

# **ENSURING THE RIGHT TO 'EFFECTIVE REMEDY' FOR WAR CRIME VICTIMS**

MONITORING WAR CRIME TRIALS  
REPORT FOR 2012

2013



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

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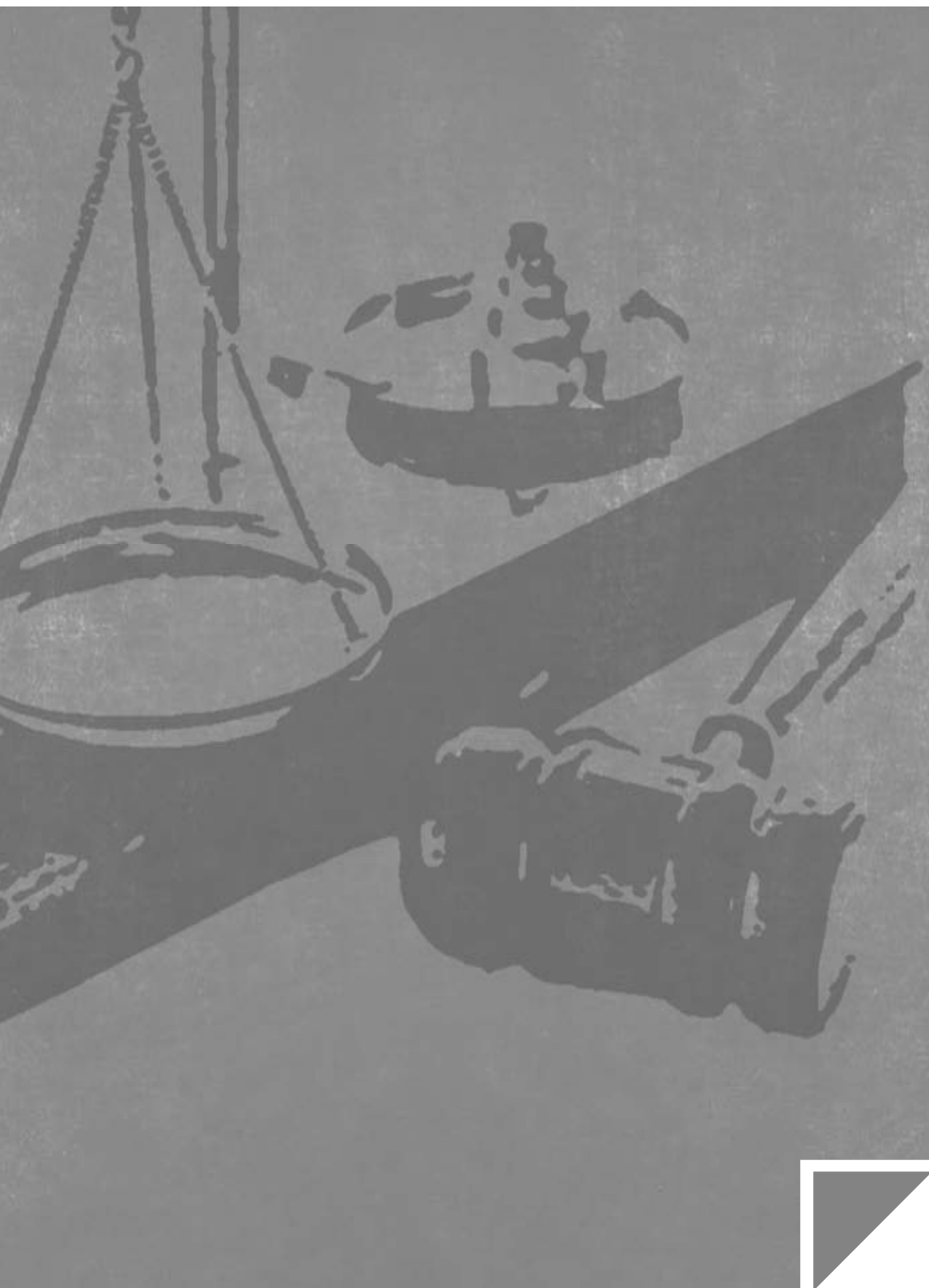
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Mladen Stojanović, Milena Čalić Jelić and Marko Sjekavica

March 2013



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# **ENSURING THE RIGHT TO 'EFFECTIVE REMEDY' FOR WAR CRIME VICTIMS**



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## LIST OF ABBREVIATIONS used in the text

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

# I. INTRODUCTION



## A. Project background and mandate

TSince 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 (hereafter referred to collectively as the “Monitoring team”).

Objectives of monitoring war crime trials include the following: increasing the effectiveness of prosecution of war crimes, improving legal framework for their prosecution, improving the position of victims in criminal proceedings, intensifying regional cooperation, indemnification 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 2012.

## B. Summary

During 2012, our monitoring team has noted a number of positive and negative aspects in war crime trials before Croatian courts, as well as in social and political events related to these trials.

We assessed to be positive the commencement or resumption of several war crimes trials, which had for years been held-up due to a lack of willingness to prosecute and which involve cases where a larger number of persons of Serb ethnicity were killed or mistreated.<sup>1</sup> Additionally, cooperation between

---

1 Crimes committed in Sisak, in the prisons located in Gajeva Street in Zagreb, in Kerestinec, Pakračka Poljana and at Zagrebački Velesajam [the Zagreb Fair].

Croatian and Serbian prosecutors has resulted in trials with (non-final) convictions before the Higher Court in Belgrade against 22 members of Serb formations for crimes committed in Croatia and against its citizens. Moreover, the Croatian Supreme Court (hereinafter: the VSRH) rendered a decision holding that it is possible to award compensation of damage to war crimes victims regardless of the fact whether the perpetrator is known.

However, we also identified a number of areas in respect of which we express our concern.

Certain problems originated in previous years, such as numerous cases of non-prosecuted crimes where planting explosives in houses owned by citizens of Serb ethnicity constitutes the guilty act, their systematic evictions as well as certain proceedings which, despite the defendants' availability, have been ongoing for 10 or more years or they keep being repeated.<sup>2</sup> Additionally, following the stipulation of exclusive competence and transferral of cases to the four county courts, several proceedings against members of Serb formations were discontinued due to unfounded charges. This suggests that all consequences caused by previous unfounded charges, despite repeated revisions conducted by state attorney's offices, have still not been eliminated.

Transferral of competence to the four courts and four state attorney's offices has lead to certain problems relating to the arrival of witnesses to courts and the necessity to conduct field interrogations of witnesses. Unfortunately, in respect of the victim-witness support system, which has been developed for several years already, no further progress has been made in 2012.

In many cases, members of Serb formations are not available to Croatian judiciary. This suggests that it is necessary to improve regional cooperation. For that reason, the Croatian side initiated the signing of agreement on prosecution and punishing the perpetrators of war crimes in March 2012 and it submitted to the Serbian side a draft cooperation agreement. However, relations between Croatian and Serbian state leadership, burdened with many issues from the past, have deteriorated after the change of government authority in Serbia in May 2012. The situation grew even worse after the acquittal of Croatian generals Gotovina and Markač rendered by the ICTY in November 2012. Only normalisation of relations and signing of inter-state agreements in respect of war crimes prosecution between countries in the region could lead to a more efficient persecution of perpetrators.

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<sup>2</sup> Trial against Mihajlo Hrastov (crime on the Korana Bridge), trial against Petar Mamula (crime in Baranja), trial against Enes Viteškić (crime in Paulin Dvor), trial against Božo Bačelić et al. (crime in Prokljan), trial against Čedo Jović (crime in Dalj IV), trial against Rade Miljević (crime at the Pogledić hill near Glina).

Despite the necessity that the Croatian judiciary and other authorities demonstrate that all defendants and victims are treated in an equal and unbiased manner, the courts continue to assess participation in the Homeland War as extenuating circumstance in respect of accused members of Croatian formations when determining the sentence against them. Extremely high defence expenses of certain accused members of Croatian formations are covered by the State Budget. On the other hand, 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. Despite the fact that the Croatian Government adopted a regulation in July 2012 according to which litigation costs can be written-off in the case of socially handicapped plaintiffs, this pressing issue is not entirely resolved and certainly not in a satisfactory manner.

It is becoming more and more difficult to prosecute crime perpetrators. The quality of evidence material is diminishing due to investigations which are carried out in an unduly and below-quality manner. Our society is still lacking the atmosphere in which people would be willing to testify against crime perpetrators who were „on our side“. Public interest in war crime issues, both domestic and international, is weakening day by day. Because of all of this we express our concern that the perpetrators and persons with command responsibilities, in particular the highest ranking officials, would remain unpunished. In spite of this, we repeatedly emphasize the necessity to reveal circumstances of commission of all war crimes and to punish the perpetrators. Only in this way justice for victims would be provided and similar cruel conflicts in the future would be prevented.





## **II. HISTORICAL CONTEXT**



## A. The way war crimes have been prosecuted in the Republic of Croatia

Investigation and prosecution of war crimes have always represented a special challenge for judicial institutions of individual states. Not only are such proceedings factually difficult and legally complex, but they are politically sensitive as well. War crimes significantly differ from general crimes and prosecutors, defenders and judges encountered them for the first time at the beginning of 90's. Probably the biggest challenge for the judicial system of any state represented the prosecution of war crimes committed by its own members. Problems, such as intimidation of witnesses or (re)traumatisation of witnesses-injured parties, represent additional obstacles. Regarding the fact that wars always imply the existence of mutually different parties in conflict, the interpretations of causes of conflict and of individual war events are extremely emotionally charged. Social communities in all conflicting sides are subjected to intense war propaganda, thus it often happened that war heroes on one side were considered war criminals on the other. The police and the judiciary may succumb to political pressure which leads them in the direction of avoiding prosecution of war crimes committed by its own members. It is precisely this fact which explains indecisiveness of the state to try members of its own formations and political structures.

Croatia has made progress in its attempts to try members of its own formations. That demonstrates progress in dealing with (unpleasant) war events by numerous relevant factors, as well as the maturing of the judicial system as a whole. However, an entire decade had to pass before commencement of prosecution of crime perpetrators on the Croatian side, and problems still exist up to now.

**During the 90's, members of Serb formations were almost exclusively prosecuted.** While respecting the fact that trials were conducted in difficult war- and post-war conditions, in a situation in which application of the law of war in practice represented a *momentum novum* for judicial actors, trials were very often conducted in an unprofessional and ethnically biased manner, mostly in absence of defendants. Approximately 80% of sentenced persons were prosecuted *in absentia*.<sup>3</sup> Sentencing verdicts were pronounced on the basis of imprecise indictments, which often included dozens of defendants and without sufficient evidence and adequate defence. Verdicts were often scarcely explained and pronounced sentences were very severe. Since the prevailing attitude of political and judicial elites at the time was that war crimes cannot be committed in a defence war, prosecution of crimes committed by members of Croatian formations failed to take place.

---

<sup>3</sup> According to DORH data published in 2004, 602 persons were convicted for crimes committed between 1991 and 2004, and out of that number 464 persons were convicted in their absence.

The Sisak District Court convicted Dušan Gavrilović and eighteen other defendants *in absentia* in 1993 to 20 years in prison each.<sup>4</sup> They were found guilty that in, their capacity as members of Serb formations, they participated in the attack on villages Maja and Svračica, plundered and maltreated civilians, destroyed houses and farm buildings, cultural and sacral facilities. The explanation of the conviction contains only two pages. „*The court-appointed defence counsel established that the evidence presented during the trial suggested a conclusion that the defendants really acted in such a manner that they committed crimes as charged, and therefore he proposed extenuating circumstances to be taken into consideration when deciding on the sentence*“, reads the explanation of the first-instance verdict. The defence did not appeal against the verdict. After the expiry of the deadline for lodging an appeal, the verdict became final and conclusive.

In 2009, the 7<sup>th</sup> convicted person - Milan Španović was extradited from the UK to Croatia. In November 2009, following the reopened trial, the Sisak County Court pronounced a sentence of 3 years and 5 months in prison instead of 20 years as in the previous trial – exactly the amount of time he had already spent in extradition detention in the UK and in the detention ward in Sisak. However, the VSRH quashed the mentioned verdict because Španović was convicted for committing crime together with eighteen other co-accused persons although the trial against all of them was meanwhile discontinued.

Parallel to the aforementioned processes, the Republic of Croatia granted amnesty to perpetrators of criminal offences committed during the war or related to war (this primarily pertained to members of Serbian minority who participated in armed rebellion). However, public information about the character and scope of application of the Amnesty Act did not take place, thus the prevailing attitude in the society was that application of the Amnesty Act gave abolition to “Serb crimes and criminals”. On the contrary, in several cases amnesty was unfoundedly applied to members of Croatian formations.

---

4 The Verdict of the Sisak District Court, No. K-38/93-20 of 17 November 1993.

We are familiar with five criminal proceedings where pardon was unfoundedly applied in respect of members of Croatian formations:

- based on the decision issued by the Osijek County Court in June 1997, criminal proceedings against Fred Marguš were discontinued (it was conducted because of the killing of four Serb civilians in Čepin near Osijek);
- based on the decision issued by the VSRH in May 1997, criminal proceedings were discontinued against Antun Gudelj (it was conducted because of the killing of Josip Reihl Kir, Goran Zobundžija and Milan Knežević and attempted killing of Mirko Tubić in Tenja near Osijek);
- based on the decision issued by the Zagreb Military Court in 1992, criminal proceedings were discontinued against Dubravko Leskovar and Damir Vide Raguž (it was conducted because of the killing of Sajka Rašković, Mišo Rašković, Mihajlo Šeatović and Ljuban Vujić, committed in Novska in 1991);
- based on the decision issued by the Zagreb Military Court in 1992, criminal proceedings were discontinued against Željko Belina, Dubravko Leskovar and Dejan Milić (it was conducted because of the killing of Goranka and Vera Mileusnić and Blaženka Slabak, and attempted killing of Petra Mileusnić, committed in Novska in 1991);
- based on the decision issued by the Zagreb Military Court in 1992, criminal proceedings were discontinued against R.A., D.Š., D.K. and V.K. (it was conducted because of the killing of Damjan Žilić at the Jakuševac landfill near Zagreb).

Trials against Fred Marguš and Antun Gudelj were repeated several years ago. Marguš was convicted to 15, and Gudelj to 20 years in prison.<sup>5</sup>

Trials were also repeated in respect of the crimes committed in Novska. Unfortunately, crime perpetrators at the Jakuševac landfill will most likely remain unpunished. Namely, the Zagreb ŽDO dismissed the criminal report lodged by wife and daughter of killed Žilić because it was of the opinion that perpetrators cannot be prosecuted again. The injured parties assumed criminal prosecution but their request for investigation was rejected with a final and conclusive decision.<sup>6</sup>

**The second decade (2000 – 2010)** was marked by an attempt to rectify mistakes committed in previous work. Investigations and prosecution of war

5 In the “Case of Marguš v. Croatia”, the European Court of Human Rights took a position that reinitiating criminal prosecution and trial against perpetrators, in this case with legal qualification of war crime, does not represent a violation of the ne bis in idem principle - the Judgment of 13 November 2012, (application No. 4455/10).

6 We learned about the mentioned cases from the media and on the basis of examination and analysis of trials conducted before military courts in Zagreb and Osijek. We have still not received access to examine trial cases at other military courts.

crimes committed by members of Croatian formations were initiated. Co-operation between judicial bodies of states in the region has been established and developed, the quality of indictments and trials is gradually improving, support offices to victims and witnesses at individual county courts were established. Adoption of a new *Criminal Procedure Act* in 2008 rendered it possible to re-open proceedings which were previously completed with final verdicts upon request filed by state attorney's offices. Thus, proceedings were re-opened and sentencing verdicts against approximately 90 convicted persons were quashed. Proceedings for crimes committed in Medak Pocket, Gospić and Osijek demonstrated the scope of social sensitivity and complexity of criminal prosecution of its own members, but perpetrators' convictions pointed at the fact that Croatian judiciary is capable of conducting such proceedings.

**In the current period (from 2010 onwards)** the legislative framework in which prosecution of war crimes takes place has been improved. Amendments to the *Act on the Application of the Statute of the International Criminal Court* for trying war crimes cases stipulated exclusive competence of county courts in Osijek, Rijeka, Split and Zagreb, as well as a possibility to use evidence collected by the bodies of the International Criminal Tribunal for the former Yugoslavia (ICTY) in criminal proceedings in the Republic of Croatia.

Two proceedings against potential perpetrators of killings of Serb civilians in Novska, which were already mentioned in this Chapter, were re-opened. We also noted first proceedings against members of Croatian formations for war crimes in which there were no fatalities. Proceedings for crimes in which numerous Serb civilians were liquidated and for which there was no will to prosecute them for years, were also initiated.<sup>7</sup>

However, even today courts fail to render final verdicts in certain proceedings that have been ongoing for 10 or more years or have been repeatedly repeated. This represents a violation of rights, both on the part of defendants and of the victims.

---

<sup>7</sup> Trials against Tomislav Merčep for the crimes in Pakračka Poljana and at Zagrebački Velesajam, and against Vladimir Milanković et al. for the crimes in Sisak.

### Case examples:

- the trial against Mihajlo Hrastov (crime at the Korana Bridge) has been conducted since 1992. The VSRH quashed two times the acquittals rendered by the Karlovac County Court; later on, the VSRH conducted a hearing itself and sentenced (final and conclusive verdict) Hrastov to 7 years in prison. However, the Constitutional Court quashed this conviction in 2010. In the repeated trial in 2012, Hrastov was sentenced to 4 years in prison (non-final verdict);
- in the trial against Petar Mamula (crime in Baranja) an indictment was laid in 2001. The VSRH quashed four times the convictions rendered by the Osijek County Court. In the fifth trial, Mamula was sentenced to 3 years and 6 months in prison. This case is at the appellate stage;
- the trial against Enes Viteškić (crime in Paulin Dvor) has been conducted since 2002. The VSRH quashed two times the acquittals rendered by the Osijek County Court. In the third trial before the first instance court, Viteškić was sentenced to 11 years in prison. This case is at the appellate stage;
- the trial against Božo Bačelić *et al.* (crime in Prokljan) has been conducted since 2001. In 2007, the VSRH quashed the acquittal rendered by the Šibenik County Court. In 2012, no trial hearings were held because of the escape of defendant Bačelić. The hearing in the repeated trial is ongoing;
- in the trial against Čedo Jović (crime in Dalj IV), the VSRH quashed three times the convictions rendered by the Osijek County Court. After the fourth trial at first instance, Jović was sentenced to 5 years in prison. This case is at the appellate stage. The defendant is held in custody as of July 2007;
- in the trial against Rade Miljević (crime on Pogledić Hill near Glina), the VSRH quashed two times the convictions rendered by the Sisak County Court. In November 2012, he was acquitted by a non-final verdict. He was detained for 4 years and 9 months – this is a maximum detention period stipulated by law.

As a consequence of former imprecise indictments, proceedings against members of Serb formations are still being discontinued.<sup>8</sup> There is a fear among judges that, due to poor indictments, it will be necessary “to conduct investigations during main hearings”.<sup>9</sup>

8 For instance: the trial against defendant Miloš Stanimirović *et al.* (crime in Tovarnik), the trial against defendant Vladimir Bekić (crime in Ilovčak near Glina) and the trial against defendant Borislav Mikelić (crime in Petrinja).

9 For instance: the trial against defendant Branko Dmitrović *et al.* (crime in Baćin).



Military or political officials, who were obliged to guarantee safety and protection to civilians or war prisoners in the area for which they were responsible and in which their subordinates committed crimes, were mostly not included in criminal prosecutions.<sup>10</sup>

Unfortunately, the level of public tolerance towards “one’s own” criminals is still big. A part of political parties and defenders’ associations provide support to sentenced persons or individual persons against whom proceedings are ongoing. Such an environment disrupts the level of security necessary so that witnesses and victims would be willing to testify.

Concern also exists because, even today, numerous crimes remain non-prosecuted. There is still a lot of room in which it is possible to improve professionalism, non-bias and efficiency in the prosecution of perpetrators.

## **B. Statistical data**

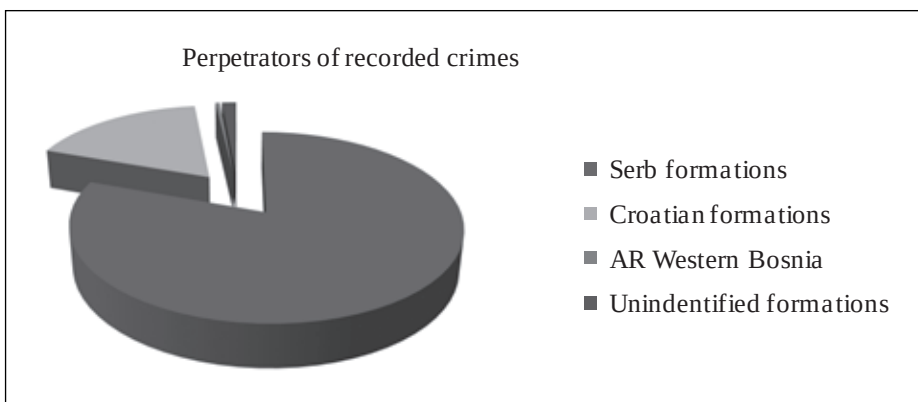
*War crimes database of the DORH*, established in the last several years, contains data on crimes, victims, evidence and identified perpetrators. It registered a total of 490 crimes with 13,743 victims: 5,987 murdered, 2,267 severely wounded, 2,339 tortured, 67 raped and 3,086 others. Each individual crime contains one or several cases which are logically, geographically and time-wise related and they mostly involve a larger number of perpetrators and victims. Each crime defined in such a manner may contain one or several cases, both against identified and non-identified perpetrators.

Out of 490 registered crimes, 393 crimes (80%) were committed by members of Serb formations – Yugoslav People’s Army or formations of the so-called SAO Krajina, 86 (18%) by members of Croatian formations – Croatian Army or the Ministry of the Interior of the Republic of Croatia, 2 (less than 1%) by members of the so-called People’s Defence of the Autonomous Region of Western Bosnia, and 7 (1.4%) by members of, for the time being, non-identified formations.

On 30 September 2012, the DORH identified perpetrators of 316 crimes. Perpetrators of 174 crimes were non-identified. However, only 112 crimes (22.86%) were fully resolved.

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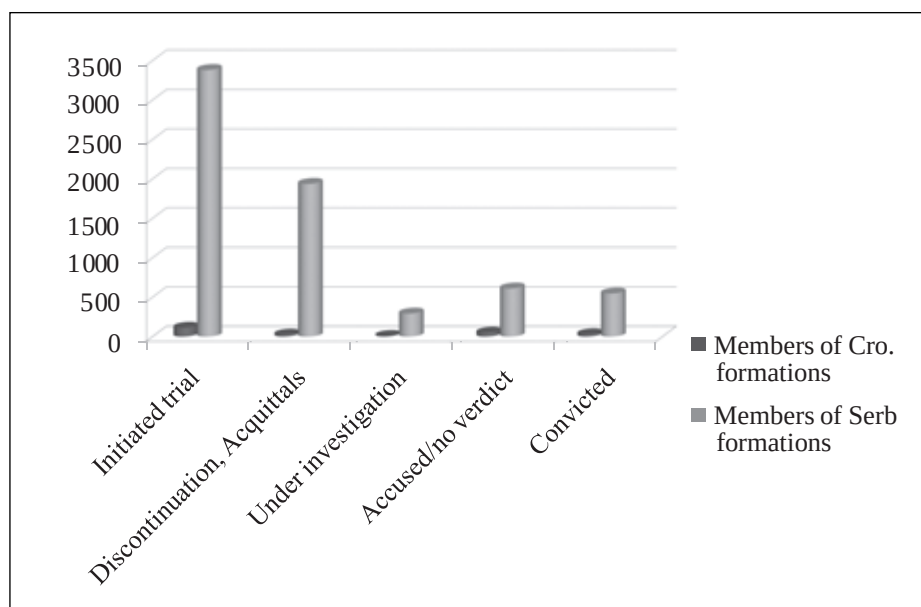
10 After pursuing our advocacy over many years to continue with the investigation of crimes committed against Serb civilians and prisoners of war in the so-called Medak Pocket, an investigation was conducted during 2012 as a result of which two persons were indicted. However, persons who are positioned on the top of the command chain stayed ‘untouchable’.



According to DORH data, **between 1991 and 30 September 2012**, criminal proceedings were initiated against 3,495 persons, of whom against 87% of persons *in absentia*. These proceedings were mostly initiated against members of the JNA and against members of formations of the so-called SAO Krajina.

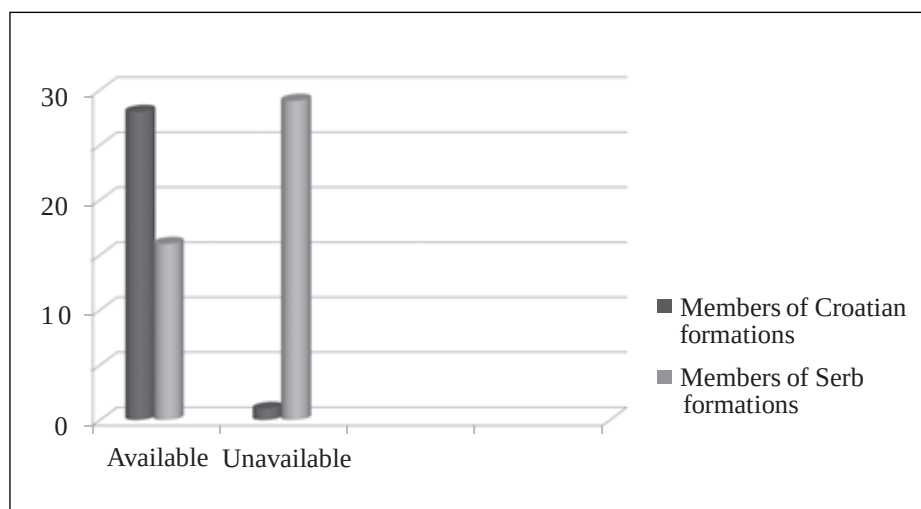
On 30 September 2012, investigations are being conducted against 299 persons, 658 were charged but the proceedings are still ongoing, while 576 persons received a final sentence. With regard to 1,962 persons, proceedings were discontinued or acquitting verdicts were rendered after the investigation or after the indictment was filed.

Out of the aforementioned total numbers, criminal proceedings were initiated against 112 members of the Croatian Army or the police (3.2% of persons against whom proceedings were initiated). Out of that number, 8 persons (2.7%) are under investigation, 49 persons (7.45%) were charged but the proceedings are ongoing, 30 persons (5.2%) were sentenced, while 25 persons (1.3%) were acquitted or proceedings were discontinued.



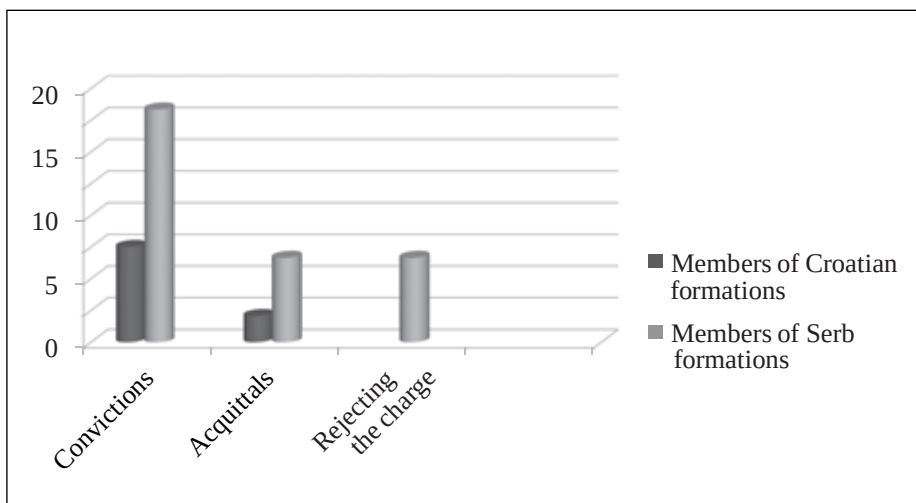
**During 2012**, main hearings in 34 trials were held before county courts - 19 against members of Serb and 15 against members of Croatian formations.<sup>11</sup>

In the aforementioned trials, a total of 74 persons were charged - 45 members of Serb formations, of whom 29 *in absentia*, and 29 members of Croatian formations, of whom 1 *in absentia*.



<sup>11</sup> According to VSRH data, there were 99 war crime cases before first-instance courts in October 2012. In most of the cases, the accused persons are unavailable and hence no hearings are scheduled.

First-instance verdicts were rendered with regard to 42 defendants. 18 members of Serb and 8 members of Croatian formations were sentenced, 7 members of Serb and 2 members of Croatian formations were acquitted, while charges were dropped with regard to 7 members of Serb formations.



Out of 34 conducted first-instance proceedings, 11 proceedings were repeated because the VSRH quashed the previous first-instance verdicts and remanded the trials to first-instance courts for a re-trial. Three proceedings were reopened – two following the arrest of persons previously sentenced *in absentia* and one upon request by the sentenced person who resides abroad.



### **III. EXISTING POLITICAL AND SOCIAL CONTEXT IN WHICH WAR CRIMES TRIALS ARE TAKING PLACE**



## **A. Presidential and parliamentary elections in Serbia**

Co-operation between the most important political actors in the region is a necessary precondition for good cooperation in all areas, including cooperation in prosecution of war crimes.

Although 2012 started with a praiseworthy initiative of Croatian President Ivo Josipović, supported by the then President of the Republic of Serbia, Boris Tadić, to sign an interstate agreement to facilitate cooperation between judicial authorities of Croatia and Serbia in the prosecution of war crimes perpetrators, relations between the two states significantly deteriorated after the presidential elections in Serbia in May 2012 on which Tomislav Nikolić, a person burdened with a wartime past, was elected president<sup>12</sup> and the formation of the Government led by Ivica Dačić, former close associate of Slobodan Milošević.

In addition to the existing problems between Croatia and Serbia - mutual lawsuits for genocide, the unresolved missing persons' issue, the issue of return and/or providing housing care for refugees and the Croatian *Act on Nullity of Certain Legal Acts of Judicial Bodies of the JNA, Former Yugoslavia and the Republic of Serbia*<sup>13</sup> - relations between the two states were additionally deteriorated after the liberation of Croatian generals Ante Gotovina and Mladen Markač by the ICTY.

## **B. Acquittal of Gotovina and Markač – euphoria in Croatia, shock in Serbia**

Pronouncement of the second-instance verdict by the ICTY in the Gotovina and Markač case certainly left a mark on prosecution of war crimes committed in Croatia. Namely, the ICTY Appeals Chamber overturned in November 2012 the convictions at first instance rendered in April 2011 in which Croatian generals Ante Gotovina and Mladen Markač were found guilty of committing a crime against humanity and a violation of the laws and customs of war, by participating in joint criminal enterprise. The objective of this criminal enter-

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12 At the position of the president of Serbia, Nikolić is burdened by his war past: his position of Chetnik duke; the former close cooperation with Vojislav Šešelj, leader of Serb radicals, indicted by the ICTY for the crimes committed in Croatia and in Bosnia and Herzegovina; organising Serb volunteer formations in the war and the fact that he was in the Croatian village Antin where crimes had been committed beyond any doubt.

13 At the beginning of 2012, President Ivo Josipović submitted a request asking for an assessment of constitutionality of the Nullity Act. The Constitutional Court of the Republic of Croatia will decide on this request.



prise was permanent removal of the Serb population from the so-called Krajina region. The cited first instance verdict sentenced Gotovina to 24 years and Markač to 18 years of imprisonment.<sup>14</sup>

The acquittal of Gotovina and Markač triggered euphoria among vast majority of the public in Croatia. The attitude on the ICTY as “being anti-Croatian” was replaced by statements that with the acquittal of Croatian generals “the Homeland War has finally ended” and that “Croatia is innocent”.

Although President Josipović and Prime Minister Milanović expressed their enthusiasm in respect of the acquittal, they both pointed out in their first public addresses that crimes were committed during and after the Operation Storm and that it is the duty of the Croatian judiciary to prosecute the perpetrators.

This pronouncement of acquittal of Croatian generals stirred up opposite reactions in Serbia, leaving the victims deeply frustrated and causing them to feel injustice because no one was punished for the crimes, which is understandable. However, leading politicians were appalled by the news on acquittal of Gotovina and Markač. Their assessment was that the ICTY was a political and “anti-Serbian” court. They also criticised Croatian authorities because of the acquittal and reduced cooperation between Serbia and the ICTY to a technical minimum.

Media approach in respect of this sensitive issue was prevailingly sensational, unprofessional and insensitive to victims’ suffering. This euphoria caused by the acquittal left in the shadow informing the public about the proportions of the crimes committed during or after the Operation Storm (murders, inhumane acts, plunder and destruction of property) and the proportion of mass exodus of Serb population.

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.

Unlike the CHC records, the DORH is in possession of data concerning 214 killed persons, out of whom 167 were killed as victims of war crime and 47 as victims of murder. When explaining this substantially different figures, the DORH stated that very often no distinction is made between murder victims and war crime victims and victims of war – in respect of whom there is no criminal liability for their killing by the warring sides.

14 The Appeals Chamber’ acquittal was rendered with dissenting opinions appended by two judges. The Appeals Chamber quashed the Trial Chamber’s finding about the unlawfulness of the artillery attacks on Knin, Gračac, Benkovac and Obrovac. In the first-instance verdict, these unlawful artillery attacks were central to the conclusion about the existence of a joint criminal enterprise whose aim was to expel Serbs from Krajina. The decision by the Appeals Chamber does not deny the committed crimes nor conduct of discriminatory policy of the then-Croatian leadership in respect of Serb population.

Croatian media mentioned only sporadically that **not a single person has been convicted for the war crimes committed during and after the Operation Storm.**

The *DORH Database* contains a total of 27 war crimes (167 victims) committed during and after the Operation Storm, in which perpetrators of 24 crimes (155 victims) are not identified.

There are/were 3 criminal proceedings conducted before Croatian courts against 10 persons for war crimes committed during and after the Operation Storm:

- for the killing of six elderly Serb civilians in Grubori during the Operation Storm - Obruč members of Special Police Frano Drljo and Božo Krajina were indicted. Initially, the criminal proceedings included five indicted persons but it was discontinued in respect of 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;
- the main hearing in the repeated trial against Božo Bačelić, Ante Mamić, Luka Vuka and Jurica Ravlić is ongoing. They are charged with the killing of two elderly spouses of Serb ethnicity in Prokljan and one prisoner of war in Mandići;
- in 2001, an investigation was carried out 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.

Despite the fact that the DORH and the Serbian Office of the War Crimes Prosecutor requested from the ICTY to submit its compiled documentation in the case of Gotovina *et al.*, it is feared that, due to previous inefficiency in persecution of these crimes but also due to weakening of international political pressure because of the accession of the Republic of Croatia to the European Union, the Croatian judiciary will not prosecute war crimes committed during and after the Operation Storm to a considerable degree.

3,728 persons were prosecuted before Croatian courts for the crimes committed during and after the Operation Storm. Out of this number, 2,380 persons were convicted. In most cases, the perpetrators committed plunder and arson. 2,287 persons were convicted of criminal offences against property (larceny, heavy burglary and robbery). 14 persons were convicted of murder, and 11 persons were convicted of rape and other criminal offences against sexual freedom and morality.

## C. Politicians' attitudes on prosecution of crimes

### 1. Positive attitudes

Visits to the places of suffering and paying tribute to victims regardless of their ethnic background by representatives of the highest state authorities became a common practice only in the last several years. Apart from representing an act of piety towards all war crime victims, such visits are necessary so that all places of suffering would become places of remembrance, with a clear message of crime condemnation and the necessity to prosecute their perpetrators.<sup>15</sup>

Statements by the highest state officials at this year's marking of the anniversary of Operation Storm and the National Thanksgiving Day, who condemned the crimes committed during and after the Operation, provide hope that Croatia can celebrate the liberation of the occupied areas of Croatia whilst acknowledging the suffering of civilian victims from the "other side".

### 2. Negative attitudes

Certain less influential political actors at the state level, following the acquitting verdicts rendered against the generals, called for the release of Branimir Glavaš, who received a final sentence for the crimes against Serb civilians in Osijek, as well as to terminate criminal proceedings against Tomislav Merčep, charged for numerous killings of Serb civilians from the area of Pakrac, Kutina and Zagreb. During the entire year, leaders of the Croatian Democratic Party of Slavonia and Baranja (HDSSB), the dominant political party in Eastern Croatia, continued to claim that Glavaš, founder and informal party leader, was "innocently convicted in a politically motivated process" and publicly denied the facts about the crimes committed in Osijek and surrounding areas.

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15 For instance, at the end of December 2012 President Josipović laid wreaths at the killing sites in the surroundings of Pakrac: at the monument erected between Jeminovac and Šnjegavići where thirty or so Serb civilians were killed in December 1991, and at the memorial site for killed Croatian defenders in Kusonje.

On 28 June 2012, on the occasion of the Day of Osijek Defenders' celebration, the City of Osijek unveiled the memorial plaque dedicated to Osijek war victims. *"With this memorial plaque we wish to pay homage to defenders and fellow citizens – victims of Greater-Serbian aggression against the City of Osijek, Osijek-Baranja County and the Republic of Croatia"*, is written on the monument including the names of killed persons as well as the names of persons in respect of whom it was established by final verdicts that they were killed by members of Croatian formations. Thus, among the victims of "Greater-Serbia aggression" are names of Branko Lovrić and Bogdan Počuča (Branimir Glavaš *et al.* were convicted for killing them), and Vukašin Bulat, Svetozar Bulat and Savo Pavitović (Fred Marguš and Tomislav Dilber were convicted for killing them). The names of Petar Ladjuk and Đorđe Petković are also included (Glavaš *et al.* were charged with killing them but it was not proven that they actually killed them).

On the other hand, the names of all victims are not mentioned on this monument (for instance Ljiljana Jaroš, a fourteen year old girl who died in 1991 during the shelling of Osijek).

By such actions leaders of the aforementioned party continue to disrupt the authority of judicial bodies and final court determinations. This is also confirmed by participation of their MP Ivan Drmić in the commission of several criminal offences (colloquially: attempt to bribe VSRH judges) so that the VSRH would render a more favourable verdict for Glavaš in the appellate procedure.<sup>16</sup> All of the aforementioned leads to the creation/maintenance of an atmosphere in which witnesses are not willing to testify about the crimes "committed on our side".

#### **D. Financing the defence of indicted members of Croatian formations**

The Republic of Croatia covers expenses of the defence of individual members of Croatian formations indicted with war crimes. In such a manner, since 2006, the costs of defence of indicted generals Gotovina, Markač and Čermak cost the state budget a total of HRK 192,312,736.66.<sup>17</sup>

<sup>16</sup> In May 2012, the main hearing commenced at the Zagreb County Court in the trial against Osijek entrepreneur Drago Tadić, indicted for associating for the purpose of committing criminal offences under Article 333 § 1 of the KZ and for instigating others to illegal intercession referred to in Article 343 § 5 of the KZ in conjunction with Article 37 § 2 of the same Act. Before the hearing, the remaining four defendants, including Ivan Drmić, pleaded guilty and made plea bargains with USKOK and thus were given suspended prison sentences in exchange for their guilty plea.

<sup>17</sup> The data issued by the Ministry of Justice of the RC on 16 November 2012. <http://www.mprh.hr/podsjetnik-0-suradnji-republike-hrvatske-s-smksj-u->

The state budget also covers the costs of defence of certain former or current MUP members indicted with war crimes. The MUP has found justification for this in the provision of Article 98 of the *Police Duties and Powers Act* which stipulates that a police officer has the right to have legal aid provided at the expense of the MUP when proceedings are initiated against him due to the use of means of coercion and other actions while performing his police duties, even in case when the person is no longer employed by the MUP. In such a manner, according to data from the MUP, the state budget covered the costs of defence of three former members of the MUP indicted with war crimes: Vladimir Milanković, Tomislav Merčep and Željko Sačić.<sup>18</sup>

We consider it wrong to interpret the aforementioned legal provision in such a manner which torture and killing of civilians considers to be „use of means of coercion or other actions while performing police duties“.

Such interpretation by the MUP leads to a serious imbalance between the position of perpetrators and victims and places a victim again in an unfavourable, stigmatized and degrading position. The legal framework/interpretation which provides an extremely discriminating access to budget funds is extremely unfair: on the one hand defendants in war crimes trials, where there is a great probability that they committed the criminal offences with which they are charged, and on the other hand victims who have for years been unsuccessfully trying to exercise the right to compensation of damage and were, due to failed claims, obliged to cover high litigation costs, cannot access public funds on the same terms.

#### **E. The Government of the Republic of Croatia has still not written-off the costs of lost lawsuits from victims' family members**

Even one year since the establishment of a new Government, the obligation of victims' family members, who filed lawsuits against the Republic of Croatia for compensation of non-pecuniary damage and who lost the lawsuits, to compensate litigation costs, has still not been written-off.

On 5 July 2012, the Government of the Republic of Croatia issued the *Regulation on the Criteria, Standards and Procedures to Delay Payments, Introduce Instalment Payments and Sale, Write-off or Partial Write-off of Debt* which allows litigation costs to be written off for the most socially vulnerable plaintiffs.<sup>19</sup> However, the aforementioned *Regulation* has a general character and does not pertain exclusively to war crime victims. Thus, it did not resolve the manner of restitution of funds to the plaintiffs who had already paid litigation costs.

18 According to the memo issued by the MUP on 11 December 2012, HRK 702,330 has been used so far to cover expenses for the defence of Vladimir Milanković, indicted for the crimes in Sisak; HRK 672 836 has been used to cover expenses for Tomislav Merčep, indicted for the crimes committed in Pakračka Poljana and at the Zagrebački Velesajam; and HRK 143,295 has been used to cover expenses for Željko Sačić who is still under investigation for the crime committed in Grubori and Ramljani.

19 The Regulation was published in the Official Gazette No. 76/12.

In approximately 70 proceedings registered by *Documenta* in which plaintiffs/injured parties were obliged to cover those costs, total litigation costs amount to more than HRK 2 million. These proceedings mainly concern pensioners. The subject of foreclosure is most often their modest pensions, but also other movable and immovable property.<sup>20</sup>

It is the standpoint of the judicial practice that decisions on writing-off debts must be adopted by the Parliament or the Government and, until they are adopted, the costs of proceedings must be paid.

At the end of 2012, the seizure of property owned by sisters Radmila and Milana Vuković was initiated; their litigation claim for the compensation of non-pecuniary damage for the killing of close family members was rejected. The Vuković sisters' parents Milutin and Cvjeta, their younger sister Dragana who was only seven years old when she died, an uncle, an aunt and their two children were killed. On 1 May 1995, during the Military Operation "Flash", members of Croatian formations killed 22 civilians in Medari (including three children and eleven women). The perpetrators were not prosecuted. This case is in pre-investigation stage. In November 2009, the Municipal Court in Nova Gradiška rejected the litigation claim by sisters Vuković as unfounded, and the Civil-Administrative section of the Municipal State Attorney's Office in Zagreb rejected the request to reach an out-of-court settlement because it was of the opinion that the death of civilians was the consequence of war conflicts (war damage), not by the commission of a war crime. The subject of this seizure should be destroyed property of the Vuković sisters.

We deem that threats with property seizure or execution due to owed litigation costs represent the continuation of injustice which had started by killing the victims and later non-prosecution of perpetrators. Therefore, the Croatian Government should urgently write off the obligation to compensate the costs of lost lawsuits for this category of plaintiffs and, by doing so, turn declaratory understanding for the resolution of this problem into practise.

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20 More about the needs of civilian war victims, litigations proceedings for the compensation of non-pecuniary damage, recommendations to improve the status of civilian victims... can be read in the research report „Civilne žrtve rata u Hrvatskoj. Pravo na pravni lijek i reparaciju za žrtve teških kršenja međunarodnog prava o ljudskim pravima i ozbiljnih povreda međunarodnog humanitarnog prava. Potrebe, praksa, preporuke“[Civilian war victims in Croatia. The right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law] – Documenta, 2012, <http://www.documenta.hr/hr/publikacije.html>

The President of the Government Zoran Milanović and the Minister of Justice Orsat Miljenić stated on several occasions that the Government is seeking to find a complete solution which would include all plaintiffs whose litigation claims for damage compensation were rejected. President Josipović also pointed out repeatedly at the necessity to resolve this issue. At the conference entitled “The Right to a Remedy and Reparation for Victims of Gross Violations of Human Rights and Serious Violations of International Humanitarian Law”, organised by *Documenta*, President referred to the litigation costs collection as “the third level of victimising the victims”. He stated that families sued the state because it did not fulfil its duty – to find and punish crime perpetrators, and that courts rejected litigation claims because the families were unable to prove who committed the crimes. He also stated that *the Regulation* was not sufficiently prepared and that he expects of the Government to correct this.

Although this would resolve the biggest injustice and the most urgent problem, there remains the issue of moral and pecuniary satisfaction, i.e. indemnification and recognition of suffering of victims’ family members who unsuccessfully sought compensation of damage through litigations.<sup>21</sup>

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21 In addition to numerous actions taken within the war crime trials monitoring programme, we also advocate the necessity of litigation costs writing-off and the need for indemnification and recognition of suffering of all civilian victims via Platform 112 – for Croatia governed by the rule of law, the coalition of national civil society organisations which submitted 112 requests to the authorities, defining priorities and concrete measures needed to be undertaken in Croatia. Hence, in April 2012, the mentioned civil society organisations issued a Report on the first 112 days of the new government with recommendations for effective performance until the end of 2012, which pointed out positive changes in respect of 29 out of 112 requests. Unfortunately, one of the main objections addressing the Government of the Republic of Croatia is its omission to pass a decision by which the Republic of Croatia waives the collection of litigation costs from all plaintiffs who were unsuccessful with their requests for compensation of damage for the death of a close person or for compensation of material damage caused by terrorist acts.

## **IV. SIGNICANT EVENTS IN WAR CRIME TRIALS**





## A. Exclusive competence of county courts in Osijek, Rijeka, Split and Zagreb

Following the amendments to the *Act on the Application of the ICC Statute* which during 2011 stipulated exclusive competence of county courts in Zagreb, Split, Rijeka and Osijek to try war crimes cases, numerous war crimes trials were transferred to the four aforementioned courts from other county courts. Out of 34 trials in which, during 2012, hearings were held at county courts, only 4 trials, in which criminal proceedings were initiated before the amendments to the cited *Act*, were conducted before other county courts. Since, during 2012, first-instance verdicts were rendered in three trials, at the end of 2012 main hearing was actively conducted in only one case at one of other county courts.<sup>22</sup>

Stipulating exclusive competence of the four county courts made certain progress: trials are concentrated at those courts, while judges from criminal departments were exclusively appointed into war crime departments. However, taking into account the fact that county courts in Osijek, Rijeka, Split and Zagreb are actually courts of general competence with exclusive competence to try war crimes cases, judges appointed into those departments are also dealing with other criminal cases – complex cases of corruption and organized crime, as well as a large number of other criminal offences.

Although by stipulating exclusive competence to try war crimes cases, judges from the cited four county courts were additionally burdened, most likely it will not be necessary to increase the number of judges at those courts. Namely, a part of their burden should be lifted because, following the amendments to criminal legislation, competence to try numerous first-instance criminal offences was transferred from county to municipal courts.

According to current dynamic of trials, the aforementioned four courts mostly have at their disposal necessary technique and sufficient number of trial chambers, except for Zagreb County Court in which trials are often conducted in too small and inadequate premises which cannot accommodate all interested parties.

By stipulating exclusive competence of the four county courts to try war crimes cases, county state attorney's offices in Osijek, Rijeka, Split and Zagreb received exclusive competence, as well. However, it often happens that transferred trials are still represented by deputy state's attorneys who also represented them before the transfer, which facilitates the position of these state attorney's offices.

According to statements by court presidents and county state's attorneys, although stipulation of exclusive competence in war crimes cases and complex

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<sup>22</sup> During 2012, first-instance proceedings were concluded in respect of the following cases against: defendant Miloš Stanimirović et al. before the Vukovar County Court; defendant Renato Petrov before the Zadar County Court and defendant Rade Miljević before the Sisak County Court. The hearing in the case of defendant Marko Bolić is ongoing before the Karlovac County Court.

cases of corruption and organized crime necessarily increases expenses, the budgets of these courts and state attorney's offices in relation to 2011 were cut down or remained the same.

## **B. Problems with transport of witnesses and delay in development of support to victims and witnesses**

Delegation of trials to four courts led to problems related to witnesses' access to court hearings. Witnesses, who are very often elderly persons with residence in rural areas that lack public transportation with the cities in which proceedings take place, are often not in a position to get transportation and appear before the court.<sup>23</sup>

Therefore we are of the opinion that support, except for informative and emotional support which is currently provided by employees and volunteers at seven county courts at which the support service was established, should also include provision of logistical support – organizing accommodation of victims and witnesses and organizing their trips.<sup>24</sup>

Unfortunately, after departments for support to victims and witnesses were established at seven county courts in the past several years, in 2012 the support system for victims and witnesses has not progressed in accordance with expectations. Although the Government of the Republic of Croatia already in January 2010 established the *Commission for Monitoring and Improving the Support System for Victims and Witnesses* with the basic objective of drafting the *National Strategy of Support for Victims and Witnesses*, it has still not been drafted. The only praiseworthy thing is the signing of an agreement between the Ministry of Justice, the Association of Volunteers for Support to Victims/Witnesses and the UNDP on the establishment of a free national telephone line for support to victims and witnesses. The call centre, which will employ educated volunteers, should commence with work in 2013.

During the previous years we also emphasised that the efficiency of the support system for victims and witnesses would primarily depend on the attitude of the Government of the Republic of Croatia towards support for victims and

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23 Examples:

- in the trial for the crime in Sisak conducted before the Osijek County Court, a large number of witnesses did not respond to the summons to attend the main hearing, partially because of problems how to reach Osijek;

- in the trial for the crime in Bačín, which was transferred from the Sisak Court to the Rijeka County Court, the Trial Council President heard about 50 witnesses out-of-court at the Municipal Court in Hrvatska Kostajnica because witnesses were unable to come before the Rijeka County Court because of their old age, illness or lack of traffic connections with Rijeka.

24 Departments for support to victims and witnesses have been established at the county courts in Vukovar, Osijek, Zagreb, Zadar, Sisak, Split and Rijeka.

witnesses and the attempts invested into swift and efficient dissemination of the support system, both at courts but also by disseminating support system to the state attorney's office and the police. It is also necessary to widen the scope of support and, in order to alleviate consequences of committed criminal offences, provide victims and witnesses with psychological and legal aid.

### **C. Regional cooperation**

On several occasions we stressed that investigations were conducted, indictments were issued or verdicts were rendered against the majority of persons in their absence. For the purpose of more efficient handling of cases, collection and exchange of evidence and in order for perpetrators to be sentenced and sent to prison, it is necessary to have as good cooperation as possible between judicial bodies of countries in the region.

The DORH concluded general agreements with prosecutor's offices of countries in the region— memorandums and protocols which facilitate cooperation - exchange of data and documents and provision of assistance in work which facilitates more successful combat against all severe crime forms.

Special agreements on cooperation in prosecuting war crimes perpetrators, crimes against humanity and genocide were also concluded between the DORH and competent prosecutor's offices in Serbia and Montenegro in 2006. The subject of these agreements is exchange of data and documents which render possible initiation of proceedings against perpetrators of crimes committed in any war conflict in the territory of the former Yugoslavia, providing that perpetrators have permanent residence in Croatia or in Serbia/Montenegro. Neither the DORH, nor any other prosecutor's office of the countries in the region, signed such type of agreement with the competent prosecutor's office in Bosnia and Herzegovina.

According to DORH data, on the basis of previous cooperation upon agreements with the Serbian War Crimes Prosecutor's Office, in the last several years the DORH forwarded to the Prosecutor's Office evidence and data in 34 cases pertaining to a total of 63 defendants. Serbian Prosecutor's Office agreed to initiate criminal proceedings against 29 persons, while in relation to 21 persons it refused to do so. Consideration of evidence and data in respect of 8 persons is still ongoing. The Serbian War Crimes Prosecutor's Office indicted 20 persons, of whom 18 were pronounced guilty. Out of that number, 14 persons were rendered final verdicts. When comparing DORH data from one year ago, a small progress was made in the exchange of evidence and data.<sup>25</sup>

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<sup>25</sup> According to DORH data made available at the end of 2011, the Prosecution Office was forwarded evidence and data in respect of 30 criminal cases (55 accused persons). 10 persons received final convictions in the Republic of Serbia.

According to DORH data from the beginning of 2013, 3 cases in respect of 8 persons were delegated to the competent prosecutor's office in Montenegro on the basis of the *Agreement*. One case, pertaining to 6 persons, was accepted by the Montenegrin prosecutor's office.<sup>26</sup> In other case pertaining to one person, the Montenegrin prosecutor's office denied the request to handle the case. One case, pertaining to one person, is currently under consideration.

Apart from the aforementioned forms of cooperation, during the last years there has been an increasing number of requests for legal aid when interrogating witnesses. Witnesses are interrogated upon requests or via video link.

According to information from the prosecutor's offices, contacts between prosecutors working on war crimes trials are very frequent. Except for individual objections regarding lack of promptness when handling requests, prosecutors' impressions on cooperation are mostly positive.

### ***1. Positive cooperation results in 2012***

During 2012, three first-instance trials against members of Serb formations were completed before the Belgrade Higher Court. In these trials, twenty two defendants received non-final sentences for the crimes committed in the territory of the Republic of Croatia and against its citizens.

Four former members of special police of the so-called SAO Eastern Slavonija, Baranja and Western Syrmium were found guilty for the killing of six civilians of non-Serb ethnicity, unlawful detention, intimidation and torture, committed in October 1991 in Beli Manastir. They received prison sentences ranging from one and a half years (the lowest) to 20 years in prison (the highest).

Fourteen defendants (four members of local civilian-military authorities, four active/reserve JNA members and six members of paramilitary formation „Dušan Silni“) were found guilty of depriving 70 civilian persons of their lives in October 1991 in Lovas and received prison sentences ranging from 4 years (the lowest) up to 20 years in prison (the highest).

After the conducted repeated trial, four defendants were found guilty of liquidation of five-member Rakić family in Lički Osik in October 1991. They received prison sentences in the duration of 10 to 20 years.

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26 It concerns trial for the crime committed against Croatian prisoners of war and civilians in the Montenegrin camp Morinj. In January 2012, after the repeated first-instance trial, the court rendered a non-final verdict in which defendants Mladen Govedarica and Zlatko Tarle were acquitted. Four defendants were found guilty and sentenced to imprisonment: Ivo Menzalin (4), Boro Gligić and Špiro Lučić (3) and Ivo Gojnić (2) years in prison.

## 2. Negative aspects of regional cooperation

Regarding the fact that the majority of defendants in Croatia were prosecuted *in absentia*, it was to be expected that the number of trials, i.e. persons in relation to whom cooperation between prosecutor's offices in the region was established, would be much larger.

A large number of defendants against whom the War Crimes Prosecutor's Office of the RS rejected to act, indicates different criteria with which prosecutor's offices of Croatia and Serbia are guided when deciding whether criminal proceedings would be initiated. As mentioned earlier, Serbian Prosecutor's Office agreed to initiate criminal proceedings against 29 persons, while in relation to 21 persons it refused to do so.

Unlike the Croatian judiciary, which several years ago initiated the prosecution of commanders who were supposed to guarantee that their subordinates would not commit crimes, the Serbian judiciary did not initiate prosecution of high-ranking officers for the crimes committed in the territories under JNA control.

When verbally explaining the verdict in the case against defendant Ljuban Devetak *et al* for the crimes in Lovas, President of the Belgrade Higher Court's Trial Chamber emphasised that, during the four-year first-instance trial, evidence was collected which facilitates investigating responsibility of high-ranking military and political structures for committed crimes. She condemned shameful testimonies provided by JNA officers, their conduct during the events in question in Lovas, as well as the attempt by the Military Prosecutor's Office to cover up crimes. Among other things, she said: "We heard in this courtroom full names and family names of other actors of the events in question, some were even our witnesses, therefore it would be just, both for the victims and the defendants, that the prosecutor fulfils the promise given in his closing arguments and deals with their criminal responsibility. Apart from that, a significant part of events in these areas – exodus of Croatian civilian population, was left out of the scope of this indictment. How it happened that Croatian civilian population was leaving the areas placed under JNA control (Lovas, Ilok and other villages), is only one of many questions, the answers to which should be provided by some higher military and political structures, and these issues should be dealt with by the prosecutor."

Thus, at the end of 2012, the War Crimes Prosecutor's Office of the RS decided not to assume criminal persecution of Aleksandar Vasiljević and Miroslav Živanović, who were charged in the indictment issued by the Osijek County

State Attorney's Office with the crimes against Croatian civilians and prisoners of war in the camps of Begejci, Stajićevo, Sremska Mitrovica, Niš and Stara Gradiška.

The indictment issued by the Osijek County State Attorney's Office No. K-DO-51/08 of 11 April 2011 charges Aleksandar Vasiljević, former JNA Major-General and the Head of Security Department of the Federal Secretariat for People's Defense, and Miroslav Živanović, JNA lieutenant colonel and Vasiljević's deputy, that they were aware that a large number of captured civilians, including women and members of Croatian armed formations, were brought in and detained in the camps of Begejci, Stajićevo, Sremska Mitrovica, Niš and Stara Gradiška and that detainees were physically and mentally abused, some up to death. However, they did nothing to prevent such conduct and to punish perpetrators. 19 persons were killed in the aforementioned camps, while several women were systematically raped and sexually abused.

The stepping stones in cooperation between Croatian and Serbian judicial institutions are still the *Nullity Act*, which basically represents a political pamphlet of HDZ authorities adopted immediately prior to the last parliamentary elections, and which was assessed in legal circles as unprofessional and inapplicable; the Serbian *Act on the Organization and Competences of State Bodies in War Crimes Proceedings* which, according to Croatian standpoint, excessively expanded criminal powers of the Republic of Serbia, cold relations after the presidential and parliamentary elections in Serbia, the acquitting verdicts rendered against Croatian generals and certain moves by representatives of judicial authorities of both countries which facilitate the maintenance of such relations.

At the end of November 2012, Serbia once again forwarded to Croatia indictment for genocide and armed rebellion against Vladimir Šeks, Ivan Vekić and Tomislav Merčep, top persons from civilian and military life of eastern Croatia in 1991.

The same indictment was sent to Croatia in July 2011 as well, but this time it did not include Branimir Glavaš, who is serving prison sentence in Bosnia and Herzegovina for the crimes committed against Serb civilians in Osijek.

The Minister of Justice, Orsat Miljenić, responded to the Serbian Ministry of Justice that he would not hand over the indictment to the defendants because acting upon it would be contrary to Croatian legal order. He stated that the indictment was issued in 1992 by the JNA Military Prosecutor's Office which committed an act of aggression on the Republic of Croatia, that no genocide was committed because, had it been, it would have been dealt with by the ICTY and that charges were based on the testimonies of detainees tortured in Serbian camps.

The Minister did not invoke the *Nullity Act* which was adopted precisely because of the quoted indictment, but invoked the *Agreement on Legal Assistance in Civil and Criminal Matters* which was signed in u 1997 by the-then ministers of foreign affairs of the RC and the Federal Republic of Yugoslavia.

All of the above mentioned does not contribute to removing potential unfounded indictments nor investigating possibly committed crimes. Only the signing of inter-state agreements could lift cooperation to a higher level.





# **V. VIOLATIONS OF INTERNATIONAL FAIR TRIAL STANDARDS: THE RIGHT TO EFFECTIVE REMEDY**



According to practice of the *European Court of Human Rights*, the obligation of state bodies to conduct efficient investigations in all cases in which suspicion exists that death was the consequence of an act of violence ensues from the obligation of the state to protect the right to life stipulated in Article 2 of the *Convention for the Protection of Human Rights and Fundamental Freedoms*, and the general duty of the state to respect human rights stipulated in Article 1.

The manner of checking whether investigating actions undertaken fulfil the minimum threshold of efficiency of investigations depends on the circumstances of each individual case. The assessment is carried out on the basis of all relevant facts, taking into account practical situations while performing investigating actions.

*“It must be accepted that there may be obstacles or difficulties which prevent an investigation from making progress in a particular situation. However, a prompt response by the authorities in investigating a disappearance may generally be regarded as essential in ensuring public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts”* - Judgment of the European Court of Human Rights in the case Skendžić and Krznarić v. Croatia, number 16212/08, Violation of the procedural aspect of Article 2 (the right to life), Subject of dispute: Lack of efficient, adequate and thorough investigation of a missing person, § 78.

In order for an investigation of the killing allegedly committed by a state official to be efficient, the *European Court of Human Rights* likewise holds that it is necessary to ensure full independence of persons responsible for conducting the investigation from those who are linked and involved in tragic events in the specific case.<sup>27</sup>

Except for the provisions contained in Article 1 and Article 2 of the *Convention*, victims' close relatives also have the right to effective remedy, as stipulated in Article 13 of the *Convention* which reads: “*Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity*”.

The quoted regulations and court practice are applicable and binding in Croatia.

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27 Güleç v. Turkey, 27 July 1998, Reports 1998-IV, §§ 81-82

## A. Non-conduct of investigations, efficient or adequate prosecution

### 1. Discretion powers of prosecutor's offices

Although prosecutors have certain discretion powers when deciding which crimes to investigate and whom to prosecute, discretion must be properly applied. It must take into account the right to efficient investigation and to effective remedy, as mentioned earlier. Apart from that, discretion cannot apply in such a manner as to discriminate against anyone.

Equality before law (non-discrimination) is a principle incorporated into the *Constitution of the Republic of Croatia*, as well as into international acts: the *General Declaration on Human Rights* (Article 7) and the *Convention for the Protection of Human Rights and Fundamental Freedoms* (Article 14). The aforementioned principle is also incorporated into the *Statute of the International Criminal Court* (Article 21, paragraph 1).

The principle of equality before law prohibits prosecutors to discriminate anyone on impermissible grounds such as sex, age, race, skin colour, language, religion or conviction, political or other opinion, national, ethnic or social background, property, birth or any other status. In other words, when assessing against whom to initiate investigation and whom to indict, prosecutors must treat all persons who are in similar situations equally.

### 2. Non-conduct of investigations

Although in previous years we noted progress in standardizing criteria for the prosecution of members of Croatian and Serb formations, we have still witnessed unwillingness to investigate and/or prosecute individual crimes committed by members of Croatian formations.

For instance, while members of Serb formations are regularly prosecuted for war crimes in cases of destruction and looting of property, we have noted only one case of members of Croatian formations indicted for war crimes committed by setting on fire houses belonging to persons of Serb ethnicity, but even this trial resulted in non-final acquitting verdict.<sup>28</sup>

28 Trial against Ivan Husnjak and Goran Sokol. On 24 May 2011, the Bjelovar County Court rendered the first-instance verdict in which the defendants were acquitted of charges – arson in the villages of Pušina and Slatinski Drenovac.

During the war, thousands of houses and economic facilities belonging to Croatian citizens of Serb ethnicity were destroyed through mining and setting on fire.

In Bjelovar area alone, where there were no war activities, 650 houses and economic facilities were destroyed. Taking into account the scope of property destruction, it is obvious that we are dealing with a pre-meditated and efficient plan of intimidating citizens of Serb ethnicity with the objective of expelling them from their homes. The number of citizens of Serb ethnicity in Bjelovar area was drastically reduced.

Perpetrators of these obvious war crimes were never prosecuted, while the existing legal solutions do not provide numerous injured parties with any form of compensation of damage nor reconstruction of destroyed facilities.

Numerous citizens of Serb ethnicity were illegally evicted from their apartments or family houses located in the territory of the Republic of Croatia under control of Croatian authorities. Numerous evictions were recorded in Split, Zagreb, Osijek...

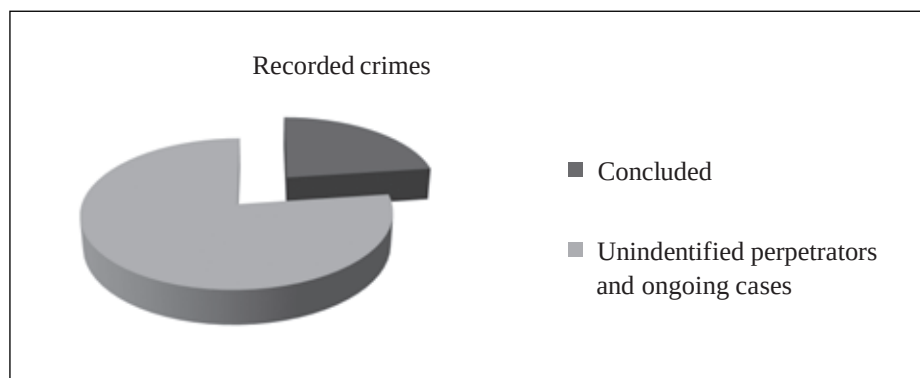
In May 2005, the Centre for Peace, Nonviolence and Human Rights – Osijek filed a criminal report against Petar Kljajić for the commission of a war crimes against civilian population. During the war, Kljajić was President of the Osijek District Court and President of the Military-housing Commission of the Osijek Operational Area.

In April 2010, the State Attorney's Office dismissed the criminal report. In the decision on dismissal, it was stated that during the period between 1991 – 1993, the reported person, as President of the then Military-housing Commission of the Osijek Operational Area, participated in forced evictions of persons of non-Croatian, primarily Serb ethnicity and handing over these apartments to families of killed Croatian defenders and displaced persons. By doing so, he violated the fundamental human rights and freedoms, violated the right to equality of all before law, personal security and protection against violence, the right to choose an apartment and the place of residence, whereby he committed a criminal act of racial and other discrimination referred to in Article 133, § 1 of the OKZ RH. However, since criminal prosecution of that criminal act fell under the statute of limitations, it was no longer possible to criminally prosecute the reported person.

According to DORH's opinion, the scope and nature of the reported person's actions still does not lead to the conclusion that he had committed a war crime against civilian population.

### 3. Inadequate and /or inefficient prosecution of crimes

The DORH *Database* registered 490 crimes. However, although DORH is familiar with perpetrators of 316 crimes, only 112 (22.9%) of crimes have been fully resolved.



In order to improve the efficiency of crime investigation, the perpetrators of which are unknown, during 2010 the MUP and the DORH agreed on the list of priority crimes to be investigated. 127 crimes were determined priorities. Out of that number, 8 crimes were determined priorities at the national level, while 119 were determined priorities at regional (local) levels. Subsequently, at the beginning of 2011, the *Strategy for Investigation and Prosecution of War Crimes Committed in the Period between 1991 and 1995* was adopted. For the purpose of its implementation, the MUP adopted the *Implementation Plan*, and the DORH adopted the *Operational Programme*. In September 2012, a new list of national and regional priorities for prosecution was adopted.

Between 2010 and the end of November 2012, progress was made in respect of investigation of 15 crimes - 5 from the list of national priorities and 10 from the list of regional priorities.<sup>29</sup> Members of Serb formations were indicted for 11 crimes, while members of Croatian formations were indicted for 4 crimes. 30 persons were indicted – 11 members of Croatian and 19 members of Serb formations. Although these are mostly crimes that involve numerous victims, only few direct perpetrators were indicted or, in case when direct perpetrators were unknown, persons with commanding responsibility. While all indicted members of Croatian formations are available to judicial bodies<sup>30</sup>, only two members of Serb formations are available to Croatian judicial bodies.<sup>31</sup> The

29 The State Attorney's Office of the Republic of Croatia: "Actions in the Prosecution of War Crimes Cases" – updated data <http://www.dorh.hr/DrzavnoOdvjetnistvoRepublikeHrvatskePostupanjeU>

30 Two persons with command responsibilities for the crimes in Sisak, one person for the crimes in Pakračka Poljana and at the Zagrebački Velesajam, five persons for the crimes in Gajeva Street in Zagreb and in Kerestinec Camp and three persons for the crime committed near Mrkonjić Grad.

31 Two members of Serb formations, charged with maltreatment and rape in Dalj.

remaining seventeen persons, indicted with the commission of 10 crimes, are unavailable to Croatian judiciary and it is questionable whether they will be brought before justice.

We also noted difficulties in trials in which indictments were issued during the previous years. Despite the fact that state attorney's offices on several occasions conducted internal reviews of cases, after which they requested re-openings of certain proceedings which were completed with final verdicts or abandoned further investigations or indictments against individual defendants, certain proceedings against members of Serb formations are even today burdened with poorly conducted investigations and indictments not substantiated with evidence. All of that causes "investigations to be conducted" at main hearings and multiple modifications of indictments which sometimes result in indictments for which it is questionable whether those are actions that constitute all significant characteristics of a war crime at all.

Investigation for the crimes in Berak was conducted in the 90's against 53 defendants. Witnesses, a large majority of them expellees, were questioned at courts throughout Croatia (Rijeka, Pula, Zagreb, Osijek..). The indictment, which involved killing of 45 persons, was issued in 2006 against 35 defendants.<sup>432</sup> During 2006 and 2007, proceedings were conducted against three available defendants. One received a final convicting verdict, but during the first-instance trial the actions with which he was charged were completely modified. The initial indictment charged him with the killing of three and abuse of a large number of civilians. Eventually he was sentenced only because of the abuse. The prosecutor's office abandoned the prosecution of the other two available defendants. At the beginning of 2009, proceedings were discontinued in respect of 12 defendants because the prosecutor's office previously modified the indictment, charging them with armed rebellion.

In September 2011, Milorad Momić was extradited to Croatia from France. He was charged that he had killed one female person and abused three female persons in Berak. During the trial, the indictment was modified on several occasions, thus he was eventually charged that, together with several other persons, he had participated in physical abuse of one man. On 21 December 2012 he received a non-final prison sentence in the duration of 3 years.

#### *4. Consequences*

**Non-existence of a final conviction of crime perpetrators results in failure of family members/plaintiffs in litigations for compensation of damage due for the death of a close person.** Plaintiffs mostly succeeded in litigations which were preceded by criminal proceedings in which criminal responsibil-

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32 The ŽDO Vukovar's Indictment No. K-DO-42/01 of 5 April 2006.



ity of perpetrators had been established. In cases in which lawsuits were filed although criminal responsibility of perpetrators had previously not been established, plaintiffs almost always lost litigations.<sup>33</sup>

However, in January 2012 in the case of plaintiffs Jovan Berić, Branka Kovač and Nevenka Stipišić, the VSRH passed a decision from which it ensues that it is the obligation of the state to compensate damage regardless whether the injuring party was established, criminally prosecuted or pronounced guilty.

The Knin Municipal Court and the Šibenik County Court dismissed the claims by Jovan Berić, Branka Kovač and Nevenka Stipišić for compensation of non-pecuniary damage for mental pains caused by the death of their parents Marija and Radivoje Berić, murdered in the village of Varivode in Knin area on 28 September 1995. Apart from that, plaintiffs were also ordered to jointly pay litigation expenses in the amount of HRK 54,000.00. However, on 18 January 2012, the VSRH quashed the cited verdicts and remanded the case to the first-instance court for a re-trial. In the explanation of the Supreme Court's decision it was stated that plaintiffs' father and mother were killed by firearms in the backyard of their house, that 9 elderly persons of Serb ethnicity were killed on the same day in that village, that it was a terrorist act aimed at causing fear, terror and insecurity among citizens, an act for which the Republic of Croatia is responsible and that the obligation to compensate damage exists regardless of the fact whether crime perpetrator was sentenced or not. Five members of Croatian formations were indicted for the crimes in Varivode, but in 2002 proceedings against them were discontinued. At the time, the crime was qualified as serious manslaughter.

The verdicts of the European Court of Human Rights in two trials (*Jularić v. Croatia*<sup>34</sup> and the already mentioned *Skendžić et al. v. Croatia*) ordered the Republic of Croatia to pay compensation of damage to the plaintiffs due to non-conduct of appropriate investigations regarding the crimes.

We are familiar with the fact that during 2012 at least twelve requests were submitted to the European Court of Human Rights in which plaintiffs claim that, in indemnification proceedings before domestic courts and due to inef-

33 Litigation claims were mostly rejected because of the objection raised in respect of the statute of limitation – by applying shorter statutes of limitation and not the ones stipulated for certain criminal offence, lack of evidence or view that the killing of civilians represents a war damage – for which nobody is to be held responsible. Documenta collected data and analysed 121 court cases in which plaintiffs demanded compensation for non-pecuniary damage in their lawsuits for the killing of close persons. So far, 15 litigation claims were accepted and 86 rejected.

34 Judgment rendered by the European Court of Human Rights in the case *Jularić v. Croatia*, of 20 January 2011 (application No. 20106/06).

fective investigation, their rights and fundamental freedoms guaranteed by the Convention and its protocols were violated, particularly the right to life (Article 2 of the Convention) in conjunction with prohibition of discrimination (Article 14 of the Convention).

## **B. Lack of solution for the crimes of sexual and gender violence**

### ***1. Overall review of the subject problem and contribution made by the ICTY towards punishing such crimes***

Despite the fact that sexual violence was prohibited already back in 1907 by The Hague Convention, Tribunals in Nürnberg and Tokio failed to prosecute such crimes. Only the occurrence of wars at the area of former Yugoslavia, which were marked with numerous crimes that involved sexual violence, implied to the necessity of punishing their perpetrators.<sup>35</sup> The ICTY played a significant role in prosecuting perpetrators of sexual violence in war. Almost one half of all defendants convicted by the ICTY were found guilty of committing sexual violence. Those trials opened space for victims to start talking about their sufferings, proving that effective prosecution of sexual violence committed in war times, is indeed possible.

### ***2. Prosecution of sexual violence committed in war by domestic judiciary***

Although the general presumption is that the scope of rape cases in the war in Croatia was significantly lower compared to the wars in Bosnia & Herzegovina or Kosovo, the exact number of raped individuals is difficult to establish. Some women, who survived rape violence or other forms of sexual abuse, publicly sought their justice - effective prosecution of perpetrators and recognition of their status of war crimes' victims.

The legislation in force and court practise thus far proved to be inefficient, which is evident from a low number of registered relevant cases and court judgments. According to DORH data, the competent County State Prosecutors indicted a total of 27 identified perpetrators, of whom 13 were finally convicted of committing war crimes by rape. Sixty victims of rape were registered in the criminal charges filed at the competent County State Prosecution Offices.<sup>36</sup>

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35 The Geneva Conventions of 1949 lay down: „Women shall be especially protected...in particular against rape, enforced prostitution, or any form of indecent assault.”

36 The State Attorney's Office of the Republic of Croatia: Supplement to the previous press-releases, 8 January 2013 (<http://www.dorh.hr/DopunaRanijimPriopcenjima>).

While working on examination of facts about all war victims, upon recording personal war related recollections and analyzing the available court documentation, we have singled out 19 court cases, at different stages of criminal procedure (at the stages between indictment and final verdict), where the manner of war crime commissions includes sexual abuse of civilians and prisoners of war. We have defined sexual abuse<sup>37</sup>, for analytical purposes, as a manner of war crime commission that includes rape or physical abuse of victims linked with individual's gender e.g. forcing to masturbation, sexual satisfaction of other persons, often of the same gender, forcing to unclothing and other forms of sexual humiliation. In the abovementioned cases 30 individuals, mostly immediate perpetrators were charged with sexual abuse as the manner of war crimes commission. According to data available from bills of indictment, the total of 64 persons was subject to sexual abuse. Victims were mostly women, nevertheless men were as well abused at prisoners' camps /prisons/ detention centres. One child has been mentioned as well as a victim in one of the proceedings. We have divided the cases in two groups based on the criteria of time and place of the crimes' commission: rapes and sexual abuses committed in prisoners' camps/prisons/ detention centres<sup>38</sup> and rapes and sexual abuses committed in the course of village or town attacks or during the occupation.<sup>39</sup> Six cases, completed with final convictions, were conducted in absence of the defendants, who are still unavailable to Croatian judicial authorities.

Lack of support from foreign institutions, lack of recognition and acknowledgement of suffering for sexual abuse victims in public, in addition to social stigmatisation, regularly lead to a situation where victims themselves deny the fact that they were sexually abused.<sup>40</sup>

37 In 1990, the Council of Europe defined in its rules of procedure sexual harassment and abuse as: "Any unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men. This includes unwelcome physical, verbal or nonverbal conduct."

38 Camps Stajićevo, Begejci, Sremska Mitrovica - the Osijek ŽDO's Indictment No. K-DO-51/08; Camp Stara Gradiška - the Slavonski Brod County Court's verdicts No. K 11/01-53 and K 27/05-30; Prison in Knin - the Šibenik County Court's verdict No. K-52/07; Container in Sekulinci - the Osijek District Court's verdict No. K-24/93-26; Camp Kerestinec - the Zagreb County Court's verdict No. 9 K-RZ-6/11.

39 Crime in Dalj - The Osijek ŽDO's indictment; Crime in Tovarnik - non-final (first instance) verdict rendered by the Vukovar County Court No. K-6/01; Crime in Hrvatski Čuntić - the Sisak ŽDO's indictment; Crime in Vukovar - non-final (first instance) verdict rendered by the Osijek County Court; the Osijek ŽDO's indictment No. KT-77/95; Crime in Čakovci - the Vukovar ŽDO's indictment No. K-DO-29/02; Crime in Lovas - the Vukovar ŽDO's indictment No. K-DO-44/04; crime in Bilje - the Osijek County Court's verdict No. K -38/93; Crime in Kopačevo - the Osijek County Court's verdict No. K-47/94; Crime in Suknovci - non-final (first instance) verdict rendered by the Šibenik County Court; Crime in Baranja - the Osijek County Court's verdict No. K-45/93-20; Crime in Donja Velešinja - the Sisak County Court's verdict No. K-31/93-19.

40 Data obtained by many research studies in the world indicate the fact that behind one reported rape case there are 15 – 20 unreported cases. Research data obtained by "Women's Room - Centre for Sexual Rights" in 2005 indicate that 17 % of women experienced an attempted rape or rape. Out of that number, only 5% of women reported violence to the police and/or the State Attorney's Office.

Rape as a manner of war crime commission against civilians is categorized under Article 120 of the OKZ RH, while sexual abuse as a form of torture was, through court practice, incorporated as a form of torture and as a criminal offence of war crime against prisoners of war pursuant to Article 122 of the same Act.

In the course of June 2012, the Croatian Government announced passing of a new Law or adoption of amendments to the existing *Law on the Rights of Military and Civilian Invalids of War*, in order to facilitate rape victims to exercise their rights as civil war victims. In late November 2012, the Government adopted the *Protocol on handling cases of sexual violence* and announced passing of the *Law on Victims of War Crimes by Rape* in January 2013.

### **3. Worrying examples**

First instance proceedings conducted during 2012, each in its own specific way, indicate institutional deficiencies resulting with low reporting and inefficient crime prosecution: lack of psychological support for victims, the prosecution's inefficiency to bring perpetrators to justice and/or inadequate punishing of perpetrators.

During the main hearing, while testifying about the crimes committed in her village, the victim (we do not disclose the name of the village or the victim's identity), for the first time, after repeated insisting of presiding judge that the victim states if she had any immediate knowledge about the committed crimes or the defendants, the victim stated that she had been raped during occupation of the village. After 20 years, she spoke, obviously shaken, for the first time about the crime committed to her detriment. Perpetrator in question was tried in his absence.

On 4 September, after repeated first instance proceedings, the Osijek County Court pronounced defendants Rade Ivković and Dušan Ivković guilty of raping a female person (identity not disclosed) as Serb paramilitaries partaking in occupation of the Vukovar suburb called Sajmište and thereby committed war crimes against civilians. Rade Ivković was convicted to eight years imprisonment and Dušan Ivković to five years and six months. Rade Ivković was tried in his absence. Dušan Ivković was present at the trial but failed to attend pronouncing of the verdict. In only few hours, which elapsed between completion of the main hearing and pronouncement of the verdict, the defendant fled from the territory of the Republic of Croatia, while the Court failed to foresee this possibility or failed to find a mechanism to prevent this.

Five defendants charged with physical abuse of prisoners in Gajevo Street in Zagreb and in Kerestinec, releasing electric power through their bodies and various forms of sexual torture and multiple rapes, were convicted at first instance of committing war crimes with imprisonment sentences below the minimum prescribed by law for war crimes. Three of them were sentenced to one year imprisonment, one to two years, while the first defendant, who was *de facto* and *de iure* commander of the unit and immediate perpetrator, to three and a half years. Victims of sexual torture, both male and female, testified at sessions of the public main hearing. Protective mechanisms, such as testifying under pseudonym from a distant room with electronic distortion of image and voice or at the session closed for the public, were not used at this trial.

The abovementioned examples indicate to flaws of the existing institutional system and necessity of accepting the practise developed by the ICTY- the best practise in prosecuting war crimes by rape recorded so far. The ICTY introduced a number of measures aimed at motivating the sexual abuse victims to report about the crimes with no fear for their lives or that their identity would be disclosed, having in view the fact that many of them are facing the risk of being stigmatised / avoided in their own communities.

So far, “the best practices” on investigation and prosecution of crimes linked with sexual violence, have not been followed in Croatia, which fact led to non-reporting about such crimes.

*Protocol on procedure in cases of sexual violence*<sup>41</sup>, adopted in late November 2012, entitled competence of the bodies within the procedure in cases of sexual violence: the police, medical institutions (general and clinical hospitals, clinical centres), judicial bodies (court and state prosecution), social welfare centres, educational institutions and institutions providing assistance and support to the protection of mental health.

Effective prosecuting of those crimes will depend on the pace and quality of systematisation and forming of teams and education of individuals involved in treatment of the victims of sexual violence within the afore-listed state institutions.<sup>42</sup> Considering the fact it is the obligation of the society towards the victims to secure both reparation and rehabilitation, implementation of the announced amendments to the *Law on the Rights of Military and Civilian Invalids of War* and passing of the *Law on Victims of War Crimes by Rape* is of essential importance. Only systematic support to the victims of sexual crimes may add for the victims to pass through their testimony as a positive and reinforcing experience.

### **C. Inadequate practice of punishing the perpetrators**

Consistent with the *Basic Criminal Law Act of the Republic of Croatia (OKZ RH)*, applicable in domestic war crime trials, minimum punishment for the most of such crimes is five years imprisonment, while the maximum is twenty years. Trial courts assesses severity of punishment within the margins laid down by law for such crimes, taking into consideration all circumstances affecting the punishment to be lower or higher (mitigating and aggravating factors). However, the Trial Court may decide to state punishment below the minimum prescribed by law should it establish particular mitigating factors benefiting the perpetrator. When the Court assesses the pertinence of conditions for applying mitigation of the sentence, it may punish the perpetrators for the commission of the most of acts subject to war crimes, with imprisonment of minimum one year.

Assessing severity of punishment in fact lays down at the judges' free margin of appreciation. Nevertheless, as is the case in all other discretion related issues, assessing the severity of punishment must be conducted fairly and in absence of any affection of unacceptable discrimination. Despite the fact each punishment is individualized and assessed for each case separately, when assessing

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41 This Protocol is based on laws and subordinate legislation and on the contents and commitments laid down in the National Policy for Gender Equality, for the period between 2011 and 2015 (OG RC 88/11) adopted by the Croatian Parliament on 15 July 2011. It is also based on the Recommendation Rec(2002)5 of the Council of Europe's Committee of Ministers to Member States on the protection of women against violence and the Explanatory Memorandum.

42 Research work and investigations carried out in respect of war crimes committed by rape is entrusted to the Osijek ŽDO since the DORH assessed in 2012 that it would be meaningful to concentrate all evidence and data in one place.

the punishment the Judges must apply equal treatment to all and be consistent. In other words, in cases of the same criminal act committed in similar circumstances, severity of punishment should be comparable.<sup>43</sup>

The most important elements affecting the decision on punishment are severity of committed crimes and role of the perpetrator. Taking a starting point from the above cited elements, the Trial Court decides whether to increase or mitigate the sentence depending on aggravating and mitigating factors. However, the manner in which the Judges would assess those elements and severity they would attribute to those elements must be exempted from any discrimination.

### ***1. Punishments disproportional to severity of crimes***

During early nineties, former Serb paramilitaries, who were mainly tried *in absentia*, were punished with very severe, usually maximum sentences for committing war crimes. In the course of recent years, perpetrators affiliated to members of Croatian and Serb formations, have been stated more balanced sentence, if established that the crimes were committed in similar circumstances. However, some stated punishments are clearly not adequate for the severity of the committed crimes. In order to justify punishments below the minimum set for the criminal act war crimes, Judges cite a series of mitigating factors benefiting the perpetrator such as: clear criminal record, low income, family situation, participation in the Homeland war, extraordinary input during participation in the Homeland war, elapse of time since the crime was committed ...

Punishments should objectify the purpose of general and special prevention and at the same time, utter strong social disapproval of the committed crime, but some judgments dispute that purpose.

On 7 September 2012, the VSRH Trial Chamber pronounced a first instance verdict wherein it found defendant Mihajlo Hrastov guilty of unlawful killing of thirteen and injuring additional two captured JNA reserve soldiers, at Korana Bridge in Karlovac on 21 September 1991, and convicted him to four years in prison.

43 The Judgment rendered in the Strugar case by the ICTY Appeals Chamber.

On 31 October 2012, the Zagreb County Court's War Crimes Council pronounced five defendants guilty of committing crimes against Serb prisoners at the prisons in Gajeva Street in Zagreb and Kerestinec. The first defendant, Stjepan Klarić was sentenced to three years and six months in prison because in his capacity as the unit commander he allowed his subordinates to torture the prisoners: releasing electric power through their bodies, rapes and different manners of sexual torture (placing electrodes into their genitals, forcing to dance in male-female type of pairs, where women had nude breasts and men genitals and vice versa, forcing male prisoners to masturbate in front of naked female prisoners...). The defendant was also punished for issuing orders of physically maltreating the prisoners. The defendant physically, mentally and/or sexually abused the total of 30 persons.

The 3<sup>rd</sup> defendant Viktor Ivančin was sentenced to 2 years in prison because of performing physical abuse and forcing to indecent acts. Željko Živec and Goran Štrukelj were sentenced to 1 year in prison each for physically maltreating the victims. Dražen Pavlović received the same sentence (one year in prison) because he ordered the prisoners to dance in couples where female prisoners had nude breasts and male prisoners' genitals were exposed.

## ***2. Participation in the Homeland war – mitigating factor appreciated for members of Croatian formations***

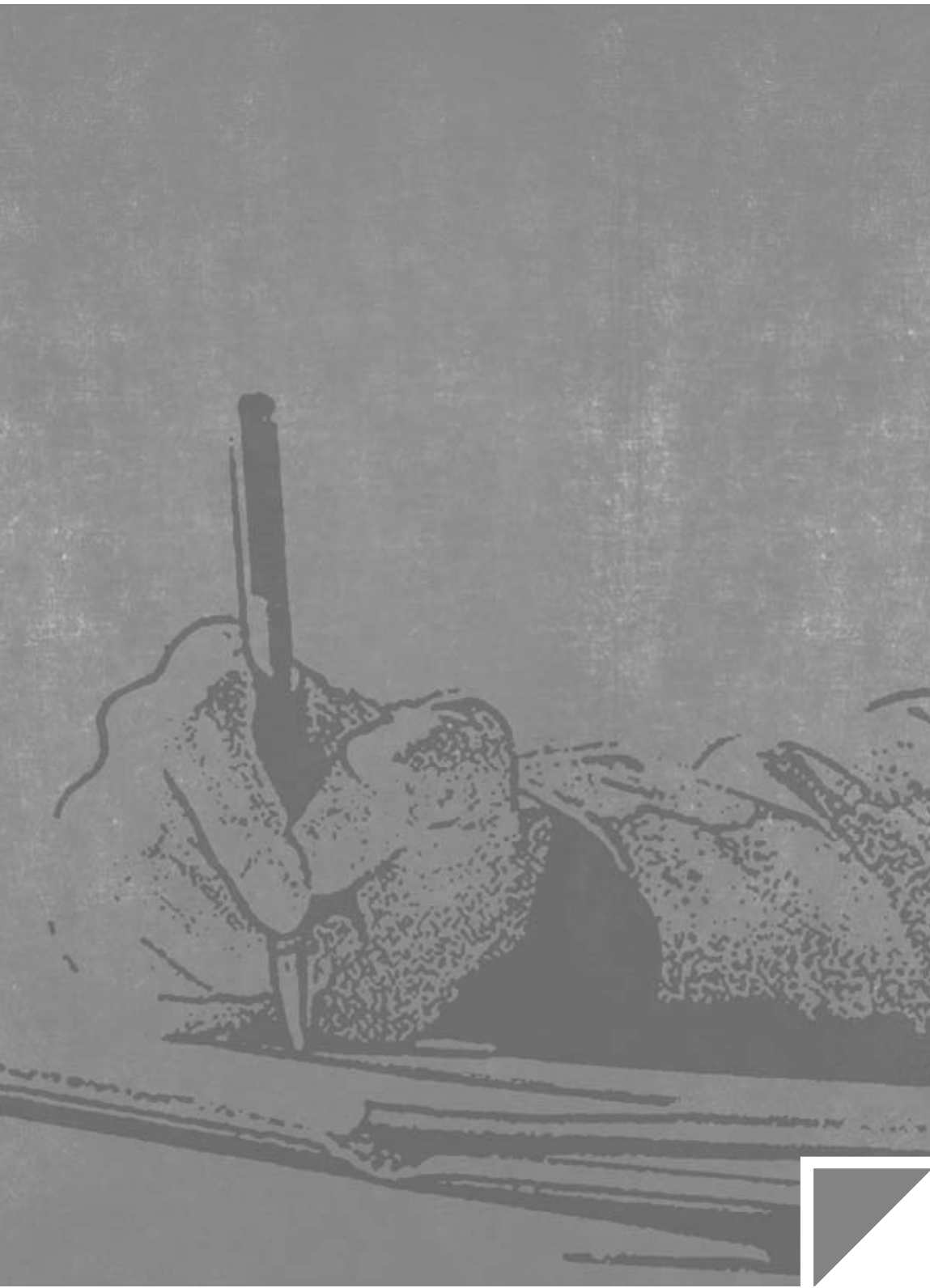
Trial courts continue with valorisation of participation in the Homeland war for the members of Croatian formations as mitigating factor when assessing their punishments. In this manner, war crimes defendants are put in an unequal position depending on their affiliation during the armed conflict.

To date, we have observed only one case where participation in the Homeland war for the member of Croatian formations was not regarded as mitigating factor.



On 28 February 2012, the Zagreb County Court's War Crimes Council sentenced defendant Željko Gojak in his capacity as member of the Croatian Army member to nine years in prison for killing an underage girl Danijela Roknić and her aunt Dragica Ninković at their home in Karlovac suburb Sajevac. When verbally explaining the reasons of the verdict, Council President Ivan Turudić highlighted the fact that defendant's participation in the Homeland war was not considered a mitigating factor, because the defendant had acted opposite to what the soldiers were supposed to and thus besmirched the reputation of the Croatian Army and the Republic of Croatia.

# **VI. RECOMMENDATIONS**



Below are the recommendations cited in our latest quarterly report, as well as in our Annual Report for 2011, which have not been implemented:

- To secure more adequate courtrooms at the Zagreb County Court that could accommodate all interested public members, while the Osijek County Court's building needs urgent renovation, for which the Ministry of Justice should provide necessary financial support;
- Because of the complexity of war crimes cases, it is due to appropriately award/stimulate judges appointed to war crimes departments at the competent county courts;
- The Croatian Government should as soon as possible issue a *National strategy for development of system of support to victims and witnesses*, in order to expand the existing support system and extend its capacity;
- The Ministry of Justice should provide vehicles and means necessary to secure systematic transportation/ attendance of witnesses at courts to the Sector for victims and witness support or departments for support operational at trial courts;
- The Croatian Government should adopt a Decision whereby litigation costs of plaintiffs/injured parties who failed with their lawsuits against Croatia for compensation of damage due to the killing of a close person would be written off in a indubitable way, while refund for already paid relevant litigation costs or for the costs based on which plaintiffs' property was seized would be rendered possible;
- It is due to bring a National programme and the Law on establishing a fund for indemnification of all victims of war, whereby the damage compensation would be regulated in conformity with UN's Basic principles and guidelines on the right to remedy and reparation of victims of gross violations of the international humanitarian law;
- To repeal 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 is a legally inapplicable and declaratively harmful Act that impairs bilateral relations between Croatia and Serbia.

The new recommendations are listed below:

- It is necessary to normalise relations between the states in the region and sign bilateral agreements aimed at more efficient prosecution of crime perpetrators and avoiding of further involvement of politics into war crimes trials;
- It is due to amend Article 98 of the Law on police affairs and authorities, based on which the Ministry of the Interior is able to cover the costs of former and current police officers charged with war crimes, thus putting war crimes defendants in an unequal position depending on their affiliation during the conflict;

- In order to provide possibility to exercise their rights to rape victims and all other civilian victims of war, it is due to pass new law or amend the valid Law on the protection of military and civilian invalids of war and pass the announced Law on the victims of war crimes by rape;
- In order to improve support for the victims of war crimes committed by sexual abuse, it is due to, as soon as possible, establish teams and educate employees of the competent state bodies involved in the treatment of victims of sexual violence.

## VII. ANNEXES



## **ANNEX 1 Overview of individual non-final proceedings concluded at first instance and opinions on individual trials**

### **Trial against Željko Gojak, charged with a war crime against civilians – crime in the Karlovac settlement of Sajevac <sup>44</sup>**

#### **Zagreb County Court**

**Criminal offence:** war crime against civilians under Article 120, Paragraph 1 of the OKZ RH

**Defendant:** Željko Gojak

**War Crimes Council (panel):** judge Ivan Turudić, Council President, judges Ratko Šćekić and Lidija Vidjak, Council members

**Prosecution:** Jurica Ilić, Zagreb County Deputy State's Attorney

**Defence Counsel:** Mijo Golub, lawyer practising in Zagreb

**On 28 February 2012, the Zagreb County Court War Crimes Council found Željko Gojak guilty of war crime against civilians stated in Article 120, paragraph 1 of the OKZ RH. Gojak was sentenced to 9 (nine) years of imprisonment and the decision to extend the detention order was passed. Gojak was found guilty as charged that during the armed conflict, on 05 October 1991, in his capacity as an employee of the Karlovac Police Administration, together with several unidentified members of the Croatian National Guard Corps, he had entered the family home of Marko Roknić in Karlovac's suburb of Sajevac, opened fire and killed with several shots Marko Roknić's family members Dragica Ninković and underage Danijela Roknić.**

#### **Opinion:**

The proceedings were carried out in a reasonable time-limit. The procedures starting with the arrest and bringing the accused into custody (May 2010) and ending with the announcement of the first-instance verdict (February 2012) were carried out within the period of one year and nine months. During the proceedings, we noticed a huge case load at the Zagreb County Court due to an increased influx of criminal law cases, which subsequently led to the change of the initially-constituted War Crimes Council, which caused the main court hearing being started anew. Untimely submission of certain documents to the parties involved in the case caused a postponement of one court hearing. However, court hearings had been scheduled and were being conducted in regular intervals which led us to conclude that the trial was efficient.

However, we noticed a problem of keeping and preserving material evidence. Namely, during the course of proceedings a question arose on where the mate-

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44 Milena Čalić Jelić monitored this trial and reported thereof.



rial evidence collected during the crime scene investigation had been kept and whether the court had been preserving the victims' clothes found during the exhumation. The stated evidence was finally found at the ballistics expert's, who eventually failed to return the evidence to the court after using them for the preparation of findings and expert opinion. Such a conduct could have jeopardised the evidence procedure.

## **Course of the proceedings**

### ***The indictment and amendments to the indictment***

According to the indictment No:K-DO-188/10 issued by the Zagreb County State Attorney's Office on 22 November 2010, Željko Gojak was charged with war crime against civilians committed by execution of Dragica Ninković, underage Danijela Roknić and Marko Roknić. At the court hearing held on 28 February 2012, the Zagreb County State Attorney's Office changed factual description of the indictment in a way that it excepted a part of incrimination relating to killing of Marko Roknić from the description of commission of the offence, explaining that there was no sufficient evidence which would corroborate the stated incriminations against the accused Gojak.

### ***Evidence procedure***

Investigation procedure, launched as late as in 2010, was initiated by the statement of the injured party Branka Roknić given during the extra-civil case hearing of declaring dead the missing person (Danijela Roknić) held before the Municipal Court in Karlovac in 2006. Further stimulus to the criminal prosecution came from a statement given by Branka Roknić to the War Crimes Prosecutor's Office of the Republic of Serbia, which was subsequently transferred to the State Attorney's Office of the Republic of Croatia. During 2009, Ana Gojak, an eyewitness to the event, gave a deposition to the investigative judge of the Zagreb County Court. Mortal remains of Marko Roknić, Danijela Roknić and Dragica Ninković were exhumed on 15 April 2010.

Total of 15 witnesses were heard during the evidence procedure. Out of those witnesses, only two persons were direct eyewitnesses to the war crime: the injured party Branka Roknić and the witness Ana Gojak (she was heard only during the investigation, deceased before the commencement of the trial). Other witnesses did not have any direct knowledge of the events in the home of Marko Roknić in Sajevac. They were giving depositions describing the events which preceded commission of the war crime, which, in court's opinion, were of no significance for establishing the decisive facts. The court entirely placed its trust in the depositions given by eyewitnesses, which were to a large degree corroborated by pathologist's findings and ballistics expert analysis.

### *Decision on the sentence*

When deciding on sentencing and penalties, the court took into consideration the accused person's family status, non-existence of criminal record, diminished responsibility, and subsequent occurrence of PTSD, and assessed these as mitigating circumstances.

As aggravating circumstances, the court assessed the circumstances of commission of the offence: ruthlessness, specially shown cruelty and a total lack of humanity (shooting the girl in her back in the moment when her mother is trying to shelter her by holding the girl in her lap), which presented a high level of criminal intent to kill the persons who had not in any way contributed to the war events, as well as the suffering inflicted on mother of the killed girl who had been forced to leave the wounded child in order to arrange the transport of the bodies to the hospital, and the suffering inflicted on the girl's brother (aged 15 at the time of the crime) who had been hiding in the attic during the entire event and who eventually found his killed father, sister and aunt.

#### **The fourth (the third repeated) trial against Čedo Jović for war crime against civilians – crime in Dalj<sup>45</sup>**

##### **Osijek County Court**

**Criminal offence:** war crime against civilians under Article 120, Paragraph 1 of the OKZ RH

**Defendant:** Čedo Jović

**War Crimes Council (panel):** judge Darko Krušlin, Council President, judges Ružica Šamota and Ante Kvesić, Council members

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

**Defence Counsel:** lawyer Tomislav Filaković

##### **Verdict following the conclusion of the fourth (the third repeated) first-instance court proceedings**

After conducting the fourth (the third repeated) trial, the War Crimes Council of the Osijek County Court again found the accused Čedo Jović guilty of war crime against civilians stated in Article 120, Paragraph 1 of the OKZ RH, in relation to Article 28 of the OKZ RH, and sentenced Jović to 5 years in prison<sup>46</sup>.

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<sup>45</sup> The trial was monitored and reported on by Mladen Stojanović.

<sup>46</sup> Three previously passed first-instance court verdicts in this case, which had also found the accused Jović guilty and sentenced him to 5 years in prison, were quashed by the Supreme Court of the Republic of Croatia: first time, the verdict was quashed due to formal reasons (violation of the provisions of the criminal procedure); the second time, due to incorrectly and incompletely established factual situation; and the third time, again, due to a major violation of the provisions of the criminal procedure – since the accused person had not been given a chance to enter the plea in respect to the guilt as charged by the amended indictment. Since the verdict was quashed due to a major violation of the provisions of the criminal procedure, the Supreme Court of the Republic of Croatia did not get into the assessment of the factual situation which had been established by the first-instance verdict.

The verdict, pronounced on 01 June 2012, found the accused Čedo Jović guilty as charged that he, in his capacity as actual commander of the Military Police Unit of the 35<sup>th</sup> Slavonian Brigade of the Republika Srpska Krajina (RSK) Army, holding the rank of captain, in the village of Dalj and the surrounding area, in the period from the end of December 1993 until June 1995, having known that his subordinate officers - Military Police Commander Novak Simić, military policemen Miodrag Kikanović and Radovan Krstinić and other unidentified military policemen had been abusing the members of the so-called “hard labour platoon” of non-Serb ethnicity on several occasions, Čedo Jović had omitted to act within the scope of his authority in order to punish the perpetrators and in that way to prevent them in their engaging in further illegal actions, thus accepting their engaging in subsequent illegal actions and accepting the consequences of such actions, so that Simić, Kikanović and Krstinić had been battering Antun Kundić, and physically abusing another five civilians, thus inflicting numerous serious wounds upon Kundić which consequently led to Kundić’s death.

The custody, which the accused Jović was held in as of 07 July 2008, was extended on the day of the pronouncement of the verdict.

During the trial, it was disputable whether the injured parties (persons of Hungarian and Croat ethnicity mobilised into the “hard labour platoon”) had had a status of civilians; whether the accused person, in addition to his indisputable official function as the Chief of Security, had also held the office of the actual Military Police Commander of the 35<sup>th</sup> Slavonian Brigade of the so-called Republika Srpska Krajina Army and had he thus been the superior official to the direct perpetrators of the crime, military policemen Simić, Kikanović and Krstinić, who had been convicted for the crime by now legally valid and conclusive verdict; and whether the accused person had taken necessary measures/actions in order to prevent the direct perpetrators from committing the crime.

The War Crimes Council (panel) concluded that the members of the hard labour platoon had had a status of civilians since they had not been directly involved in the hostilities; that the accused person, who unquestionably had held the office of the Chief of Security, had also been the actual Military Police Commander since he had been taking on the role of the commander of the military police and he had also been regarded as such by members of the military police; that the accused person had not taken all necessary measures in his power whatsoever in order to prevent abuse of members of the hard labour platoon and to have the perpetrators prosecuted, since the accused person had omitted to file a criminal report against the perpetrators, unlike in the case of rape of a woman in Dalj Planina in which Jović had conducted enquiries and had filed a criminal report.

The War Crimes Council concluded that the accused person actually had had the authority to detain the direct perpetrators, however, he had failed to do so. The accused person had informed his superior officials about the event but had released the perpetrators who had actually admitted to the crime. The War Crimes Council ascertained that the accused person in case of the killing of Antun Kundić had omitted to take measures which he had taken in case of the abovementioned criminal act of rape – the accused Jović had failed to file a criminal report, since in case he had done so the police would have questioned the perpetrators in their capacity as suspects and not in the capacity as the citizens being interviewed during the police interrogation. The spouse of the injured party had been informed that Antun Kundić had deceased as a result of a heart attack. The aforementioned details pointed to the fact that the accused person had been involved in concealment of the event and had acted in favour of the persons who had committed the crime as well as to the fact that Jović had omitted to carry out his guarantee obligation.

### **The objections and attitudes of the defence counsel**

The defence counsel was constantly lodging objections to the statements given by the witness Slavko Kit, retired Croatian Army (HV) Colonel, former Yugoslav National Army (JNA) officer until 1991 (when he had joined the Croatian Army), who was summoned to testify at trial as an expert in military organisation and a person knowledgeable about the methods (chains) of command within the military police in the former Yugoslav National Army, since the defence regarded the witness Slavko Kit as incompetent and the witness statement as contradictory. During the previous first-instance proceedings, the defence counsel had been filing requests to the court to hear the retired General Imra Agotić. The prosecution had objected to such evidence being filed by the defence, claiming that the defence had obviously been dissatisfied with Slavko Kit's statement and that the defence had only been trying to obtain the statement suitable to the defence by filing a request for a new expert witness.

Considering the fact that Imra Agotić had died in the meantime, during the latest first-instance proceedings the defence filed a request to summon as a witness Jordan Atanasoski, who had testified in the case against Damir Kufner et al., or Mate Laušić, who had testified on several occasions both before the domestic courts and the ICTY alike, or any other person whom the court may have considered as an expert. Moreover, the defence counsel filed a request to enter into the court file his memo sent to General Imra Agotić on 21 March 2011, in which the defence counsel kindly asked Agotić to provide an expert opinion on circumstances regarding the chains of command, the role of security bodies in the unit/formation of the brigade of the former Yugoslav National Army, as well as the tasks and roles of the military police, and to enter in the court file the reply by General Imra Agotić sent by electronic mail on 21 May

2011, in which Agotić provided detailed expert explanations and interpretations. Furthermore, the defence counsel filed a request to enter into the court file also the material documentation: the military police identification card and the identification card of the security body official with rights and responsibilities of the official written on them; Manual for Military Policemen; Military Police Training Methodology; and the Instructions for Application of Operative Rules of the Military Police of the Armed Forces of the SFRJ (Socialist Federative Republic of Yugoslavia), from which it might have been deduced, according to the claims made by the defence, that the witness Slavko Kit had not provided a credible testimony and that Kit had not possessed an expert knowledge on the subject matter.

Having determined that the facts had already been sufficiently established, the court rejected the aforementioned request for evidence filed by the defence counsel.

Furthermore, the defence, unlike the prosecution and the court's assessments alike, believed that the members of the hard labour platoon could not have had the status of civilians since they had been receiving mobilisation/draft/ orders and they had a formation deployment schedule in the brigade; that the accused person had not had either a formal command authority (which he had been initially charged with by the indictment at the beginning of the proceedings) nor an actual command authority over the members of the military police; and that the witnesses, who had been testifying about the accused person's superior role over the members of the military police, had actually formed their conclusions based on multiple hear-say spread in the village, and that neither one of them had not actually heard or seen the accused person issuing any commands to any member of the military police.

### **Opinion on the proceedings**

In our written opinion prepared after the second (the first repeated) trial, we pointed to the possibility of the first-instance court verdict being quashed by the Supreme Court of the Republic of Croatia, especially having in mind the numerous requests for evidence being filed by the defence, which were subsequently rejected by the War Crimes Council (panel) of the first-instance court. Although the first-instance court, as early as in the third trial, had presented the majority of evidence which had been specified and pointed to by the Supreme Court of the Republic of Croatia in its overruling decision, it is still uncertain whether the Supreme Court of the Republic of Croatia would find that the factual situation was correctly and thoroughly established.

Due to omission by the first-instance court to conduct a formally correct trial, and also to thoroughly establish the factual situation in a correct manner,

the proceedings have taken more time than reasonably expected. The accused person has been kept in custody during the entire course of the criminal proceedings. The accused person was apprehended at the border-crossing when attempting to enter the Republic of Croatia on 07 July 2008 and has been kept in custody ever since. One might assume that the accused Jović, if the convicting verdict and the sentence to 5 years in prison had become final and legally valid, Jović would have already been prematurely released from serving his prison sentence.

The length of the proceedings, the custody the accused person was kept in, as well as the rejections of the requests for evidence filed by the defence, have all resulted in disputes between the War Crimes Council (panel) President and the defence counsel, which were blatantly obvious while the parties were delivering their closing arguments.<sup>47</sup>

**Repeated trial against Pero Đermanović, Dubravko Čavić and Ljubiša Čavić, charged with a war crime against civilians in the villages along the Una river near Hrvatska Kostajnica**<sup>48</sup>

**Zagreb County Court**

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

**Defendants:** Pero Đermanović (held in custody, which was cancelled on 12 November 2012), Dubravko Čavić (unavailable to Croatian authorities) and Ljubiša Čavić (attends the trial undetained; his detention was vacated after the pronouncement of the first-instance verdict)

**War Crimes Council (the panel):** judge Zdravko Majerović, Council President, judges Željko Horvatović and Tomislav Juriša, Council members

**Prosecution:** Robert Petrovečki, Zagreb County Deputy State's Attorney

**Defence:** Zorko Kostanjšek, a lawyer practising in Sisak representing Pero Đermanović; Ivan Rafaj, a lawyer practising in Sisak representing Dubravko Čavić; Domagoj Rupčić, a lawyer practising in Sisak representing Ljubiša Čavić

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<sup>47</sup> The defence counsel (Tomislav Filaković) began his closing speech by referring to the prosecutor's closing speech. However, the War Crimes Council President interrupted the defence counsel by bidding him to not refer to the prosecutor's speech but to deliver his own. The defence counsel attempted to invoke the court practice and state the example of the legally valid, final verdict passed by the Osijek County Court in the case against Damir Kufner et al. however the War Crimes Council President interrupted him and concluded the issue by stating that the issue was irrelevant. After the defence counsel asked the Council to tell him which specific issue he was allowed to talk about after all, the Council member (Ružica Šamota) quoted the Article 346, Paragraph 1 of the Criminal Procedure Act, which stated the following: "The defence counsel, or the defendant himself, is to present the defence plea in his speech and, while doing so, he may refer to the statements made by the prosecutor and the injured party", which was followed by the defence counsel's comment that it was obvious that he himself was "talking too much" to no avail.

<sup>48</sup> Milena Čalić Jelić monitored this trial and reported thereof.

## About the repeated first-instance trial <sup>49</sup>

The Zagreb County Court's War Crimes Council repeated the first-instance trial. On 8 November 2011, it found the defendants guilty and sentenced them to the following prison sentences: Pero Đermanović (9 years), Dubravko Čavić (7 years) and Ljubiša Čavić (2 years). They were found guilty of war crime against civilians referred to in Article 120, paragraph 1 of the OKZRH because, in their capacity as members of illegal armed formations of the so-called SAO Krajina, in the villages along the Una river near Hrvatska Kostajnica (Stubalj, Graboštani, Donji and Gornji Hrastovac) during October 1991:

(a) Pero Đermanović and Dubravko Čavić abducted Vladimir Letić from his sister's house in Graboštani, tied his arms with wire and took him in the „Renault 4“ vehicle to the TO Headquarters in Gornji Hrastovac where members of illegal armed formations of the so-called SAO Krajina interrogated and physically abused him. The day after, the victim was driven to the village of Stubalj where he was forced to point at the houses where weapons were held. Thereafter, Pero Đermanović and Dubravko Čavić, together with deceased Milan Stiljak a.k.a. „Japan“, took the victim to the woods known as „Parlogi“ and killed him there by firing several shots at him causing him physical injuries – fractures of both lower legs and the head;

(b) In the evening of 26 October 1991, Pero Đermanović and Ljubiša Čavić entered two family house yards in Graboštani owned by Stevo Karanović and Ivo Karanović, poured petrol at the houses and set them alight causing their burning out.

The repeated first-instance trial was conducted in defendant Dubravko Čavić's absence, who was represented by court-appointed defence-counsel. Defendant Đermanović was held in custody during the trial and after the pronouncement of the verdict his detention was extended.

The repeated trial took six months to be completed. Depositions of 12 witnesses and a medical expert were taken at four trial hearings and one out-of-court hearing was held by using video-conference link. With the consent of parties to the proceedings, depositions given by certain witnesses were read.

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49 In the (first) first-instance trial, conducted before the Sisak County Court, defendants Pero Đermanović, Ljuban Bradarić, Dubravko Čavić and Ljubiša Čavić were found guilty on 23 April 2010. Đermanović was sentenced to 11 years, Bradarić to 1 year, Dubravko Čavić to 9 years and Ljubiša Čavić to 2 years in prison. On 22 December 2010, the Supreme Court of the Republic of Croatia upheld the verdict in respect of Ljuban Bradarić. However, it accepted appeals lodged by Đermanović and Dubravko Čavić and Ljubiša Čavić and quashed the first-instance verdict against them. On the basis of the proposal issued by the DORH, the Supreme Court of the Republic of Croatia decided that the trial was to be repeated before the Zagreb County Court.

The State Hydrometeorological Institute provided the court with data on moon phases and cloud covering information for 20-30 October 1991 in respect of the area Graboštani in Hrvatska Kostajnica municipality. Inspection of tangible evidence was made, two eye-witnesses were heard again and an on-site investigation was carried out. Proposals by the defence counsels to bring face-to-face the eye-witnesses and to obtain documentation on establishing the right to reconstruction of the houses burnt down were rejected as inappropriate or irrelevant evidence. The Court decided so because it was of the opinion that the fact which would be determined on the basis of proposed evidence had already been determined by other evidence.

After presenting the evidence, the prosecution partially modified the factual description of how the criminal offence referred to in the indictment was committed. The defendants were no longer charged that they intended to expel the population of Croatian ethnicity. In addition, the prosecution removed the allegation from the factual description in the indictment that defendants Đermanović and Dubravko Čavić, together with Milan Stiljak a.k.a. „Japan“, were hitting Vladimir Letić with gunstocks and their feet in military boots before killing him.

During the presentation of evidence, the certainty with which the court can give faith to only one eye-witness deposition was doubtful, especially for the criminal offence specified in the count (b) of the indictment and the ordering part of the verdict. However, on the basis of presented evidence the court established that the defendant committed crime as charged by the amended indictment.

In its conclusion pertaining to determination of sentence, the court assessed as extenuating circumstances the defendants' family situation, no prior criminal record and that the commission of this crime was the result of turbulent war activities. The court assessed as aggravating circumstances the maximum level of guilt - direct intention, and motives – aimed against members of Croatian people.

The defendants lodged appeals against the verdict due to erroneous and incomplete establishment of facts and procedural defects. The Zagreb ŽDO also lodged an appeal due to determined sentences which the prosecution finds to be inappropriate when compared with the gravity of committed crime.



## Reopened trial against Borislav Mikelić, charged with a war crime against civilians – crime in Petrinja <sup>50</sup>

### Zagreb County Court

**Criminal offence:** war crime against civilians under Article 120, Paragraph 1 of the OKZ RH

**Defendant:** Borislav Mikelić, tried in absence

**War Crimes Council (panel):** judge Željko Horvatović, Council President, judges Ratko Šćekić and Zdravko Majerović, Council members

**Prosecution:** Jurica Ilić, Zagreb County Deputy State's Attorney

**Defence Counsel:** Silvije Degen, lawyer from Zagreb

### Opinion

On 31 May 2012, the War Crimes Council of the Zagreb County Court reached the decision on cancellation of the criminal proceedings against Borislav Mikelić since the Zagreb County State Attorney's Office dropped charges against Mikelić prior to the beginning of the main hearing which was scheduled specifically on the basis of the decision on reopening of the case. The request for reopening of the case was filed by Borislav Mikelić, who had been sentenced in 1993 to 20 years of imprisonment.

This case is one of the examples of the reopening of the legally valid, conclusive criminal proceedings initiated by the accused persons themselves, who still have been unavailable to the Croatian judiciary. The reopening of cases at the request of the accused persons was made possible in 2008 following the changes to the Criminal Procedure Act.

The analysis of the verdict passed by the Sisak District Court on 09 June 1993 in absence of Mikelić and other accused persons only confirms the problem of a flawed prosecution (issuing poor quality indictments) and equally flawed adjudication during the war time of the 1990ies, and post-war years. The case is characterised by a flawed joint indictment (in this case against a group of nine accused persons) in which the guilt has not been sufficiently individualised; a completely passive role of the court appointed defence counsel representing all nine accused persons; as well as the adjudication of maximum punishment, and defence counsels' omissions to lodge complaints against the first-instance court verdicts, both practices typical of the 1990ies.

The proceedings held at the Sisak District Court in 1993 were abundant in the lack of professionalism. Considering the fact that the trial was held in absence of the accused persons, the impossibility to hear the accused persons, as well as the impossibility to file evidence and to present the filed evidence also significantly contributed to the total lack of objectivity.

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50 Milena Čalić Jelić monitored this trial and reported thereof.

## The course of the proceedings

### *Indictment*

By the indictment No:KT-9/93 issued by the Sisak District Attorney's Office on 10 March 1993, Borislav Mikelić and other eight persons had been charged with war crime against civilians in the area of the town of Petrinja. The first-accused Borislav Mikelić had been charged that he, in his capacity as a creator of realisation of the SANU's<sup>51</sup> Great-Serbia memorandum in the SAO Krajina (Serb Autonomous District of Krajina), had formed the so-called Chetniks' Formations Headquarters and subsequently had been preparing and coordinating the armed rebellion actions; that he had issued the order to launch the attack on the town of Petrinja and other towns; that he had issued the order to launch the attack on members of the Croatian National Guards Corps and members of the Croatian Ministry of Interior and other non-Serb civilian population; that he had ordered the persecution and expulsion of non-Serb civilian population, misappropriation of the movable property, destruction of housing facilities, commercial facilities, barns, sheds, sacred facilities; that he had been ordering illegal arrests of persons of Croat ethnicity who had subsequently been taken to the (Yugoslav National Army) "Vasilije Gaćeša" Military Barracks where they had been psychically and physically abused. One person had been killed and six persons had been injured during the stated attacks.

### *Verdicts in absentia*

On 09 June 1993, the Sisak District Court had found guilty all nine accused persons: Borislav Mikelić, Dušan Jović, Milan Muidža, Dušan Kačar, Ilija Nišević, Milan Milanković, Ilija Bjelajac, Simo Karaica and Stanko Divjakinja. All of them had been sentenced to the maximum sentence: 20 years in prison each. All accused persons had been tried in absence and all of them had been represented by one defence counsel, who, according to the statements from the explanation of judgement, had ascertained that the presented evidence had pointed to the conclusion that the accused persons had indeed committed the crimes they had been charged with. The mentioned judgement with its explanation had not indicated sufficient information on the evidence and the reasons for establishing guilt. Although he had been obliged to do so, the defence counsel had failed to lodge an appeal against the convicting verdict which subsequently had become legally valid and conclusive once the time-limit for appeals had expired.

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51 The SANU Memorandum – the document created by the Serbian Academy of Science and Art (SANU). As a strategic program made by the Serbian intelligentsia, the document defined the future direction for solving the Serb issue within the SFRJ (Socialist Federative Republic of Yugoslavia). The Memorandum represented the modernized version of the previously issued programs of realization of the Great Serbia.

### ***Reopening of the proceedings for the eight co-accused and convicted persons***

The verdict in respect of all convicted persons, except for the first-convicted Borislav Mikelić, was abrogated in 2009. Namely, the Sisak County State Attorney's Office requested the reopening of proceedings in respect of the convicted Dušan Jović, Milan Muidža, Dušan Kačar, Ilija Nišević, Milan Milanković, Ilija Bjelajac, Simo Karaica and Stanko Divjakinja. After the request was granted and the proceedings were reopened, the Sisak County State Attorney's Office changed the legal qualification of the offence – into the criminal act of armed rebellion, and subsequently (following the application of the General Amnesty Act) the Sisak County Court cancelled the criminal proceedings.

### ***Decision on reopening of case in respect of Borislav Mikelić***

By the decision issued on 26 April 2011, the Sisak County Court sustained the request filed by the convicted Borislav Mikelić and approved the reopening of the criminal proceedings in respect of Mikelić.

The request for reopening of the criminal proceedings had been filed by the convicted Mikelić himself, in absentia, in accordance with the regulation in Article 501, Paragraph 1, Item 3 of the Criminal Procedure Act. The request had presented new facts and evidence for which the convicted person believed that, in the reopened case, they would lead to his acquittal of criminal responsibility or a more lenient sentence. The Sisak County State Attorney's Office established that Mikelić's request was unfounded. In the process of deliberation upon the request for reopening of criminal proceedings, the Court heard three witnesses who had known the convicted person before the war, and in their statements all three witnesses confirmed that the same convicted person had had a traffic accident, that the convicted person had been hospitalised at the time of the incriminated events and that they had not seen him in Petrinja during the incriminated events. The witnesses also stated that they had no knowledge of the convicted person's involvement or participation in the actions of preparation and coordination of armed rebellion in Petrinja. The Court made inspection into the material evidence filed by the convicted person and, subsequent to the inspection, established that the circumstances indicated in the request for reopening of case had not been taken into consideration during the course of now legally valid and conclusive proceedings, although they have been suitable to lead to the acquittal of the person convicted for war crime against civilians stated in Article 120, Paragraph 1 of the OKZ RH or to his conviction according to a more lenient legal act. Therefore the request for reopening of the criminal proceedings in respect of Mikelić was sustained.

## **Trial against Ivica Pintarić, charged with a war crime against civilians – crime near Mrkonjić Grad II <sup>52</sup>**

### **Zagreb County Court**

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

**Defendant:** Ivica Pintarić, currently serving a prison sentence on the basis of final and conclusive conviction for committing the other criminal offence

**War Crimes Council (panel):** judge Zdravko Majerović, Council President, judges Mirko Klinžić and Erna Dražanić, Council members

**Prosecution:** Jurica Ilić, the Zagreb County Deputy State's Attorney

**Defence:** Juro Martinović, lawyer practising in Zagreb

### **Indictment & verdict**

The Indictment No. K-DO-312/10 of 3 February 2012 issued by the Zagreb ŽDO charges Ivica Pintarić that, on not precisely determined day during September and October 1995 in a village near Mrkonjić Grad in Bosnia and Herzegovina, in his capacity as a member of HV Independent Sniper Company, he entered a house where he found two unidentified persons, a man and a woman, and killed them on the spot by firing several shots from automatic „Kalashnikov“ rifle. Therefore, he committed a war crime against civilians referred to in Article 120, paragraph 1 of the OKZRH.

Following the main hearing which was conducted expeditiously and efficiently, the Zagreb County Court's War Crimes Council pronounced a verdict of acquittal on 9 May 2012, pursuant to Article 354, point 3 of the ZKP. On the basis of presented evidence the Council could not establish that the defendant committed the offence as charged. The Council was of the opinion that on the basis of one witness deposition alone it could not determine beyond doubt that the defendant committed the crime and that this deposition did not contain sufficient information. The Council was also of the opinion that it remained unclear whether the defendant killed the victims and it stated that the victims' bodies were not found and that the victims' identity as well as the name of the village where the alleged crime had been committed were not established.

### **Opinion on the quality of the indictment**

If the Supreme Court of the Republic of Croatia confirms the first-instance verdict of acquittal, this will only prove that the ŽDO's indictment was not based on sufficient and high-quality evidence. This way, because of the application of the „*ne bis in idem*“ principle, the possibility of any further investigation of the crime referred to in the indictment against this particular defendant would

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52 Milena Čalić Jelić monitored this trial and reported thereof.

be prevented. The reasons why this indictment was laid in such a hasty manner can hardly be justified because it concerns, in particular, a criminal offence, the prosecution of which is not subject to any statute of limitation, and because better co-operation with the BiH judiciary is expected which could shed some light on numerous unknown unidentified facts which this case has in abundance.

### **Trial against Milan Marinković, charged with a war crime against prisoners of war - crime in Borovo Selo <sup>53</sup>**

#### **Osijek County Court**

**Criminal offence:** war crime against prisoners of war under Article 122 of the OKZ RH

**Defendant:** Milan Marinković

**War Crimes Council (panel):** judge Darko Krušlin, Council President, judges Anto Rašić and Ninoslav Ljubojević, Council members

**Prosecution:** Miroslav Dasović, Osijek County Deputy State's Attorney

**Defence:** Marko Cvrković, lawyer from Vukovar, and Zlatko Cvrković, lawyer from Vinkovci

**On 01 February 2012, the War Crimes Council of the Osijek County Court pronounced the accused Milan Marinković guilty of war crime against prisoners of war stated in the Article 122 of the OKZ RH. Marinković was sentenced to 3 years and 6 months of imprisonment.**

Milan Marinković was found guilty of the crime committed in the village of Borovo Selo, in the area called Savulja, on 02 May 1991, when Marinković, in his capacity as member of Serb paramilitary troops, together with Jovan Jakovljević and other Serb paramilitaries, had been battering, kicking and beating with sticks the captured Osijek Police Administration policemen Zvonimir Meković and Dalibor Križanović, who had previously been wounded by fire-arms shots, thus inflicting many injuries on the two policemen and causing them severe pain in addition to the pain they had felt from sustained gunshot wounds.

Marinković, who was being kept in custody since 11 November 2010, was released from custody on the day of announcement of the verdict.

#### **Accusation and separation of the case**

The indictment No: K-DO-28/11 issued by the Osijek County State Attorney's Office on 10 May 2011 charged Milan Marinković, Jovan Jakovljević,

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<sup>53</sup> Miren Špek monitored this trial and reported thereof.

Dragan Rakanović, Milenko Mihajlović and Jovica Vučenović with the abuse of captured and wounded Croatian policemen Zvonimir Meković, Dalibor Križanović, Boško Crčić-Kurtanjek and Ivan Komšić in Borovo Selo on 02 May 1991.

By the decision of the Extra-trial Council of the Osijek County Court, dated on 02 December 2011, the case in respect of the accused Milan Marinković was separated from the case relating to other (above stated) accused persons who were unavailable to the judicial bodies of the Republic of Croatia.

On 17 January 2012, before the commencement of the trial, the indictment was adjusted in respect of the accused Marinković.

Course of the trial and the verdict

Two court hearings of the trial were held on 19 January 2012 and 30 January 2012, after which the first-instance verdict was passed and announced on 01 February 2012.

Twelve witnesses, among who were also the injured parties – the policemen Meković and Križanović, were heard during the trial. The War Crimes Council denied the motion to summon as witnesses the three persons who appeared in the audience and attended the court hearing held on 19 January 2012.

The accused person presented his defence on three occasions: in his capacity as a suspect person before the police officials, and before the investigative judge in November 2010, and at the court hearing held on 30 January 2012. At first, Marinković claimed that he had not been leaving his home on the critical day, that he had been babysitting his newborn son and that he had spent some time doing minor repairs and maintenance around the house. Later on, Marinković claimed that on the critical day he had some guests who had been visiting him for the 1st May celebration, and that he had spent the following day (02 May) inside his house with several relatives and neighbours, who later confirmed Marinković's statement in their depositions given at court. Marinković explained the discrepancy between his deposition given at court and his statement given before the police officials and justified it as a result of his shock when he had learnt he had been arrested. Marinković also stated that his nickname was not "Kurta".

The disputable issue in these proceedings was whether the accused Marinković had been the very person seen by the witness Vaso Stanivuković in the cottage where the injured parties had been abused, and, another disputable issue, according to opinion of the defence, was the legal qualification of the indictment itself. Namely, the defence claimed that no armed rebellion of the part of the Serb population in Croatia had existed whatsoever prior to the events of the deployment of Croatian policemen to Borovo Selo and the attack against them.

The War Crimes Council did not assess as credible the claims made by the defence of the accused Milan Marinković, instead, the Council accepted as the key evidence the statement initially made by the witness Vaso Stanivuković (made prior to Stanivuković's attempts of changing the statement in favour of the accused). During the trial, the witness Vaso Stanivuković claimed that he had seen Mišo a.k.a. "Kurta" at the crime scene alongside the Borovo Selo Territorial Defence Commander Šoškočanin and Jakovljević on the critical day, and actually identified Milan Puškar a.k.a. Kurta as the very person he had seen, and not the accused Milan Marinković. However, the War Crimes Council concluded, primarily on the basis of the statement made by the mentioned witness during the investigation, in which Stanivuković had thoroughly described the incriminated event, that actually the accused Milan Marinković was the very person who had been seen by the witness at the crime scene.

In its judgement, the Court stated that it was a generally known fact that armed conflicts in the Republic of Croatia had commenced on 28 March 1991 following the attack of Serb paramilitary troops against members of the Croatian Ministry of Interior on Plitvice, and that the circumstances described by injured parties in these proceedings had literally pointed to the fact that the stated situation had represented a premeditated and organised attack by members of Serb paramilitaries, a previously prepared ambush which the injured parties and their colleagues had been caught into. The stated facts led the War Crimes Council to conclude that the events which had happened in Borovo Selo on 02 May 1991 did not represent an isolated case of conflict, but a case of non-international armed conflict which the Geneva Conventions and the Additional Protocol (Protocol II) had to be applied to.

Although the charges stated in the indictment against accused Marinković included commission of war crime against prisoners of war stated in Article 122 of OKZ RH and commission of war crime against wounded and sick persons stated in Article 121 of OKZ RH, the War Crimes Council concluded that the case did not represent a concurrence of the mentioned criminal offences, since one offence consummated another offence, i.e. that the case might be considered as a nominal concurrence of offences. Considering the fact that the legal concept of the "prisoner of war" contains in itself also the members of armed forces who laid down their weapons and left the combat formations, among other reasons – also due to being wounded, we have concluded that this case represents a criminal offence of war crime against prisoners of war.

The accused Marinković was given a prison sentence which was lighter than the minimum sentence prescribed by law for the criminal offence at issue. By applying the clause on court's mitigation of penalty, the War Crime Council sentenced Marinković to 3 years and 6 months imprisonment.

The War Crimes Council entirely exempted the accused person from paying the costs of the court proceedings.

Our opinion is that the War Crimes Council conducted the first-instance proceedings in a correct manner. In the explanation of the judgement, special attention was given to a key - yet disputable - circumstance of the identity of the perpetrator of this criminal offence.

**Trial against Emil Črnčec, Tihomir Šavorić, Antun Novačić, Robert Precehtjel, Nenad Jurinec, Goran Gaća and Robert Berak, charged with a war crime against prisoners of war - crime in Halapići and Mlinište in Bosnia and Herzegovina** <sup>54</sup>

**Zagreb County Court**

**Criminal offence:** war crime against prisoners of war under Article 122 of the OKZ RH

**Defendants:** Emil Črnčec, Tihomir Šavorić, Antun Novačić, Robert Precehtjel, Nenad Jurinec, Goran Gaća, and Robert Berak

**War Crimes Council (panel):** judge Marijan Garac, Council President, judges Rajka Tomerlin Almer and Zdravko Majerović, Council members

**Prosecution:** Jurica Ilić, Zagreb County Deputy State's Attorney

**Defence:** lawyer Željko Olujić, defence counsel for the first-accused; lawyers Zvonimir Hodak and Tanja Vranjican Đerek, defence counsels for the second-accused; lawyers Ana Marija Gospočić and Laura Valković, defence counsels for the third-accused; lawyer Gordana Grubeša, defence counsel for the fourth-accused; lawyer Marko Zečević, for the fifth-accused; lawyer Emir Midžić, for the sixth-accused; lawyer Stipica Akrap, for the seventh-accused.

**Presentation and opinion on the conducted first-instance proceedings**

On 24 October 2011, the War Crimes Council of the Zagreb County Court passed the verdict which: found the 2nd-accused Tihomir Šavorić, the 3rd-accused Antun Novačić and the 5th-accused Nenad Jurinec guilty of killing the prisoners of war, since they had been violating regulations of the international law, and in this way they had committed a crime against humanity and the international law – war crime against prisoners of war; The verdict found the 4th-accused Robert Precehtjel and the 7th-accused Robert Berak guilty since they had assisted the 3rd-accused and the 5th-accused in commission of the war crime against prisoners of war<sup>55</sup>; The verdict acquitted the 1st-accused Emil

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<sup>54</sup> Marko Sjekavica, Martina Klekar, Maja Kovačević Bošković and Jelena Đokić Jović monitored this trial and reported thereof.

<sup>55</sup> On the page 3 of the operative part of the verdict, it was erroneously stated that the 4th-accused and the 7th-accused had committed a criminal act of assisting in the war crime against prisoners of war, instead of stating that the mentioned accused persons were guilty of assisting in commission of criminal act of war crime against prisoners of war. Assisting per se does not constitute a crime; instead, it is just one of the methods of commission of crime.



Črnčec and the 6th-accused Goran Gaća of all charges, based on the Article 354, Paragraph 1, Item 3, due to a lack of evidence.

It was established by the evidence procedure that the accused persons, during the international armed conflict, in their capacity as members of the 7th Guards Brigade of the Croatian Army (HV), had participated in the Military Operation “Maestral 2”<sup>56</sup>, in the territory of Bosnia and Herzegovina, where they, in the vicinity of the village Mlinište, had captured members of enemy formations of the Army of Republika Srpska: Radoslav Lakić, Pero Vidović, Petar Jotanović, Dragoslav Mutić, Borislav Vukić and one unidentified male person, who had been taken to the brigade headquarters in the village of Halapići, where they had been detained in a nearby barn awaiting their execution. It was established that, on 10 September 1995, the 2nd-accused Šavorić, following and executing the order issued by the now-deceased General Ivan Korade, had opened fire and killed Pero Vidović, and that the 3rd-accused Novačić, the 4th-accused Precehtjel and the 7th-accused Berak, having been aware that the captives would be killed, had participated in transporting by truck the captured Dragoslav Mutić and Borislav Vukić and bringing them to the position of the Artillery Battery of the 3rd Battalion of the 7th Guards Brigade in the village of Mlinište, where the 3rd-accused Novačić and the 5th-accused Jurinec had opened fire from automatic rifles and killed the stated captives with several rounds.

By announcing the penal sanctions, the court sentenced the 2nd-accused Tihomir Šavorić to 6 years of imprisonment, the 3rd-accused Antun Novačić to 5 years of imprisonment, the 4th-accused Robert Precehtjel to 2 years of imprisonment, the 5th-accused Nenad Jurinec to 6 years of imprisonment, and the 7th-accused Robert Berak to 2 years of imprisonment.

In the operative part of the judgment, having amended the factual description of the indictment thus adjusting it to the factual findings determined during the evidence procedure, the court purposely left out, assessing it as unproven, the incrimination against the 1st-accused person and the 2nd-accused person which stated that Črnčec and Šavorić had opened fire from firearms and killed Radoslav Lakić and Pero Vidović<sup>57</sup> in front of the Brigade Headquarters in Halapići, and the court also left out the incriminating act attributed to the 3rd-accused, the 4th-accused and the 7th-accused person which charged them with executing the order issued by now-deceased General Ivan Korade on their forming a firing squad in front of the Brigade Headquarters in Halapići, opening fire from automatic rifles and killing Petar Jotanović and one *no-*

56 The verdict uses the word “Maestral 2” as the name of the military operation, which was also used in the indictment, however, the stated name is disputable, i.e. it is not clear what exactly the item “2” within the name of the Operation means, since, according to the Ministry of Defence of the Republic of Croatia’s publicly available information, there was, indeed, a joint military operation carried out by the Croatian Army (HV), the Croatian Defence Council (HVO) and the BiH Army, code-named “Maestral”, which was launched on 08 September 1995 and ended on 17 September 1995, and which was done in three phases, the first of which was carried out in the period from 08 September until 10 September 1995, and there were no other military operations code-named “Maestral”.

57 Page 43 and page 44 of the verdict.

*men nescio* male person.<sup>58</sup> Furthermore, the court partially changed the factual description and legal qualification of the incriminating events, whereas the objective identity of the charges (i.e. of the offence the accused persons were charged with in the indictment) remained unchanged. In this way, instead of the factual description stated in the indictment, according to which the 3rd-accused Novačić, the 4th-accused Precehtjel, the 5th-accused Jurinec, the 6th-accused Gaća and the 7th-accused person Berak, after prisoners of war Dragoslav Mutić and Borislav Vukić had been handed over to them in the village of Mlinište, killed Mutić and Vukić with several rounds they shot from automatic rifles, subsequently it was determined that the 3rd-accused Novačić, the 4th-accused Precehtjel and the 7th-accused Berak, having known that the prisoners of war Dragoslav Mutić and Borislav Vukić would be killed, the accused Novačić, Precehtjel and Berak took Mutić and Vukić by truck from the Brigade Headquarters in Halapići to the position of the Artillery Battery in Mlinište, where the 3rd-accused Novačić and the 5th-accused Jurinec killed them with several rounds they shot from automatic rifles. Thus the 4th-accused Robert Precehtjel and the 7th-accused Robert Berak were convicted of assisting in commission of the crime against humanity and the international law – war crime against prisoners of war, which is described and punishable according to the Article 122, in relation to the Article 22 of the OKZRH, and were not convicted of complicity in the same offence, as initially charged by the indictment. In respect of the 4th-accused Robert Precehtjel and the 7th-accused Robert Berak, the court neither determined the existence of any relevant elements which constituted complicity, as a method of execution of crime, which all had to cumulatively appear in their objective relevant contribution of the co-perpetrator in execution of the offence, nor it determined the awareness of a co-perpetrator on the joint cooperation in realisation of the guilty knowledge. Following the described amendments to the factual findings, the operative part of the judgment did not encompass the killing of the injured party Radoslav Lakić<sup>59</sup> and Petar Jotanović, and one unidentified male person (whereas the indictment had included the incriminations against the accused persons for killing Lakić, Jotanović and one unidentified male person).

In these criminal proceedings, the War Crimes Council assessed as indisputable the fact that the incriminated events had actually happened during the international armed conflict, within which the Croatian Army (HV) had been operating in the territory of Bosnia and Herzegovina<sup>60</sup> and which, in this seg-

58 Page 15 and page 44 of the verdict.

59 On the page 44 of the explanation for the verdict, the court determined that the same injured party had been killed by the now-deceased General Ivan Korade who had used a handgun to shoot the injured party.

60 On the page 7 and page 16 of the explanation of judgment, it was stated that the 7th Guards Brigade of the Croatian Army (HV) had been transferred to the territory of Bosnia and Herzegovina (to the Livno area and the area of Dinara mountain) in the summer of 1995, after Tuđman and Izetbegović signed the Split Accord (agreement on military cooperation between the Republic of Croatia and Bosnia and Herzegovina, signed on 22 July 1995), although the 1st-accused Črnčec, when presenting his defence plea, at the trial hearing held on 18 October 2011, explicitly stated (however, it was not entered into the court records) that

ment, had also been characterised by the ICTY<sup>61</sup> judicature itself as the international conflict. On page 16 and page 57 of the explanation of judgment, it was also stated that, beyond any doubt, the critical events had indeed happened during the international armed conflict, while the evidence procedure undoubtedly showed that the perpetrators had in fact been acting in their capacity as members and officers of the regular military units of the Republic of Croatia, and they had been doing so on the territory belonging to a country other than Croatia.

The trial council (War Crimes Council) assessed as indisputable also the fact that the members of the 7th Guards Brigade of the Croatian Army (HV), by participating in the Military Operation “Maestral”, in the wider area of Mlinište, had captured six enemy soldiers: Radoslav Lakić, Pero Vidović, Petar Jotanović, Dragoslav Mutić, Borislav Vukić and one unidentified male person who had been wounded in his arm, and the members of the 7th Guards Brigade had detained the stated captives in the barn located near the Brigade Headquarters. Taking into consideration the witnesses’ depositions, medical expert’s documentation and photo-documentation of the dead bodies, all enclosed to the case file, as well as the findings and opinion of the medical expert who had examined the medical documentation attached to the case file<sup>62</sup>, it was indisputable that all the mentioned persons had been killed from firearms.

The court determined beyond any doubt that Major Radoslav Lakić had been killed by General Korade himself using a handgun, which fact had been deduced from the witnesses’ depositions as well as from sections of the defence pleas of the accused persons, which had been linked to one another and the connections had been found. The incriminated act of killing Radoslav Lakić, which, by the indictment, had been attributed to the 1st-accused Črnčec and the 2nd-accused Šavorić, remained unproven according to the War Crimes Council’s opinion, which concluded that the factual situation was as stated above. It was also undoubtedly determined that all the prisoners of war, whose killing had been encompassed by the indictment relating to this case, had ac-

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his military unit had been transferred to the territory of Bosnia and Herzegovina at the end of 1994 and that it had been operating there. However, when asked directly by the War Crime Council President, on what grounds the unit had actually been deployed on the territory of Bosnia and Herzegovina, the accused Črnčec had replied that his unit had been deployed on the stated territory based on the Split Accord (which was signed in 1995, sic). Although irrelevant for these criminal proceedings and for the assessment of guilt of the accused persons, we would like to emphasise the above mentioned circumstance since we believe that the court judgments, in their factual substrata, also present, inter alia, one of the vital historic sources which are important in the process of establishing the historic facts.

61 Verdicts passed in the case against accused Blaškić and in the case against accused Naletilić and Martinović, as well as the first-instance verdict against accused Kordić and Čerkez, definitely determined that the Republic of Croatia had been involved in the military conflict in BiH, which (the conflict) consequently, in this respect, undoubtedly had a character of international armed conflict.

62 From the stated material evidence as well as from findings and the medical expert’s opinion, it was deduced that no autopsy on the mortal remains of Radoslav Lakić, Pero Vidović, Petar Jotanović, Dragoslav Mutić and Borislav Vukić had been carried out whatsoever; instead, only the external examination of the bodies had been performed, exclusively for the purpose of identification (page 22 of the verdict).

tually been killed following the order issued by the now-deceased General Korade.<sup>63</sup>

The cruelty in commission of this crime was not specifically emphasised or elaborated upon in the judgment itself, instead, the court only stated in general that it did take into consideration the method of commission of crime as an aggravating circumstance in respect of the convicted persons. However, although the very fact was deduced during the evidence procedure, i.e. the fact was deduced from the very evidence which the War Crimes Council had found credible, no explicit statement whatsoever was supplied in the judgment, in the section specifying the mentioned aggravating circumstances, which would explicitly state that the killed prisoners of war had been mistreated, insulted, stripped naked, beaten, and humiliated prior to their killing by the members of the Croatian Army (HV). The injured party Dragoslav Mutić had been shot in the genitals<sup>64</sup>, which had caused him intense pain and great suffering prior to his killing.

Not wishing to usurp the appeal role of a higher-instance court, nor wishing to elaborate upon the court's assessment of evidence, with this opinion we still wish to point out to the circumstances mentioned in the depositions given by certain witnesses, which were also presented in the explanation of judgment, and which all referred to the incriminations attributed to the 6th-accused Goran Gaća. Namely, the witnesses Josip Haramina (page 36 of the verdict), Milan Kramarić (pages 37, 49 and 50 of the verdict) and Željko Ivan Fuček (page 39 of the verdict) in their witness statements, which the War Crimes Council assessed as credible, actually incriminated the 6th-accused Gaća by giving depositions describing Gaća's conduct during the transport of the injured parties Mutić and Vukić to the position of the Artillery Battery of the 3rd Battalion of the 7th Guards Brigade of the Croatian Army (HV) and during the very act of killing of Mutić and Vukić.<sup>65</sup> Furthermore, as stated in the explanation of judgment (on page 46), it was deduced from the witness statements given by

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63 Page 21 of the verdict.

64 The stated was deduced from the defence of the 5th-accused Jurinec, from the deposition given by witness Mihajlo Brmbota, the medical expert documentation, findings and opinion of the authorised medical expert, specifically from the section stating that the examination of the dead body of Dragoslav Mutić led to the conclusion that a damaged spot had been found on the front, left side of Mutić's underpants which may have had corresponded to a gunshot hole, whereas no visible corresponding damage had been found on photos depicting the trousers and belt belonging to the mentioned injured party, which all may have pointed to the fact that the injured party Mutić had been wearing nothing but underpants in the moment when he was killed.

65 From the deposition given by witness Josip Haramina, it was deduced, inter alia, that the 6th-accused Gaća, together with the 3rd-accused Novačić, had taken the two mentioned captives towards the woods (where the two captives had been killed by several rounds shot from firearms - as the court determined during the evidence procedure - by the 3rd-accused Novačić and the 5th-accused Jurinec). From the deposition given by witness Milan Kramarić, it was deduced, inter alia, that the 6th-accused Goran Gaća had been present in the moment when the two captives had been brought to the crime scene and the witness supposed that Gaća had also been participating in the beating and kicking of the two captives. The witness Željko Ivan Fuček stated, inter alia, that the 6th-accused Gaća had been present in the moment when the two captives had been brought to the crime scene and that Gaća himself had kicked one of the captives.

Mihajlo Brmbota, Ivica Okički <sup>66</sup> and Miroslav Kokan <sup>67</sup>, that the 6th-accused Gaća had also been present among the group of soldiers who had opened fire on the two prisoners of war. The court's War Crimes Council was not bound by the legal qualification of the offence stated in the indictment, so, also in case of the 6th-accused Gaća, there was a possibility of establishing another, milder form of commission of the offence, which was established in respect of the 4th-accused Precehtjel and the 7th-accused Berak.

The court determined that the 4th-accused Precehtjel and the 7th-accused Berak had participated in commission of the criminal act of execution of two prisoners of war (brought to the position of the Artillery Battery) by assisting the perpetrators, since Precehtjel's and Berak's contribution to commission of the crime was such that it represented a facilitation and enhancement of possibility of commission of the very crime by the perpetrators – the 3rd-accused Novačić and the 5th-accused Jurinec, but the court concluded that Precehtjel's and Berak's contribution was not of such great importance that the lack of that contribution would have caused the criminal act to remain unrealised.

There were two persons, Vlado Čavić and Mihajlo Brmbota, who, along with the 4th-accused Precehtjel and the 7th-accused Berak, had also participated in bringing/transporting the injured parties Mutić and Vukić from the Brigade Headquarters in Halapići to the position of the Artillery Battery in Mlinište, where the stated injured parties had been executed. However, Vlado Čavić and Mihajlo Brmbota appeared as witnesses in these criminal proceedings and were not encompassed by the indictment.

In conclusion, we are of opinion that the criminal proceedings in the matter were, in their entirety, correctly conducted, in ethnically unbiased manner, and within a reasonable time-limit, and the latter being said especially concerning the total number of accused persons and the extent of all filed personal and material evidence.

**The fifth (the fourth repeated) trial against Petar Mamula, charged with a war crime against civilians – crime in Baranja <sup>68</sup>**

**Osijek County Court**

**Criminal offence:** war crime against civilians under Article 120, Paragraph 1 of the OKZ RH

**Defendant:** Petar Mamula

**War Crimes Council (panel):** judge Zvonko Vrban, Council President, judges Ante Kvesić and Mario Kovač, Council members

**Prosecution:** Miroslav Dasović, Osijek County Deputy State's Attorney

**Defence Counsels:** lawyer Lina Budak and lawyer Artur Fišbah

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<sup>66</sup> Page 49 of the verdict.

<sup>67</sup> Page 49 of the verdict

<sup>68</sup> Veselinka Kastratović and Miren Špek monitored this trial and reported thereof.

## **Verdict following the conclusion of the fifth (the fourth repeated) first-instance court proceedings**

After conducting the trial, the War Crimes Council of the Osijek County Court passed the first-instance verdict on 10 February 2012 which found the accused person Petar Mamula guilty of war crime against civilians stated in Article 120, Paragraph 1 of the OKZ RH and sentenced Mamula to 3 years and 6 months in prison.

When deliberating on the sentencing and penalties, the War Crimes Council, by applying the provisions on mitigation of sentence, pronounced the prison sentence lighter than the legal minimum. One might have expected that, when providing the explanation for decision on the length of sentence, the War Crimes Council would specify the “particularly extenuating circumstances” it took into consideration following the application of the provisions on mitigation of the pronounced sentence.

The time the accused Mamula had spent in custody during the investigation and the main hearing (in the earlier part of the criminal proceedings) – from 06 October 2000 until 07 May 2003 – was included in the pronounced prison sentence.

The verdict found Petar Mamula guilty as charged that he, in his capacity as a participant of the armed rebellion of the local Serb population against the constitutional and legal order of the Republic of Croatia, in Batina and Kneževi Vinogradi, on 09 September 1991, had participated in intimidation and cruel physical and psychical abuse of civilian population of non-Serb ethnicity in Baranja, by interrogating the illegally-arrested Catholic priest Antun Knežević at the Batina Territorial Defence Headquarters, beating Knežević on the head, opening fire from a handgun and shooting near Knežević’s head, subsequently taking Knežević by a car to the infirmary in Kneževi Vinogradi, threatening to kill Knežević on the way to Kneževi Vinogradi infirmary, where Mamula had confiscated Knežević’s wristwatch and shot at the wristwatch with the handgun, subsequently putting the handgun against Knežević’s head, near Knežević’s left ear, shooting one bullet and causing the burst of Knežević’s eardrum from the detonation which forced Knežević to fall to the ground, and in that moment other members of the so-called Kneževi Vinogradi Territorial Defence approached Knežević and started kicking him which caused severe bleeding all over Knežević’s body, subsequently Mamula had taken Knežević by car to the so-called SUP (Internal Affairs Secretariat) in Beli Manastir, where he had ordered Knežević to lean against the reception desk and to spread his feet, subsequently kicking Knežević in the genitals, and than handing Knežević over to be put in prison.

In these proceedings, as well as in the majority of other proceedings which we monitored, and which were concluded with the convicting verdict being

delivered by the War Crimes Council, the accused person was exempted from paying the court fees.

### **The course of the previous proceedings**

The above mentioned verdict was preceded by four non-conclusive first-instance verdicts according to which the accused Petar Mamula had been found guilty and convicted to prison sentence(s)<sup>69</sup>, and which were subsequently quashed by the Supreme Court of the Republic of Croatia each time and reversed for retrial(s) at the Osijek County Court.

The Appeals Council of the Supreme Court of the Republic of Croatia, at its session held on 12 October 2011, quashed the first-instance verdict passed at the fourth (the third repeated) trial due to a major violation of the provision of the Article 367, Paragraph 3 of the Criminal Procedure Act, and reversed the case for retrial at the Osijek County Court. The Appeals Council of the Supreme Court of the Republic of Croatia ascertained that the first-instance court violated the right to defence by rejecting the defence counsel's motion for presentation of evidence by hearing the witnesses Stjepan Petrešev, Đuro Molnar and Franjo Joh. The Supreme Court of the Republic of Croatia made the decision that the repeated proceedings were to be conducted before the newly-constituted first-instance court panel (War Crimes Council) and that, additionally, the expert survey of the injured party Antun Knežević was to be conducted by the court-appointed medical expert.

### **About the fifth (the fourth repeated) trial**

In this repeated trial, the War Crimes Council heard the injured party Antun Knežević in respect of the circumstances pointed out by the Supreme Court of the Republic of Croatia in its decision on reversal. The injured party described in great detail the critical event, as well as the conduct and actions of the accused person, and actions of the witness Stjepan Petrešev, in equally consistent manner as in the previous depositions.

The War Crimes Council confronted the injured party with the witness Stjepan Petrešev in order to eliminate discrepancies between their statements in relation to the critical event in Batina. During the confrontation, according to the statement by the War Crimes Council<sup>70</sup>, the witness Antun Knežević quietly and composedly looked into the witness Petrešev's eyes and gave the statement

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69 On 5 April 2002, Petar Mamula was found guilty and sentenced to 5 years and 6 months in prison; on 08 May 2006, Mamula was sentenced to 4 years and 10 months in prison; on 07 April 2009, Mamula was sentenced to 4 years and 10 months in prison; on 23 March 2011, Mamula was sentenced to 3 years and 6 months in prison.

70 Page 8 of the court records on trial hearing held on 09 February 2012, and page 3 of the trial monitoring report (please see [www.centar-za-mir.hr](http://www.centar-za-mir.hr)).

in the same manner. Contrary to the stated, the War Crimes Council concluded that the witness Stjepan Petrešev was not telling the truth, and that Petrešev was restless during the confrontation, he was not looking at the injured party whatsoever, he was playing with his fingers.

The witnesses for the defence, Đuro Molnar and Franjo Joh, confirmed - by their statements - the allegations stated in the indictment regarding the accused person's conduct at the critical event.

The War Crimes Council also heard the court-appointed medical expert, who, in his findings and report, confirmed that Antun Knežević's injury was the result of the temporal bone fracture, which might have been caused either by a violent blow in the area of the left ear using a blunt object or by falling and injuring the occipital area.

The injured party Antun Knežević decided (after the fifth trial) to pursue his property lawsuit in a separate (civil) lawsuit.

The repeated trial before this War Crimes Council was conducted in accordance with the Criminal Procedure Act; the War Crimes Council carried out all the tasks as instructed by the Supreme Court of the Republic of Croatia and heard the witnesses stated in the Supreme Court's decision, however, the Council did not get into the accused person's reasons for appeal which the Supreme Court of the Republic of Croatia had examined but rejected them as unfounded.<sup>71</sup>

The War Crimes Council's decision on guilt of the accused Petar Mamula was based on the evidence presented at this repeated trial, with a special emphasis that the statements from the indictment had been corroborated by the witnesses who had been called by the defence itself.

In accordance with the aforementioned, the War Crimes Council concluded that the accused person had committed the criminal offence he had been charged with by the indictment. By acting in a manner which included his inflicting serious physical injuries upon the injured party, abusing the injured party and humiliating the injured party during the critical event, the accused person did realise the very substance of the criminal act he had been charged with. In addition to the fact that the injured party had suffered pain and humiliation, and especially since the injured party was a (Catholic) priest, the described actions taken by the accused person could have served as the means for sending mes-

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71 The accused person appealed against the violation of the Criminal Law Act claiming that the criminal proceedings had been held for the same criminal offence against D.Ž., and he appealed against the violation of the Criminal Law Act claiming that the Court had applied to his actions the provisions of the 4th Geneva Convention and the Protocol II. The same objections had been lodged in the previous appeals against the previous first-instance verdicts and the Supreme Court of the Republic of Croatia had found them as unacceptable.



sage regarding the pattern which would have been applied to anyone refusing to accept or refusing to support the political option established in the area of Batina and Baranja in 1991. Therefore, the described behaviour was characterised as a criminal offence of war crime.

### **The length of the proceedings**

We are of opinion that the length of these proceedings is contrary to the provision of the Article 6 of the *European Convention on Human Rights and Fundamental Freedoms*, which prescribes the right to a trial within reasonable time-limit, both for the accused person and the victims alike. In the case of Petar Mamula, the first-instance court verdict was quashed on four occasions. The accused person spent two years and seven months in custody, which is almost one year less than the very prison sentence he was convicted to by the non-final (non-conclusive) verdict. The proceedings were inefficient, both in respect of the injured party, who was re-traumatised during each of the repeated appearances and testifying in court, and in respect of the accused person, who is entitled to right to the conclusion of the trial in a reasonable time-limit.

**Trial against Miloš Stanimirović, Stevan Srdić, Dušan Stupar, Boško Miljković, Dragan Sedlić, Branislav Jerković, Jovo Janjić, Milenko Stojanović, Dušan Dobrić, Đuro Dobrić, Jovan Miljković, Katica Maljković, Nikola Tintor, Željko Krnjajić and Radoslav Stanimirović – crime in Tovarnik** <sup>72</sup>

### **Vukovar County Court**

**Criminal offence:** genocide under Article 119 of the OKZ RH and war crime against civilians under Article 120, Paragraph 1 of the OKZ RH, with application of Article 43 of the OKZ RH; subsequent to the changes to the indictment: war crime against civilians under Article 120, Paragraph 1 of the OKZ RH and criminal offence of armed rebellion under Article 235, Paragraph 1 (236 f) of the KZ RH

**Defendants:** Miloš Stanimirović, Stevan Srdić, Dušan Stupar, Boško Miljković, Dragan Sedlić, Branislav Jerković, Jovo Janjić, Milenko Stojanović, Dušan Dobrić, Đuro Dobrić, Jovan Miljković, Katica Maljković, Nikola Tintor, Željko Krnjajić and Radoslav Stanimirović

**War Crimes Council:** judge Nikola Bešenski, Council President, judges Nevenka Zeko and Zlata Sotirov, Council members

**Prosecution:** Miroslav Šarić, Vukovar County Deputy State's Attorney

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<sup>72</sup> The first-instance proceedings commenced on 13 April 2010 and were concluded by the announcement of a non-final verdict in April 2012. The trial was monitored and reported on by Veselinka Kastratović, Melanija Kojić and Miren Špek. Summarised presentations of the proceedings and of the non-final verdict were prepared by Veselinka Kastratović and Miren Špek.

**Defence:** Stjepan Šporčić, Šimo Filipović, Jasminka Mandić, Jelica Balog, Du-bravko Marjanović, Dražen Marković, Branimir Fingler, Hrvojka Čolaković, Josip Ćorluka, Berislav Knez, Igor Plavšić, Darko Bekavac, Ranko Janjić, Krunoslav Gloković and Domagoj Rešetar

**On 23 April 2012, the War Crimes Council of the Vukovar County Court pronounced the first-instance verdict which found seven accused persons guilty, four accused persons were acquitted, while the charges were re-fused in respect of three accused persons.**

The accused persons Miloš Stanimirović, Stevan Srdić, Dušan Stupar, Boško Miljković, Dragan Sedlić, Željko Krnjajić and Radoslav Stanimirović were found guilty and were sentenced to following prison sentences: Miloš Stanimirović - 10 years of imprisonment, Stevan Srdić - 8 years, Dušan Stupar - 6 years, Boško Miljković - 8 years, Dragan Sedlić - 6 years, Željko Krnjajić - 6 years and Radoslav Stanimirović - 5 years. They were found guilty as charged that they - together with other members of paramilitary formations, who had been deployed at the “Tovarnik Militia Station“ located in the house of Đorđe Cvejić - had been illegally arresting, illegally detaining and interrogating the inhabitants of Tovarnik of Croat ethnicity and other non-Serb ethnicities in the period from 23 September 1991, during October 1991 and November 1991, and had been abusing them in various ways, threatening to kill them, thus committing the criminal offence of war crime against civilians stated in Article 120, Paragraph 1 of the OKZ RH.

The accused persons Branislav Jerković, Jovo Janjić, Milenko Stojanović and Nikola Tintor were acquitted due to a lack of evidence which would corroborate the statements from the indictment.

After the County State Attorney’s Office changed the legal characterisation of the criminal offence initially stated in the indictment in respect of Dušan Dobrić, Đuro Dobrić and Jovan Miljković, thus changing it into armed rebellion, the General Amnesty Act was applied to the mentioned accused persons, and subsequently the charges against them were dismissed.

In accordance with the Vukovar County Court Decision dated on 26 February 2007, which was upheld by the Decision of the Supreme Court of the Republic of Croatia on 13 October 2009, all the accused persons were tried in absence.

### **The indictment, previous proceedings and the amendment to the indictment**

The indictment No: DO-K-34/00 was issued by the Vukovar County State At-torney’s Office on 01 February 2001 against 24 accused persons charged with commission of genocide and war crime against civilians in Tovarnik.

In 2006, the case was separated in respect of six accused persons available to the Croatian judiciary: Milenko Stupar, Strahinja Ergić, Dragoljub Trifunović, Đorđe Miljković, Mićo Maljković and Janko Ostojić. Stupar, Ergić, Trifunović and Mićo Maljković were acquitted; a rejection verdict following the suspension of indictment was passed in respect of Janko Ostojić, whereas Đorđe Miljković was sentenced to 3 years of imprisonment.

After the arrest of Aleksandar Trifunović in 2006, the case in respect of Trifunović was separated. Trifunović was kept in custody and he was attending the trial while in custody, however, the Vukovar County Court accepted Trifunović's property registration (his house) as a guarantee that Trifunović would appear in court, and released him on bail. The Supreme Court of the Republic of Croatia quashed the decision on bail and on Trifunović's release from custody, however, prior to the issuance of the overruling decision the accused person had escaped from the Republic of Croatia. An international warrant was issued for his arrest.

In respect of the accused Jovan Medić and Božo Rudić, the proceedings were dismissed due to death of the accused persons.

By the decision of the Vukovar County Court passed in 2007, which was subsequently upheld by the decision of the Supreme Court of the Republic of Croatia passed in 2009, it was determined that the remaining accused persons (15) would be tried in absence. In February 2011, the proceedings against the deceased Katica Maljković were also dismissed during the course of the trial.

The initial indictment charged the accused persons with killing several dozens civilians of Croat ethnicity and other non-Serb ethnicities, with physical abuse, (forcible) relocation of population, and appropriation and destruction of property, all for the purpose of ethnic cleansing and preventing Croat population and other non-Serb population from further living in the area of Tovarnik, i.e. the indictment charged the accused persons with commission of genocide and war crime against civilians. However, on 10 April 2012, after the conclusion of evidence procedure, the Vukovar County State Attorney's Office changed factual aspects of the act and the legal description as well as the legal characterisation of the indictment. The amended indictment charged the accused persons with illegal arrests, illegal detention and interrogations of the inhabitants of Tovarnik of Croat ethnicity and non-Serb ethnicity. Majority of the accused persons were charged with physical abuse of civilians.

### **The course of the first-instance proceedings and the verdict**

The first-instance proceedings took two years to complete. Approximately seventy witnesses<sup>73</sup> were heard during some twenty trial hearings and four extra-

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73 In the non-final (non-conclusive) judgement No: K-6/01, the number of 90 witnesses was stated (some witnesses had deceased before the case was brought to court, so their statements were read out during the trial).

trial hearings, the latter had been held in order to hear elderly and sick witnesses in places of their residence instead of the courtroom. Inspection was made into numerous pieces of material evidence: sixty-one death certificates, medical reports and certificates, fifty autopsy records (reports).

The statements given by numerous witnesses during the trial were not concurrent with the depositions given during the investigation. Unfortunately, the depositions taken during the investigation were often too general and lacked specific information. In most cases during the investigation, the witnesses were only stating that they had heard the information on who had killed a person but they failed to elaborate on the very means through which they had obtained the information – whether they had personally seen the event, or if they had directly (personally) heard about the event, or if they had heard about the event from a specific person, whereas during the main hearing the witnesses were clearly stating that they had no knowledge on who exactly had killed certain inhabitant of Tovarnik or who exactly had beaten whom. Furthermore, numerous witnesses were stating that they had been beaten in prison, however, they had no knowledge on who exactly had been beating them. Direct knowledge of the incriminated events the witnesses presented during the investigation would often become indirect knowledge<sup>74</sup> during the main hearing.

The accused persons who were found guilty by the first-instance court were not found guilty of deportation of civilians since the court determined that the stated allegation had not been proven during the course of the trial.

Furthermore, the court did not either find guilty those accused persons who, according to the indictment had been jointly charged with abuse of civilians, who had also been jointly stated in the indictment. Instead, the court found guilty a specific accused person separately, in accordance with the established factual situation, or several accused persons, stating their names one by one in case they had jointly acted and physically abused a particular injured party.

The court did not find guilty certain accused persons who allegedly, together with other unidentified members of paramilitary formations, had been illegally arresting certain injured parties and taking them away from their homes, and who were found dead later on, since the court determined that the criminal report had not contained a precise causal link whatsoever between the illegal capture, taking away of injured parties, and the subsequent killings.

The Court concluded that the accused persons Miloš Stanimirović, Stevan Srđić, Dušan Stupar, Boško Miljković, Dragan Sedlić, Željko Krnjajić and

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74 Example: “The Court accepted as credible the statement the witness J.V. had given both during the trial (main hearing) and during the investigation, except for those sections given during the investigation which were discrepant to those given at the main hearing. Namely, at the main hearing, the witness stated that he did not have any direct knowledge on the incriminated events in Tovarnik and that his deposition given during the investigation contained the information the witness had heard from his wife or from some inhabitants of Tovarnik while sharing information in the exile, and stated that the real truth was the statement he gave at the main hearing,” – The Vukovar County Court verdict No: K-6/01 dated on 23 April 2012, page 27.

Radoslav Stanimirović, considering their actions during the time of occupation, were actually torturing civilian population and treating the civilians inhumanely; the Court also concluded that the stated accused persons were implementing measures of intimidation and terror, and were looting the civilians' property, and the Court elaborated the stated facts for each accused person, i.e. for several accused persons in case when they jointly committed a criminal offence.

The War Crimes Council assessed that the accused persons who were found guilty had actually committed war crime against civilians with intention (pre-meditation) – that they had been absolutely aware of their actions and actually had the design to commit the crime. When deliberating on sentencing and penalties, which were pronounced within the limits prescribed for the war crime against civilians (5-20 years of imprisonment), the War Crimes Council also assessed as aggravating circumstances the very existence of great deal of criminal intent, persistence and ruthlessness while inflicting grievous bodily harm upon the injured parties. In case of all accused persons, a non-existence of previous criminal record was assessed as extenuating circumstance.

## **Conclusion**

The indictment for the crimes committed in Tovarnik was issued in 2001 based on witness statements given by Tovarnik inhabitants questioned during the investigation, whose knowledge on the incriminated events was acquired by (multiple) hearsay, and not from a direct observation of the event(s) or an indirect knowledge obtained from eyewitnesses. After the conclusion of the main hearing, the indictment was substantially reduced. However, the War Crime Council held the opinion that not even all incriminations stated in such a reduced indictment could have been assessed as being proven. The Council's opinion was that none of the accused persons whatsoever was responsible for the death of any of the killed civilians stated in the indictment.

This trial, held in absence of the accused persons, has not provided an answer on the identity of persons responsible for the death of several dozens of civilians killed in Tovarnik at the end of 1991. Neither the results of the investigation nor the facts on responsibility for crime commission, which have been established by the court based on available evidence, can bring any satisfaction to the survived victims or the family members of the killed persons.

The collected evidence, mostly personal evidence (testimonies given by witnesses), has proved to be insufficient to secure a conviction for the most serious crimes committed in Tovarnik, while lapse of time (from the very events when the crime was committed to the present day) has brought fears about the notion that the crime perpetrators will most likely remain unpunished.

## Reopened trial against Miljenko Bajić, charged with a war crime against civilians – crime in Lora <sup>75</sup>

### Split County Court

**Criminal offence:** war crime against civilians under Article 120, Paragraph 1 of the OKZ RH

**Defendant:** Miljenko Bajić

**War Crimes Council (panel):** judge Vladimir Živaljić, Council President, judges Damir Romac and Ivona Rupić, Council members

**Prosecution:** Julijana Stipišić, Split County Deputy State's Attorney

**Defence Counsel:** Nediljko Ivančević and Željko Ostojica, lawyers from Split

After spending six years as a fugitive, Miljenko Bajić was arrested in September 2010. Bajić had been tried in absence and sentenced to six years of imprisonment by the Split County Court verdict dated on 02 March 2006, which had been upheld by the Supreme Court of the Republic of Croatia on 07 February 2007. Bajić had been accused that he had participated in beating of two male persons in the “Lora” Military-Investigative Centre in Split on 14 June 1992. The two male persons had died from wounds sustained during the beating.

After his arrest, Bajić was allowed to have the case reopened. The main hearing of the reopened proceedings was conducted on 14 May 2012. On the same day, the War Crimes Council of the Split County Court passed the judgement according to which the previous verdict of guilty remained in effect, except for the section referring to the penal sanction, so that, subsequent to the motion of the prosecution, Bajić was sentenced to 4 years and 6 months of imprisonment.

### Explanation

In March 2004, the Supreme Court of the Republic of Croatia quashed the Split County Court verdict passed in 2002 which had acquitted the accused members of the Military Police of the Croatian Army charged with the war crime against civilians committed in the “Lora” Military-Investigative Centre in Split. The repeated first-instance proceedings, held before the entirely changed War Crimes Council, was concluded by the announcement of the verdict which found all the accused military policemen: Tomislav Duić, Tonči Vrkić, Miljenko Bajić, Josip Bikić, Davor Banić, Emilio Bungur, Ante Gudić and Anđelko Botić, guilty of physical and psychical abuse, torture and corporal punishment of the detained civilians, which caused death of the two civilians: Gojko Bulović and Nenad Knežević. They were convicted to prison sentences ranging from 6 to 8 years. The repeated trial was held in absence of the four accused persons: Tomislav Duić, Miljenko Bajić, Josip Bikić and Emilio Bungur, who were fugitives and thus unavailable to the Croatian judiciary.

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<sup>75</sup> Maja Kovačević Bošković monitored this trial and reported thereof.

After his arrest in 2010, Miljenko Bajić filed a request for reopening of the criminal proceedings against him. The extra-trial council of the Split County Court granted his request. In the reopened trial, carried out and concluded during a single court hearing, numerous pieces of evidence were presented, which had also been presented during the previous proceedings. The content of the evidence itself was not read out in the court, however, with concurrence of the parties, it was entered into the court records that the evidence were read out in the courtroom. A legally valid (conclusive) verdict passed by the Split County Court at the end of 2009 as a conclusion of the reopened proceedings against Josip Bikić, who had voluntarily surrendered to the authorities, was read out at the trial hearing as the new evidence. In the stated proceedings, Bikić had actually admitted to have participated, together with Bajić and other accused persons, in the beating of Nenad Knežević and Gojko Bulović.<sup>76</sup>

The accused Miljenko Bajić denied that he had committed the offences he, as well as Josip Bikić, were charged with. Bajić pleaded not guilty. In his defence, Bajić expressed his regret over the death of Nenad Knežević and Gojko Bulović, however, he stated that he had nothing to do with their tragic suffering.

The War Crimes Council ascertained that the factual findings stated in the legally valid verdict, based on which Miljenko Bajić's guilt had been established in the first place, were not to be challenged in the reopened proceedings, therefore the (previous) verdict remained in effect in relation to Miljenko Bajić's guilt. However, the War Crimes Council established that new circumstances did exist, which, according to the Council's opinion, had influence on the sentencing and penalties. Thus it was stated that, after spending several years as a fugitive, Bajić had actually exposed himself to the arrest, that Bajić's conduct during the proceedings was good, and that he had expressed sincere regret about the death of Nenad Knežević and Gojko Bulović. When deciding upon the sentencing and penalties, the War Crimes Council assessed as extenuating circumstances also the fact that Bajić was a caretaking father of three children, as well as the fact that he was sending his entire retirement allowance to his children from the first marriage, whereas he had been forced to leave his eight-year-old child from the second marriage due to his escape, as well as the fact that Bajić had been a youngster during the time of commission of the crime, and the fact that he had been a participant of the Homeland War, and as such, he had been exposed to suffering. Deliberating over the stated circumstances, the War Crimes Council decided to abrogate the very section referring to regulations of the penal sanctions (included in the previous legally valid verdict, and adjudged Bajić a penalty of 4 years and 6 months in prison.

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<sup>76</sup> In the reopened proceedings Bikić was found guilty of the crime. Instead of the sentence received during the previous proceedings (6 years of imprisonment), Bikić was sentenced to 4 years of imprisonment.

Considering the fact that the accused Bajić, together with other accused persons, did cause serious consequences with his actions – the death of two civilians, we believe that adjudging of penalty below the minimum sentence prescribed for the war crime against civilians (5 years of imprisonment) is debatable.

**Reopened trial against Renato Petrov, charged with a war crime against civilians – crime in Škabrnja <sup>77</sup>**

**Zadar County Court**

**Criminal offence:** war crime against civilians under Article 120, Paragraph 1 of the OKZ RH

**Defendant:** Renato Petrov

**War Crimes Council (panel):** judge Boris Babić, Council President, judges Vladimir Mikolčević and Boris Radman, Council members

**Prosecution:** Slobodan Denona, Zadar County Deputy State's Attorney

**Defence Counsel:** Dragan Jovanić, lawyer from Rijeka

**After conducting the reopened trial against Renato Petrov, the War Crimes Council of the Zadar County Court acquitted the accused Petrov due to a lack of evidence. Renato Petrov had been charged with war crime against civilians committed in Škabrnja on 18 November 1991.**

The verdict passed by the Zadar County Court in 1995, upheld by the Supreme Court of the Republic of Croatia in 1998, according to which Renato Petrov had been found guilty and sentenced in absence to 20 years of imprisonment, was abrogated.

Regarding the procedural aspects, the reopened trial was conducted correctly. However, once again we would like to remind the public of the indictments indiscriminately issued during the 1990ies against members of Serb military/paramilitary formations, based on which the proceedings had been conducted in absence of the accused persons and guilty verdicts had been passed, despite the fact that in many cases the accused persons had not displayed the behaviour which would have constituted the (*actus reus*) guilty act of war crime or despite the fact that there was no probability that the very accused persons had actually committed the stated war crimes. One of the examples of such a practice is the very proceedings against Renato Petrov. <sup>78</sup>

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<sup>77</sup> Maja Kovačević Bošković monitored this trial and reported thereof.

<sup>78</sup> We would like to mention also the case of Edita Rađen Potkonjak, who had been tried in 1995 in the same proceedings as Petrov. Rađen Potkonjak had been found guilty and sentenced to 15 years of imprisonment. Through her defence counsel, Rađen Potkonjak had filed a request for reopening of the proceedings which was granted in 2009. Following the change of legal qualification of the offence stated in the indictment (war crime against civilians) into armed rebellion, the proceedings against Rađen Potkonjak were cancelled and the previous guilty verdict was abrogated.



However, on the other hand, we deem it necessary to bring to justice all those responsible for the crime in Škabrnja - the officials responsible according to the command responsibility as well as the direct perpetrators.

## **Explanation**

On 22 August 1994, the Zadar County State Attorney's Office issued the indictment against Goran Opačić et al. (the total of 26 persons) for commission of war crime against civilians. The accused persons had been charged that, on 18 November 1991, during the armed conflict between the rebel forces and the Yugoslav National Army (JNA) formations on the one side and the armed forces of the Republic of Croatia on the other side, who, by implementing the idea of the Great Serbia to military conquer and isolate a part of the territory of the Republic of Croatia, had entered the village of Škabrnja, inhabited exclusively by population of Croat ethnicity, and after crushing the resistance of the village defenders, they had been destroying, without any military purpose, on a large scale, the housing facilities, barns, sheds, sacred facilities, and had forcibly taken out from the basements and other shelters the civilian population who had not resisted or presented any danger to the aggressors whatsoever, and subsequently killed at least 44 persons by shooting them with firearms at a close range or by hitting them on their heads and bludgeoning them to death using blunt objects, and torturing to death and massacring some of the victims. Petrov had been charged with the killing of one male person who had been shot at with a handgun.

After the conclusion of the proceedings, which had been conducted in presence of only one accused person, the Zadar County Court, on 11 November 1995, found 18 accused persons guilty and sentenced them to prison sentences ranging from 10 to 20 years. The accused Petrov was found guilty and sentenced to 20 years of imprisonment. Prior to the conclusion of the main hearing, the case was separated in respect of eight accused persons since it was assessed that the available evidence was not sufficient for forming a meritorious judgement in respect of the eight accused persons.

## **Extradition of Renato Petrov and reopening of the criminal proceedings**

Renato Petrov was arrested in Germany at the beginning of April 2011 based on the Interpol arrest warrant. He was extradited to the Republic of Croatia. In July 2011, Petrov's request for reopening of the case was granted.

At the main hearing, which commenced in September 2011 and was concluded in September 2012, a series of evidence was presented. The witness Bruno Ivković, the only one to charge Petrov for the offence, was heard during the main hearing. The autopsy findings of the Škabrnja victims did not substantiate

the statement given by Ivković. After analysing the expert witness statement given by medical expert Dr. Josip Dujella, who had performed autopsies on all victims, the Court could not link any of the victims to the statement given by the witness Bruno Ivković. The witness Mladen Uzelac, heard via video conference link, also refuted the statement of the witness Bruno Ivković who had claimed that the very witness Mladen Uzelac had told him that Renato Petrov had killed an elderly male person in Škabrnja on 18 September 1991. The witness Uzelac explained that he never had any conversation with Bruno Ivković, and that he (Uzelac) could not have been present in Škabrnja with the accused Petrov because he (Uzelac) had been serving his regular military service in Priština at the time of the incriminating events. The statement given by the witness Ivković was refuted also by other witnesses heard via video conference link with the Belgrade District Court.

Due to a lack of evidence, the War Crimes Council of the Zadar County Court acquitted the accused Petrov of all charges.

### **Repeated trial against Željko Šuput and Milan Panić, charged with a war crime against civilians – crime in Korenica <sup>79</sup>**

#### **Rijeka County Court**

**Criminal offence:** war crime against prisoners of war under Article 122 of the OKZ RH; after the modification of the indictment on 26 April 2012 war crime against civilians under Article 120, Paragraph 1 of the OKZ RH

**Defendants:** Željko Šuput and Milan Panić

**War Crimes Council (panel):** judge Jesenka Kovačić, Council President, judges Dina Brusić and Ksenija Zorc, Council members

**Prosecution:** Darko Karlović, Rijeka County Deputy State's Attorney

**Defence counsels:** Đuro Vučinić, a lawyer practising in Rijeka, defence counsel for defendant Šuput; Dragan Smolić-Ročak, a lawyer practising in Rijeka, court-appointed defence counsel for defendant Panić

After the conducted repeated trial at the Rijeka County Court, on 12 June 2012 a verdict was pronounced which once again found defendants Željko Šuput and Milan Panić guilty. They received prison sentences identical to the ones pronounced in the previously conducted first-instance trial: Šuput 4 years, and Panić 3 years and 6 months.

The Rijeka County State Attorney's Office charged Šuput and Panić that in the period between 15 October 1991 and end of April 1992 in Korenica, as members of special militia unit within the composition of the armed forces of

<sup>79</sup> Maja Kovačević Bošković monitored the trial and reported thereof.

the so-called SAO Krajina, on several occasions, together with other militia members of the so-called SAO Krajina they beat up, insulted, mistreated and abused prisoners of war Nikola Nikolić, Mile Lukač and Perica Bičanić in the building hall and in the backyard. The aforementioned prisoners of war were, together with other prisoners, detained in the premises of the militia building without basic existential hygienic conditions.

In April 2012, the prosecution re-qualified the criminal offence contained in the indictment. The amended indictment charged Šuput and Panić with the commission of a criminal offence to the detriment of civilians and not, as previously stated, to the detriment of prisoners of war.

### **The course of the previous trial**

In October 2008, the Rijeka County Court's War Crimes Council rendered a verdict in which the defendants were found guilty for the commission of a war crime against prisoners of war and received prison sentences in the duration of 4 years (Željko Šuput) and 3 years and 6 months, respectively (Milan Panić). The VSRH accepted as valid the defendants' appeals lodged due to erroneously and incompletely established facts, quashed the first-instance verdict and remanded the case for a re-trial.

In the repeated trial, the first-instance Court was supposed to establish whether the injured parties had the status of prisoners of war, bearing in mind that, at the moment of their capturing, they wore civilian clothes, did not carry weapons and were captured outside of combat activities. The VSRH also pointed at certain inconsistencies in witness testimonies who charged the defendants, thus it remained dubious whether the defendants participated in the commission of a war crime in Korenica and, if they did, whether they committed it personally or were members of a group that committed it.

The VSRH held that it remained dubious whether the defendants committed a war crime against injured party Nikola Nikolić. Namely, injured party Nikolić testified that he did not recognize Šuput as the person who had beat him up in Korenica prison. Injured party Nikolić also stated that things were easier after the defendants, as members of the so-called 13th Sooty Brigade, took over the prison, that they did not allow the prisoners to be beaten. The witness claimed that it was precisely Milan Panić who saved him from slaughter, and clarified that it was not true that he claimed before the investigation judge that Panić „demolished him“ on the first day when he came to prison. For the VSRH it remained disputable whether the defendants committed the criminal offence, bearing in mind that they, together with their unit, took over the prison only 2-3 months after the injured parties were brought in there. The VSRH also pointed at contradictions in the testimonies of Perica Bičanić during the inves-

tigation and at the main hearing. During the investigation he claimed that the defendants had beat him, while at the main hearing he testified that they did not beat him but belittled and insulted him. Furthermore, witness Dražen Rendulić claimed that defendant Šuput had hit Perica Bičanić once and that he thought that defendant Panić had beat Bičanić and Nikola Nikolić, as well. According to the VSRH, it remained unclear whether the claim by Perica Bičanić was true, that Panić did not beat him, or the claim by Rendulić that he did. The only witness who consequently charged both defendants was Mile Lukač. He claimed that both of them had beat him and that Šuput's speciality was hitting people in the head with a volley. The VSRH also requested from the first-instance court in this case to link the testimony of this witness and the testimonies of other witnesses during the repeated trial. Finally, according to the list of members of Titova Korenica Police Station, as of 3 December 1990 the defendants were registered as members of police reserve forces, who did not perform police duty on everyday basis but only under extraordinary circumstances. During the repeated trial, the court had to examine the conclusion that the defendants were deployed as members of a special unit in Titova Korenica as of the aforementioned date, that they were subordinate to the Territorial Defence Headquarters, which fact the defendants disputed during the trial and in their appeals.

### **About the repeated trial**

The repeated first-instance trial commenced on 25 October 2011 and was completed on 12 June 2012. Numerous evidence were presented at seven hearings. The witnesses who charged the defendants with their testimonies and whose testimonies were full of inconsistencies, were heard directly before the court, as requested by the VSRH. The testimonies of thirteen witnesses who did not charge the defendants in the previous trial were read with consent from all parties to the proceedings. On 19 and 20 March 2012, twelve witnesses were directly heard in Korenica, in the presence of parties to the proceedings. At the end of the evidence procedure, insight was made into material documentation in the case file.

The Court did not accept evidence proposals filed by the defence because it assessed that the facts have been sufficiently established in relation to circumstances due to which the presentation of this evidence was proposed (for instance, the first defendant's injury, conditions in the prison...).

After the conducted first-instance trial, the Council concluded that prisoners in Korenica prison were subjected to beatings and abuse by the guards. The guards did this in groups, so that prisoners were taken out of their cells to the hall or the backyard and jointly beat them with batons, legs and different objects. A prisoner who was subjected to abuse was, as a rule, not allowed to look at the abusers, thus some witnesses were not able to testify with certainty which

persons actually abused them. Except for the guards, at the beginning of their detention in prison they were also beaten by the persons who were coming to the prison premises from the outside. During the evidence procedure, the court established that the defendants were among the persons who had beat and abused the prisoners.

Witness Nikolić clarified that in the previous testimony, when stating that it was easier after the defendants took over the prison, he meant to say that it was easier for the prisoners because the defendants did no longer allow civilians to come to the prison and abuse prisoners. He reiterated that the defendants beat them more at the beginning, while they were at the position and were coming to the prison while at a later stage, when they took over the prison, the abuse subsided. He confirmed that it was true that Panić „demolished him“ on the first day when he came to the prison. When he said that, he meant the day when Panić took over control over them, not the day when the witness came to prison. The testimony of this witness was sufficient for the Council to draw a conclusion that it was precisely the defendants who had beat the prisoners during the first two months of their stay in prison.

In the repeated trial, witness Perica Bičanić was also warned about inconsistencies in his previous testimonies. During the investigation he stated that the defendants had beat him, while at the previous main hearing he testified that he thought the defendants had not beat him but insulted and belittled him. He clarified that the defendants had been coming in a group and he could not assess who had beat him and how much, but it was true that all members of the group had beat them.

The Council assessed the testimony of witness Dražen Rendulić, who testified that Šuput hit Perica Bičanić once and that Panić beat both Bičanić and Nikolić, to be credible because it was confirmed by the testimonies of Nikolić and Lukač.

Furthermore, the Council established that during the critical period the defendants were members of the armed forces of the so-called SAO Krajina. As of 3 December 1990, they were members of the special militia unit with the Titova Korenica Police Station, subordinate to the Territorial Defence Headquarters. The seat of the so-called 13th Sooty Brigade was at the militia building in Korenica. The defendants were registered in the list of fighters and in the salary list of the so-called 13th Sooty Brigade, from which it ensues without a doubt that they were members of the armed forces of the so-called SAO Krajina.

The Council established that injured parties Nikola Nikolić, Mile Lukač and Perica Bičanić had the status of civilians during detention in Korenica prison because at the moment of their capturing they wore civilian clothes, they were without weapons and their capturing took place outside combat activities.

Although the defendants denied the committed criminal offence, the Council once again pronounced them guilty in the repeated trial and uttered the same prison sentences as in the previous trial. The Council assessed as extenuating circumstance defendants' lack of criminal record and their family situation, the fact that they returned with their families to the Republic of Croatia deeming it to be their homeland, as well as their young age at the time of committing the criminal offence. In respect of the first defendant Šuput, the Council assessed as aggravating circumstance his persistence in the commission of the criminal offence which manifested itself in the brutal treatment of prisoner Milo Lukač, whom the defendant was repeatedly hitting with his leg to the head, causing him great pains due to which he was losing consciousness, and which resulted in sustained injury of permanent nature.

**Repeated trial against Mićo Cekinović, charged with war crimes  
against civilians – crimes committed in Slunj and nearby villages <sup>80</sup>**

**Rijeka County Court**

**Criminal offence:** war crime against civilians under Article 120, Paragraph 1 of the OKZRH

**Defendant:** Mićo Cekinović

**War Crimes Council (panel):** judge Ika Šarić, Council President; judges Valentin Ivanetić and Zoran Sršen, Council members

**Prosecution:** Doris Hrast, Rijeka County Deputy County State's Attorney

**Defence:** Luka Šušak, attorney practising in Zagreb

**Review and opinion about the course of repeated first instance proceedings**

On 23 December 2011, the Rijeka County Court's War Crimes Council pronounced defendant Mićo Cekinović **guilty** of committing the violation of rules of the international law during an armed conflict by omitting to prevent, although he was obliged to, and thus sustaining the killing of civilian population, causing injuries to their physical integrity, illegal and erratic devastation of their property, execution of their resettlement or removal and overall inhumane treatment of the civilian population, whereby he committed a **criminal act against humanity and international law - war crime against civilians**.

In the course of presentation of evidence, the Council established the **defendant's command responsibility** because, in his capacity as commander of TO Primišlje, which operated as an integral part of the army of the so-called SAO Krajina, the defendant was aware of the fact that his subordinates were committing actions pertinent to legal definition of war crimes against civilians while, at the same time, he had the authority to prevent, restrain or punish the com-

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<sup>80</sup> Marko Sjekavica and Milena Čalić Jelić monitored the trial and reported thereof.

mission of such actions, but failed to undertake anything in that regard. Defendant Cekinović was pronounced **guilty in concreto because his subordinates, members of TO Primišlje committed the following:**

- a) On 14 November 1991, in the village of Gornje Primišlje, they **arrested and groundlessly beat up civilians Tomo and Mile Kos**, after which they transported them without legal grounds to the JNA training spot located in the vicinity of Slunj, where they were **detained**;
- b) On 16 November 1991, in the community called Ivšić, suburb of Slunj, they **deprived of life of civilian Pavo Ivšić**;
- c) erratically **burnt down family houses owned by Ruda Ivšić, Pavo Ivšić and a hayloft owned by Dane Modrušan**;
- d) **Expelled the majority of population of Croat ethnicity from their homes and looted detachable items from their houses.**

Defendant Mićo Cekinović was **sentenced to four years in prison.**

In the course of subject criminal proceedings, **the trial council undoubtedly established** that the crimes, subject to the charges, occurred in the course of (international) armed conflict, which is an essential precondition for pressing charges under the subject criminal offence qualification. The fact that defendant Cekinović was commander of TO Primišlje and that the crimes were committed under his jurisdiction and area of responsibility, while he, without a doubt, had the authority and control over his unit, was likewise not disputed.

**By its verdict the Council partially modified the facts from the indictment**, whereby the objective and subjective identity of the charges was not put in question. It is important to emphasise considerations the fact that the defendant had been extradited from Bosnia and Herzegovina for the subject criminal proceedings. Thus, the Council left out from the description of facts the part alleging that the defendant had partaken in planning and elaboration of the military attack on Slunj aimed at occupation of the city and expelling of Croat population, as well as the part alleging that he ordered illegal detention of civilians. Instead, the Council, in enacting terms of the verdict, cited that immediately before, during and after the attack on and occupation of the town of Slunj and nearby villages, for the purpose of occupation and expelling of the Croat population, the defendant acted in violation of the provisions of the IV Geneva Convention and I Additional Protocol to the Geneva Conventions. Since those facts, which the Court deemed necessary to remove i.e. add to the description of facts, were not relevant to the objectification acts of the subject criminal offence, they did not modify the identity of the crime<sup>81</sup> nor they violated the conditions under which the defendant had been extradited to the Republic of Croatia.

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81 In conformity with Garačić, Ana, 'Court interventions into description of facts from the indictment, Zagreb, 2004, page 3.

**Upon the conduct of evidence proceedings, it was unquestionably established** that the unit under the defendant's command had been systematically and actively prepared for the attack and occupation of Slunj and nearby villages, whilst its members committed the acts alleged to the subject crime which, based on the principle of command responsibility, were put on the defendant's accountability. The Council drew an explicit conclusion from the presented material evidence and the testimonies of interrogated witnesses, that the **defendant had at his disposal efficient means for preventing and sanctioning of illicit acts of which he was aware, committed by his subordinates- members of TO Primišlje, yet failed to use them.** Exactly from those presumptions ensues the defendant's guaranty obligation towards the protected object i.e. his command responsibility. Wide-ranging attribute of the provisions of 120 of OKZ RH, which sets the normative for war crimes against civilians, ensues from the fact that acts alleged by this legal provision may be considered relational criminal offence only if they denote the violations of the values protected by the international humanitarian law, in this concrete case, the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and the Additional Protocols to the Geneva Conventions. Applying the mentioned status of facts, the Council concluded that injured parties Pave Ivšić <sup>82</sup>, Tomo Kos and Mile Kos certainly had the status of civilians and as such, were subject to the protection under the Geneva Convention. Defendant Cekinović was found guilty for failing to prevent, restrain or punish his subordinates who arrested, beaten up and detained Tomo and Mile Kos (the late Đuro Grubor <sup>83</sup> and other unit members) and killed Pavo Ivšić (Nenad Tepavac). Based on the presented evidence, the Council determined that members of TO Primišlje erratically burnt down the houses owned by Pavo Ivšić <sup>84</sup>, Ruda Ivšić and the hayloft owned by Dane Modrušan, expelled the majority of the Croat

82 From the status of facts established during the evidence proceedings, it ensues (verdict pages 77, 78) that victim Pavo Ivšić, after he had exited his house, pointed a rifle against members of TO Primišlje and refused to throw down the rifle, so Nenad Tepavac, a member of TO Primišlje, killed him from automatic weapons, due to which he was sentenced with a final verdict of the VSRH No. I Kž 1265/07-7 (nota bene, the mentioned offender was convicted based on charges for the subject act but with legal qualification of murder, not war crimes). According to Article 3 of the IV Geneva Convention and Article 13 § 3 of the Additional Protocol to the II Geneva Convention, civilian population as such enjoys protection as long as they do not directly participate in hostile activities. Clarification of the disputable circumstances linked with the fact that the victim was armed with a rifle and his behaviour immediately before he was shot down, were decisive when establishing the defendant's accountability for the death of the victim, who had been killed by the defendant's subordinate.

83 During the evidence procedure the defence challenged the claim alleging that Đuro Grubor was member of the TO Primišlje unit, stating that he was member of Militia of the so-called SAO Krajina and thus beyond the command responsibility of defendant Cekinović. When assessing and relating all material and testimonial evidence, the Trial Panel decided that the defendant, in his capacity as commander of TO Primišlje was superior officer to Đuro (Đuka) Grubor (verdict pages 72-76).

84 Witness Juraj Jurašin stated that Pavo Ivšić's house was undamaged at the time when he buried Pavo's body in the back yard, as well as at the time when the defendant took him to Ivšić Brdo to detect mine fields (verdict pages 24 and 82). However, the Council did not give trust to that part of witness's testimony (page 83 of the verdict). The Council concluded that the houses owned by Pavo and Ruda Ivšić were burnt down on 16 November 1991. It is due to underline that the mentioned date is not decisive for establishing the defendant's accountability, because the time period cited by the charges refers not only to that specific date, but to the entire period before, during and after the attack and occupation of Slunj (pages 82-84 of the verdict).



population from Slunj<sup>85</sup> and nearby villages, and subsequently looted their property<sup>86</sup>. Burning down the houses and haylofts, that symbolised facilities in civilian usage, regardless of the type of appliance used for this action<sup>87</sup>, when viewed in a wider context of the-then events in the area of Slunj, where numerous houses were demolished, looted and set on fire, were considered illegal and erratic destruction of property at large scale, unjustifiable with military needs. The civilian facilities burnt *tempore criminis*, were located at the area of jurisdiction of the unit under the defendant's command. Therefore, the **defendant was found guilty of omission with regards to all *supra* exhibited alleged charges by application of Article 28 paragraph 2 of the OKZ RH, because he failed to act against his subordinates, while he was obliged to under the international humanitarian law.**

Considering the fact that the defendant was detained pending the subject criminal proceedings, thus was not able to earn any income, the Trial Panel decided to **exempt him from paying the court fees** as the mentioned payment order might cause difficulties to the allowance for the defendant or his dependant family members.

By applying the **legal provisions about mitigation of sentence**, the Council sentenced the defendant to the imprisonment term **below the legal minimum** prescribed for the subject criminal offence i.e. five years. The mitigation of sentence was not elaborated in detail in the statement of reasons of the verdict. The defendant's lack of criminal record was considered a **mitigating factor**, while social endangerment of the proven crime was considered an **aggravating factor**. The Council decided not to consider the fact that the defendant, *tempore criminis*, saved the life of witness Juraj Jurašin, who at the time was a member of the Croatian National Guard, which fact the witness emphasised in all his testimonies, as a mitigating factor.<sup>88</sup>

Injured parties Zvonko and Milan Modrušan who stated they wished to file **indemnification claims** during the trial hearing, were advised to **file civil litigations**, since the outcome of the subject criminal proceedings did not provide reliable grounds for such arbitration.

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85 Although it ensues from the verdict that on 16 November 1991, at the time of the attack and occupation of Slunj, the majority of Croat population had already fled from the town, the Council considered proven that the unit of TO Primišlje, under the defendant's command, jointly with the JNA, deployed at the military training spot nearby Slunj and other joined TO units of the so-called SAO Krajina, undertook military attacks against the town Slunj and nearby villages, whereby certainly contributed to expelling non-Serb civilian population (pages 67-68 and 84 of the verdict).

86 The Council's conclusion about the looting of property from expelled Croats by the defendant's subordinates from the TO Primišlje unit was elaborated on page 87 of the verdict.

87 From material and testimonial evidence available from the case file it ensues that a mortar unit was an integral part of TO Primišlje (page 80 of the verdict).

88 The Council provided the reasoning for such opinion on page 88 of the verdict.

The subject criminal proceedings were carried out at high professional level, with dedicated and analytical approach of the Presiding Judge during the presentation of evidence, when all characteristics of the inquisitorial principle of the conduct of trial came to the light. Given that the defendant holds Serbian citizenship, both the Trial and Appellate Panels, repeatedly considered that extension of the detention order was necessary due to the risk of flight, as well as that such decisions would not impinge on the principle of proportionality. The defendant has been detained pending proceedings since 16 April 2009, thus the period of detention will soon be equal to the full period of the imprisonment term he was convicted to at the first instance.

Finally, we consider that the criminal proceedings against defendant Mićo Cekinović were carried out in a correct manner, at professional level and within a reasonable period of time, having in view that the Presiding Judge interrogated a large number of witnesses, out-of-trial, at the place of their residence before the Municipal Court in Karlovac-Permanent Office in Slunj, due to justified reasons i.e. their age and health condition. Legal reasoning of the Trial Council considering command responsibility is in conformity with the relevant applicable Croatian judicature.<sup>89</sup>

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<sup>89</sup> The verdict in case No. II-K-rz-1/06, against defendants Rahim Ademi and Mirko Norac, issued by the Zagreb County Court and subsequently endorsed by the VSRH, set up foundations for the application of the concept of command responsibility in the Republic of Croatia. This verdict, resulting from trying the case referred to the domestic judiciary from the ICTY, gives detail elaboration of the possibilities of criminal liability of commanders for illegal actions of their subordinates by applying *tempore criminis* valid standards of the international and domestic legislation (Art. 86 Paragraph 2 and Art. 87 of the Additional Protocol of I Geneva Conventions; Art. 39 and Art. 48 Paragraphs 1 & 2 of the Defence Act; Art. 28 of the OKZ RH).

## ANNEX 2 TABLE OVERVIEW OF THE MONITORED WAR CRIME TRIALS BEFORE CROATIAN COUNTY COURTS IN 2012

*Trials in which first instance verdicts were rendered by county courts in 2012*

|   | Case/ status                                                                                                                                                                                                                    | Indictment / criminal offence / prosecution                                                                                                                                                    | Court / Council (judges' panel)                                                                                                                      | Defendants / members of Croatian/Serb formations / detention                                                                                                    | Verdict                                                                                                                                                                                                                                                     | Victims                                                                                                                                    | Remarks / fair trial related issues                                                                                                                                                                                                                                                                                                                                                                  |
|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | <p><b>CRIME IN RAVNI KOTARI II</b></p> <p>The criminal proceedings are concluded.</p> <p>The main hearing began in March 2011 at the Zadar County Court. However, the case was transferred later to the Split County Court.</p> | <p>Indictment No. K-DO-51/07 of 14 September 2009 issued by the Zadar ZDO.</p> <p>War crime against civilians</p> <p>Prosecution: Slobodan Denona, County Deputy State's Attorney in Zadar</p> | <p>Split County Court (the case was delegated from the Zadar County Court)</p> <p>War Crimes Council: judge Vladimir Živaljić, Council President</p> | <p><b>Nebojša Baljak and Stevo Ivanišević</b></p> <p>Members of Serb formations</p> <p>Unavailable to Croatian judiciary and thus tried <i>in absentia</i>.</p> | <p>Criminal proceedings were discontinued on the basis of the decision issued by the Split County Court on 30 January 2012.</p> <p>On 4 April 2012, the VSRH dismissed the DORH's appeal as unfounded and thus the trial ended as final and conclusive.</p> | <p><b>Victims – intimidated, sustained physical injuries:</b></p> <p>Zvonko Zelić, Bore Zelić, Mile Zelić, Ivan Pačić and Stojka Pačić</p> | <p>The trial was discontinued because in 1996 the defendants had already been convicted to 20 years in prison each. They were sentenced that on almost the same location and the same time period they killed five civilians.</p> <p>In the 2009 indictment they were charged that they were torturing, mistreating, treating inhumanely and intimidating civilians in the area of Ravni Kotari.</p> |

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| 2 | <p><b>CRIME IN BOROVO SELO (defendant Milan Marinković)</b></p> <p>The proceedings at first instance are concluded.</p> <p>The main hearing at first instance began on 19 January 2012.</p> | <p>Indictment No. K-DO-28/11 of 10 May 2011 issued by the Osijek ZDO, after separation of the proceedings in respect of unavailable defendants, modified in respect of the defendant Milan Marinković on 17 January 2012.</p> <p>War crime against wounded and sick persons and war crime against prisoners of war</p> <p>Prosecution: Miroslav Dasović, County Deputy State's Attorney in Osijek</p> | <p>Osijek County Court</p> <p>War Crimes Council: judge Darko Kušlin, Council President; judge Anto Rašić, Council Member; judge Miroslav Ljubojević, Council Member</p> | <p><b>Milan Marinković</b></p> <p>Member of Serb formations</p> <p>Spent time in custody from 11 November 2010 until the pronouncement of the first-instance verdict on 1 February 2012</p> | <p>On 1 February 2012, the Osijek County Court's War Crimes Council found the defendant Marinković guilty and sentenced him to 3 years and 6 months in prison.</p> | <p><b>Victims - beaten:</b> Zvonimir Meković and Dalibor Kržanović</p> | <p>In the indictment issued by the ŽDO Osijek, five defendants were indicted. The trial against available Marinković was separated from the trial against defendants who are unavailable to Croatian judiciary: Jovan Jakovljević, Dragan Rakanović, Milenko Mihaljović and Jovica Vučenović.</p> |
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| 3 | <p><b>CRIME IN LOVAS</b></p> <p>The proceedings at first instance are concluded.</p> <p>On 29 April 2009, the trial in respect of the trial in respect of defendants (Ilija Vorkapić and Milan Tepavac) was separated from the trial against the defendants who are unavailable.</p> <p>In December 2010, the Tepavac case was separated from the Vorkapić case due to the incapability of defendant Tepavac to stand trial.</p> <p>The CPO<sup>1</sup> monitoring team has been monitoring this case since 20 April 2006.</p> | <p>Indictments:<br/>No. KT-265/92 of 19 December 1994 issued by the Osijek ZDO;<br/>No. K-DO-44/04 of 1 October 2004 issued by the Vukovar ZDO – both merged into a single indictment<br/>No. K-DO-39/00 which is amended on 4 November 2011 in respect of the defendant Ilija Vorkapić.</p> <p>War crime against civilians</p> <p>Prosecution:<br/>Vlatko Mijlković, County Deputy State's Attorney in Vukovar</p> | <p>Vukovar County Court</p> <p>War Crimes Council:<br/>judge Jadranka Kurbel, Council President;<br/>judge Berislav Matanović, Council Member;<br/>judge Željko Marin, Council Member</p> | <p><b>Ilija Vorkapić</b></p> <p>Member of Serb formations</p> <p>The only defendant who attended the entire proceedings. His detention was vacated on 1 October 2003. After that, he attended the trial undetained.</p> | <p>On 2 February 2012, the Vukovar County Court's War Crimes Council pronounced the first-instance verdict in which the defendant Vorkapić was acquitted.</p>                                             | <p><b>Victims:</b></p> <p><b>- 24 persons killed in the mine field:</b> Božo Madarac, Mijo Šalej, Tomislav Sabljak, Slavko Strangarić, Nikola Badaňjak, Marko Vidić, Mato Hodak, Tomo Sabljak - junior, Ivica Sabljak, Slavko Kuzmić, Petar Badaňjak, Marko Marković, Ivan Conjar, Ivan Kraljević - junior, Ivan Palijan, Josip Turkali, Luka Balić, Željko Pavić, Darko Pavić, Darko Solaković, Zlatko Božić, Ivan Vidić, Antun Panjek and Zlatko Panjek</p> <p><b>- 15 persons sustained serious physical injuries in the mine field:</b> Marko Filić, Emanuel Filić, Stjepan Peulić, Josip Sabljak, Stanislav Franković, Milko Keser, Ivica Mujić, Ljubo Solaković, Milan Radmilović, Zlatko Toma, Josip Gersner, Mato Kraljević, Petar Vuleta, Lovro Gersner and Dragan Sabljak</p> <p><b>- plundered:</b><br/>The families: Balić, Franković, Grčanac, Pavličević and others.</p> | <p>This is a lengthy trial at first instance. Defendant Vorkapić was the only present defendant during the most of the first-instance proceedings. His right to a trial within a reasonable time has been violated (as guaranteed by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms).</p> |
| 4 | <p><b>CRIME IN BARANJA</b></p> <p>The fifth (fourth repeated) trial at first instance is concluded.</p> <p>For the fifth time, the main hearing at first instance began on 12 January 2012.</p>                                                                                                                                                                                                                                                                                                                                | <p>Indictment No. KT-136/94 of 3 April 2001 issued by the Osijek ZDO; amended on 14 March 2002, 4 May 2006 and 23 March 2011.</p> <p>War crime against civilians</p> <p>Prosecution: Miroslav Dasović, County Deputy State's Attorney in Osijek</p>                                                                                                                                                                 | <p>Osijek County Court</p> <p>War Crimes Council:<br/>judge Zvonko Vrban, Council President;<br/>judge Ante Kvesić, Council Member;<br/>judge Mario Kovac, Council Member</p>             | <p><b>Petar Mamula</b></p> <p>Member of Serb formations</p> <p>He spent time in custody from 6 October 2000 until 7 May 2003. Since then, he attends the trial undetained.</p>                                          | <p>On 10 February 2012, the Osijek County Court's War Crimes Council, after the fifth (fourth repeated) trial, found the defendant Mamula guilty and sentenced him to 3 years and 6 months in prison.</p> | <p><b>Victim - maltreated:</b> Antun Knežević</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <p>The VSRH quashed four times the convictions rendered at first instance. The trial is inefficient and it is unreasonably time consuming – more than a decade. The defendant's right to a trial within a reasonable time has been violated, and the injured party is repeatedly traumatised by frequent summons and questioning.</p>       |

1 Abbreviated: the CPO monitoring team: the monitoring team of the Centre for Peace, Nonviolence and Human Rights-Osijek

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| 5 | <p><b>CRIME IN KARLOVAC SETTLEMENT SAJEVAC</b></p> <p>The trial at first instance is concluded.</p> <p>The main hearing began on 17 December 2010.</p>                                                                                                                                                                                                                | <p>Indictment No. K-DO-188/10 of 22 November 2010 issued by the Zagreb ŽDO, amended at the main hearing held on 28 February 2012.</p> <p>War crime against civilians</p> <p>Prosecution:<br/>Jurca Ilić, County Deputy State's Attorney in Zagreb</p> | <p>Zagreb County Court</p> <p>War Crimes Council:<br/>judge Ivan Turudić,<br/>Council President;<br/>judge Lidija Vrdjak;<br/>Council Member,<br/>judge Ratko Ščekić,<br/>Council Member</p> | <p><b>Željko Gojak</b></p> <p>Member of Croatian formations</p> <p>In custody since 22 October 2010.</p>                                                                                                                                                                                                                                                           | <p>On 28 February 2012, the Zagreb County Court's War Crimes Council found the defendant Gojak guilty and sentenced him to 9 years in prison.</p>                        | <p><b>Victims – killed:</b><br/>Dragica Ninković and minor Danijela Roknić</p> | <p>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.</p> |
| 6 | <p><b>CRIME IN SUNJSKA GREDA</b></p> <p>The repeated trial at first instance is concluded.</p> <p>The main hearing in the repeated trial began on 28 March 2012.</p> <p><i>Previously, the VSRH quashed the Sisak County Court's first-instance verdict issued on 20 December 2010 wherein the defendant was found guilty and sentenced to 7 years in prison.</i></p> | <p>Indictment No. K-DO-36/08 of 20 September 2010 issued by the Sisak ŽDO.</p> <p>War crime against civilians</p> <p>Prosecution: Stipe Vrdoljak, County Deputy State's Attorney in Sisak</p>                                                         | <p>Zagreb County Court</p> <p>War Crimes Council:<br/>judge Marijan Garac,<br/>Council President;<br/>judge Zdravko Majerović, Council Member,<br/>judge Vladimir Vrnja, Council Member</p>  | <p><b>Milenko Vidak</b></p> <p>Member of Serb formations</p> <p>The defendant was extradited to Croatia on the basis of the decision issued by the Court for Serious Crimes in Trabzone in the Republic of Turkey: as of 4 August 2009 he is under detention in the Sisak prison.</p> <p>Previously, he spent time in extradition detention from 12 July 2009.</p> | <p>On 17 April 2012, after the repeated proceedings, the Zagreb County Court's War Crimes Council found the defendant guilty and sentenced him to 6 years in prison.</p> | <p><b>Victim:</b> Sijepan Sučić, killed</p>                                    |                                                                                                                                                                              |

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| 7 | <p><b>CRIME IN TOVARNIK</b></p> <p>The trial at first instance is concluded.</p> <p>The main hearing began on 13 October 2010.</p> | <p>Indictment No. DO-K-34/00 of 1 February 2001 issued by the Vukovar ŽDO; amended on 10 April 2012.</p> <p>Genocide and War crime against civilians; and after amending the indictment: War crime against civilians and armed rebellion</p> <p>Prosecution: Miroslav Šarić, County Deputy State's Attorney in Vukovar</p> | <p>Vukovar County Court</p> <p>War Crimes Council: judge Nikola Bešenski, Council President; judge Nevenka Zeko, Council Member; judge Zlata Soltrov, Council Member</p> | <p><b>Miloš Stanimirović, Stevan Srdić, Dušan Stupar, Boško Mijlković, Jerković, Branislav Jerković, Jovo Janjić, Milenko Stojanović, Dušan Dobrić, Đuro Dobrić, Jovan Mijlković, Nikola Tintor, Željko Knjajić and Radoslav Stanimirović</b></p> <p>Members of Serb formations</p> <p>All defendants are unavailable to the Croatian judiciary and thus tried <i>in absentia</i>.</p> <p>Present defendants <i>Milenko Stupar, Strahinja Ergić, Dragoljub Trifunović, Đorđe Mijlković, Miko Mijlković and Janko Ostojić</i> were tried before.</p> <p><i>Stupar, Ergić, Trifunović and Mijlković</i> were acquitted. Charges against Ostojić were rejected and Đorđe Mijlković was sentenced to 3 years in prison.</p> <p>Later on, after arrest, <i>Aleksandar Trifunović</i> was also tried but, during the main hearing, after his release from detention, he fled from Croatia.</p> <p>The trial was discontinued in respect of defendants <i>Jovan Medić</i> and <i>Božo Rudnić</i> because of their deaths.</p> <p>On 11 February 2011, trial against defendant <i>Katica Mijlković</i> was discontinued due to her death.</p> | <p>On 23 April 2012, the Vukovar County Court's War Crimes Council pronounced the first instance verdict in which, after the change of the legal qualification of the offence to armed rebellion, the charge in respect of Dušan Dobrić, Đuro Dobrić and Jovan Mijlković was rejected.</p> <p>Defendants <i>Branislav Jerković, Jovo Janjić, Milenko Stojanović</i> and <i>Nikola Tintor</i> are acquitted.</p> <p>Defendants <i>Miloš Stanimirović, Stevan Srdić, Dušan Stupar, Boško Mijlković, Dragan Sedić, Željko Knjajić and Radoslav Stanimirović</i> are found guilty and sentenced to the following prison sentences: <i>Miloš Stanimirović</i> (10), <i>Stevan Srdić</i> (8), <i>Dušan Stupar</i> (6), <i>Boško Mijlković</i> (8), <i>Dragan Sedić</i> (6), <i>Željko Knjajić</i> (6) and <i>Radoslav Stanimirović</i> (5) years in prison.</p> | <p><b>Victims:</b></p> <p><b>– killed at different sites after physical abuse and apprehensions from the police station:</b> Ivan Jurić, Ruža Jurić, Ante Markanović, Marko Marinković, Marko Bošnjak, Ivo Mašević, Đuro Gbrić, Karlo Grbešić, Branko Latas, Tomo Gilbo, Filomena Gilbo, Marko Šjaković, Mato Čurić, Krešo Puljić, Ilija Đambo, Pavo Donković, Rudolf Rapp, Krešimir Puljić, Tomislav Ivković and Marin Popović</p> <p><b>– unlawfully detained and physically abused in the police station:</b> Stjepan Lukić, Ivan Palijan, Mihaljo Dovičin, Slavko Jukić, Andrija Jurić, Ivo Markanović, Pero Nikolić, Branko Šimunić, Dragan Nakić, Đuro Dević, Marin Mitrović, Stjepan Marinković, Ilija Šimunić, Tomislav Kovačević, Pero Nikolić, Božo Bazina, Mate Cuk, Đuro Dominiković, Dragan Hajduk, Mirko Glavašević, Mirko Martuković, Ratko Dovičin, Pavo Marinković and Vinko Beljo.</p> <p><b>– confined and killed :</b> Željko Vrančić, Josip Sarčević, Antun and Berislav Šimunić, Danijel Marinković, Ivan Zelić and Stjepan Matić</p> <p><b>– maltreated/apprehended for interrogation:</b> Kata Kovačević, Šima Rapp, Adam Marinković, Andrija Glavašević, Tanja Palijan, Mijo Petković and his wife</p> <p><b>– maltreated and expelled:</b> Marica Grgić, Đuro Grgić, Tomislav Grgić and his mother, Ilija Šimunić and Kata Šimunić, Mato Cuk, Genova Marinković, Kata Kovačević</p> <p><b>– plundered :</b> Vlatko Glavašić, Adam Mikološević</p> <p><b>– forced to labour:</b> Stjepan Lukić, Petar Bilić, Mile Ivandić, Josip Šišić, Stipe Kovačević</p> | <p>A large number of the defendants – all tried in one case – <i>in absentia</i>.</p> |
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| 8  | <p><b>CRIME NEAR MRKONJIĆ GRAD II, BIH</b></p> <p>The trial at first instance is concluded.</p> <p>The main hearing at first instance began on 9 May 2012.</p>                                                                                                                                                                                   | <p>Indictment No. K-DO-312/10 of 3 February 2012 issued by the Zagreb ZDO.</p> <p>War crime against civilians</p> <p>Prosecution: Jurica Ilić, County Deputy State's Attorney in Zagreb</p>                               | <p>Zagreb County Court</p> <p>War Crimes Council: judge Zdravko Majerović, Council President; judge Erna Dražanić, Council Member; judge Mirko Klinčić, Council Member</p> | <p><b>Ivica Pintarić</b></p> <p>Member of Croatian formations</p> <p>He is serving his sentence in the prison in Lepoglava for committing another criminal offence.</p>                                        | <p>On 9 May 2012, the Zagreb County Court's War Crimes Council pronounced the verdict in which the defendant was acquitted.</p>                                                                                                                                                                         | <p><b>Victims – killed:</b></p> <p>An unidentified man and an unidentified woman</p>                                                                                                                                                                                                                                   | <p>Insufficiently specified indictment: unknown crime scene, exact time and identity of victims.</p>                                                           |
| 9  | <p><b>CRIME IN LORA (defendant Miljenko Bajić)</b></p> <p>The reopened trial at first instance is concluded.</p> <p>Previously, the defendant was sentenced <i>in absentia</i> to 6 years in prison. After his arrest, reopened proceedings against him were approved.</p> <p>The main hearing at reopened proceedings began on 14 May 2012.</p> | <p>Indictment No. K-DO-131/02 of 25 March 2002 issued by the Split ZDO; amended on 13 February 2006.</p> <p>War crime against civilians</p> <p>Prosecution: Julijana Stipšić, County Deputy State's Attorney in Split</p> | <p>Split County Court</p> <p>War Crimes Council: judge Vladimir Živaljić, Council President; judge Damir Romac, Council Member; judge Ivona Rupčić, Council Member</p>     | <p><b>Miljenko Bajić</b></p> <p>Member of Croatian formations</p> <p>Detained</p>                                                                                                                              | <p>On 14 May 2012, the Split County Court's War Crimes Council left in force the previous conviction, except for the section which relates to a criminal sanction. Thus, the defendant was sentenced to 4 years and 6 months in prison instead of the previous sentence of 6 years of imprisonment.</p> | <p><b>Victims:</b></p> <p>A larger number of confined civilians were maltreated. Gojko Knežević and Nenad Bulović were among them and they died of sustained injuries.</p>                                                                                                                                             |                                                                                                                                                                |
| 10 | <p><b>CRIME IN PAULIN DVOR</b></p> <p>The third (second repeated) proceedings at first instance are concluded.</p> <p>The main hearing at third (second repeated) proceedings began on 19 September 2011.</p>                                                                                                                                    | <p>Indictment No. K-DO-68/2002 of 12 March 2003 issued by the Osijek ZDO, amended at the hearing held on 5 April 2004.</p> <p>Prosecution: Miroslav Dasović, County Deputy State's Attorney in Osijek</p>                 | <p>Osijek County Court</p> <p>War Crimes Council: judge Darko Krušlin, Council President; judge Mario Kovač, Council Member; judge Damir Krahulec, Council Member</p>      | <p><b>Enes Viteškić</b></p> <p>Member of Croatian formations</p> <p>Attended the trial undetained.</p> <p>As of 17 May 2012, the day when the conviction at first instance was pronounced, he is detained.</p> | <p>On 17 May 2012, the Osijek County Court's War Crimes Council found the defendant Viteškić guilty and sentenced him to 11 years in prison.</p>                                                                                                                                                        | <p><b>Victims - killed:</b> Milan Labus, Spasoja Milović, Boja Grubišić, Božidar Sudžuković, Bosiljka Katić, Dragutin Kečkeš, Boško Jelčić, Milan Katić, Dmitar Katić, Draginja Katić, Vukašin Medić, Daninka Vujanović, Arda Jelčić, Milica Milović, Petar Katić, Jovan Gavrić, Milena Rodić and Marja Sudžuković</p> | <p>This trial has been ongoing since 2002.</p> <p>At present, the VSRH quashed two times acquittals at first instance rendered by the Osijek County Court.</p> |



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| 11 | <p><b>CRIME IN PETRINJA</b></p> <p>The reopened trial at first instance is concluded.</p> <p><i>Previously, the Sisak County Court accepted the request submitted by the convicted Borislav Mikelic and permitted in his case reopening of criminal proceedings which had been concluded with a final sentence rendered by the Sisak District Court No. K-13/93 of 9 June 1993 in which Mikelic was sentenced to 20 years in prison.</i></p> | <p>Indictment No. K-DO-45/12 issued by the Zagreb ŽDO, taken over from the Sisak ŽDO/District Public Prosecution from Sisak No. KT-9/93 of 10 March 1993.</p> <p>War crime against civilians</p>                                                                            | <p>Zagreb County Court (the case was delegated from the Sisak County Court)</p> <p>War Crimes Council: judge Zeljko Horvatović, Council President; judge Ratko Ščekić, Council Member; judge Zdravko Majerović, Council Member</p> | <p><b>Borislav Mikelic</b></p> <p>Member of Serb formations</p> <p>Unavailable. The reopened trial was conducted in absence of the defendant, upon his request.</p> | <p>On 31 May 2012, a decision on dismissal of the proceedings was adopted. Previously, the prosecution informed the court that it decided not to prosecute the defendant.</p> | <p><b>Victims:</b></p> <p><b>- killed:</b> Štef Bučar</p> <p><b>- sustained physical injuries:</b> Nikola Drakulić, Anđelina Banadinović, Rajko Đurać, Ramiz Herelić, Đuro Vujatović and Ivo Bunjan</p> <p>The trial in which Mikelic and eight defendants were convicted in 1993 in their absence to 20 years in prison each – is an example of biased and unprofessional acts by the judiciary in the 90s.</p> <p>Following the request by the state attorney's office in 2009, the trial was reopened and discontinued in respect of the other eight defendants.</p>                                                                                                         |
| 12 | <p><b>CRIME IN DALJ IV</b></p> <p>The fourth (third repeated) trial at first instance is concluded.</p> <p>The main hearing in this case began on 15 May 2012.</p>                                                                                                                                                                                                                                                                           | <p>Indictment No. K-DO-52/08 of 4 November 2008 issued by the Osijek ŽDO, amended (specified) on 31 March 2009 and at the hearing held on 14 March 2011.</p> <p>War crime against civilians</p> <p>Prosecution: Dragan Poljak, County Deputy State's Attorney in Osijek</p> | <p>Osijek County Court</p> <p>War Crimes Council: judge Darko Krušlin, Council President; judge Ružica Šamota, Council Member; judge Ante Kvesić, Council Member</p>                                                               | <p><b>Čedo Jović</b></p> <p>Member of Serb formations</p> <p>Arrested on 7 July 2008 and in detention since then.</p>                                               | <p>On 1 June 2012, the Osijek County Court's War Crimes Council pronounced the defendant guilty and sentenced him to 5 years in prison.</p>                                   | <p><b>Victims:</b></p> <p><b>- killed:</b> Antun Kundić</p> <p><b>- physically maltreated:</b> Ivan Horvat, Ivan Bodza, Karol Kremerenski, Josip Ledencan and Emerik Hudik</p> <p>The right to a trial within a reasonable time has been violated. The VSRH quashed three times the first-instance verdicts of conviction, in which the defendant was sentenced to 5 years in prison – due to procedural defects or incorrect or incomplete establishment of facts.</p> <p>The defendant is in custody as of 7 July 2008. We assume that, had the sentence to 5 years imprisonment become final and conclusive, the defendant would have been already released from prison.</p> |

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| 13 | <p><b>CRIME IN ILOVČAK NEAR GLINA</b></p> <p>The trial at first instance is concluded.</p> <p>The main hearing began on 24 April 2012.</p>                                                                                                                                                                             | <p>Indictment No. K-DO-38/2005 issued by the Sisak ŽDO, amended at the main hearing held on 4 June 2012.</p> <p>War crime against civilians</p> <p>Prosecution:<br/>Igor Bijelić, County Deputy State's Attorney in Rijeka</p>                                   | <p>Rijeka County Court (the case was delegated from the Sisak County Court)</p> <p>War Crimes Council:<br/>Judge Saša Cvijetić, Council President</p>                                                                               | <p><b>Vladimir Bekić</b></p> <p>Member of Serb formations</p> <p>Unavailable and thus tried in his absence.</p>                                                                    | <p>On 4 June 2012, the Rijeka County Court's War Crimes Council, after changing the legal qualification of the criminal offence referred in the indictment into armed rebellion, rendered the verdict rejecting the charge.</p> | <p><b>Victim - killed:</b> Milan Kapac</p>                                                                | <p>The defendant is tried in his absence.</p> |
| 14 | <p><b>CRIME IN KORENICA</b></p> <p>The repeated trial at first instance is concluded.</p> <p>Repeated proceedings began on 25 October 2011.</p> <p><i>Previously, the VSRH quashed on 8 June 2011 the verdict rendered by the Rijeka County Court on 3 October 2008 in which the defendants were found guilty.</i></p> | <p>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 on 26 April 2012.</p> <p>War crime against civilians</p> <p>Prosecution: Darko Karlović, County Deputy State's Attorney in Rijeka</p> | <p>Rijeka County Court (the case was delegated from the Gospić County Court)</p> <p>War Crimes Council:<br/>Judge Jesenka Kovačić, Council President;<br/>Judge Dina Brusić, Council Member; Judge Ksenija Zorc, Council Member</p> | <p><b>Željko Šuput and Milan Panić</b></p> <p>Members of Serb formations</p> <p>The defendants attend the trial undetained.</p> <p>They spent 1 year and 10 months in custody.</p> | <p>On 12 June 2012, the Rijeka County Court's War Crimes Council found the defendants guilty and sentenced them as follows:<br/>Željko Šuput to 4 years and Milan Panić to 3 years and 6 months in prison.</p>                  | <p><b>Victims – unlawfully confined and maltreated:</b> Nikola Nikolić, Mile Lukac and Perica Bičanić</p> |                                               |

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| 15 | <p><b>CRIME IN VUKOVAR</b><br/>(defendants <b>Rade Ivković</b> and <b>Dušan Ivković</b>)<sup>2</sup></p> <p>The repeated trial at first instance is concluded.</p> <p>The repeated proceedings began on 18 June 2012.</p> <p><i>Previously the VSRH quashed the verdict rendered by the Vukovar County Court issued on 1 October 2007 in which the defendant Rade Ivković was sentenced to 3 years and 6 months in prison, and defendant Dušan Ivković was acquitted.</i></p> | <p>Indictment No. K-DO-17/02 of 11 November 2002 issued by the Vukovar ŽDO, amended on 2 July 2009.</p> <p>War crime against civilians</p> | <p>Osijek County Court</p> <p>War Crimes Council: judge Zvonko Vrbanić, Council President; judge Damir Krahulec, Council Member, judge Ante Kvesić, Council Member</p> | <p><b>Rade Ivković and Dušan Ivković</b></p> <p>Members of Serb formations</p> <p>Rade Ivković was tried in his absence.</p> <p>Dušan Ivković attended the trial undetained.</p> | <p>On 4 September 2012, the Osijek County Court's War Crimes Council found the defendants guilty and sentenced them to prison:</p> <p>Rade Ivković to 8 years in prison and Dušan Ivković to 5 years and 6 months in prison.</p> | <p><b>Victim:</b> one female person raped (identity not disclosed)</p> | <p>Obligation to punish the perpetrators has been jeopardised – the first defendant was tried in his absence whilst the second defendant fled from Croatia just before pronouncement of the verdict.</p> <p>Namely, Dušan Ivković attended the main hearing. However, he did not appear before court on the day of verdict pronouncement when he was sentenced to 5 years and 6 months in prison. Following the verdict pronouncement, custody was ordered against the defendant but the defendant left the territory of the Republic of Croatia.</p> |
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<sup>2</sup> The case was heard in camera. The Judges' Panel did not allow the CPO to attend and monitor the court hearing in this case.

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| 16 | <p><b>CRIME IN ŠKABRNJA</b></p> <p>The reopened trial at first instance is concluded.</p> <p>The main hearing began on 21 September 2011.</p> <p>On 11 November 1995, the Zadar County Court rendered the verdict in which the defendant Petrov was sentenced in absentia to 20 years in prison. The proceedings were held against Goran Opacic and 25 more defendants, and the defendant Petrov was the 14<sup>th</sup> defendant.</p> | <p>Indictment No. KT-41/92 of 22 August 1994 issued by the Zadar ŽDO (against 26 defendants), following the separation of the proceedings in respect of the defendant Renato Petrov, was modified on 20 September 2011.</p> <p>War crime against civilians</p> <p>Prosecution: Slobodan Denona, County Deputy State's Attorney in Zadar</p> | <p>Zadar County Court</p> <p>War Crimes Council: judge Boris Babić, Council President; judge Vladimir Mikočević, Council Member; Judge Boris Radman, Council Member</p> | <p><b>Renato Petrov</b></p> <p>Member of Serb formations</p> <p>During the reopened proceedings, the defendant was in custody. He was arrested in Germany in April 2011, and in July 2011 he was extradited to Croatia. His detention was vacated after the pronouncement of the first-instance verdict.</p> | <p>On 28 September 2012, the Zadar County Court's War Crimes Council pronounced the verdict in which the defendant was acquitted due to the lack of evidence.</p> | <p><b>Victim:</b> one elderly male person killed</p>                                     | <p>In 1995, Renato Petrov 1995 was tried in his absence to 20 years in prison, but then after his extradition and reopening of the trial, he was acquitted with the non-final verdict.</p> |
| 17 | <p><b>CATHOLIC CHURCH DESTRUCTION IN GLINA</b></p> <p>The trial at first instance is concluded.</p> <p>The main hearing began on 17 September 2012.</p>                                                                                                                                                                                                                                                                                 | <p>Indictment No. KT-56/97 of 16 July 2007 issued by the Sisak ŽDO.</p> <p>Criminal offence: destruction of cultural and historical monuments</p> <p>Prosecution: Marjan Zgurić, County Deputy State's Attorney in Sisak</p>                                                                                                                | <p>Zagreb County Court</p> <p>War Crimes Council: judge Tomislav Juriša, Council President; judge Vladimir Vinja, Council Member; judge Petar Šakić, Council Member</p> | <p><b>Ranko Birač</b></p> <p>Member of Serb formations</p> <p>Unavailable and thus tried <i>in absentia</i>.</p>                                                                                                                                                                                             | <p>On 15 October 2012, the Zagreb County Court's War Crimes Council found the defendant guilty and sentenced him to 2 years in prison.</p>                        | <p><b>Destroyed cultural heritage</b> – catholic church of St. Ivan Nepomuk in Glina</p> | <p>The defendant is tried in his absence.</p>                                                                                                                                              |

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| 18 | <p><b>CRIME IN THE KERESINEC PRISON AND IN THE PRISON IN GAJEVA STREET IN ZAGREB</b></p> <p>The trial at first instance is concluded.</p> <p>The main hearing began on 27 March 2012.</p> | <p>Indictment No. K-DO-384/10 of 18 November 2011 issued by the Zagreb ŽDO.</p> <p>War crime against prisoners of war</p> <p>Prosecution: Robert Petrovečki, County Deputy State's Attorney in Zagreb</p> | <p>Zagreb County Court</p> <p>War Crimes Council: judge Marijan Garac, Council President; judge Mirjana Rigić, Council Member; judge Petar Šakić, Council Member</p> | <p><b>Stjepan Klarić, Dražen Pavlović, Viktor Ivančin, Željko Živec and Goran Štrukelj</b></p> <p>Members of Croatian formations</p> <p>On 22 November 2010 they were arrested. Klarić, Pavlović and Ivančin spent time in custody until the pronouncement of the first-instance verdict on 31 October 2012. Živec spent time in custody until 16 July 2012, and Štrukelj until 14 February 2012, and later on from 16 May 2012 until 16 July 2012.</p> | <p>On 31 October 2012, the Zagreb County Court's War Crimes Council found the defendants guilty and sentenced them to the following prison sentences: Klarić to 3 years and 6 months; Ivančin to 2 years; and Pavlović, Živec and Štrukelj to 1 year each in prison.</p> | <p><b>Victims – physically, mentally and/or sexually abused:</b> Đorđe Jovičić, Dobroslav Gračanin, Milka Badrić, Milena Adamović, Danica Vuruna, Danica Poznanović, Zorka Hrkić, Pantelija Zec, Slobodan Kukić, Tomislav Božović, Damir Kalik, Branko Zeljak, Milorad Đuričić, Branimir Skočić, Mirodrag Nikolić, Petra Došen, Vid Ninić, Slobodan Jasenski, Ljuban Grab, Dušica Nikolić, Borivoj Rogić, Nenad Filipović, Nebojša Kostadinović, Volkan Živković, Nada Grab, one unidentified male person, Nada Milićević, Milorad Blagojević, Miloš Crnković and Rajka Majkić</p> | <p>Trial hearings were held in inadequate court rooms – certain defendants were seated next to their family members and they consulted with them and commented with them the ongoing proceedings.</p> <p>When determining the sentence against the defendants, the War Crimes Council took into consideration a series of extenuating circumstances: exemplary behaviour in court, no prior criminal record, participation in the Homeland War, significant contribution in the war and the fact that the defendants have no assets – resulted with the sentences which were significantly lower than the minimum sentences stipulated for the war crime against civilians.</p> <p>On the occasion of pronouncing the criminal sanction, no adequate valorisation has been made in respect of the rape and sexual abuse of the injured parties, as a modus of committing the war crime.</p> |
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| 19 | <p><b>CRIME IN NOVA GRADIŠKA</b></p> <p>The trial at first instance is concluded.</p> <p>The main hearing began on 9 October 2012.</p>                                     | <p>Indictment of the injured party as prosecutor of 8 May 2012.</p> <p>War crime against prisoners of war</p> <p>Prosecution: Dimitrije Škrpan -injured party, in his capacity as private prosecutor he took over the prosecution from the Slavonski Brod ŽDO</p> | <p>Osijek County Court</p> <p>War Crimes Council: judge Krunoslav Barkić, Council President; judge Anto Rašić; judge Damir Krahulec, Council Member</p>                 | <p><b>Ivan Kumić</b></p> <p>Member of Croatian formations</p> <p>Attends the trial undetained.</p>                                                    | <p>On 8 November 2012, the Osijek County Court's War Crimes Council rendered the verdict in which the defendant Kumić was acquitted.</p>     | <p><b>Victim – physically and mentally maltreated:</b> Dimitrije Škrpan</p>                          | <p>The Slavonski Brod ŽDO filed a request for investigation against Ivan Kumić. During the investigation it dropped charges against the defendant, but the injured party assumed criminal prosecution powers.</p>                                                                                                                                                                                                             |
| 20 | <p><b>CRIME ON POGLEDIĆ HILL NEAR GLINA</b></p> <p>The third (second repeated) trial at first instance is concluded.</p> <p>The main hearing began on 25 October 2010.</p> | <p>Indictment No. K-DO-03/06 of 4 September 2006 issued by the Sisak ŽDO, amended on 9 May 2007.</p> <p>War crime against civilians</p> <p>Prosecution: Marijan Zgurić, County Deputy State's Attorney in Sisak</p>                                               | <p>Sisak County Court</p> <p>War Crimes Council: judge Melita Avedić, Council President; judge Alenka Lešić, Council Member; judge Željko Milinarić, Council Member</p> | <p><b>Rade Milijević</b></p> <p>Member of Serb formations</p> <p>Attends the trial. He spent time in custody from March 2006 until December 2010.</p> | <p>On 22 November 2012, the Sisak County Court's War Crimes Council rendered the verdict in which the defendant Milijević was acquitted.</p> | <p><b>Victims - killed civilians:</b> Janko Kaurić, Milan Litrić, Borislav Litrić and Ante Žužić</p> | <p>The defendant's right to a trial within a reasonable time has been violated.</p> <p>The VSRH quashed two times convictions rendered at first instance, in which the defendant was sentenced to 14 i.e. to 12 years in prison.</p> <p>The defendant was in custody for four years and nine months. His detention was vacated after expiry of maximum detention period in the course of the trial, as stipulated by law.</p> |

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| 21 | <p><b>CRIME IN PERUŠIĆ</b></p> <p>The repeated trial at first instance is concluded.</p> <p>The main hearing began on 16 May 2012.</p> <p><i>Previously, the VSRH quashed the Zadar County Court's verdict issued on 4 February 2011 in which the previous conviction rendered by the Zadar County Court was left in force. According to the 1995 verdict, the defendant was sentenced in absentia to 9 years in prison.</i></p> | <p>Indictment No. K-7-9/95 of 27 June 1995 issued by the Zadar District State Attorney's Office.</p> <p>War crime against civilians</p> <p>Prosecution: Radovan Marjanović, County Deputy State's Attorney in Zadar</p>                                                                                               | <p>Split County Court (the case was delegated from the Zadar County Court)</p> <p>War Crimes Council: judge Bruno Klein, Council President; judge Damir Romac, Council Member; judge Neven Cambi, Council Member</p> | <p><b>Nikola Munjes</b></p> <p>Member of Serb formations</p> <p>He was extradited from Monte Negro. He is in custody as of 20 October 2010.</p> | <p>On 30 November 2012, the Split County Court's War Crimes Council found the defendant Munjes guilty and sentenced him to 5 years in prison.</p>                                | <p><b>Victims – maltreated:</b> Duje Pešut and Grgo Pešut</p>                                                                                                                                                                                                                                                                   | <p>The investigation was carried out badly and the indictment contained non-precise information unsupported by the evidence against the defendant for the crimes in Berak. During the main hearing, the indictment against defendant Momić was amended. Incriminations against him are entirely amended and thus instead of killing one and maltreating three female persons, the amended indictment charges him with maltreatment of one male person.</p> |
| 22 | <p><b>CRIME IN BERAK (defendant Milorad Momić)</b></p> <p>The trial at first instance is concluded.</p> <p>The main hearing began on 3 November 2011.</p>                                                                                                                                                                                                                                                                        | <p>Indictment No. K-DO-42/01 of 5 April 2006 issued by the Vukovar ZDO (against 35 persons), specified in respect of the defendant by a memo of 12 October 2011 and amended on 31 August 2012.</p> <p>War crime against civilians</p> <p>Prosecution: Vlatko Mijlković, County Deputy State's Attorney in Vukovar</p> | <p>Vukovar County Court</p> <p>War Crimes Council: judge Nikola Bešenski, Council President; judge Milan Kojić, Council Member; judge Irena Lenić, Council Member</p>                                                | <p><b>Milorad Momić</b></p> <p>Member of Serb formations</p> <p>In custody. He was extradited from France on 2 September 2011.</p>              | <p>On 21 December 2012, the Vukovar County Court's War Crimes Council rendered the verdict in which the defendant Momić was found guilty and sentenced to 3 years in prison.</p> | <p><b>Victims:</b></p> <ul style="list-style-type: none"> <li>- according to the initial indictment: <b>- killed:</b> Kata Garvanović;</li> <li><b>- beaten:</b> Anđa Rušnov, Danica Rušnov and Mara Kulundžić</li> <li>- according to the indictment amended on 31 August 2012: <b>- maltreated:</b> Stanko Penavić</li> </ul> | <p>The investigation was carried out badly and the indictment contained non-precise information unsupported by the evidence against the defendant for the crimes in Berak. During the main hearing, the indictment against defendant Momić was amended. Incriminations against him are entirely amended and thus instead of killing one and maltreating three female persons, the amended indictment charges him with maltreatment of one male person.</p> |

### *Trials with ongoing main hearings*

|   | Case/ status                                                                                                                    | Indictment / criminal offence / prosecution                                                                                                                                                        | Court / Council (judges' panel)                                                                                                                                                                                         | Defendants / members to Croatian/Serb formations / detention                                                                                                                                                                                                                                                                                                | Victims                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Remarks / fair trial related issues                                                                                                                                                                                                                                                                           |
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| 1 | <p><b>CRIME IN GRUBORI</b></p> <p>Ongoing proceedings at first instance.</p> <p>The main hearing began on 24 November 2011.</p> | <p>Indictment No. K-DO-358/09 of 15 December 2010 issued by the Zagreb ŽDO.</p> <p>War crime against civilians</p> <p>Prosecution: Robert Petrovečki, County Deputy State's Attorney in Zagreb</p> | <p>Zagreb County Court</p> <p>War Crimes Council: judge Zdravko Majerović, Council President; judge Mirko Klinžić, Council Member, judge Marijan Garac, Council Member</p>                                              | <p><b>Frano Drijo and Božo Krajina</b></p> <p>Members of Croatian formations.</p> <p>Attend the trial undetained.</p> <p>During the trial, detention against the defendants was vacated. Drijo was held in custody until 29 August 2012, and Krajina until 3 July 2012.</p>                                                                                 | <p><b>Victims – killed:</b> Milica Grubor, Marija Grubor, Jovo Grubor, Jovan Grubor of deceased Damjan, Miloš Grubor and Đuro Karanović</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <p>The premises intended for the main hearing cannot accommodate all interested public because of the size which is too small.</p> <p>The indictment was also laid against Igor Beneta but the trial against him was discontinued due to his death. It is disputable whether he committed suicide or not.</p> |
| 2 | <p><b>CRIME IN BAČIN</b></p> <p>Ongoing proceedings at first instance.</p> <p>The main hearing began on 2 May 2012.</p>         | <p>Indictment No. KT-89/94 of 29 October 2010 issued by the Sisak ŽDO.</p> <p>War crime against civilians</p> <p>Prosecution: Doris Hrašć, County Deputy State's Attorney in Rijeka</p>            | <p>Rijeka County Court (the case was delegated from the Sisak County Court)</p> <p>War Crimes Council: judge Ika Šarić, Council President; judge Zoran Srsen, Council Member; judge Stjepanka Sanić, Council Member</p> | <p><b>Branko Dmitrović, Slobodan Borojević, Milinko Janjetović, Momčilo Kovacević, Stevo Radunović, Veljko Radunović, Katica Pekić, Marin Krivosić and Stevan Dodoš</b></p> <p>Marin Krivosić is the only defendant available to the court. He was extradited from Monte Negro and is held in custody. The other defendants are tried in their absence.</p> | <p><b>Victims – killed (at least 56):</b> Antun Svrčić, Marija Svrčić, 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 Mućavac, Katarina Vradić, Marija Mlašinović, Marija Jukić, Marija Šestić, Antun Krivačić, Ana Tepić, Veronika Jukić, Soka Volarević, Kata Lončar, Marija Antolović, Katarina Alavančić, Kata Ferić, Juraj Ferić, Terezija Alavarić, Barbara Kropf, Ana Plitkija, 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 thirteen still unidentified persons</p> | <p>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.</p> <p>Only one defendant is available to the court. The indictment's quality is doubtful.</p>                                    |



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| 3 | <p><b>CRIME NEAR MRKONJIĆ GRAD (BiH)</b></p> <p>Ongoing proceedings at first instance.</p> <p>The main hearing began on 28 February 2012.</p>                       | <p>Indictment No. K-DO-200/11 of 29 July 2011 issued by the Zagreb ŽDO.</p> <p>War crime against civilians</p> <p>Prosecution: Robert Petrovečki, County Deputy State's Attorney in Zagreb</p> | <p>Zagreb County Court</p> <p>War Crimes Council: Judge Tomislav Juriša, Council President; judge Petar Šakić, Council Member; judge Jadranka Mandušić, Council Member</p> | <p><b>Tihomir Šavorić, Ivica Krklec and Alen Toplek</b></p> <p>Members of Croatian formations</p> <p>Tihomir Šavorić is held in custody because in the first-instance verdict rendered on 24 October 2011 by the Zagreb County Court he was found guilty and sentenced to 6 years in prison for the commission of a war crime against prisoners of war, also in the surrounding area of Mrkonjić Grad in BiH. Ivica Krklec and Alen Toplek attend the trial undetained.</p> | <p><b>Victims – killed:</b> two unidentified female persons and two unidentified male persons</p>                                                                                                                                                                                                                                                                                                        | <p>The trial council separated from the court file the 2<sup>nd</sup> defendant's deposition provided to police authorities in which he confessed the crime, because this trial council viewed it as inadmissible evidence.</p> <p>Based on the prosecution's appeal, the VSRH quashed such decision of the mentioned trial council.</p>                  |
| 4 | <p><b>CRIME IN PAKRAČKA POLJANA AND AT ZAGREBAČKI VELESAJAM</b></p> <p>Ongoing proceedings at first instance.</p> <p>The main hearing began on 9 February 2012.</p> | <p>Indictment No. K-DO-406/10 of 8 June 2011 issued by the Zagreb ŽDO.</p> <p>War crime against civilians</p> <p>Prosecution: Silvio Sušec, County Deputy State's Attorney in Zagreb</p>       | <p>Zagreb County Court</p> <p>War Crimes Council: judge Zdravko Majerović, Council President; judge Petar Šakić, Council Member; judge Ratko Ščekić, Council Member</p>    | <p><b>Tomislav Merčep</b></p> <p>Member of Croatian formations</p> <p>Attends the trial undetained. He is held in custody until 5 July 2012. His detention was vacated because the extra-trial chamber of the Zagreb County Court was of the opinion that the defendant, considering the conditions in the Hospital for persons in custody, could not be provided with adequate medical care and necessary physical therapy.</p>                                            | <p><b>Victims:</b></p> <ul style="list-style-type: none"> <li>- <b>killed:</b> M.C., Pl., 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., unidentified male person a.k.a. S., M.Z., M.Z., A.Z. and 24 unidentified persons;</li> <li>- <b>maltreated and missing:</b> P.R., K.R. and M.R.</li> <li>- <b>maltreated:</b> Đ.G., N.M., D.M., S.B., N.P. and B.V.</li> </ul> | <p>The main hearing was held in the court-room which was too small, and is not adequate for the work of all trial parties, in particular for the representatives of injured parties who are seated at the place intended for the public.</p> <p>Certain witnesses-injured parties were not cautioned about the possibility to file a pecuniary claim.</p> |

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| 5 | <p><b>CRIME IN SISAK</b></p> <p>Ongoing proceedings at first instance.</p> <p>The main hearing began on 21 May 2012.</p> | <p>Indictment No. K-DO-53/11 of 16 December 2011 issued by the Osijek ZDO.</p> <p>War crime against civilians</p> <p>Prosecution: Miroslav Kraljević, County Deputy State's Attorney in Osijek</p> | <p>Osijek County Court</p> <p>War Crimes Council:<br/>judge Zvonko Vekić;<br/>Council President:<br/>judge Ružica Šamota,<br/>Council Member;<br/>judge Ante Kvesić,<br/>Council Member</p> | <p><b>Vladimir Milanković and Drago Bošnjak</b></p> <p>Members of Croatian formations</p> <p>In custody</p> | <p><b>Victims:</b></p> <p><b>- killed/missing:</b></p> <p>Vlado Božić, Zoran Vranešević, Branko Oljača, Željko Vila, Evica Vila, Marko Vila, Dušan Vila, Mlado Vila, Nikola Trivkanović, Zoran Trivkanović, Berislav Trivkanović, Jovan Crnobrnja, Rade Španović, Stevo Ratković, Ljubica Solar, Milan Cveteljević, Petar Pajagić, Vojislav Trbulin, Stanko Martinović, Stevo Borjčević, Miloš Čalić, Vaso Jelić, Nikola Drobňjak, Miloš Brkić and Dragan Mločinović</p> <p><b>- unlawfully confined and/or maltreated:</b></p> <p>Stevo Brajenović, Dmitar Brajenović, Milan Slavuij, Miodrag Stojaković, Sveto Mijić, Gojko Ladević, Nenad Tintor, Živko Živanović, Obrad Širbac, Milan Davorija, Stevo Miodrag, Mito Mitrović, Pero Dragljević, Ivica Bišćan, Dobrila Crnobrnja, Milorad Ratković, Blažana Ratković, Danica Ratković, Dragica Subanović, Branko Subanović, Lazo Ostojić, Danica Ostojić, Dragan Ostojić, Mirko Dragljević, Nedeljka Drageljević, Nikola Batula, Milica Batula, Đuro Cveteljević, Dragomir Cveteljević, Mihaljo Mrkonja, Živko Goga, Milan Vasilević, Nikola Arnautović, maloljetni Živko Vujančić, Ranko Davidović, Ratko Miljević, Miloš Gojić, Blagoje Savić, Radivoj Crevar, Ljuban Vuksić, unidentified civilian aged about 45, Boško Subotić</p> | <p>The transport issue of witnesses from Sisak to Osijek is not resolved – this is one of the reasons why only few witnesses respond to the summons for the main hearing.</p> |
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| 6 | <p><b>CRIME IN PROKLJAN AND MANDIČI</b></p> <p>Ongoing repeated proceedings at first instance.</p> <p>The main hearing began on 19 June 2012.</p> <p><i>Previously, the VSRH quashed on 5 April 2007 the Šibenik County Court's verdict rendered on 11 September 2002 in which the defendants were acquitted.</i></p> | <p>Indictment No. K-DO-45/01 of 1 March 2002 and 11 May 2007 issued by the Šibenik ŽDO.</p> <p>War crime against civilians and war crime against prisoners of war</p> <p>Prosecution: Zvonko Ivić, County Deputy State's Attorney in Šibenik</p> | <p>Split County Court (the case was delegated from the Šibenik County Court)</p> <p>War Crimes Council: judge Ivona Rupić, Council President; judge Stanko Grabavac, Council Member; judge Mladen Pivan, Council Member</p> | <p><b>Božo Bačelić, Ante Mamić, Luka Vuko and Jurica Ravić</b></p> <p>Members of Croatian formations</p> <p>Božo Bačelić is held in custody. He was arrested in Germany in February 2012 and extradited to Croatia in April 2012.</p> <p>Other defendants attend the trial undetained.</p> | <p><b>Victims - killed:</b> Milica Damjanić and Nikola Damjanić (civilians) and Vuk Mandić (war prisoner)</p> | <p>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 Ravić were detained again whilst Bačelić ran away. The trial against Mamić, Vuko and Ravić was not conducted because neither the decision on trial in absence of Božo Bačelić nor the decision on separation of the trial was issued. They were in custody until the expiry of maximum detention period. After that period, they were released.</p> |
| 7 | <p><b>CRIME IN PODVOŽIĆ</b></p> <p>Ongoing proceedings at first instance.</p> <p>The main hearing began on 8 September 2011. However, it will have to start anew because since November 2011 no trial hearing has been held.</p>                                                                                      | <p>Indictment No. K-DO-33/10 of 18 April 2011 issued by the Karlovac ŽDO.</p> <p>Unlawful killing and wounding the enemy.</p> <p>Prosecution: Gordana Križanić, County Deputy State's Attorney in Karlovac</p>                                   | <p>Karlovac County Court</p> <p>War Crimes Council: judge Ante Ujević, Council President; judge Alenka Laplalo, Council Member; judge Denis Pancirov, Council Member</p>                                                    | <p><b>Marko Bolić</b></p> <p>Member of Serb formations</p> <p>In custody</p>                                                                                                                                                                                                               | <p><b>Victims – killed:</b> Marijan Jakšić and Darko Tuškan</p>                                               | <p>The last trial hearing was held in November 2011. During 2012, certain witnesses were heard in Serbia, as was requested. The defendant was in custody during entire trial.</p> <p>Council President only partially cautioned the witnesses about their rights and commitments. Certain witnesses were not cautioned about the right not to answer certain questions, although they were members of Serb paramilitary formations.</p>                                                                                                                       |
| 8 | <p><b>CRIME IN MILJEVAČKI PLATO</b></p> <p>Ongoing proceedings at first instance.</p> <p>The main hearing began on 14 November 2012.</p>                                                                                                                                                                              | <p>Indictment No. K-DO-16/02 issued by the Šibenik ŽDO.</p> <p>War crime against prisoners of war</p> <p>Prosecution: Sanda Pavlović Lučić, County Deputy State's Attorney in Šibenik</p>                                                        | <p>Split County Court</p> <p>War Crimes Council: judge Bruno Klein, Council President; judge Davor Svalina, Council Member; judge Marica Štepanović, Council Member</p>                                                     | <p><b>Ante Babac and Mišo Jakovljević</b></p> <p>Members of Croatian formations</p> <p>In custody.</p>                                                                                                                                                                                     | <p><b>Victim - killed:</b> Miroslav Subotić</p>                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

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| 9  | <p><b>CRIME IN OSJEK (defendant Mirko Sivić)</b></p> <p>Ongoing proceedings at first instance.</p> <p>The main hearing began on 29 October 2012.</p> <p><i>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.</i></p> | <p>Indictment No. K-DO-2/11 of 16 April 2007 issued by the Osijek ZDO, modified in respect of the defendant Sivić on 27 October 2011.</p> <p>War crime against civilians</p> <p>Prosecution: Miroslav Kraljević, County Deputy State's Attorney in Osijek</p> | <p>Osijek County Court</p> <p>War Crimes Council: Judge Kuunoslav Barkić, Council President; Judge Miroslav Rožac, Council Member; Judge Darko Krušin, Council Member</p> | <p><b>Mirko Sivić</b></p> <p>Member of Croatian formations</p> <p>Attends the trial undetained</p>                                                                                                                                                                                                                     | <p><b>Victims - killed:</b> an unidentified male person and Aljia Šabanović</p>                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 10 | <p><b>CRIME IN NOVSKA II</b></p> <p>Ongoing repeated proceedings at first instance.</p> <p>The main hearing began on 18 December 2012.</p> <p>On 10 July 2012, the VSRH quashed the Sisak County Court's verdict rendered on 16 April 2010 in which Damir Vide Raguž was sentenced to 20 years in prison and Željko Škledar was acquitted.</p>                      | <p>Indictment No. K-DO -16/09 of 15 January 2010 issued by the Sisak ZDO, modified in April 2010.</p> <p>War crime against civilians</p> <p>Prosecution: Jadranka Huskić, County Deputy State's Attorney in Sisak</p>                                         | <p>Zagreb County Court</p> <p>War Crimes Council: Judge Tomislav Juriša, Council President; Judge Mirko Klinčić, Council Member; Judge Petar Šakić, Council Member</p>    | <p><b>Damir Vide Raguž and Željko Škledar</b></p> <p>Members of Croatian formations</p> <p>Damir Vide Raguž is at large and thus he is tried <i>in absentia</i>.</p> <p>Željko Škledar attends the trial undetained – in the previous trial he was detained until the pronouncement of the first-instance verdict.</p> | <p><b>Victims – tortured and killed:</b> Saja Rašković, Mišo Rašković, Mihaljo Šeatović and Ljuban Vujić</p> | <p>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 <i>Act on Amnesty from criminal prosecution and procedures for criminal acts committed in armed conflicts and in the war against the Republic of Croatia</i>.</p> |

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| 11 | <p><b>CRIME IN NOVSKA III</b></p> <p>Ongoing repeated proceedings at first instance.</p> <p>The main hearing began on 28 November 2012.</p> <p><i>On 21 February 2012, the VSRH quashed the first-instance verdict rendered by the Sisak County Court in the part where charges against Željko Belina and Dejan Milić were rejected. The Court confirmed one part of the same verdict in which charges against Ivan Grgić and Zdravko Plešec were rejected.</i></p> | <p>Indictment No. K-DO-35/08 of 9 July 2010 issued by the Sisak ZDO, amended by the Zagreb ZDO (No. K-DO-254/12)</p> <p>War crime against civilians</p> <p>Prosecution: Jadranka Huskić, County Deputy State's Attorney in Sisak</p> | <p>Zagreb County Court</p> <p>War Crimes Council: Judge Marijan Garac; Council President; Judge Petar Šakić; Council Member; Judge Zdravko Majerović, Council Member</p> | <p><b>Željko Belina and Dejan Milić</b></p> <p>Members of Croatian formations</p> <p>Attend the trial undetained.</p> | <p><b>Victims:</b></p> <ul style="list-style-type: none"> <li>- <b>killed:</b> Goranka Mileusnić, Vera Mileusnić and Blaženka Sibak</li> <li>- <b>maltreated and wounded:</b> Petar Mileusnić</li> </ul> | <p>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, Zdravko Lesković, Dejan Milić and Zdravko Plešec for murder and attempted murder.</p> <p>After the investigation, the Military Prosecution in Zagreb dropped charges against Grgić and Plešec while in respect of Belina, Lesković 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.</p> <p>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.</p> |
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| 12 | <p><b>CRIME IN THE VILLAGES ALONG THE UNA RIVER NEAR HRVATSKA KOSTAJNICA</b></p> <p>The third (second repeated) proceedings at first instance – ongoing.</p> <p>The main hearing began on 12 November 2012.</p> <p>On 5 September 2012, the VSRH quashed the Zagreb County Court's verdict in which, following the repeated proceedings, the defendants were found guilty and sentenced to the following prison sentences: Đermanović (9 years), Dubravko Čavić (7 years) and Ljubiša Čavić (2 years).</p> | <p>Indictment No. K-DO-10/09 of 5 November 2009 issued by the Sisak ŽDO.</p> <p>War crime against civilians</p> <p>Prosecution:<br/>Robert Petrovečki, County Deputy State's Attorney in Zagreb</p> | <p>Zagreb County Court</p> <p>War Crimes Council:<br/>judge Zdravko Majerović, Council President; judge Tajana Ivošević Turk, Council Member,<br/>judge Tomislav Juriša, Council Member;</p> | <p><b>Pero Đermanović, Dubravko Čavić and Ljubiša Čavić</b></p> <p>Members of Serb formations</p> <p>Defendant Pero Đermanović attends the trial undetained. He was detained from 6 May 2009 until 12 November 2012.</p> <p>Dubravko Čavić is at large and thus is tried in his absence.</p> <p>Ljubiša Čavić attends the trial undetained.</p> | <p><b>Victims:</b></p> <p>- <b>unlawfully confined, tortured and killed:</b><br/>Vladimir Letić</p> <p>- <b>burnt houses belonging to:</b> Stevo Karanović and Ivo Karanović</p> | <p>The VSRH quashed two times already the convictions at first instance.</p> |
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## ***Trials in which main hearings were scheduled but not held***

|   | Case/ status                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Indictment / criminal offence / prosecution                                                                                                                                                                           | Court / Council (judges' panel)                                                                                                                                        | Defendants / members to Croatian/Serb formations / detention                                                                                                                                                                                                                                                                                                                                                | Victims                                                                                                                                                                                                                                           | Remarks / fair trial related issues                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| 1 | <p><b>CRIME IN MAJA</b></p> <p>The repeated proceedings at first instance were scheduled for 29 November 2012. The hearing was postponed because the defendant did not appear before the court.</p> <p><i>Previously, the VSRH quashed on 28 September 2010 the verdict rendered on 13 November 2009 by the War Crimes Council of the Sisak County Court in which, following the reopened proceedings, the defendant Španović was sentenced to 3 years and 5 months in prison.</i></p> | <p>Indictment No. KT-53/93 of 13 August 1993 issued by the Sisak District State Attorney's Office.</p> <p>War crime against civilians</p> <p>Prosecution: Marijan Zgurić, County Deputy State's Attorney in Sisak</p> | <p>Zagreb County Court</p> <p>War Crimes Council: judge Marijan Garac, Council President; judge Petar Šakić, Council Member; judge Ratko Ščekić, Council Member</p>    | <p><b>Milan Španović</b></p> <p>Member of Serb formations</p> <p>Attends the trial undetained.</p> <p>On 19 August 2009, he was extradited from the UK to Croatia.</p> <p>He was held for three years and five months in extradition detention in the UK and later in prison and detention ward in Sisak. His detention was vacated on 13 November 2009 when the first-instance verdict was pronounced.</p> | <p><b>Shooting houses belonging to:</b> Anka Goršeta, Šimo Goršeta, Stjepan Lamza and Milka Mičija;<br/> <b>Alienation of agricultural machinery and home appliances owned by:</b> Milka Tusić, Ivan Mladenović, Marko Lamza and Milka Mičija</p> | <p>This is an example of unprofessional and biased bringing charges in the 90s.</p> <p>Španović was, among other 18 defendants unavailable to Croatian judiciary, found guilty and sentenced to 20 years in prison in the verdict rendered by the Sisak County Court.</p> <p>Court appointed defence counsel, who represented all defendants, did not lodge a complaint against the first-instance verdict. The explanation in the verdict 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.</p> <p>The trial against other defendants was reopened and discontinued in the course of several years.</p> |
| 2 | <p><b>CRIME IN BANSKI GRABOVAC</b></p> <p>The main hearing was scheduled for 3 December 2012. It was postponed because the defendant did not appear before the court.</p>                                                                                                                                                                                                                                                                                                              | <p>Indictment No. K-DO-8/09 of 9 May 2011 issued by the Sisak ZDO.</p> <p>War crime against prisoners of war</p> <p>Prosecution: Jurica Ilić, County Deputy State's Attorney in Zagreb</p>                            | <p>Zagreb County Court</p> <p>War Crimes Council: judge Tomislav Juriša, Council President; judge Mirko Klinžić, Council Member; judge Petar Šakić, Council Member</p> | <p><b>Mirko Korelija, Miroslav Peškir and Ranko Šimulija</b></p> <p>Members of Serb formations</p> <p>The defendants are unavailable to Croatian judiciary. They reside in the area of the Republic of Serbia.</p>                                                                                                                                                                                          | <p><b>Victim - killed:</b> Mladen Breković</p>                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

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| 3 | <p><b>CRIME IN MAJA (defendant Milan Borojević)</b></p> <p>The main hearing was scheduled for 19 September 2012. It was postponed because the defendant did not appear before the court.</p>  | <p>Indictment No. K-DO-11/03 of 7 June 2010 issued by the Sisak ZDO.</p> <p>War crime against civilians</p> <p>Prosecution: Marijan Zgurić, County Deputy State's Attorney in Sisak</p>                   | <p>Zagreb County Court</p> <p>War Crimes Council: Judge Tomislav Juriša, Council President</p> | <p><b>Milan Borojević</b></p> <p>Civilian</p> <p>The defendant is unavailable to Croatian judiciary.</p>                  | <p><b>Victims - killed:</b> Duro Brdarić and Štefanija Brdarić</p> |  |
| 4 | <p><b>CRIME IN SABORSKO</b></p> <p>The main hearing was scheduled for 10 December 2012. It was postponed because the defendant did not appear before the court.</p>                           | <p>Indictment No. K-DO-4/03 of 22 December 2011 issued by the Karlovac ZDO.</p> <p>War crime against civilians</p> <p>Prosecution: Doris Hraš, County Deputy of State's Attorney in Rijeka</p>            | <p>Rijeka County Court</p> <p>War Crimes Council: Judge Ika Šarić, Council President</p>       | <p><b>Zdravko Pejić</b></p> <p>Member of Serb formations</p> <p>The defendant is unavailable to Croatian judiciary.</p>   | <p><b>Victims - killed:</b> Nikola and Kata Dumančić</p>           |  |
| 5 | <p><b>CRIME AT THE BRŠLJENOVIC HILL NEAR PLAŠKI</b></p> <p>The main hearing was scheduled for 20 November 2012, but it was postponed because the witness did not appear before the court.</p> | <p>Indictment: No. K-DO-9/02 of 8 June 2011 issued by the Karlovac ZDO.</p> <p>War crime against wounded and sick persons</p> <p>Prosecution: Doris Hraš, County Deputy of State's Attorney in Rijeka</p> | <p>Rijeka County Court</p> <p>War Crimes Council: Judge Ika Šarić, Council President</p>       | <p><b>Dušan Kovačević</b></p> <p>Member of Serb formations</p> <p>The defendant is unavailable to Croatian judiciary.</p> | <p><b>Victims-killed:</b> Zdravko Biondi</p>                       |  |



**TABLE OVERVIEW OF THE MONITORED VSRH APPEALS CHAMBERS' SESSIONS/HEARINGS  
REGARDING WAR CRIME TRIALS IN 2012**

| Case / status                                                                                                                                                                                                                                                                                                                                                             | Indictment / criminal offence / prosecution                                                                                                                                                                  | Court / Council (judges' panel)                                                                                                                                                                                     | Defendant(s) / member(s) to Croatian/Serb formations / detention                                                                        | Verdict / Decision                                                                                                                                                                                                                        | Victim(s)                                                                                                                                   | Remarks / fair trial related issues                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| 1<br><br>CRIME IN NOVSKA III<br><br>The VSRH Appeals Chamber held its session deciding on the appeal against the verdict rendered by the Sisak County Court. On 19 November 2010, the Sisak County Court's War Crimes Council rendered a verdict rejecting the charge because it held the view that this was a res judicata case i.e. that the matter was already judged. | Indictment No. K-DO-35/08 of 9 July 2010 issued by the Sisak ZDO.<br><br>War crime against civilians<br><br>Prosecution:<br>Jasmina Dolmagić, the Deputy State's Attorney General of the Republic of Croatia | Supreme Court of the Republic of Croatia<br><br>Chamber members:<br>judge Ana Garađić,<br>Council President,<br>judge rapporteur<br>Damir Kos, Council Members: Ranko Marjan, Miroslav Sovani and Hajrija Novoselec | Željko Belina, Dejan Milić, Ivan Grgić and Zdravko Plesec<br><br>Members of Croatian formations<br><br>They attend the trial undetained | On 21 February 2012, the VSRH quashed the first-instance verdict rejecting the charge in respect of defendants Belina and Milić. In respect of defendants Grgić and Plesec the first-instance verdict rejecting the charge was confirmed. | <b>Victims:</b><br>- <b>killed:</b> Goranka Mileusić, Vera Mileusić and Blaženka Slabak<br>- <b>mal-treated and wounded:</b> Petar Mileusić | One of the cases in which the Amnesty Act had been incorrectly applied during the 90s. Namely, the investigation had been carried out in 1992 in respect of the relevant event against Željko Belina, Ivan Grgić, Dubravko Leskovar, Dejan Milić and Zdravko Plesec for murder and attempted murder.<br><br>After the investigation, the Zagreb Military Prosecution dropped charges against Grgić and Plesec whilst against Belina, Leskovar and Milić the trial continued before the Zagreb Military Court and concluded on 2 November 1992 by rendering a decision to discontinue the proceedings by applying the Amnesty Act.<br><br>Later on, the injured parties lodged a criminal report against the aforementioned persons for the mentioned event but in respect of the commission of a war crime against civilians. |

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| 2 | <p><b>CRIME IN DALJ IV</b></p> <p>The VSRH Appeals Chamber held its session deciding on the appeal against the verdict rendered on 15 March 2011 by the Osijek County Court in which the defendant was sentenced to 5 years in prison, following the third (second repeated) trial.</p> | <p>Indictment No. K-DO-52/08 of 4 November 2008 issued by the Osijek ZDO, amended (specified) on 31 March 2009 and at the hearing held on 14 March 2011.</p> <p>War crime against civilians</p> <p>Prosecution: Milorad Cuculić, the Deputy State's Attorney General of the Republic of Croatia</p> | <p>Supreme Court of the Republic of Croatia</p> <p>Chamber members: Judge Vesna Vrbetić, Chamber President; Judge rapporteur Damir Kos,</p> <p>judges Žarko Dundović, Dražen Tripalo and Marni Mrčela, members</p> | <p><b>Čedo Jović</b></p> <p>Member of Serb formations</p> <p>Arrested on 7 July 2008. In custody.</p>                                                          | <p>On 22 February 2012, the VSRH accepted the defendant's appeal, quashed the first-instance verdict and remanded the case for retrial.</p> <p>After the fourth (third repeated) trial at first instance, the defendant was found guilty again on 1 June 2012 and sentenced to 5 years in prison.</p> | <p><b>Victims:</b></p> <p><b>- killed:</b> Antun Kundić</p> <p><b>- physically maltreated:</b> Ivan Horvat, Ivan Bodza, Karol Kremerenski, Josip Ledencan and Emerik Hudik</p> | <p>The defendant's right to a trial within a reasonable time has been violated.</p> <p>Due to procedural defects or incorrect and incomplete establishment of facts, the VSRH quashed three times the first-instance convictions in which the defendant was sentenced to 5 years in prison.</p> <p>The defendant is held in custody as of 7 July 2008. We assume that, had the sentence to 5 years imprisonment become final and conclusive, the defendant would have been already released from prison.</p> |
| 3 | <p><b>CRIME IN RAVNI KOTARI II</b></p> <p>The VSRH Appeals Chamber held its session deciding on the decision issued on 30 January 2011 by the War Crimes Council of the Split County Court in which the trial against the defendants was discontinued.</p>                              | <p>Indictment No. K-DO-51/07 of 14 September 2009 issued by the Zadar ZDO.</p> <p>War crime against civilians</p>                                                                                                                                                                                   | <p>Supreme Court of the Republic of Croatia</p> <p>Chamber members: Judge Senka Klarić-Baranović, Chamber President, judges Branko Brkić and Marijan Svederović, members</p>                                       | <p><b>Neboljša Baljak and Stevo Ivanišević</b></p> <p>Members of Serb formations</p> <p>Unavailable to Croatian judiciary and thus tried in their absence.</p> | <p>On 4 April 2012, the VSRH rejected the state attorney's appeal as unfounded. Thus, the decision in which the trial was discontinued became final and conclusive.</p>                                                                                                                               | <p><b>Victims – intimidated, sustained physical injuries:</b></p> <p>Zvonko Zečić, Bore Zečić, Mile Zečić, Ivan Pačić and Stojka Pačić</p>                                     | <p>The trial was discontinued because the defendants had already been convicted in 1996 – sentencing them to 20 years in prison each. They were sentenced that at almost the same location and at the same time period five civilians had been killed.</p> <p>In the 2009 Indictment they were charged with torture, maltreatment, inhuman treatment and intimidation of civilians in the area of Ravni Kotari.</p>                                                                                          |

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| 4 | <p><b>CRIME IN THE VILLAGES OF MUNICIPALITY PROMINA</b></p> <p>The VSRH Appeals Chamber held its session deciding on the appeal against the verdict rendered on 24 September 2010 by the Šibenik County Court in which the defendant was sentenced to 3 years and 6 months in prison, following the repeated proceedings.</p> | <p>Indictment No. K-DO-12/03 of 11 July 2003 issued by the Šibenik ŽDO.</p> <p>War crime against civilians</p>                                                                                                                            | <p>Supreme Court of the Republic of Croatia</p>                                                                                                                                                                       | <p><b>Rajko Janković</b></p> <p>Member of Serb formations</p> <p>Attends the trial undetained. He was detained during the proceedings at first instance (from April 2003 until the pronouncement of the first-instance verdict in May 2004).</p>                                                      | <p>On 28 June 2012, the VSRH rendered the verdict in which the appeals by the state attorney and the defendant were rejected and the first-instance verdict was confirmed.</p> | <p><b>Victims/injured - maltreated and/or intimidated and/or property plundered:</b></p> <p>Šime Zelić, Neda Zelić, Vlado Zelić, Ankica Zelić, Neda Zelić, Anda Cavlina, Dinka Karaga, Ante Parać, Milka Parać, Marija Parać, Ante Bračić and Marija Bračić</p> | <p>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 against defendant Raguž and now-deceased defendant Dubravko Leskovar. The Military Prosecution in Zagreb legally qualified this offence as a murder. However, the Military Court in Zagreb discontinued the criminal proceedings against the defendants by applying the Act on Amnesty from criminal prosecution and procedures for criminal acts committed in armed conflicts and in the war against the Republic of Croatia.</p> |
| 5 | <p><b>CRIME IN NOVSKA II</b></p> <p>The VSRH Appeals Chamber held its session deciding on the appeal against the verdict rendered on 16 April 2010 by the Sisak County Court in which Damir Vide Raguž was sentenced to 20 years in prison and Željko Škledar was acquitted.</p>                                              | <p>Indictment No. K-DO -16/09 of 15 January 2010 issued by the Sisak ŽDO, amended in April 2010.</p> <p>War crime against civilians</p> <p>Prosecution: Višnja Lončar, the Deputy State's Attorney General of the Republic of Croatia</p> | <p>Supreme Court of the Republic of Croatia</p> <p>Chamber members: Judge Damir Kos, Chamber President; Judge Ranko Marijan, Judge rapporteur; Judges Zlata Lipnjak Bosananc, Marijan Svedrović and Vesna Vrbelić</p> | <p><b>Damir Vide Raguž and Željko Škledar</b></p> <p>Members of Croatian formations</p> <p>Damir Vide Raguž is at large and thus tried in his absence. Željko Škledar attends the trial undetained – he was detained until the pronouncement of the first-instance verdict in the previous trial.</p> | <p>On 10 July 2012, the VSRH quashed the first instance verdict due to incorrect and incomplete establishment of facts.</p>                                                    | <p><b>Victims – tortured and killed:</b></p> <p>Saika Rašković, Mišo Rašković, Mihaljo Šeatović and Ljuban Vujić</p>                                                                                                                                            | <p>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 against defendant Raguž and now-deceased defendant Dubravko Leskovar. The Military Prosecution in Zagreb legally qualified this offence as a murder. However, the Military Court in Zagreb discontinued the criminal proceedings against the defendants by applying the Act on Amnesty from criminal prosecution and procedures for criminal acts committed in armed conflicts and in the war against the Republic of Croatia.</p> |

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| 6 | <p><b>CRIME IN THE VILLAGES ALONG THE JUNA RIVER NEAR HRVATSKA KOSTAJNICA</b></p> <p>The VSRH Appeals Chamber held its session deciding on the appeal against the verdict rendered by the Zagreb County Court in which, following the repeated proceedings, the defendants were found guilty and sentenced to the following prison sentences: Pero Dermanović (9), Dubravko Čavić (7) and Ljubiša Čavić (2) years in prison.</p> | <p>Indictment No. K-DO-10/09 of 5 November 2009 issued by the Sisak ZDO.</p> <p>War crime against civilians</p> <p>Prosecution: Milorad Cuculić, the Deputy State's Attorney General of the Republic of Croatia</p>                                              | <p>Supreme Court of the Republic of Croatia</p> <p>Chamber members: Judge Senka Klarić Baranović,</p> <p>Chamber President; Judge rapporteur Branko Brkić;</p> <p>Judges Damir Kos, Marijan Svedrović and Lidija Grubić Radaković, members</p> | <p><b>Pero Dermanović, Dubravko Čavić and Ljubiša Čavić</b></p> <p>Members of Serb formations</p> <p>The defendant Pero Dermanović attends the trial undetained. He was detained from 6 May 2009 until 12 November 2012. Dubravko Čavić is at large and thus tried in his absence. Ljubiša Čavić attends the trial undetained.</p> | <p>On 5 September 2012 the VSRH quashed the Zagreb County Court's verdict and remanded the case to the first-instance court for retrial.</p>                                                                                       | <p><b>Victims:</b></p> <ul style="list-style-type: none"> <li>- <b>unlawfully confined, tortured and killed:</b> Vladimir Lelić</li> <li>- <b>burned houses belonging to:</b> Sivo Karanović and Ivo Karanović</li> </ul>                                                                                                                                                               | <p>The VSRH quashed two times the first-instance verdict in which the defendants were found guilty.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 7 | <p><b>CRIME ON THE KORANA BRIDGE</b></p> <p>The VSRH held a hearing in this case.</p> <p><i>Previously, the Constitutional Court of the Republic of Croatia quashed the final sentence in which the defendant was sentenced to 7 years in prison.</i></p>                                                                                                                                                                        | <p>Indictment No. KT-48/91 of 25 May 1991 issued by the Karlovac ZDO, last time amended on 6 March 2007.</p> <p>Unlawful killing and wounding the enemy</p> <p>Prosecution: Jasmina Dolmagić, the Deputy State's Attorney General of the Republic of Croatia</p> | <p>Supreme Court of the Republic of Croatia</p> <p>Chamber members: Judge Žarko Dundović,</p> <p>Chamber President; Judge rapporteur Dražen Tripalo;</p> <p>lay judges Josip Banić, Marija Kovačev and Dubravko Vuko</p>                       | <p><b>Mihajlo Hrastov</b></p> <p>Member of Croatian formations</p> <p>Not detained</p>                                                                                                                                                                                                                                             | <p>On 7 September 2012, the VSRH rendered the verdict in which it accepted the prosecution's appeal, modified the Karlovac County Court's acquittal and found defendant Hrastov guilty. He was sentenced to 4 years in prison.</p> | <p><b>Victims:</b></p> <ul style="list-style-type: none"> <li>- <b>killed:</b> Jovan Sipić, Božo Kozlina, Nebojša Popović, Milić Savić, Milenko Lukač, Nikola Babić, Slobodan Milovanović, Svetozar Gojković, Miloš Srdić, Zoran Komadina, Mile Babić, Vaso Bižić and Mile Peurača</li> <li>- <b>wounded:</b> Duško Mrkić, Svetozar Šarac, Nebojša Jasnić and Branko Maderac</li> </ul> | <p>The defendant's right to a trial within a reasonable time has been violated. The trial has been conducted since 1992. The VSRH quashed three times the Karlovac County Court's acquittals. Later on, the VSRH conducted a hearing and Hrastov was sentenced to 8 years in prison. This sentence was reduced to 7 years in prison by the third-instance decisions. However, the Supreme Court's conviction was quashed by the Constitutional Court of the Republic of Croatia because of procedural defects. The case has still not been concluded with a final and conclusive verdict because the parties have the right to appeal against the VSRH's second-instance verdict of 7 September 2012.</p> |

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| 8 | <p><b>CRIME IN SUKNOVCI AND OKLAJ</b></p> <p>The VSRH Appeals Chamber held its session deciding on the appeal against the verdict rendered on 20 May 2011 by the Šibenik County Court in which the defendant Goran Amanović was acquitted.</p> | <p>Indictment No. K-DO-30/06 of 27 December 2010 issued by the Šibenik ŽDO.</p> <p>War crime against civilians</p>                                                                     | <p>Supreme Court of the Republic of Croatia</p>                                                                                                                                                                        | <p><b>Goran Amanović</b></p> <p>Member of Serb formations</p> <p>During the proceedings at first-instance he was detained in the Šibenik prison. He was extradited to Croatia from Bosnia and Hercegovina.</p> | <p>On 13 September 2012, the VSRH accepted the state attorney's appeal, quashed the first-instance verdict of acquittal and remanded the case back to the first-instance court for retrial.</p> | <p><b>Victims:</b></p> <ul style="list-style-type: none"> <li>- <b>died as a result of beating:</b> Kisto Čotai;</li> <li>- <b>victim of rape</b> female person (identity not disclosed);</li> <li>- <b>victim of attempted rape:</b> female person (identity not disclosed);</li> <li>- <b>maltreated:</b> Stanko Bara</li> </ul> |  |
| 9 | <p><b>CRIME IN SELKOVAC AND SATORNJA</b></p> <p>The VSRH Appeals Chamber held its session deciding on the appeal against the verdict rendered on 14 November 2008 by the Sisak County Court in which the defendant was acquitted.</p>          | <p>Indictment No. K-DO-21/06 of 1 August 2008 issued by the Sisak ŽDO, amended at the main hearing held on 1 October 2008 and 14 November 2008.</p> <p>War crime against civilians</p> | <p>Supreme Court of the Republic of Croatia</p> <p>Chamber members: Judge Vesna Yrbetić, Chamber President; judge rapporteur Dražen Tripalo; judges Žarko Durdović, Ana Garačić and Zlata Lipnjak Bosanac, members</p> | <p><b>Mile Letica</b></p> <p>Member of Serb formations</p> <p>He was detained until the pronouncement of the first-instance verdict on 14 November 2008.</p>                                                   | <p>We are not familiar with the VSRH's decision of 10 October 2012.</p>                                                                                                                         | <p><b>Victim - killed:</b> Franjo Sušec</p>                                                                                                                                                                                                                                                                                        |  |

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