Soon to follow, on 03 June 2013, the *Protocol on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Crimes of Genocide* was signed between the State Attorney's Office of the Republic of Croatia and the Prosecutor's Office of Bosnia and Herzegovina.

War crime perpetrators were misusing/abusing dual citizenship, since the Republic of Croatia and Bosnia and Herzegovina do not extradite their own citizens to other countries; therefore by escaping the country in which they had committed crimes, the crime perpetrators were avoiding the prosecution and bringing the judicial bodies into "a stalemate". Subsequent to all mentioned facts, the state attorney's offices and the prosecutor's offices have agreed to exchange information, data and the evidence. Finally, the cooperation and the exchange of evidence would render possible to have the crime perpetrators prosecuted in the country of their current residence.

According to the assessment made by the Chief Prosecutor of Bosnia and Herzegovina Goran Salihović, some fifty cases could be initiated based on the mentioned agreement. Due to the influx of new cases, the State Attorney's Office of the Republic of Croatia has been planning on reinforcing their war crime departments in the four county state attorney's offices competent for dealing with war crimes issues.

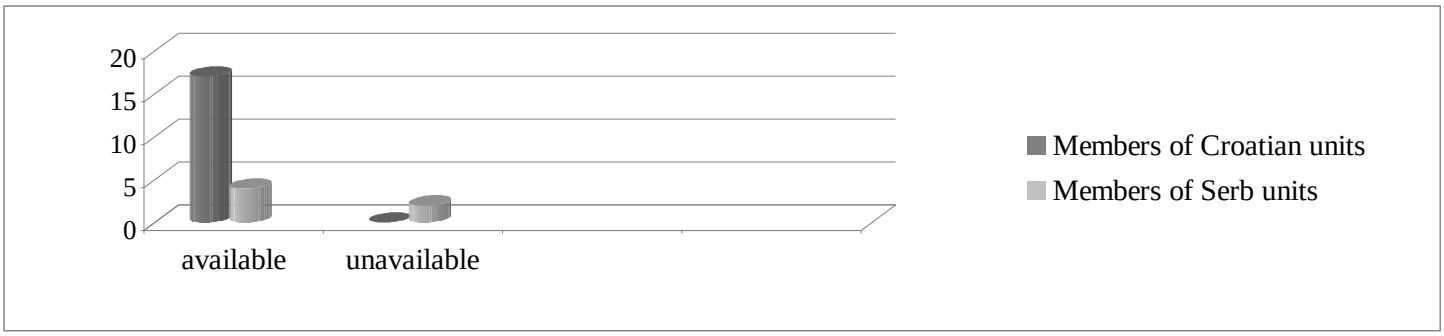
C. Monitored trials in Croatia

Out of 14 trials in which main hearings have been actively and regularly held, 9 trials have been held against the total of 17 members of Croatian military units whereas 5 trials have been held against the total of 6 members of Serb military units[5]. All the accused members of Croatian military units have been attending the trials. Two accused members of Serb military formations have been tried *in absentia* whereas four members of Serb military formations have been attending the trials. [6]

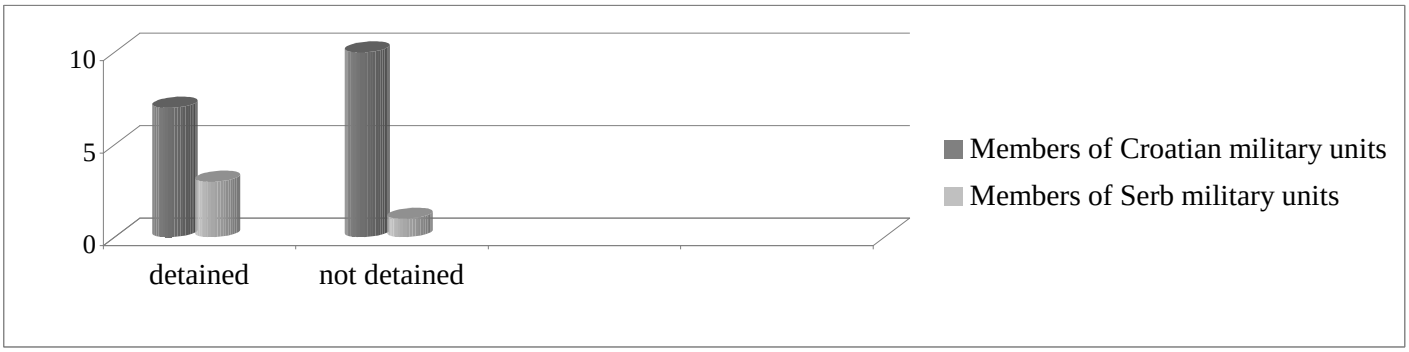
[5] During the first trimester of 2013, main hearings (trials) were held in 17 cases of criminal proceedings for war crimes.

[6] Table overview of monitored main hearings held at county courts and the Supreme Court's sessions is attached to this report as a separate document.

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



Out of 17 members of Croatian military units, 10 men attend trial undetained and 7 men are held in custody. Three members of Serb military units are held in custody whilst one member attends trial undetained.



In respect of ten Serb military unit members, main hearings were scheduled in four trials but were not held because the defendants did no respond to the summons to appear at the hearing or were not available to Croatian judiciary since no decisions were adopted that they would be tried in their absence.

First-instance court verdicts were rendered in 2 cases against 7 Croatian military unit members. One such member was convicted whilst 6 of them were acquitted or charges against them were rejected.

1. Proceedings against members of Croatian military units

(a) First-instance court verdicts

(aa) *The first non-final conviction for the „Storm“ Military Operation – only 5 years and 10 months prison sentence for the killing of two elderly Serb civilians and one captured Serb soldier!*

On 13 June 2013, the Split County Court found Božo Bačelić guilty for killing an elderly married couple of Serb ethnicity which he happened to find in front of their house after completion of the „Storm“ Military Operation. He was also found guilty for killing the captured member of the so-called RSK Army (Republika Srpska Krajina Army). For the commission of both crimes, Bačelić was given a joint sentence of 5 years and 10 months in prison.

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

Against other three co-accused persons, who were Croatian Army conscripts during the incriminating event, the charges were rejected by applying the statue of limitations for criminal persecution or the verdict of acquittal was rendered.[7]

Still no one has received a final court conviction for war crimes committed during and immediately after the „Storm" Military Operation!

The total of 27 war crimes (167 victims), committed during and after the „Storm", were registered in the *Data Base of the State Attorney's Office of the Republic of Croatia* (DORH). The perpetrators of 24 crimes (155 victims) are still completely unknown. Only three criminal proceedings for the crimes committed during and immediately after the „Storm" – against the total of 10 persons – were held or have been held before Croatian courts:

– for the killing six elderly Serb civilians in Grubori during the „Storm - Encirclement" indicted were Special Police members Frano Drljo and Božo Krajina. Initially, criminal proceedings were initiated against five persons but were suspended against Berislav Garić and Igor Beneta who committed suicide. The investigation against Željko Sačić, the then deputy of the Special Police Commander Mladen Markač is still ongoing;

–in the trial against Božo Bačelić, Ante Mamić, Luka Vuko and Jurica Ravlić, charged with the killing of two elderly spouses of Serb ethnicity in Prokljan and one prisoner of war in Mandići, the first-instance verdict was rendered – convicting Bačelić and acquitting or rejecting the charges against other defendants;

– in 2001, an investigation was conducted against Mato Šindija because of the killing of three civilians in Laškovci and Dobropoljci; however, the prosecution dropped charges against him due to lack of evidence.

3728 persons were prosecuted before Croatian courts for the crimes committed during and after the „Storm". Out of this number 2380 persons were convicted. The convicted persons were largely perpetrators of plunder and arson. 2287 persons were convicted for criminal offences against property: larceny, aggravated larceny and robbery, ... and as many as 14 persons were convicted for murder and 11 persons were convicted for criminal offences against sexual freedom and sexual morality.

Data on the„Storm" victims

The Croatian Helsinki Committee for Human Rights (CHC) recorded 677 civilian victims and approximately 20,000 destroyed facilities (burned down, destroyed or entirely damaged) in the area liberated by the military action.

According to the records from the Directorate for Detained and Missing Persons under the Ministry of Family, Defenders and Intergenerational Solidarity, 679 persons were exhumed and 563 persons are still recorded missing.

The DORH Data Base contains information concerning 214 killed persons, out of whom 167 persons were killed as victims of war crime and 47 persons as victims of murder. When explaining these substantially

[7] All four accused persons were arrested as early as in 2001. In 2002, all of them were acquitted of charges at the Šibenik County Court, however the Croatian Supreme Court of the Republic of Croatia quashed the acquitting verdict in 2007. After that, Bačelić was on the run and the court proceedings were on hold until April 2012 when he was extradited from Germany.

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

different figures, the DORH stated that very often no distinction is made between murder victims/war crime victims and victims of war – in respect of whom there is no criminal liability for their killing by the warring side.

At the beginning of May 2013, the remains of 44 persons of Serb ethnicity killed during the „Storm" were exhumed at the Zadar city cemetery. The remains of the mentioned victims were collected from the wider area of Zadar and buried in 1995. Among them there were persons who were members of Serb armed forces but also civilians.

(aaa) Three members of the Croatian Army "Puma" unit non-conclusively acquitted of the charges for killing of civilians during the Military Operation "Southern Region" (Južni potez)

On 23 May 2013, the Zagreb County Court passed the first-instance (non-final) verdict against former members of the 7th Guards Brigade of the Croatian Army – Tihomir Šavorić, Ivica Krklec and Alen Toplek acquitting them of charges of killing four unidentified civilians in the area of the villages of Dabrac and Bočac (half-way between Mrkonjić Grad and Banja Luka, in the territory of Bosnia and Herzegovina) in October 1995.[8]
The accused Krklec, who had admitted his guilt and charged Šavorić and Toplek in the initial statement given to the police, changed his statement during the court hearing.

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

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

- against Vladimir Milanković and Drago Bošnjak for execution of 26 citizens of Sisak of Serb ethnicity;
- against Frano Drljo and Božo Krajina for execution of six elderly civilians in Grubori near Knin after the completion of the Military Operation "Storm";
- against Tomislav Merčep, war-time counsellor in the Ministry of Interior of the Republic of Croatia, for issuing orders for illegal arrests, abuse and execution of civilians in the area of Kutina, Pakrac and Zagreb[9];
- against Ante Babac and Mišo Jakovljević for execution of one prisoner of war at the Miljevci plateau;
- against Mirko Sivić for executing two civilians in Osijek;
- against Velibor Šolaja for executing one female person in the Medak pocket area;
- against Josip Krmpotić, for failing to prevent the execution of four unidentified soldiers of the so-called RSK Army and for ordering the burning down and destruction of houses owned by Serb ethnicity population in the Medak pocket area.

[8] In October 2011, Tihomir Šavorić was convicted to six years in prison for executing the captured member of the Army of Republika Srpska during the (Croatian Army) Military Operation "Maestral 2" carried out during September 1995 in the small village of Halapići in Bosnia and Herzegovina.
[9] Merčep was charged for illegal apprehension of 52 persons, out of whom 43 persons were killed, and another 3 persons have been registered missing.

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

(c) Sessions of the Croatian Supreme Court's appeals chambers

During the reporting period, sessions of the Supreme Court appeals chambers were held in respect of the following war crime cases:

- on 16 May 2013, the Croatian Supreme Court (hereinafter: VSRH) confirmed the verdict rendered by the Zagreb County Court in which defendant Željko Gojak was sentenced to 9 years in prison for the killing of Dragica Ninković and minor Danijela Roknić in the Karolvac settlement Sajevac in October 1991;

- on 6 May 2013, the VSRH Appeals Chamber held its session deciding on the appeal against the Zagreb County Court's verdict rendered on 24 October 2011 in which defendants Tihomir Šavorić and Nenad Jurinec were sentenced to 6 years each, Antun Novačić to 5 years in prison for the commission of war crime against prisoners of war, Robert Precehtjel and Robert Berak to 2 years each for aiding and abetting the crime, while Emil Črnčec and Goran Gaća were acquitted. During the incriminating events in September 1995, six detained soldiers of the Republika Srpska Army were killed in Mlinište and Halapići in the Bosnia and Herzegovina. We are not familiar with the VSRH decision.

2. Proceedings against members of Serb military units

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

During the reporting period, the hearings are pending in respect only three cases involving accused members of Serb military units:

- at the Karlovac County Court, in the case against the accused Marko Bolić, who was charged of killing two members of Croatian military units who had previously laid down their arms and surrendered in the village of Podvožić [10];
- at the Rijeka County Court, in the case against unavailable defendant Zdravko Pejić, who was charged of killing a married couple of Croat ethnicity in the village of Saborsko in November 1991;
- at the Osijek County Court, in the case against defendants Ljubinko Radošević and Vojislav Grčić, charged of raping one female person and maltreating her family members in August 1991 in Dalj.

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

During the reporting period, the VSRH Appeals Chamber held its session in the case of defendant Petar Mamula, who was sentenced to 3 years and 6 months in prison by the Osijek County Court's verdict rendered on 10 February 2012, in the fifth (fourth repeated) trial, for physical maltreatment of a Catholic priest in 1991 in Baranja. We are not familiar with the VSRH decision on this case.

[10] The criminal offence has been legally qualified as unlawful killing and wounding of enemy, stated in Article 124, Paragraphs 1 and 2 of the OKZRH.

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

(c) Investigations and indictments

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

- the Rijeka County State Attorney's Office, at the beginning of May 2013, issued the indictment against two citizens of the Republic of Serbia who are unavailable to the Croatian judiciary, charged that they killed three Croats and five members of MUP RH in September 1991 in Donji Hrastovac (municipality of Hrvatska Kostajnica);

- the Osijek County State Attorney's Office, at the end of June 2013, issued a warrant on conducting investigation against a citizen of the Republic of Serbia who is unavailable to the Croatian judiciary, due to a probable cause that the accused person raped one female person on several occasions from 15 October until the end of 1991 in Opatovac.

Defendants Rade and Dušan Ivković case – new Criminal Law Act is more lenient in respect of persons who committed war crime as rape perpetrators

End of January 2013, the VSRH modified, by its decision on sentence, the Osijek County Court's verdict rendered in September 2012 in which Rade and Dušan Ivković were convicted for the rape of one female person in 1991 in Vukovar. Rade Ivković's sentence was reduced from 8 to 6 years in prison while Dušan Ivković's sentence was increased for 6 months so that he also received a sentence of 6 years imprisonment. At present, both defendants are unavailable to the Croatian judiciary.

The VSRH applied a new Criminal Law Act (OG 125/11, 144/12), in effect from 1 January 2013. According to Article 91 paragraph 2 of the mentioned Act, the war crime perpetrator who committed this crime by rape, sexual oppression, forced prostitution, pregnancy, sterilization or other sexual abuse, shall be punished by imprisonment for not less than three years imprisonment. The VSRH applied the mentioned Act because it is more lenient than the OKZRH in respect of the perpetrators because this latter Act stipulates a minimum of 5 years imprisonment for the commission of war crime against civilians referred to in Article 120, paragraph 1 of the same Act.
Only in cases where the crime was committed against a great number of people or in a particularly cruel or treacherous way, the new Criminal Law Act stipulates that the perpetrator shall be punished by imprisonment for not less than five years of by long-term imprisonment (in Article 91, paragraph 1).

This way, the rape in its non-qualified forms has not been made equal to the torture or inhumane treatment, which are stipulated in Article 91, paragraph 1 of the new Criminal Code.

Unfortunately, it is evident from the aforementioned that new legislation does not follow the practice and achievements of the ICTY in prosecuting cases of sexual violence. In the *Mucić et al.* case, the rape was legally qualified as the type of torture. Pronouncing the 1998 judgement in this case, the ICTY judges stated that: "... there can be no question that acts of rape may constitute torture under customary international 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."

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

IV. RESTITUTION TO THE VICTIMS & MEMBERS OF VICTIMS' FAMILIES

1. Proceedings for restitution of damages for the death (killing) of a close family member – there's a need for reaching settlements in order to cease further victimisation of victims

The failure of victims' family members/plaintiffs to win civil lawsuits for restitution of damages for the death (killing) of the close family member has been the most usual consequence of the non-existence of a legally valid and conclusive conviction of a crime perpetrator. The plaintiffs usually have success only in such civil lawsuits which were preceded by criminal proceedings in which the perpetrator's criminal responsibility had been established. However, due to many unprosecuted crimes or inadequately carried out criminal proceedings, victims can expect to have success in proceedings before the European Court for Human Rights (ECHR).

Out of 1223 decisions and judgements rendered in the case of the Republic of Croatia, the ECHR rendered them thus far in the majority of cases (851) in conjunction with potential or established violations under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms – *Right to a Fair* Trial. In 34 cases, decisions and judgements were rendered in respect of violations under Article 2 – *Right to Life* and in 113 cases in respect of violations under Article 3 of the Convention - *Prohibition of torture.*

The ECHR established in the cases **Skendžić and Jularić** that the Republic of Croatia violated Article 2 of the Convention by failing to implement effective investigations of killings committed during the war**.** In certain cases, the ECHR deemed that due to investigations which were not carried out or which had been carried out ineffectively, it can be considered in the case of family members of killed civilians that they were exposed to inhumane treatment by the state – and this issue is regulated by already mentioned Article 3 of the Convention.

Croatian authority is obliged to carry out effective investigations, i.e. to take all relevant measures which could lead to disclosure of perpetrators and their bringing to justice. Failing to do so, the Croatian authority is in breach of the obligations under Article 2 of the Convention.

Significant increase in the number of cases before ECHR has been recorded in the last few months which indicate violation of Article 2 of the Convention. Violations of Article 4 and Article 14 (*Prohibition of discrimination*) were also reported in some cases.

With settlements reached between the injured parties/plaintiffs and the Republic of Croatia as the defendant, the state could unburden itself from paying indemnifications which shall be highly likely ruled for failing to carry out adequate criminal prosecution of perpetrators. This way, the victimisation of close family members of killed persons would be stopped or at least reduced.

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

Criminal proceedings against Vjera Solar – terrible agony of killed young Sisak girl's mother

In the last few months, the Sisak Municipality Court carried out the proceedings for slander against Vjera Solar.

The person who initiated the proceedings by a private lawsuit was Silvio Benčina. He believed that Vjera Solar slandered him and inflicted mental pain upon him by her deposition given on 19 September 2012 during the court proceedings held against Vladimir Milanković and Drago Bošnjak for the crimes committed against Serb civilians in Sisak, which was commented on and conveyed by numerous media.

In her deposition, Vjera Solar presented the information she had about the circumstances under which her daughter Ljubica Solar had been shot at and killed by a bullet that had flown through the window of the apartment she had been living in at that time in the centre of the town of Sisak on 17 September 1991. *Inter alia*, Vjera Solar stated that several years prior to the court proceedings, Ivan Božurić had called her from the Gospić prison and told her that her daughter had been killed by Silvio Benčina. Božurić later dismissed the statement that he actually had told Vjera Solar about the person who had killed her daughter. However, since Božurić was killed in Sisak at the beginning of May 2013, he will not be giving any statements in the criminal proceedings initiated by Silvio Benčina against Vjera Solar.

For many years, Vjera Solar has been devoted to the issue of prosecution of the crimes committed in Sisak during the early 90-ies. She has founded the *Civic Association against Violence* in Sisak and collected the information on approximately one hundred victims. For twenty years, she has been facing negative reactions, insults, death threats, lawsuits, rejected requests for payment of damages, and the obligation of payment of court fees.

Although Vjera Solar stated everything she knew by giving her deposition in the court case, as is a duty of a witness, she had to face a criminal prosecution against her initiated by a private plaintiff Benčina. On 10 July 2013, however, Benčina decided to drop charges. This way, Vjera Solar's hardship has been to some extent at least mitigated.

2. Status of civilian victims – not even in the very moment of Croatia's accession to the European Union has the status of civilian victims of war been adequately resolved

On the first of July this year, the *Act on Pecuniary Compensation to Victims of Criminal Offences* entered into force. It has been adopted pursuant to *the European Convention on the Compensation of Victims of Violent Crimes*, which commits member states to provide compensation of damage in the cases of premeditated criminal offences and killings caused by the commission of violent crimes. This compensation, resting on the principles of social solidarity and righteousness, is provided by the Republic of Croatia irrespective of the fact whether the criminal proceedings were initiated. However, victims of war crimes are not covered by this Act since it stipulates a condition that request for compensation is to be submitted 6 months at the latest after the actual crime commission.

At the moment when Croatia enters the EU, many civilian victims of war have still not received any appropriate compensation. The war started more than twenty years ago and despite this fact there is still no

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

political will to resolve the status of civilian war victims. The present Government is just following the steps of its predecessors – and yet its duty is to make steps forward. Traces of any demonstration of social solidarity and righteousness are still invisible.

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