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Civic Committee for Human Rights

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The report edited by:
Mladen Stojanović, Robert Adrić and Katarina Kruhonja

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The report edited by
Mladen Stojanović, Robert Adrić and Katarina Kruhonja

Translation
Suzana Lazarević
Ljiljana Bračun

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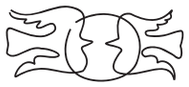

Centre for Peace, Non-Violence and Human Rights, Osijek
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Monitoring team:

Veselinka Kastratović

Mladen Stojanović

Vlatka Kuić

Jelena Đokić Jović

Maja Kovačević Bošković

Marko Sjekavica

Martina Franičević

Tanja Vukov

Tino Bego

Robert Adrić

Project Assistant:

Ljiljana Bračun

LIST OF ABBREVIATIONS used in the text:

VSRH - the Supreme Court of the Republic of Croatia
OKZRH - Basic Penal Code of the Republic of Croatia
ZKP - Criminal Procedure Act

On behalf of the organizations:

Katarina Kruhonja, *Centre for Peace, Non-Violence and Human Rights, Osijek*
Vesna Teršelič, *Documenta – Centre for Dealing with the Past*
Zoran Pusić, *Civic Committee for Human Rights*

KEY OBSERVATIONS

Key observations in monitoring the trials for war crimes in the first half of 2009, pointed out by the monitors of the Centre for Peace, Non-Violence and Human Rights, the Documenta, and the Civic Committee for Human Rights included insufficient personnel capacities and technical conditions of courts with ongoing trials, a decrease in the number of court trials in absentia, an increased number of legal qualifications modifications of criminal offences in the indictments and withdrawal from criminal prosecution including the practice of unjustified acquitting the defendants from paying court fees. We also indicated to the consequences made by the Croatian Parliament's decision on withholding the approval for detaining the defendant Glavaš and inertness and negligence by the judiciary-repressive organ which failed to pronounce any caution measures, like for instance seizing travel and other documents necessary for crossing the state border.

Insufficient personnel capacities and technical conditions

The civil society organisations monitoring war crimes trials are of opinion that trials should be carried out exclusively by specialised departments at four county courts (in Zagreb, Split, Rijeka and Osijek).

We consider the mentioned courts to be sufficiently equipped in terms of personnel and technical conditions. Placing the running of court procedures for war crimes in the mentioned courts would lead to upgrading of standards of professional and unbiased trials.

As was pointed out previously, we are of the opinion that war crimes councils should comprise three judges with a distinguished work experience in criminal cases (because of the degree of criminal acts and the knowledge about criminal-legal matters). However, the frequent ongoing practice is that the panel members for war crimes as still the judges from county court civil departments.

With this in mind, we pointed out to the weak points of the Act on Application of the International Criminal Court Statute in the part which stipulates that the council members for war crimes must be judges with long work experience in the most complex cases, because it was not expressly stated that this must be criminal cases. Despite the omissions by the mentioned Act, we found that its provisions need to be interpreted in „good faith" and that only the judges with long work experience get appointed for working on the most complex criminal cases.[1]

In monitoring the public hearing at the VSRH in the trial against the defendant Mihajlo Hrastov (for crime on the Korana river bridge), we detected one more weak spot of the mentioned Act.

Namely, although the explicit purpose of the Act is to avoid the participation of the judges – jurors in the work of the council, and thereby the "professionalization" of the council, it does not stipulate the second-instance court council composition of the VSRH when this court tries at the hearing; instead the provisions of the Criminal Procedure Act (hereinafter: the ZKP) are applicable in respect of the composition of the mentioned council.[2]

It is clear that some courts have neither technical nor professional conditions for trials in the court cases of such seriousness and importance that the war crime cases present.

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[1] *The Supreme Court Council of the Republic of Croatia (hereinafter: the VSRH), in the case against the defendant I. H. at al., for the war crime against civilians referred to in Article 120, paragraph 1 of the Basic Penal Code of the Republic of Croatia (hereinafter: the OKZRH), in its decision no. II 4 Kr 11/09-3 of 03 February 2009, considered that the council for war crimes should comprise of only of judges with experience gained in criminal cases, and it accepted the proposal to transfer the local competences of the Virovitica County Court, because the mentioned court did not have the possibility to form a judicial council which would comprise three judges from the criminal department.*

Thus, with a special decision, the VSRH Council delegated the case, in accordance with Article 31 of the Criminal Procedure Act (hereinafter: the ZKP), to the Bjelovar County Court, instead of referring it to the one of four county courts which have extra teritorium competence, pursuant to the Act on Application of the International Criminal Court Statute.

[2] *In the case of the defendant Hrastov, the trial council of the Supreme Court comprised two judges-professionals and three judges-jurors.*

Despite the complimentary words stated by the VSRH President, on 24 March 2009 at the Monitoring War Crime Trials Round Table, in respect of the court procedures for the crime in Marino Selo against the defendant Kufner et al. before the Požega County Court, we find that this Court complies neither with the basic premise conditions (trial room) nor technical conditions (video link) for trials in such court cases. In addition to the mentioned shortcomings, we also noticed significant mistakes made in the decisions of the Požega County Court. [3]

As indicative, we also consider the decision of the VSRH to hold a public hearing in the court case against the defendant Mihajlo Hrastov charged for the crime on the Korana river bridge. Namely, the Supreme Court in respect of this court case, after the Karlovac County Court delivered the verdict of acquittal three times and after the Supreme Court quashed the verdict of acquittal two times, decided to conduct the public hearing itself. Having conducted the hearing in April and May 2009, the VSRH Council found the defendant guilty and sentenced him to 8 years of imprisonment. [4]

Political context and consequences by political decisions

We are of opinion that ethnicity of the perpetrator and of the victim still influence the readiness for political and other will for criminal prosecution of war crime perpetrators.

Although previously dominant attitude that the Croatian soldier cannot commit war crimes in a defending war is not heard publicly any more, but the consequences of such attitude are still felt in practice.

Namely, we consider that the Croatian Parliament, in its decision of 12 January 2008, wherein „during the parliamentary representative mandate, the approval to detain the representative Branimir Glavaš is denied“ involved itself directly in the judicial authority scope of work and thereby it brought into question its independence and freedom in a decision making process.

The consequence of such political decision in this specific court process is also the escape by the accused representative after the announcement of the first-instance court verdict of guilty. In our opinion, this represents also inertness – intentional or negligence – by the judiciary-repressive organ.[5]

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[3] *Namely to date, we monitored the following two trials at the Požega County Court:*

- *In the trial against the defendant Gužvić (for the crime in Pakrac) for the war crime against civilians under Article 120, Paragraph 1 of the OKZRH, conducted in 2007, the trial council comprised two judges professionals and three judges-jurors - this is not in compliance with the Act on Application of the International Criminal Court Statute, in force since 2003. Besides, the war crime council president failed to adjourn the hearing when the court appointed defence counsel for the defendant who was tried in absentia had left the courtroom. Because of the incorrect council composition (a substantial violation of the criminal procedure provisions) the VSRH quashed the verdict and reversed the case for a retrial;*
- *In March 2009, the verdict was released in the court case of the defendant Kufner et al. (the crime in Marino Selo), wherein one of the defendants (the def. Tomica Poletto) was sentenced to 16 years in prison. However, pursuant to the OKZRH, it is not possible to pronounce a prison sentence of such duration. Either a prison sentence of up to 15 years can be pronounced, or a 20-year prison sentence for the most severe cases of criminal offence.*

[4] *This trial is pending since 1992. The verdict of the VSRH, of May 2009, is also not legally valid because it allows an appeal, which, in the third instance, is also under the VSRH jurisdiction.*

[5] *In the case of the defendant Glavaš, the Court failed to impose any caution measures, like confiscation of passport or other documents necessary for crossing the state border.*

The defendant Glavaš, in his personal assets card, available on the website of the Croatian Parliament, published the information that as of April 2008 he transferred his property to his son. This raises a question how come that this fact was not indicative of a possible epilogue to any of the competent financial-, intelligence- and judicial institutions.

Furthermore, we believe that it was possible and important to establish whether the war crime accused has a Bosnian-Herzegovinian citizenship. If this fact was known when the Croatian Parliament was deciding on detention, by taking into consideration the persistent practice of escaping from judicial institutions by persons with dual citizenship, the decision by the Parliament would have perhaps been different.

Namely, the persons born in the Socialist Federative Republic of Yugoslavia before 1976 were granted the citizenship on the basis of the ius sanguinis principle, by being entered in the Citizen Record of the state where the father of the child was found to reside during the first post-war census. Since the parents of Branimir Glavaš were from Bosnia and Herzegovina, where they were probably living at the time of the first census, he was entered in the Record of Bosnian-Herzegovinian Citizens. Therefore, regardless of the date when Braninir Glavaš officially requested a certificate on the citizenship of Bosnia and Herzegovina, he was in the possession of this citizenship even before that.

However, even after the announcement of the verdict not legally valid, the highest ranking executive power official (the Prime Minister) entered into a public discussion whereby he criticized the judiciary that by their verdict announcement shortly before local elections, the judiciary influences the outcome of elections.[6] Having done so, the executive power attacked the judicial authority and stated that it expected the judiciary to be careful when issuing decisions so that with those decisions it does not damage or is useful to some political option. The judicial authority has an obligation to execute their duties independently from current political situations, interests of politicians and political parties; the criticism of such conducts by the court coming from the highest level of executive power evidently indicates a basic non-understanding of three-way partition of powers and damages the establishment of trust in the judicial system.

Misapplication of the institute of the parliamentary immunity

We believe that an extensive interpretation of the provisions of the Constitution regulating the parliamentary representative's immunity issue, as was made in the case of Branimir Glavaš, is wrong because it develops an inequality practice among citizens and is not beneficial to the rule of law.

Namely, the Croatian Parliament approved the commencement of criminal proceedings against defendant Glavaš in January 2008, but withheld approval for his detention. In our opinion, the immunity from criminal prosecution should not be separated from the immunity from detention.

Our opinion is that the Constitutional Court should present its interpretation of Article 75 of the Constitution of the Republic of Croatia that regulates immunity of representatives in the Croatian Parliament.[7]

The purpose of the institute of parliamentary representatives' immunity is and must remain within the framework of ensuring the freedom in performing duties of the parliamentary representative and preventing the restrictions in actions performed by the representatives, which could find themselves for any reason to be in the minority position and would want to defend themselves in such manner and to propagate certain interests.

Among other persons who can be elected, and who are elected for the Croatian Parliament are also the persons which during the war (thus, at the time when criminal acts - war crimes were committed) were high-ranked state or military officials. For that reason it is important to ensure that certain legal institutes (in this case – parliamentary immunity) are not misused for the purpose of protecting the perpetrators or those who had ordered the crimes, and this made to the detriment of establishing the facts on war crimes and to the detriment of the victims rights in finding persons responsible for crimes.

We find the modifying/narrowing down of the constitutional provisions regulating the representative's immunity issue necessary in order to avoid possible future misuse of the mentioned right.

The Croatian Parliament must assume the responsibility in initiating the procedure of modifying/narrowing down the part of the Constitution of the Republic of Croatia that regulates the representative's immunity, in view of the consequence (Glavaš escaped from Croatia) which was enabled by the mentioned Parliament's decision.

Dual citizenship and extradition

As evident from examples of recent past, a situation in which the defendant is in a possession of dual citizenship can turn into an obstacle in trying the perpetrators of criminal act in general, therefore including also criminal acts of war crimes.

In the context of the specific examples, the defendants are in possession of both the citizenship of the Republic of Croatia and of Bosnia and Herzegovina. This was made possible by the Agreement on Dual Citizenship

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[6] *The verdict by the War Crimes Council of the Zagreb County Court was announced on 8 May, and local elections in the Republic of Croatia were held on 17 May and 31 May 2009.*

[7] *Civic Committee for Human Rights and Documenta filed a proposal to the Constitutional Court of the Republic of Croatia in February 2008 asking for an initiation of the assessment procedure in respect of the (non)constitutionality of the disputed decision of the Croatian Parliament.*

signed in 2007 between the Republic of Croatia and Bosnia and Herzegovina[8]. According to this Agreement, the citizens of one contractual party can acquire the citizenship of the other contractual party (dual citizens) in the manner and according to the procedure established by the regulations of the contractual parties.

Furthermore, if a dual citizen is found on the state territory of one of the contractual parties, then the citizen concerned is considered to be exclusively the citizen of the contractual party on which territory she/he is currently found.

Thus, when a person with the citizenship of both Croatia and BiH, against whom there is a criminal proceedings ongoing in Croatia, is found on the BiH territory, then the legislation of the BiH applies in respect of that person, including the provisions which regulate the extradition issue.

Pursuant to Article 415 of the Criminal Procedure Act of the Bosnia and Herzegovina (BiH) the first presumption for extraditing a person from BiH is „that the person, an extradition of whom is requested, is not the citizen of Bosnia and Herzegovina".

The Republic of Croatia also does not extradite its citizens to other countries. Namely, Article 9 of the Croatian Constitution stipulates that a Croatian citizen cannot be expelled from the Republic of Croatia, that his/her citizenship cannot be taken away and that she/he cannot be extradited to another country.

Croatia, as well as the neighbouring countries, should either extradite the indictees or have them retried.

Our opinion is that certain derogations from the principle of non-extradition should also be introduced in the Republic of Croatia; such derogations are contained in the constitutions of some EU member states (Germany and Italy, for instance).

We believe that conclusion of bilateral agreements allowing the possibility of dual citizenship should be followed by bilateral agreements that would regulate dual citizens extradition, and this not only in the cases of organised crime and corruption, as was announced by the Minister of Judiciary, Mr. Šimonović, but also in war crime cases.

Decisions on trial expenses compensation

In this report, we caution about establishing an illogical (and, in our opinion, inappropriate) court practice by which the war crimes perpetrators are fully exempted from paying court expenses, whereas at the same time it was established during the court trial that the same persons are receiving, in proportion to the circumstances in Croatia, above-average or extremely high income.

We present the most obvious examples.

In the trial for the war crime against civilian population in the Medak pocket, Mirko Norac, sentenced by the first-instance court verdict, was entirely exempted from paying court expenses with a clarification that even a partial paying of expenses would bring his sustenance into jeopardy.[9] According to information available to us, the State Attorney's Office filed no complaint against such a court decision.[10]

The defendants in the case of crime against civilians in Osijek, Branimir Glavaš and others, were also entirely exempted from paying court expenses (except for expenses of the victim's attorney in fact). However, the parliamentary representative Glavaš has a salary higher than the salary of the President of the State, amounting more than HRK 26,000.00.

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[8] *On 3 October 2007, the Croatian Parliament adopted the Act on Ratification of the Agreement, which was published on 10 October 2007 (Official Gazette – International agreements no. 9/07).*

[9] *According to the court records from the hearing held on 18 June 2007, Mirko Norac receives a monthly retirement allowance in the amount of HRK 6,000.00, he is in possession of personal vehicle VW Passat, manufactured in 2007, a flat of 100m2 in Zagreb, he is not married and has no children.*

[10] *In the communication of the Zagreb County Attorney's Office, available on the website of the State Attorney's Office of the Republic of Croatia, issued on 1 October 2008, it was stated that the Zagreb County Attorney's Office proposed in its appeal that the VSRH should modify the decision on sentence which is stated within the convicting section of the quashed first-instance court verdict in a way that it should impose more strict prison sentences, while the VSRH should quash and reverse for a retrial the acquitting section of the verdict by reason of a significant violation of the provisions of criminal procedure and by reason of incorrect and incompletely established facts.*

The Criminal Procedure Act clearly establishes under which conditions the defendant can be exempted from the obligation of paying the criminal proceedings expenses. Article 122, paragraph 4 of the same Act stipulates that the defendants can by exempted entirely or partially from the obligation to pay the trial expenses only if the payment of the same would lead their sustenance into jeopardy or would lead into jeopardy the sustenance of persons he/she is obliged to provide for. Taking into consideration all circumstances, it is difficult indeed to explain how one's existence (especially of persons with such a huge income) could be jeopardized if this person would need to pay at least one part of court expenses.

Such decisions send a message that it is righteous for tax payers to pay for the consequences of other peoples' evil deeds, in the situation when a large number of Croatian citizens are losing their jobs and are living below the poverty limit.

Furthermore, we find necessary to indicate yet another illogicality contained in the Croatian judiciary. In specific, we refer to an established court practice in the civil proceedings for damage compensation. Namely, in the proceedings where plaintiffs were asking for a compensation of non-material damage from the Republic of Croatia because of the death of a relative[11], which as a rule were concluded by rejecting the plaintiff's claim and litigation claim in its entirety, the plaintiffs were, in addition to losing the case, were condemned to paying court expenses entirely to the benefit of the defendant – the Republic of Croatia.

We support this with a case of Dragica Ferenčak who initiated the proceedings but her claim and litigation claim was entirely rejected imposing the obligation against her to compensate the civil proceedings expenses to the defendant – the Republic of Croatia in the amount of HRK 71,480.00.

We consider that it is clearly evident that with such decisions a message is sent to indirect victims of war crimes that not only that they will get a satisfaction for the sustained mental suffering due to the loss of a close person, but also they will end up paying huge bills for court fees.

Therefore, it is quite illogical that the Croatian courts exempt the persons sentenced for war crimes from paying the trial expenses, who have considerably higher incomes when compared to the incomes of the mentioned group of persons, and by doing so it pushes to the edge the latter whose existence is already being jeopardized.

Standing of victims in criminal proceedings

For a number of years already, we have been observing that the victims in the trials only sporadically have their attorney-at fact.

The Free Legal Aid Act does not provide for a possibility for free legal aid (by representing) the victims (injured parties) in criminal proceedings against international humanitarian law, unless they meet a general condition for free legal aid (social status).

We noted earlier several cases where the witnesses, who had evidently been damaged by a criminal act, no indication was presented to them during the main hearing which would inform them that they enjoy the position of the injured party in the proceedings and that they are entitled to file a property-legal request.

The mentioned circumstances affect victims, and their resignation in respect of the work of judicial institutions can be best reflected by the fact that most frequently they do not come to monitor the trials.

New Criminal Procedure Act (Official Gazette 152/08), for the first time introduces a victim with special rights among the participants of criminal proceedings, by improving the position of witnesses and victims in criminal proceedings. Newly introduced provisions in the act guarantee the victim's right to a special consideration of all bodies which participate in the judicial proceedings, the protection of unlawful/unauthorized influence by other criminal proceedings participants, on efficacious psychological and other professional assistance and support, and participation in criminal proceedings. However, the implementation

[11] *In the proceedings where the death was entirely the consequence of war crimes, more precisely, killed persons were mostly civilians who were not members of any paramilitary formation and were not armed. Such persons were mostly taken out of their homes, and their bodies were later found or have never been found at all.*

of the Act i.e. implementation of its part which regulates the aforementioned issue, should only start at the beginning of 2011.

We remind that some family members of civilian war victims, not being satisfied due to inefficient investigations, raised charges against the Republic of Croatia and requested indemnification.[12] The Constitutional Court of the Republic of Croatia, with its decision No:U-I-2921/2003 of 19 November 2008, took a position that the Act on the Responsibility for Damages Caused by Terrorist Actions and Public Demonstrations (Official Gazette 117/03), is in compliance with the Croatian Constitution, but at the same time it assessed in its clarification that the paying of court expenses would shift and place a disproportional and oversized burden onto the plaintiffs which would be constitutionally and legally unacceptable. Even more, it would raise a question of violation of constitutional guarantee to a righteous/objective court proceeding.[13]

Although the Croatian Constitutional Court took the aforementioned positions, it missed twice to protect the plaintiff's rights by means of the legally-binding form. First time, by presenting it in the clarification of its decision, because only the enacting clause, unlike the decision's clarification is mandatory, and for the second time by presenting it in a form of a statement, which, pursuant to the provision of the Constitutional Act on Constitutional Court is merely of declarative nature, i.e. it is not binding.

Though the Constitutional Court's decision could have alleviated the position of people who suffered irrecoverable loss or severe material damage, the effect did not occur because it was not binding.[14] More than seventeen years after the crime being committed, some victim families have been requesting in vain criminal prosecution of perpetrators and indemnification for suffered losses; and on top of that the state charges them for civil proceedings expenses.

In our opinion, the Croatian Parliament should discuss the standing of victims and it should adopt a declaration on the right of all victims to the truth, justice and righteous indemnification.

Trials in absentia and re-opened trials against persons validly sentenced in absentia

In the first half of 2009, we noted a significant trend of a decreased number of proceedings conducted in the defendants' absence.

Namely, considering the fact that the first-instance court proceedings against the defendant Jugoslav Mišljenović et al. (for the crime in Mikluševci) were concluded in February 2009, which, in the end, after withdrawing from criminal prosecution or cancellation of the proceedings due to the death of certain defendants, resulted in charges being brought against 14 persons, out of which 11 persons were tried in absentia; and the fact that the case for crime in Lovas was separated[15], the number of defendants tried in absence in proportion to a total number of the accused in ongoing trials has significantly decreased.

According to Antun Kvakan, the Deputy Chief State Attorney of the Republic of Croatia, the State Attorney's Office carried out a revision of indictments in the proceedings conducted in absence of the defendants, and therefore, out of a total of 465 persons tried in absentia, the State Attorney's Office will submit requests for re-opening of proceedings in respect of 89 persons.[16]

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[12] *Examples: Marica Šeatović against the Republic of Croatia; and Vjera Solar against the Republic of Croatia.*

[13] *Article 29 of the Constitution of the Republic of Croatia.*

[14] *In the case of Marica Šeatović against the Republic of Croatia, whose husband was killed by the Croatian Army members in Novska in 1991, the Municipality Court in Novska, on 30 December 2008, adjudicated on the matter ordering her once again (for the second time) to cover expenses of civil proceedings.*

[15] *War Crimes Council of the Vukovar County Court separated the proceedings against two present defendants, in relation to the proceedings against 14 defendants who are at large and who were tried in absentia.*

[16] *Round-table discussion on war crime trials in Croatia, was held at the Hotel International in Zagreb, on 24 March 2009.*

The new Criminal Procedure Act (Official Gazette 152/08) provides for a possibility, under conditions prescribed by law, to the benefit of the defendant to re-open the criminal proceedings concluded with a legally valid verdict regardless of the fact whether the defendant is present or not. [17]

Increased number of modifications of legal qualification of offences in indictments and the increase of withdrawals from criminal prosecution

The fact that the State Attorney's Office of the Republic of Croatia is carrying out a revision of indictments is evident because, when compared with previous periods, it has come to an increase of the number of modifications of legal qualification of offences in indictments (modifying the criminal act of war crime into a criminal act of armed rebellion) and the increase of cancellations of proceedings after the prosecution's withdrawal from further criminal prosecution.

Namely, two repealing verdicts were pronounced following the modifications of legal qualification of offence into a criminal act of armed rebellion[18]. In one court case, the proceedings were cancelled in respect of 12 defendants after the prosecution modified a legal qualification of the criminal act in the indictment into a criminal act of armed rebellion[19], and in three court cases, in respect of 9 defendants, proceedings were cancelled after the prosecution decided to withdraw charges[20].

It is noticeable that the majority of mentioned modifications of legal qualification of offence or withdrawals from prosecution pertain to the indictments issued by the Vukovar County Attorney's Office.

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[17] *The mentioned possibility did not exist until 1 January 2009, i.e. until the entry into force of the part of a new Criminal Procedure Act regulating the institute of re-opening criminal proceedings.*

[18] *In the court cases of the defendant Đuro Đurić (the crime in Zamlaća, Struga and Kozibrod) before the Sisak County Court, and of the defendant Sreten Peslać (crime in Ervenik) before the Šibenik County Court.*

[19] *In the trial for the crime in Berak (the def. Mihajlo Eror et al.), as a result of changing legal qualifications, the proceedings against the defendants Dragan Eror, Đuro Krošnjar, Stevan Vučetić, Milan Knežević, Milosav Jovanović, Ranko Mirilović, Žarko Kajganić, Željko Eror, Nikola Eror, Stevan Gledić, Mile Krošnjar and Dragan Tepšić were cancelled. All mentioned defendants were at large.*

[20] *In January 2009, criminal proceedings before the Vukovar County Court were cancelled against the defendants: Milovan Ždrnja (the crime in Sremska Mitrovica), Milan Bojanić, Jaroslav Mudri, Nikola Vlajnić, Čedo Stanković and Saša Hudak (the crime in Mikluševci), and Stanko Vujanović and Marko Crevar (the crime at the Velepromet), and in April 2009 the trial was also cancelled in respect of Stanimir Avramović (the crime at the Velepromet).*

AN OVERVIEW OF THE MONITORED TRIALS

Monitored main hearings at county courts

In the period from 1 January to 15 May 2009, monitors of the monitoring team of the Centre for Peace, Non-Violence and Human Rights – Osijek, the Documenta, and the Civic Committee for Human Rights – Zagreb were present at main hearings of 16 trials conducted at 8 county courts in the Republic of Croatia and the monitors made reports on each hearing.

Out of 16 trials, 5 trials were held before the Vukovar County Court, 4 trials before the Osijek County Court, 2 trials before the Šibenik County Court and one trial at each of the county courts in Zagreb, Požega, Rijeka, Karlovac and Sisak.

In Vukovar, we monitored the following trials: against the def. Slobodan Raič for the crime at Drvena pijaca in Vukovar; against the def. Dušan Zinajić for the crime in Borovo Naselje; against the def. Jugoslav Mišljenović et al. for the crime in Mikluševci; against the def. Bogdan Kuzmić for the crime at the Vukovar hospital; and the trial against the def. Stanimir Avramović for the crime at the Velepromet; in Osijek we monitored the following trials: against the def. Čedo Jović for the crime in Dalj IV, against the def. Petar Mamula for the crime in Baranja, against the def. Stojan Pavlović et al. for the crime in Popovac; and the trial against the def. Željko Čizmić for the crime in Dalj; in Šibenik we monitored the following trials: against the def. Sreten Peslać for the crime in Ervenik; and against the defendants Milan Atlija and Đorđe Jaramaz for the crime at the BiH corridor, in Potkonje, Vrpolje and Knin; in Zagreb we monitored the trial against the def. Branimir Glavaš et al. for the crime in Osijek; in Požega we monitored the trial against the defendant Damir Kufner et al. for the crime in Marino Selo; in Rijeka, we monitored the trial against Zlatko Jušić et al. for the crime in Velika Kladuša; in Karlovac, the trial against Nenad Pejnović for the crime in Vrhovine, and in Sisak, the trial against the defendant Đuro Đurić for the crime in Zamlaća, Struga and Kozibrod.

Out of 16 monitored trials, five trials were repeated. Three trials were repeated for the first time[21], whereas in two proceedings – this was already the third (second repeated) trial[22].

In addition, one trial was re-opened against the defendant who was previously sentenced in absentia following a legally valid verdict, but later became accessible to judicial bodies of the Republic of Croatia[23].

In the aforementioned trials, a total of 48 persons were charged, out of which there were 34 Serb formations members, 12 Croatian formations members and two officials of the so-called Western Bosnia Autonomous Region.[24]

Out of the total number of the defendants, 32 defendants were present at main hearings, whilst 16 defendants were at large, not-accessible to the Croatian judicial authorities and thus were tried in absentia. All the defendants tried in absentia were charged for committing the criminal acts of war crimes as members of Serb military formations.[25]

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[21] *This concerns the following trials: at the Šibenik County Court – the trial against the def. Atlija et al. for the crime at BiH corridor, Potkonje, Vrpolje and Knin; at the Osijek count court – the trial against the def. Stojan Pavlović et al. for the crime in Popovac; and at the Vukovar County Court – the trial against the def. Raič for the crime at Drvena Pijaca in Vukovar.*

[22] *The trial before the Osijek County Court against the def. Mamula for the crime in Baranja, and the trial before the Vukovar County Court against the def. Avramović for the crime at the Velepromet.*

[23] *The trial against the def. Sreten Peslać for the crime in Ervenik before the Šibenik County Court.*

[24] *The defendants Zlatko Jušić and Ibrahim Jušić for the crime in Velika Kladuša.*

[25] *14 defendants in the trial against the def. Jugoslav Mišljenović et al. (the crime in Mikluševci), the def. Bogdan Kuzmić (the crime at the Vukovar hospital) and the def. Stanimir Avramović (the crime at the Velepromet).*

Out of 32 defendants who were present at court hearings, 13 of them, at least for a certain period during this reporting period, were detained (6 Serb formation members, 6 Croatian members and one official of the so-called Western Bosnia Autonomous Region).

In this reporting period (1 January 2009 – 15 May 2009), not a single court hearing was held in respect of 2 trials that our monitoring team has been regularly monitoring, and because of the recess of the trial proceedings lasting longer than two months, the main hearings in the mentioned trials will start anew.[26]

In the both mentioned trials, the defendants are members of Serb formations. However, it remained unknown to us whether, at the Rijeka County Court for the crime committed in Lovinac in particular, scheduling of the main hearing is planned at all, if considering that all defendants in that trial are not accessible to the Croatian judiciary.

Monitored public sessions of the Supreme Court of the Republic of Croatia

The monitoring team attended seven public sessions at the Croatian Supreme Court.

We monitored the following public sessions:

- in the case against the defendants Janko Banović and Zoran Obradović (the crime in Petrinja II), member of Serb formations, against whom the prison sentences of 5 years were pronounced in June 2008 following the repeated proceedings before the Sisak County Court.

  The def. Banović is at large and is tried in absentia, and the def. Obradović is detained.
  We do not have information available about the decision of the Croatian Supreme Court.

- in the case against the defendants Vlastimir Denčić and Zoran Kecman (the crime in Dalj II), members of Serb formations; the trial at the Osijek County Court was concluded in November 2007 when the defendant Denčić was found guilty of participating in expulsion of a total of 104 non-Serb ethnicity persons from Dalj and therefore he was sentenced to 4 years and 6 months of imprisonment, whereas defendant Kecman was acquitted.

  During the first-instance court proceedings, the defendants were not kept in custody.
  The VSRH, at the session of the Council held on 4 February 2009, rejected the appeal by the def. Denčić and the State Attorney as ungrounded and upheld the first-instance court verdict;

- in the case against the def. Jovan Petković (the crime in the Stara Gradiška detention camp)[27], member of Serb formations, who was, at the reopened proceedings before the Slavonski Brod County Court, acquitted of charges that he had committed a criminal act of war crime against war prisoners pursuant to Article 122 of the OKZRH.[28]

  We are not familiar with the particulars of the decision of the Croatian Supreme Court;

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[26] *In the trial before the Rijeka County Court for the crime in Lovinac against five defendants, the def. Radoslav Čubrilo et al. (they are tried in absentia), the last court hearing was held at the end of 2007.*

In the trial before the Vukovar County Court for the crime in Lovas, the last court hearing was held in March 2008, and two out-of-court hearings were held in May of the same year. At the beginning of 2009, the composition of the War Crimes Council in this court case was altered. The hearings were scheduled also in April 2009, however, the main hearing did not commence. On 29 April 2009, a decision was made by which the trial against the defendants Milan Tepavac and Ilija Vorkapić – present at the proceedings - was separated from the other fourteen defendants who are still at large and are being tried in absentia.

[27] *We have not monitored this trial until the VSRH public session.*

[28] *Previously in 1995, Jovan Petković was charged that acting as a guard he physically, psychically and sexually abused the detainee Nevenka Preradović in the Stara Gradiška detention camp. The trial was held before the Požega County Court in absence of the defendant. He was sentenced to 12 years of prison. Following his arrest in 2005, on the basis of the international APB (all-points bulletin), a re-opened trial was conducted before the Slavonski Brod County Court, because the Požega County Court declared that the case was not in its local jurisdiction.*

- in the case against the def. Nikola Cvjetićanin (the crime in the village of Smoljanac), member of Serb formation, who was, in January 2008, following the repeated proceedings before the Gospić County Court, acquitted of the charges that he committed a criminal act referred to in Article 120, paragraph 1 of the OKZRH.

  The Croatian Supreme Court, at the session of the Council held on 18 February 2009, rejected the appeal by the state attorney and upheld the first-instance court verdict;

- in the case against the defendants Tomislav Madi, Mario Jurić, Zoran Poštić, Davor Lazić and Mijo Starčević (the crime in Cerna), members of Croatian formations; following the proceedings concluded at the Vukovar County Court in February 2008, the defendants were found guilty of war crime against civilians pursuant to Article 120, paragraph 1 of the OKZRH, which was committed by killing the four-member family Olujić, thus the following prison sentences were pronounced to the defendants: 20 years (the def. Madi), 12 years (the def. Jurić), 8 years (the def. Poštić), 7 years (the def. Lazić) and 10 years (the def. Starčević).[29]

  The defendants are in detention since August 2006 (the defendants Madi, Jurić, Poštić and Lazić), i.e. since October 2006 (the def. Starčević).

  We are not familiar with the particulars of the decision of the Croatian Supreme Court;

- in the case against the defendant Antun Gudelj, at the time of incrimination a member of the Croatian Ministry of Internal Affairs (hereinafter: the MUP) reserve units; following the trial concluded at the Osijek County Court in July 2008, the defendant was found guilty of three criminal acts of murder (Josip Reihl-Kir, Milan Knežević and Goran Zobundžija) and one criminal act of attempted murder (Milan Tubić) which had been committed at the police checkpoint in new Tenja on 1 July 1991, and therefore the defendant was sentenced to a joint prison sentence of 20 years[30].

  The Croatian Supreme Court upheld the verdict of the Osijek County Court;

- in the case against the def. Mitar Arambašić[31] whereby, following the re-opened proceedings before the Split County Court, a verdict was pronounced in June 2008 according to which, pursuant to Article 411, paragraph 3 of the ZKP, the verdict of the Split County Court No:K-15/95 of 26 May 1997 remained valid in its entirety, and upheld by the verdict of the VSRH No: Ikž-497/97 of 01 June 2000, whereby the def. Arambašić was convicted for criminal acts of war crime against civilians referred to in Article 120, paragraph 1 of the OKZRH and a war crime against war prisoners referred to in Article 122 of the OKZRH and sentenced to a joint sentence of 20 years of imprisonment. The accused is in detention. He was detained in September 2002.

  We are not familiar with the particulars of the decision of the Croatian Supreme Court.

We did not monitor the public session of the VSRH Council held on 28 January 2009, in the proceedings against Rade Ivković and Dušan Ivković charged for the criminal act referred to in Article 120, paragraph 1 of the OKZRH.[32]

Available information to us is that the Croatian Supreme Court annulled the verdict of the War Crimes Council of the Vukovar County Court and reversed the case for retrial.

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[29] At the time when the crime was committed, the defendants Jurić, Poštić and Lazić had just come of age, therefore in accordance with the provisions of the Law on Juvenile Courts, they could receive a maximum prison sentence of up to 12 years.

[30] Although this is not a war crime case, we monitored this trial because of a considerable public interest and the consequences which this act had at the very beginning of the armed conflict in Croatia.

[31] We did not monitor the trial at the Split County Court.

[32] The first-instance court proceedings were held before the Vukovar County Court. The accused were charged with war crime against civilians pursuant to Article 120, paragraph 1 of the OKZRH, - rape as the committed act. The def. Rade Ivković was tried in absentia, while the def. Dušan Ivković was present at the trial and was not kept in custody. Rade Ivković was found guilty and sentenced to 3 years and 6 months in prison and Dušan Ivković was acquitted of the charges. The public was not allowed to attend the main hearing.

Moreover, considering the fact that the information about the public session was not made available on the Croatian Supreme Court's website, we were not in position to monitor the public session in the proceedings against the def. Željko Iharoš et al., member of Croatian formations, charged for the crime in Virovitica[33].

The VSRH, at the session of its Council held on 24 March 2009, rejected the appeal by the state attorney as ungrounded and upheld the first-instance court verdict.

Monitoring public hearings at the Supreme Court of the Republic of Croatia

Monitors also monitored the public hearing at the Supreme Court of the Republic of Croatia in the case against the def. Mihajlo Hrastov (the crime on the Korana river bridge).

Namely, the Supreme Court decided to hold a public hearing following its public session held in respect of this case in September 2008.

Previously, in March 2007, a verdict was pronounced following the third (second repeated) proceedings at the Karlovac County Court whereby the def. Hrastov was acquitted of the charges that he, as the Croatian Ministry of Interior unit member, killed 13 reserve members of the Yugoslav National Army with the shots from automatic gun on the Korana river bridge in Karlovac on 21 September 1991, and thus committed a criminal act of unlawful killing and injuring the enemy referred to in Article 124 of the OKZRH.

The Croatian Supreme Court even earlier was quashing the verdicts, also the acquitting ones, of the Karlovac County Court and was reversing the case for retrials, but this time the Supreme Court decided to conduct a hearing by itself.

Two public hearings were held in April and May 2009, and having conducted the mentioned hearings, the VSRH Judicial Council found the def. Mihajlo Hrastov guilty and sentenced him to 8 years in prison.

Considering the fact that the length of the pronounced sentence is above five years, the defendant was detained.

Parties in the trial are entitled to appeal against this Supreme Court's verdict. This verdict will also be the subject matter of the Supreme Court which will be deciding on this verdict, in the third instance, at its Council session.

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[33] *Having conducted the repeated proceedings, the War Crimes Council of the Bjelovar County Court pronounced a verdict on 7 March 2006 wherein the defendants Željko Iharoš and Luka Perak were acquitted of the charges that they had committed war crime against civilians referred to in Article 120, paragraph 1 of the OKZ RH. Prior to that, the prosecution had dropped charges against Ivan Vrban and Anđelko Kašaj during the evidence procedure.*

The defendant Iharoš was charged that he, in his capacity as the military police commander, did know about physical abuse of the four prisoners, resulting with the death of one prisoner due to sustained injuries, and one prisoner was killed after abuse, whereas the other defendants were charged that as military policemen they acted as immediate perpetrators of the crime.

AN OVERVIEW OF NON-FINAL PROCEEDINGS (WITH THE FIRST-INSTANCE COURT VERDICTS)

During the reporting period, 13 proceedings were completed resulting with the first-instance court verdicts:

- in the case against the def. Milovan Ždrnja (the crime in Sremska Mitrovica)[34], member of Serb formations, after the Vukovar County Attorney's Office dropped charges against Ždrnja, the Vukovar County Court on 23 January 2009 brought the decision on abatement of action against the defendant for war crime against civilians as described in Article 120, paragraph 1 of the OKZRH.

  The court informed the wife and children of the injured party Ivica Pavić about the possibility of continuance of the criminal prosecution, since the injured party Ivica Pavić deceased during the course of trial.
  We do not have the information available whether the mentioned injured parties decided to continue with criminal prosecution.

- in the case in which the third (second repeated) trial commenced on 12 February 2009 at the Vukovar County Court against the def. Stanimir Avramović (the crime at the Velepromet) for war crime against civilians referred to in Article 120, paragraph 1 of the OKZRH, in which the defendant was tried in absentia, a decision on cancellation of the court proceedings was reached on 30 April 2009 after the State Attorney had dropped charges as was stated in the memo of 8 April 2009.[35]

We do not know whether the injured parties were informed of the State Attorney's withdrawal from criminal prosecution and whether they opted for the possibility of pursuing further criminal prosecution on their own.

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[34] *Previously, the VSRH upheld the defendant's appeal and quashed the first-instance court verdict of 31 December 2004 (which had found the accused Ždrnja guilty and sentenced him to 3 years and 6 months in prison) and reversed the case for retrial (to be done before the altered court council). The VSRH instructed that all evidence had to be carefully and thoroughly checked at the repeated trial and that it had to be verified if there was any evidence showing that the accused had been in the Sremska Mitrovica prison on the night of 19 to 20 November 1991 and whether Ždrnja did commit the incriminatory acts (act) against the injured party, and, if the court was to establish that the accused did strike one blow on the back of the injured person's head using a truncheon, which made the injured person slip out of consciousness; then it had to be determined whether such an act of torture against a civilian did present an inhumane treatment of the civilian, and if such an action did cause great suffering to the injured person, which all presented important characteristics of the criminal act the accused person had been charged with, or it could possibly present some other criminal act.*

The repeated trial commenced in June 2008. The defendant was not detained.

[35] *Preceding course of the trial:*

In 1996, the Osijek County Attorney's Office issued an indictment against Radivoje Jakovljević et al. (the total of 23 indictees) for crimes of genocide and war crime against civilians, and, in 1998, it issued the indictment against Stevan Curnić and Damir Sireta.

The Vukovar County Attorney's Office has taken up both indictments and in 1999 it issued an indictment against Stevan Curnić et al. (the total of 22 indictees) for the stated offences.

The Vukovar County Court announced the verdict in May 2000. In respect of the three defendants, the indictment was rejected; nine defendants were acquitted, whereas ten defendants were found guilty and sentenced to prison.

The VSRH partially upheld the State Attorney's appeal and quashed the verdict i.e. the part of verdict relating to the defendants: Zoran Stanković, Stanko Vujanović, Darko Fot, Marko Crevar, Stanimir Avramović and Marko Kraguljac, and reversed that particular part of the case for a retrial.

Following to that, the Vukovar County Attorney's Office indicted the above mentioned persons for war crime, described in Article 120, paragraph 1 of the OKZRH.

In 2003, the Vukovar County Court found the defendants guilty and sentenced them to prison, as follows: Stanko Vujanović (5 years), Darko Fot (5 years), Marko Kraguljac (8 years), Marko Crevar (3 years) and Zoran Stanković (8 years).

The accused Stanimir Avramović was acquitted of all charges.

In 2007, the VSRH upheld the appeals lodged by Stanko Vujanović and Marko Crevar, as well as the appeal submitted by the Vukovar County Attorney's Office (relating to the accused Stanimir Avramović), and reversed the case (the parts relating to the mentioned persons) for a retrial.

After the Vukovar County Attorney's Office, in a memo dated on 1 December 2008, dropped charges against accused Stanko Vujanović and Marko Crevar due to a lack of evidence, the court proceedings against the two mentioned persons were cancelled by the Vukovar County Court's decision issued on 29 January 2009, in accordance with Article 291, paragraph 1, item 1 of the ZKP.

- at the trial against the def. Jugoslav Mišljenović et al. (the crime in Mikluševci), member of Serb formations, a verdict was announced on 5 February 2009 whereby the defendants Zlatan Nikolić and Darko Hudak were acquitted of charges for genocide described in Article 119 of the OKZRH.

  Other defendants were found guilty of criminal act of war crime against civilians referred to in Article 120, paragraph 1 of the OKZRH[36] and were sentenced to prison: Jugoslav Mišljenović - 6 years, Milan Stanković - 6 years, Dušan Stanković - 6 years, Petar Lenđer - 15 years, Zdravko Simić - 4 years, Joakim Bučko - 4 years, Mirko Ždinjak - 6 years, Dragan Ćirić - 6 years, Zdenko Magoč - 4 years and 6 months, Jovan Cico - 15 years, Đuro Krošnjar - 6 years and Janko Ljikar - 4 years and 6 months.

  The defendant Joakim Bučko, Zdenko Magoč and Darko Hudak were present at the announcement of the verdict. Other accused persons are not available to the Croatian judiciary and they were tried in absence.

- in the repeated trial against the def. Slobodan Raič (the crime at Drvena pijaca in Vukovar), member of Serb formations, after one single court hearing and after the Vukovar County Attorney's Office modified the indictment dismissing the initial charges of omission to provide medical help to the injured person, the War Crime Council of the Vukovar County Court, on 22 January 2009, found the accused Raič guilty of unlawful capture and sentenced him to 2 years and 6 months in prison - the prison sentence being identical to the one pronounced at the first trial.[37]

  At the repeated trial, the defendant was not kept in custody. He had been kept in custody in the period from 6 May 2006 until the public session before the Croatian Supreme Court on 30 October 2008 i.e. almost 2.5 years, which equals the duration of sentence pronounced against him by the War Crime Council of the Vukovar County Court in both first-instance court proceedings.

- in the trial against the def. Đuro Đurić (the crime in Zamlaća, Struga and Kozibrod), member of Serb formations, charged with a criminal act of war crime against civilian population referred to in Article 120, paragraph 1 of the OKZRH. Main hearing was held at the Sisak County Court in February 2009.[38]

  After the modification of the factual and legal description and the modification of legal qualification of the offence stated in the indictment (legal qualification - war crime- was modified into armed rebellion), the Court Council issued the verdict on suspension of indictment, on 11 February 2009.

- in the re-opened trial against the def. Sreten Peslać (the crime in Ervenik), who had been tried in absence in 1993 and sentenced to 10 years of imprisonment for war crime against civilians described in Article 120, paragraph 1 of the OKZRH, this reopened trial commenced at the Šibenik County Court on 1 December 2008; by applying the General Amnesty Law, the verdict on suspension of indictment was announced on 9 February 2009, after the County Attorney's Office had modified the factual and legal description as well as the legal qualification of the offence, changing it from a war crime against civilians into an armed rebellion.[39]

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[36] *The indictment charges all defendants with a crime of genocide referred to in Article 119 of the OKZRH.*

[37] *Previously, the VSRH on 30 October 2008 quashed the verdict issued by the Vukovar County Court which had found the def. Slobodan Raič guilty of unlawful capture of the civilian and failure to provide medical help, and therefore, had convicted Raič for the offence of war crime against civilians and sentenced him to 2 years and 6 months in prison. The quashing decision made by the VSRH states that the first-instance court finding, relating to the inhumane treatment of the injured person done by omitting to provide medical help to the injured person, is based on incorrectly established facts.*

[38] *According to the words by the prosecutor, the court proceedings against the defendant Đurić have been separated from other defendants listed in the indictment since the majority of them are not available to the Croatian judiciary. Some of them have already been tried at separate trials, and only the 10th-accused Dragan Vranešević has been convicted so far and sentenced to 15 years in prison. Allegedly, the defendants Tošo Sundać, Slavko Tadić, Goran Barač, Dušan Badić, Dalibor Borota and Rade Lukač are deceased or killed. However, since no official documents were issued by relevant institutions to confirm the mentioned, the proceedings against the above mentioned persons still have not been abated.*

The defendant Đuro Đurić was tried in 2001. At that time, Đurić was kept in custody. However, when the detention order was cancelled and he was released from custody, Đurić stopped obeying court summonses. After an order for his detention was reissued and the arrest warrant was issued, Đurić voluntarily surrendered.

[39] *The indictment No: KT-27/92 issued by the Šibenik County Attorney's Office on 23 October 1992 charged 30 persons with war crime against civilians. Eight indictees were charged with the murder of Drago Čengić, and murder of Drago Čengić's wife Nevenka Čengić and their sons*

The detention of the defendant was cancelled, and he was released from custody and the arrest warrant was recalled.[40]

- in the repeated trial against the def. Milan Atlija and Đorđe Jaramaz (the crime in BiH corridor, in Potkonje, Vrpolje and Knin)[41], member of Serb formations, a main hearing was concluded on 7 May 2009 and a verdict was announced.

  The defendants Atlija and Jaramaz were found guilty of committing criminal acts as charged under count (I) of the indictment.[42] A prison sentence of 10 years was pronounced to both defendants.

  Considering the fact that the defendant Atlija had previously been validly sentenced to 5 years in prison for war crime against war prisoners, committed by abusing war prisoners, the defendant was pronounced a joint sentence of 14 years in prison.

  The defendant Atlija was acquitted in respect of the criminal act of war crime against civilians which he was charged for pursuant to count II of the indictment (attack on the villages Potkonje and Vrpolje, intimidation, unlawful detention and abuse of civilian population, that resulted in the civilians abandoning their homes).

  The def. Atlija currently serves a prison sentence in Lepoglava Penitentiary Institution, while the def. Jaramaz is being kept in custody. They were detained in September 2006.

- in the trial against the def. Čedo Jović (the crime in Dalj IV), following the main hearing held in March and April 2009, the verdict was announced finding the defendant guilty that in the period from the end of December 1993 to June 1995, in his capacity as commander of the Republika Serb Krajina Army 35th Slavonian Brigade Military Police unit, knowing that his subordinates Novak Simić, Miodrag Kikanović and Radovan Krstinić and a few other, still unidentified, military policemen were mistreating members of the forced labour platoon of non-Serb ethnicity, he failed to take any measures within his authority in order to punish the perpetrators and thus prevent them from further unlawful acting, in this way the accused tacitly agreed to his subordinates' continued involvement in such illegal acts and the accused agreed to the consequences of such acts. The aforementioned three military policemen were beating six persons, one person out of those six persons sustained injuries which soon led to his death.

Slobodan and Goran, who were minors at the time of the crime (mid-January 1992). 22 defendants, among whom was Sreten Peslać, were charged that they, in their capacity as members of paramilitary units of the so-called Krajina region, committed terrorist acts against civilians in the Ervenik area from May 1991 until January 1992, with intention to make the civilians leave the territory of the so-called SAO Krajina, threatened to civilians and insulted them, physically abused them, plundered and destroyed their movable property and burnt their immovable property, unlawfully arrested civilians and took them to detention camps in Knin where the civilians were exposed to physical and psychical abuse, which caused many villagers to leave the area.

[40] On 18 February 2008, Sreten Peslać was arrested in Verona, Italy, during his check-in with the police. On that occasion, a police official informed Peslać that an international arrest warrant had been issued against him. He was ordered detention. After he was served the indictment, Peslać read it and decided to submit the request for his extradition to Croatia.

[41] Previously, in 2006, the Šibenik County Attorney's Office issued the indictment which, under counts (I) and (II), charged Atlija for war crime against civilians pursuant to Article 120, paragraph 1 of the OKZRH, and under count (III) for war crime against war prisoners pursuant to Article 122 of the OKZRH, while the accused Jaramaz was charged, under count (I) of the indictment, with war crime against civilians pursuant to Article 120, paragraph 1 of the OKZRH. On 4 June 2007, the War Crime Council of the Šibenik County Court passed the verdict which found Milan Atlija and Đorđe Jaramaz guilty of all offences stated in the indictment, except that Milan Atlija was acquitted of the charges stated in the count (II) of the indictment. Defendant Atlija was convicted of the criminal act stated in Article 120, paragraph 1 of the OKZRH for which he received a ten-years prison sentence; and he received a sentence of three years in prison for the criminal act referred to in Article 122 of the OKZRH, therefore, Atlija received a joint sentence of 12 years in prison. Defendant Đorde Jaramaz was sentenced to ten years of imprisonment. The same verdict, based on Article 354, item 3 of the Criminal Procedure Act, acquitted defendant Atlija of the charges for criminal act of war crime against civilians pursuant to Article 120, paragraph 1 of the OKZRH (it was not proven that Atlija had actually committed the offence he was charged with under count (II) of the indictment).

At its public session held on 16 April, 2008, the Supreme Court of the Republic of Croatia quashed the first-instance court verdict in relation to the criminal act stated in Article 120, paragraph 1 of the OKZRH (count I of the indictment) and in relation to the criminal act stated in Article 120, paragraph 1 of the OKZRH (count II of the indictment) and reversed that particular section of the case for a retrial.

In relation to the criminal act stated in Article 122 of the OKZRH, the decision on the sentence passed on the defendant Atlija was modified so that he received a sentence of five years in prison (instead of the first-instance court ruling which sentenced him to three years in prison).

[42] The defendant Atlija was charged for ordering the killings and the def. Jaramaz for the act of killing one civilian.

Therefore, the defendant omitted to prevent inhumane treatment of civilians and infliction of serious bodily harm and the killing, which constitutes a criminal act of war crime against civilians pursuant to Article 120, paragraph 1 of the OKZRH. The defendant was found guilty and sentenced to five years of imprisonment.[43]

The detention order against the defendant was extended. The accused has been kept in custody since July 2008 when he was arrested at the border crossing between the Republic of Serbia and the Republic of Croatia.

- in the third (second repeated) trial against the def. Petar Mamula (the crime in Baranja) the verdict was pronounced at the Osijek County Court on 7 April 2009 which found the defendant Mamula guilty of war crime against civilians pursuant to Article 120, paragraph 1 of OKZ RH and sentenced the defendant to a prison term in duration of 4 years and 10 months.[44]

  Acting in accordance with the instructions issued by the Supreme Court of the Republic of Croatia, by comparing the factual substratum in this trial with the factual substrata in the proceedings which had been earlier conducted against this accused person, in relation to which the General Amnesty Law had been applied, the first-instance court established that the facts were not the same, therefore, the court also concluded that the issue had not been adjudicated with a legally valid verdict.

  In that phase of the proceedings, the defendant Mamula was not kept in custody. The defendant was kept in custody from 6 October 2000 until 7 May 2003.

- in the trial against the defendants Damir Kufner, Davor Šimić, Pavao Vancaš, Tomica Poletto, Željko Tutić and Antun Ivezić (the crime in Marino Selo), members of Croatian formations, the verdict was announced on 13 March 2009, which found accused persons guilty of war crime against civilians pursuant to Article 120, paragraph 1 of the OKZRH.

  Defendant Kufner was found guilty of ordering unlawful detention, and was found guilty of failure to carry out his duty to prevent the killing of civilians and inhumane treatment of civilians and their unlawful detention. He was sentenced to four years and six months of imprisonment.

  Defendant Šimić was found guilty of failure to carry out his duty to prevent inhumane treatment of civilians and their unlawful detention. The accused was sentenced to one year in prison.

  Defendant Vancaš was found guilty of torture, inhumane treatment of civilians and infliction of great suffering and serious bodily harm. The accused was sentenced to 3 years of imprisonment.

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[43] *Verdict against the above mentioned military policemen Novak Simić, Miodrag Kikanović and Radovan Krstinić for war crime against civilians became legally valid in December 2008. At the above mentioned trial, accused Čedo Jović has been charged with the same crime, however, he was tried according to the command responsibility. Novak Simić, who was tried in absence, was sentenced to ten years of imprisonment, Miodrag Kikanović was sentenced to 6.5 years in prison, while Radovan Krstinić was sentenced to five years in prison. Kikanović and Krstinić were present at the trial.*

[44] *Previously, the Osijek County Attorney's Office had issued the indictment against 58 persons for criminal act stated in Article 120, paragraph 1 of the OKZRH. The case against the accused persons who were present at the trial (Nikola Alaica, Mile Bekić, Drago Karagaća, Petar Mamula, Milan Prusac and Sreto Jovandić) was separated in 2001.*

On 5 April 2002, at the Osijek County Court, the accused were sentenced to prison terms: Nikola Alaica was sentenced to six years in prison, Mile Bekić - three years in prison, Drago Karagaća - two years in prison, Petar Mamula - five years and six months in prison, Milan Prusac - two years, and Sreto Jovandić- two years.

The Supreme Court of the Republic of Croatia quashed the mentioned verdict and reversed the case to the first-instance court for a retrial.

After the repeated trial was completed, on May 8, 2006, the War Crime Council of the Osijek County Court pronounced the verdict on suspension of indictment against accused Alaica, Bekić, Karagaća, Prusac and Jovandić. Previously, the prosecutor had modified the indictment concerning the mentioned accused persons in a way that they were charged for criminal act of armed rebellion.

The defendant Petar Mamula was found guilty of war crime against civilians and was sentenced to 4 years and 10 months of imprisonment.

The VSRH Council, at its public session held on 15 October 2008, quashed the convicting section of the verdict of the War Crime Council of the Osijek County Court and reversed it to the first-instance court for a retrial. The VSRH quashed the verdict due to incompletely established facts as the Supreme Court, based on the data in the case file, was unable to determine whether the incriminating acts of the accused Mamula had been previously regulated by the General Amnesty Law. The first-instance court was instructed to make inspection into the court documents issued earlier by the Osijek County Court and the Military Court in Osijek, and to compare the factual substrata in order to determine whether the incriminating acts of the defendant Mamula had previously been regulated and covered by the General Amnesty Act.

Defendants Poletto, Tutić and Ivezić were found guilty of murder, torture and inhumane treatment of civilians, and infliction of great suffering and serious bodily harm on civilians. Defendant Poletto was sentenced to 16 years of imprisonment; the def. Tutić was sentenced to 12 years in prison, and the def. Ivezić to 10 years in prison. [45]

All the defendants were kept in custody since February or March 2008. The defendants Vancaš and Šimić were released from custody in December 2008, i.e. in January 2009, while the def. Kufner was released from custody following the announcement of the verdict. Other accused persons (Poletto, Tutić and Ivezić) are still being kept in custody.

- in the trial against the def. Nenad Pejnović (the crime in Vrhovine), a main hearing commenced on 24 February 2009 before the Karlovac County Court, and the verdict was announced on 3 April 2009 which found the defendant Pejnović, in his capacity as a member of Serb military unit, guilty of unlawful detention of six civilians of Croat ethnicity, who had been taken away and killed by unidentified persons the day after their being detained, which constitutes a criminal act of war crime against civilians pursuant to Article 120, paragraph 1 of the OKZRH. The accused was sentenced to 6 years of imprisonment.

  The War Crime Council did not find it proved that the defendant himself had killed the civilians, as he was charged in the indictment.

  The defendant has been kept in custody since 10 February 2008 and his detention order is being extended.

- in the trial against the defendants Zlatko Jušić and Ibrahim Jušić (the crime in Velika Kladuša), indicted for war crimes against civilians which they committed while serving as officials of the so-called Autonomous Province of Western Bosnia, the main hearing was held between 5 September 2008 and 24 March 2009. The verdict which acquitted the defendant Zlatko Jušić, and convicted the defendant Ibrahim Jušić sentencing him to seven years in prison, was announced on March 25, 2009.

  Defendant Ibrahim Jušić was found guilty of ordering and participating in torture, inhumane treatment, inflicting major suffering, and unlawful detention of civilians in the region of Velika Kladuša and surrounding area between September 1993 and August 1994, and also from November 1994 until August 1995.

  Defendant Zlatko Jušić was released from custody in December 2008, while defendant Ibrahim Jušić is still being kept in custody.

- in the trial against the defendants Branimir Glavaš, Ivica Krnjak, Gordana Getoš Magdić, Dino Kontić, Tihomir Valentić and Zdravko Dragić (the crime in Osijek), indicted for a criminal act of war crime against civilian population, the War Crime Council of the Zagreb County Court announced the verdict on 8 May 2009 whereby the defendants were found guilty and sentenced to prison.

  For two criminal acts stated in the indictment, prison terms of 5 years and of 8 years were passed on the def. Glavaš, thus a joint sentence of 10 years in prison was pronounced. The def. Krnjak was sentenced to 8 years in prison, and the def. Getoš Magdić to 7 years in prison. The defendants Kontić, Valentić and Dragić were sentenced to 5-year prison terms each.

  By taking into consideration that the sentences pronounced are 5 years and longer, a detention was ordered in respect of the defendants.[46]

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[45] *War Crime Council of the Požega County Court sentenced the def. Tomica Poletto to 16 years in prison. However, the paragraphs 1 and 2 of the Article 35 of the OKZRH prescribe that a prison sentence must not be lower than 15 days or longer than 15 years, and that the prison sentence in duration of 20 years may be pronounced only in most serious cases of the criminal act. In accordance with the mentioned provisions, as well as with the court practice, it is not possible to pronounce a prison sentence in duration of 16 years according to the aforementioned law, since the maximum prescribed prison sentence is 15 years. No other sentence above 15 years may be pronounced except the sentence in duration of 20 years, i.e. no prison sentence between 15 and 20 years (16, 17, 18 or 19 years) may be pronounced whatsoever.*

[46] *The detention of def. Krnjak has been extended, considering the fact that he has been in detention since 21 April 2009 for reasons of his avoidance of court hearings.*

The defendants Glavaš and Getoš Magdić were not present when the verdict was announced. The defendant Gordana Getoš Magdić contacted police the next day. The defendant Glavaš, in his capacity as parliamentary representative, was stripped of immunity from detention after the announcement of the verdict[47]. However, he is currently at large in Bosnia and Herzegovina, and the fact that he is a BiH citizen prevents his extradition to the Republic of Croatia.

[47] *Just to remind that the Croatian Parliament, in its decision of 12 January 2008, withheld an approval to detain the representative Branimir Glavaš.*

AN OVERVIEW OF OTHER TRIALS

1. In the trial before the Vukovar County Court against the def. Dušan Zinajić[48] (the crime in Borovo Naselje), a main hearing commenced on 21 January 2009. Four hearings were held so far and about ten witnesses were heard. A lesser part of the material evidence was presented so far and the defendant presented his defence plea.

   The accused person is not being kept in custody.

2. In the trial in absence of the defendant, before the Vukovar County Court against Bogdan Kuzmić (the crime in Vukovar hospital), who was charged that, after the occupation of Vukovar, the defendant singled five civilians out of the Vukovar hospital and took them in an unknown direction, who were killed in (still) unknown circumstances, and thus the defendant committed a war crime against civilians, six hearings were held during 2008, and only one hearing was held in February 2009.

   The next hearing will be scheduled in a written form.

   By taking into consideration that more than two months elapsed since the last hearing, the main hearing will be reinitiated.

3. In the trial before the Vukovar County Court for the crime in Lovas, the last hearing was held in March 2008, while two hearings were held out-of-court in May of the same year.

   Beginning 2009, the War Crime Council (court panel) in the Lovas case was changed. Court hearings were scheduled to take place at the beginning and the end of April 2009. However, they were not held. On 29 April 2009, a decision on separation of proceedings against defendant Milan Tepavac and Ilija Vorkapić (who are present at the trial) was passed, thus separating their case from the case of 14 other accused persons who are fugitives and are tried in absence. The accused persons who are present at the trial (Tepavac and Vorkapić) are not being kept in custody.

4. In the repeated trial before the Osijek County Court against the def. Stojan Pavlović, Đuro Urukalo and Branko Berberović (the crime in Popovac)[49], a main hearing commenced on 20 April 2009.

   The defendants are not kept in custody. They were detained from 5 March 2003 until 8 April 2004.

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[48] *The indictment of the County Attorney's Office in Vukovar, No: K-DO-5/06 of 29 December 2006, charges him that, on 20 November 1991, in Vukovar, after the occupation of Borovo Naselje, as a member of paramilitary formations he approached from the back the civilian Tomislav Kovačić who was within a group of men who, as ordered, were lying on the ground, and that the defendant fired a bullet in the direction of Kovačić's head, but an unknown soldier of the so-called Yugoslav National Army (hereinafter JNA) pulled the defendant's arm at that very moment so that the bullet scratched Tomislav Kovačić at the top of his head that made him covered with blood so that an unknown person provided medical assistance to him, and thereby the defendant inhumanely acted towards civilians at the time of occupation and committed a criminal act of war crime against civilians stated in Article 120, paragraph 1 of the OKZRH.*

[49] *In 2003, Stojan Pavlović, Đuro Urukalo, Branko Berberović and Milan Šarić, in the period between August 1991 and 1996, in their capacity as members of Serbian formations, in the village of Popovac in Baranja, were indicted for inhumane treatment of civilians, inflicting serious bodily harm on civilians, involuntary relocation of civilians, intimidation and infliction of terror, taking hostages, forced military recruitment of (non-Serb) civilians into enemy (Serb) forces, unlawful detention and taking forced labour, which constitutes a criminal act of war crime against civilians pursuant to Article 120, paragraph 1 of the OKZRH, while Đuro Urukalo was also indicted for possession of explosive ordnance, and for the offence of illicit possession of weapons and explosive ordnance pursuant to Article 335, paragraph 1 of the Penal Law.*

In 2004, at the end of the evidence procedure, the indictment was modified. The section of the indictment containing the legal qualification of the offence committed by the accused Šarić was modified so that the accused Šarić was charged with criminal act of armed rebellion.

In April 2004, the Osijek County Court reached the verdict on suspension of indictment against accused Šarić, while the other accused persons were found guilty. Accused Pavlović was sentenced to two years and six months of imprisonment, accused Urukalo received a joint sentence of two years and two months of imprisonment, while accused Berberović received the sentence in duration of one year and six months of imprisonment. Accused Pavlović was acquitted of a part of the charges.

In 2008, the Supreme Court of the Republic of Croatia upheld a part of the verdict in relation to the accused Šarić; the Supreme Court sentenced Urukalo to six months in prison for unlawful possession of arms and explosive ordnance, while it quashed the rest of the verdict due to a serious violation of provisions of the penal procedure, and reversed the case for a retrial. Namely, by pronouncing the verdict against accused Pavlović, the first-instance court also had acquitted Pavlović of one part of the charges, however, as this is the case of a continued offence which does

5. In the trial before the Osijek County Court against the def. Željko Čizmić (the crime in Dalj), who was charged that in his capacity as a commander of the so-called Dalj Militia station, in 1991, he committed a war crime against civilians of non-Serb ethnicity, a main hearing was in recess as early as from December 2007, and it finally started anew on 8 May 2009.

   The defendant in this trial is not kept in custody.

not allow a possibility of passing both the verdict of guilty and the verdict of acquittal, the VSRH determined that the first-instance court verdict was unclear and discrepant.

OPINIONS ON TRIALS

The trial against the def. Jugoslav Mišljenović et al. for the criminal act of genocide

Vukovar County Court

Criminal act: genocide, referred to in Article 119 of the OKZRH

Defendants: Jugoslav Mišljenović (at large), Milan Stanković (at large), Dušan Stanković (at large), Janko Kiš (was at large, the proceedings were cancelled in 2004 because of the death), Živadin Ćirić (the proceedings were cancelled because of the death), Petar Lenđer (at large), Milenko Kovačević (was at large, the proceedings were cancelled in 2004 because of the death), Zdravko Simić (at large), Momir Anđelić (was at large, the proceedings were cancelled in 2003 because of the death), Slobodan Anđelić (was at large, the proceedings were cancelled in 2003 because of the death), Joakim Bučko (not detained), Mirko Ždinjak (at large), Slobodan Mišljenović (not detained, the proceedings were cancelled in 2008 after the prosecution dropped charges against him), Dragan Ćirić (at large), Milan Bojanić (was at large, the proceedings were cancelled in 2009 after the prosecution dropped charges against him), Jaroslav Mudri (not detained, the proceedings were cancelled in 2009 after the prosecution dropped charges against him), Zdenko Magoč (not detained), Dušanka Mišljenović (not detained, the proceedings were cancelled in 2008 after the prosecution dropped charges against her), Dragica Anđelić (was at large, the proceedings were cancelled in 2008 after the prosecution dropped charges against her), Aleksandar Anđelić (was at large, the proceedings were cancelled in 2008 after the prosecution dropped charges against him), Nikola Vlajnić (was at large, the proceedings were cancelled in 2008 after the prosecution dropped charges against him), Zlatan Nikolić (at large), Jovo Cico (at large), Đuro Krošnjar (at large), Ljubica Anđelić (was at large, the proceedings were cancelled in 2005 because of the death), Čedo Stanković (was at large, the proceedings were cancelled in 2009 after the prosecution dropped charges against him), Radoje Jeremić (was at large, the proceedings were cancelled in 2003 because of the death), Joakim Lenđer (was at large, the proceedings were cancelled in 2003 because of the death), Kiril Builo (was at large, the proceedings were cancelled in 2003 because of the death), Stanislav Simić (was at large, the proceedings were cancelled in 2008 after the prosecution dropped charges against him), Darko Hudak (not detained), Saša Hudak (not detained, the proceedings were cancelled in 2009 after the prosecution dropped charges against him), Srđan Anđelić (was at large, the proceedings were cancelled in 2008 after the prosecution dropped charges against him), Dušan Anđelić (was at large, the proceedings were cancelled in 2004 because of the death), Janko Ljikar (at large).

War Crimes Council (panel): Judge Nikola Bešenski, Council President, Judge Slavko Teofilović, Council member, and Judge Nevenka Zeko, Council member.

Prosecution: Zdravko Babić, Vukovar County Deputy State's Attorney.

Opinion

In the Indictment of the Osijek County Attorney's Office, no. KT-37/93 of 29 April 1996, a total of 35 indictees were charged for genocide referred to in Article 119 of the OKZ RH. In 2005, the Vukovar County Attorney's Office took over the criminal prosecution against 27 indictees for the same criminal offence. The criminal proceedings were cancelled against eight indictees because of their death. By the end of the first-instance criminal proceedings, concluded on 5 February 2009, 14 indictees remained in the indictment. The indictment was modified seven times.

On 5 February 2009, the War Crimes Council of the Vukovar County Court announced the verdict wherein 12 defendants were found guilty of committing war crime against civilian population referred to in Article 120, paragraph 1 of the OKZ RH, and two defendants were acquitted of charges that they had committed genocide referred to in Article 119 of the OKZRH.

This trial was marked by several important facts:

- The indictment was issued in 1996 against 35 defendants,
- The moment when the indictment was issued, all defendants were inaccessible to the judicial authorities of the Republic of Croatia; with the decision of the Osijek County Court, no. Kv 46/97, of 21 February 1997, it was decided that all defendants would be tried in absentia,

- Investigation was conducted in 1993, at the time when Mikluševci and a large part of Vukovar-Srijem county was occupied and inaccessible to the judiciary and police authorities of the Republic of Croatia; a large number of witnesses and victims was in exile throughout Croatia or was living in the occupied area,

- After the Vukovar County Attorney's Office took over the indictment, no additional investigation was requested; it was only during the main hearing when witnesses were heard, the indictment was modified on several occasions and made more precise based on witnesses' testimonies,

- Some witnesses were heard five or more times during the main hearing, which indicated that the investigation was poorly conducted and that the previous additional investigation had to be carried out,

- During the evidence procedure, the proceedings against 13 defendants were cancelled due to death of the defendants, and during 2008 and 2009 the Vukovar County Attorney's Office withdrew from further criminal prosecution in respect of 8 defendants due to a lack of evidence,

- By taking over the indictment from the Osijek County Attorney's Office, the Vukovar County Attorney's Office modified the indictment, justifying the modifications by significantly altered circumstances and the time of execution of specific incriminating acts and with collected evidence contained in the compiled documentation,

- By modifying the indictment on 20 March 2007, the factual and legal descriptions as well as the legal qualification of offences were modified whereby the defendants were charged with committing war crime against civilian population referred to in Article 120, paragraph 1 of the OKZRH. Soon after, on 13 April 2007, the indictment was modified in a manner that the defendants were charged with genocide referred to in Article 119 of the OKZRH; however, the actions the defendants were charged with remained the same as in the indictment modified on 20 March 2007, whereas the legal qualification of offence was changed back to the original charges – a genocide,

- With the decision of the Osijek County Court, no. Kv-115/97 of 21 March 1997, a detention of defendants was ordered. At the main hearing, the defence lawyers proposed the cancellation of detention for the defendants present at the trial and the caution measures to be imposed against those defendants, which the Deputy Vukovar County Attorney present at the trial agreed to.[50] The Council issued the decision which cancelled detention against the defendants present at the trial and ordered caution measures prohibiting the defendants to leave the residence, obliging them to get into contact with the Council President every two months, and seizing travel documents and other documents necessary for crossing the state border.

The victims and injured parties, as well as the general public, found the decision on not keeping the defendants (present at trial) in custody during the court trial to be incomprehensible since they were indicted for the most severe criminal offence, for which it would be appropriate to have the defendants kept in detention during the trial,

- The length of the first-instance criminal proceedings can cause the witnesses and injured parties to feel that this criminal proceedings are useless,

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[50] *When asked by the Council President about possible remarks, the defence lawyers Biserka Treneski, Stjepan Šporčić, Vojislav Ore and Andrej Georgievski, in accordance with Article 107a of the Criminal Procedure Act, proposed the termination of detention and taking caution measures referred to in Article 90, paragraph 1 and 2, item 1 and 3 of the ZKP, in respect of the present defendants Milan Stanković, Živan Ćirić, Joakim Bučko, Slobodan Mišljenović, Jaroslav Mudri, Zdenko Magoč, Dušanka Mišljenović, Darko Hudak and Saša Hudak, clarifying that in relation to the aforementioned defendants a legally valid decision on ordering detention did exist. That decision No:KV-115/97 was issued by the Osijek County Court on 21 March 1997.*

The Deputy Vukovar County Attorney present at the trial agreed to the proposal of the defence, however, he did suggest that in addition to the mentioned caution measures referred to in Article 90, paragraph2, items 1 and 3 of the ZKP, a caution measure referred to in item 6 of the mentioned Article of the ZKP were to be introduced as well (as entered into Vukovar County Court records on 25 April 2005, page 8).

- Interest of the media gradually weakened during the course of the trial, despite the fact that this was a trial for genocide,
- The right of defendants to a fair trial, as prescribed by the provision stated in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[51], has been violated with a lengthy first-instance court proceedings[52] and frequent modifications of the indictment.

The evidence presented during the evidence procedure indicated that in this specific trial the crime of war crime against civilians, described in Article 120, paragraph 1 of the OKZRH, was committed. The Vukovar County Attorney's Office issued the indictment for genocide, referred to in Article 119 of the OKZRH.

Article II of the Convention on the Prevention and Punishment of the Crime of Genocide is worded as follows: "Within the meaning of the Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group such life conditions which would lead to its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of one group to another group."

"Principally, genocide can be committed by any person regardless of its position in the military or political hierarchy. However, by taking into consideration the nature of this crime (historical framework of its occurrence connected to the holocaust) which presumes a massive scale of victims and a capability of the perpetrator to cause massive and severe sufferings, according to the nature of the matter, the genocide perpetrators will be the highest ranked persons in a military and/or political hierarchy. The practice of ICTY and the *International* Criminal Tribunal for *Rwanda verifies that*."[53] The specificity of genocide as a crime is its special intention, mens rea, the so-called genocidal intent, a wish to physically destroy a national, ethnic, racial or other group, or its significant part, exactly for the reason this being this particular group. A decision to commit such an act has to be a conscious one, which is directed towards a destruction of this group. In the concrete case, the defendants were members of Serb and Ruthenian ethnic minorities, and the victims were to a great extent Ruthenians and other non-Serb persons. The defendants were members of the local territorial defence. By stating these facts, we do not intend to diminish the significance of the incriminating acts but we believe that in this specific trial, the defendants should have been charged with a criminal act of war crime against civilians, referred to in Article 120, paragraph 1 of the OKZRH.

The indictment was modified eight times. At a certain moment, the legal qualification of the offence was also changed from genocide into a war crime against civilians. And very soon, the defendants were charged again with a crime of genocide. The stated opens up a series of legal issues, amongst other also the issue of violation of the provision of Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms to the detriment of the defendants (right to a fair trial[54]). The Holik family victims

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[51] *"In order to have her/his civil rights and obligations determined, or in case of criminal charges being pressed against her/him, everyone is entitled to a fair and public hearing within a reasonable time to be conducted by an independent and impartial tribunal established by law..."*

[52] *The trial is ongoing since 1996; the first-instance court verdict was pronounced on 5 February 2009.*

[53] *Prof. dr. sc. Ivo Josipović, „Ratni zločini"[War crimes], a manual for trials monitoring, Centre for Peace, Non-violence and Human Rights, Osijek, 2007.*

[54] *Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms*

Right to a fair trial

1. When deciding upon a person's civil rights and obligations, or in case of well founded criminal charges against the person, each person is entitled to a fair and public hearing to be conducted within a reasonable time by an independent and impartial tribunal established by law. The verdict is to be pronounced publicly but the press and the public may be excluded from the entire trial, or a part of it, in the interests of ethics, public order or national security in a democratic society, where the interests of juveniles or the protection of private life of the parties require so, or in special circumstances when the court deems it strictly necessary since the publicity may harm the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

and Slavko Hajduk's family victims almost got forgotten during the proceedings. By all means, this is not a consequence of the work of the War Crimes Council, which made efforts to conduct the proceedings in a correct manner and in accordance with the ZKP provisions. We believe that because of the seriousness of the crime committed in Mikluševci, the Vukovar County Attorney's Office should have asked for additional investigation to be carried out at the moment when they took over the court case from the Osijek County Attorney's Office. Things would have been clearer after additional investigation being carried out. Without this, the Vukovar County Attorney's Office, throughout the evidence procedure conducted a "hidden investigation", and this is evident from the process of adjusting and modifying the indictment following the testimonies of certain witnesses.

War Crime Council found proven that twelve defendants committed a crime of war crime against civilians referred to in Article 120, paragraph 1 of the OKZRH. It is beyond any doubt that the verdict will have to provide clarification of such a decision. Although the Council is not bound with the legal qualification of offence, an issue relating to objective identity of the indictment and the verdict could be raised at this point. It is very likely that, in their appeals, both the Vukovar County Attorney's Office and the defence will raise exactly the issue of identity of the indictment and of the verdict. Although it seems that the Council did act in accordance with the provisions of Article 350, paragraph 1 of the ZKP, when determining that the convicted defendants, by acting the way they did, brought into existence the very criminal act of war crime against civilians, which, in relation to the charges for genocide, represents a less serious crime, this decision at the same time opens up a series of legal issues. Primarily, it opens up an issue whether the protected good (protected subject) is the same in the stated two criminal offences.

Just before the end of the evidence procedure, pursuant to the provision of Article 63, paragraph 1 of the OKZ RH, the court appointed defence lawyers ex officio to each of the defendants. Until that moment, several defendants shared one defence lawyer. Considering the fact that, formally, the hearing started anew, each defendant formally had his own defence lawyer during the main hearing.

However, this trial went on for twelve years. During the evidence procedure, substantial evidence was presented at the time when one defence lawyer represented several defendants. A question may be raised whether such a situation was in contradiction to the benefits of their defence.[55]

3. Everyone charged with a criminal offence has the following minimum rights:

a. to be informed promptly and thoroughly, in a language which she/he understands, of the nature and cause of the accusation against her/him;

b. to have adequate time and conditions for the preparation of his/her defence;

c. to defend herself/himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to receive it free of charge when the interests of justice require so;

d. to personally examine them or request the prosecution witnesses to be examined, and to facilitate his/her presence at the examination of the defence witnesses under the same terms which pertain to the prosecution witnesses;

[55] *Article 63, paragraph 1 of the OKZ RH: "Several accused persons may have a joint defence lawyer only if no criminal proceedings for the same crime are being conducted against these accused persons, or if this is not contrary to the benefits of their defence."*

The trial against the defendant Đuro Đurić for a criminal act of war crime against civilian population

Sisak County Court

Criminal act: the war crime against civilians referred to in Article 120, paragraph 1 of the OKZ RH (following the modification of the indictment – into armed rebellion under Article 236f, paragraph 1 of the Penal Code of the Republic of Croatia)

Defendant: Đuro Đurić

War Crimes Council (the panel): Judge Melita Avedić, Council President, Judge Ljubica Rendulić Holzer, Council member, Judge Predrag Jovanić, Council member

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

Defence: lawyer Zdravko Baburak

Opinion

The trial against Đuro Đurić before the War Crimes Council of the Sisak County Court was conducted in a correct manner, and despite some minor procedural omissions which we noted when reporting on the main hearing, we have no objections either to the procedure conduct by the court, or to the issued court decision.

The mentioned omissions related to the fact that the witnesses were not cautioned in a prescribed manner stated in Article 324 and Article 236 of the ZKP, although it was entered in the court records that the witness had actually been cautioned in accordance with the mentioned provisions.

However, we find it necessary to note that on the occasion when the County Attorney's Office was changing the bill of indictment (charges) and the legal qualification stated in the indictment – from the war crime against civilians (referred to in Article 120, paragraph 1 of the OKZ RH) into the armed rebellion (referred to in Article 236f, paragraph 1 of the Penal Code of the Republic of Croatia), it failed to take into consideration the testimony of the witness Marija Stipić, who was the only witness who actually charged the defendant, in sense of a possible extension of the bill of indictment (charges) in that direction and further clarification of the circumstances concerned.

Namely, this witness stated that the def. Đuro Đurić took her to Dvor, to the police station premises, to have her beaten up, resulting with serious physical injuries.

Since this event occurred at the time after the incriminating period, this event could not have been the subject matter of the court ruling in this crime case.

We are of opinion that the modification and amendment to the indictment in this direction, and a possible supplementary investigation could have shed more light on the particular event and could have verified the information, which the witness obtained by hearsay, that the defendant Đuro Đurić took the witness' mother and brother to the bank of Una river where her mother was slaughtered and thrown into the river, and the brother was handcuffed and also thrown into the river.

The practice of issuing joint indictments against several perpetrators of the same criminal act, which was frequently followed in respect of inaccessible perpetrators of war crime against civilians and other related crimes, and the practice of subsequent separation of the proceedings against an individual defendant who would at a certain moment become reachable to the judiciary, along with retaining the same, very generalized indictment, is in our opinion a highly suspect practice.

In respect of the indictment, and in accordance with the accusatory nature of the Croatian criminal procedure, we find the conducted proceedings and the verdict to be correct.

The trial against Sreten Peslać, indicted for war crime against civilians

Šibenik County Court

Criminal act: the war crime against civilians referred to in Article 142 of the assumed Penal Code of Yugoslavia

Defendant: Sreten Peslać

War Crimes Council (the panel): Judge Branko Ivić, Council President; Judge Ivo Vukelja, Council member; Judge Jadranka Biga Milutin, Council member

Prosecution: Sanda Pavlović Lučić, Šibenik County Deputy State's Attorney

Defence: lawyer Vera Bego

Opinion

The reopened trial against the defendant Sreten Peslać, tried in absence in 1993 and sentenced to a 10-year prison term, arrested in Italy in February 2008 and extradited to Croatia, was conducted before the War Crimes Council of the Šibenik County Court and concluded on 9 February 2009.

At the last hearing the Šibenik County Court modified the legal qualification of the offence, modifying it from a war crime against civilians into an armed rebellion. Subsequently, the Court reached the verdict which rejected the charges by applying the General Amnesty Act.

This trial is yet another example of the earlier practice of issuing poor-quality indictments and insufficiently precise indictments against a large number of defendants. Later, almost as a rule, the defendants were tried in absentia and sentenced to long prison terms.

Recently, we have been witnessing the reinstitution/re-opening of trials against persons who were previously legally sentenced in absence, in which the prosecution, in the course of the evidence procedure, is dropping charges or altering the legal qualification of the offence into criminal act of armed rebellion, so that the courts, by applying the General Amnesty Act, are reaching verdicts on suspension of indictment, or issuing decisions on trial termination.

Because of the mentioned practice by the prosecution and courts, a common one in the 1990ties, Sreten Peslać spent one year in custody despite the fact that evidence, available at the first-instance court trial and at the re-opened trial, did not change significantly.

By monitoring the trial, we recorded a situation to which we would like to indicate for the purpose of possible similar re-opened trials in the future although this situation did not affect the outcome of the trial and the "destiny" of the defendant.

Namely, at the first hearing at the trial, following the reading of the indictment and the defendant pleading not guilty to committing any acts he was charged with in the indictment, the War Crime Council President stated that the trial was being conducted pursuant to the 1993 Criminal Act Procedure (Official Gazette 34/93), and did not grant the defendant's request to present his defence at the end of the evidence procedure.[56]

It is obvious that a footing for such a stand, the Council President rested on the provisions on the re-opening of trial of the Criminal Procedure Act (OG 110/97), in force at the time when this re-opened trial was conducted; this Act stipulates that in the case of new proceedings conducted pursuant to the decision

[56] *Article 306 of the mentioned Act stipulates that the Council President, after reading the indictment or litigation claim or after an oral presentation of their contents, shall start with hearing of the defendant, as well as that the defendant shall be asked, after entering plea on each count of the indictment, to present her/his defence.*

allowing the re-opening of the trial, the same provisions apply as for the first trial. [57] In respect of the first trial, in which the defendant was tried in absence, the Criminal Procedure Act in force in 1993 was applied.

We believe that in this specific case of a re-opened trial against the def. Sreten Peslać the act in force at the time of conducting the re-opened trial, i.e. the 1997 ZKP, should have been applied. In our opinion, Article 411 of the ZKP relates to the application of material and legal provisions, thus accordingly the penal act valid at the time of the first trial should be applied and not the procedural law. The legislator itself in the "newest" Criminal Procedure Act (OG 152/08) clarified that particular provision by stipulating that for the new trial conducted on the basis of the decision allowing re-opening of the trial, the same material and legal provisions as were valid for the first trial would apply, except the provisions on statute of limitation.[58]

If the re-opened trial was conducted pursuant to the law valid at that time, this would have made possible for the defendant to present his defence plea at the end of the proceedings, since it is prescribed that the defendant, who pleads not guilty to all or some counts of the indictment is to be heard at the end of the evidence procedure, unless the defendant himself requests otherwise.[59]

We would also like to draw attention to the provision of Article 191, paragraph 3 of the Act on Amendments to the Criminal Procedure Act (OG 58/02) according to which, if a main hearing, in the case conducted in line with the provisions valid so far (i.e. the law which was previously in force), is to start anew, the plea of the defendants in respect of the charges, within the meaning of Article 320, paragraph 3 of the Criminal Procedure Act, shall be heard and the procedure shall continue pursuant to the provisions of this Act i.e. the Criminal Procedure Act of 1997. In the same manner, the court shall act also in the case when the verdict was annulled following a legal remedy and the case was reversed for a retrial. [60]

We repeat that this situation did not significantly influence the outcome of this specific trial. However, if the prosecution had not modified the legal qualification of the crime stated in the indictment, we believe that the mentioned situation would have represented a significant violation referred to in Article 367, paragraph 1, item 8 of the ZKP and that the verdict would have been quashed and returned to the first-instance court for a retrial.

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[57] *Article 411, paragraph 1 of the ZKP (OG 110/97).*

[58] *Article 508, paragraph 1 of the ZKP (OG 152/08). The mentioned Article is a version of Article 411 of the ZKP (OG 110/97).*

[59] *Article 320, paragraph 7 of the ZKP (OG 110/97).*

[60] *It is disputable whether the mentioned Article refers only to situations when the main hearing is to start anew due to regular legal remedies, when the composition of the Council was changed or when the trial recess lasted longer than two months, or it can also be applied in the cases of re-opening the trial.*

The trial against the defendant Petar Mamula for war crime against civilians

Osijek County Court

Criminal act: the war crime against civilian population referred to in Article 120, paragraph 1 of the OKZRH

Defendant: Petar Mamula

War Crimes Council (the panel): Judge Zvonko Vekić, Council President, Judge Drago Grubeša, Council member, Judge Katica Krajnović, Council member

Prosecution: Zlatko Bučević, Osijek County Deputy State's Attorney

Defence: lawyers Slobodan Budak and Artur Fišbah

Opinion

On 7 April 2009, the War Crime Council of the Osijek County Court announced the first-instance court verdict no. Krz-88/08, which found the def. Petar Mamula guilty and sentenced him to 4 years and 10 months in prison for criminal act of war crime against civilian population referred to in Article 120, paragraph 1 of the OKZ RH.

The third (second repeated) trial was conducted correctly, in accordance with the provisions of the Criminal Procedure Act.

The first-instance court presented the evidence, the presentation of which had been instructed by the Supreme Court of the Republic of Croatia, including the evidence which was found to be necessary and which was proposed by the defence.

In accordance with aforementioned, the first-instance court carried out an inspection into the court files Kio-30/97, Kio 29/97, and into the verdict of the Osijek County Court no. K-17/06. On the basis of this inspection, the Court was to determine for which reasons (factual substratum) the investigation against the def. Petar Mamula had been terminated, and accordingly, whether the concerned offence had already been legally adjudicated. The witnesses Jovan Narandža, Veljko Salonja and Antun Knežević were heard again.

On the basis of the presented material evidence, the court found that the actions constituting the criminal offence that the defendant is charged with in this trial are not identical to the actions which were the subject matter of the investigation terminated by the decision of the Osijek County Court No: Kio-30/97 following the application of the General Amnesty Act.

On the basis of the presented personal evidence, i.e. the depositions of witnesses who were heard again, the read testimonies of previously heard witnesses, the court found that the def. Petar Mamula did commit a criminal act of war crime against civilians referred to in Article 120, paragraph 1 of the OKZ RH, as he was charged in the modified indictment.

When deciding on the degree and purpose of the sentence, the court found that the purpose of punishing would be fulfilled with the pronounced less stringent sentence.

The trial against Milovan Ždrnja, initially indicted for a criminal act of war crime against war prisoners, referred to in Article 122, paragraph 1 of the OKZRH, but following the modified indictment charged with a criminal act of war crime against civilians referred to in Article 120, paragraph 1 of the OKZ RH.

Vukovar County Court

Criminal act: a war crime against war prisoners referred to in Article 122, paragraph 1 of the OKZRH, and on the basis of the modified indictment - a war crime against civilians referred to in Article 120, paragraph 1 of the OKZ RH

Defendant: Milovan Ždrnja

War Crimes Council (the panel): Judge Slavko Teofilović, Council President, Judge Zlata Sotirov, Council member, Judge Berislav Matanović, Council member

Prosecution: Zdravko Babić, Vukovar County Deputy State's Attorney

Defence: lawyer Igor Plavšić

Opinion

On 23 January 2009, the trial against Milovan Ždrnja was terminated at the Vukovar County Court since the Vukovar County Attorney's Office dropped charges against Ždrnja.

With the modified indictment from July 2004, the defendant was charged that he had approached Ivica Pavić in the Sremska Mitrovica detention camp on 20 November 1991 and hit the victim on the back of his head using a truncheon, so that the victim had lost conscience and fallen on the ground; and thus the defendant, at the time of the armed conflict, tortured and inhumanely treated civilians causing them great suffering and physical injuries, and thus committed a crime against the values protected by the international law - war crime against civilians referred to in Article 120, paragraph 1 of the OKZ RH.

Prior to the mentioned modification, the defendant was also charged with hitting of Šimun Karlušić.

On 31 December 2004, the War Crime Council of the Vukovar County Court found the def. Milovan Ždrnja guilty and, by applying the provisions on mitigation of penalty, sentenced him to 3 years and 6 months in prison.

On 20 March 2007, the VSRH quashed the first-instance court verdict and reversed the case to the first-instance court for a retrial, to be conducted before the completely altered council. The VSRH found that the facts, upon which the decision on the defendant's responsibility was based, had been incomplete and incorrectly established.

Since the verdict rested only on the statement of the victim Ivica Pavić and on the testimony of the witness Šimun Karlušić, the first-instance court, in a repeated trial, following the instructions of the VSRH, was obliged to evaluate their testimonies more thoroughly, more critically and comprehensively. If the court had found that the defendant had hit the victim's back of the head once using a truncheon so that the victim had lost consciousness, then it should have evaluated whether such action of torture of a civilian did represent inhumane treatment of the civilian, whether such action did cause great suffering to the victim, which all represented the significant characteristics of the crime the accused was charged with, or whether the mentioned action could possibly represent another criminal offence.

By changing the factual description of the indictment in July 2004, during the first trial, the Vukovar County Attorney's Office, after hearing the witness Šimun Karlušić, dropped one part of the incrimination relating to the actions taken to his detriment.

In the end, the accusation was based only on the testimony of the victim Ivica Pavić who deceased in the course of the repeated trial.

After seven years of court proceedings, during which one non-final (first-instance court verdict) verdict of guilty was reached, the prosecution dropped charges.

We are of opinion that in every criminal proceeding, indictments should be issued following the properly conducted investigations and they should be resting on evidence which would create a well founded suspicion that the defendant was indeed the perpetrator of crime.

The court trial that lasted for seven years, after which the prosecution dropped charges, does not support the mentioned.

The trial against defendants Damir Kufner, Davor Šimić, Pavao Vancaš, Tomica Poletto, Željko Tutić and Antun Ivezić, indicted for a criminal act of war crime against civilians stated in Article 120 of the Basic Penal Law of the Republic of Croatia

Požega County Court

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

Defendants: Damir Kufner, Davor Šimić, Pavao Vancaš, Tomica Poletto, Željko Tutić and Antun Ivezić

War Crimes Council (the panel): Judge Predrag Dragičević, Council President, Judge Jasna Zubčić, Council member, Judge Žarko Kralj, Council member

Prosecution: Božena Jurković, Požega County Deputy State's Attorney

Defence: lawyers Jovan Doneski and Miroslav Vukelić (for the first-accused); lawyer Marko Dumančić (for the second-accused); lawyers Željko Damjanac and Ivica Vrban (for the third-accused); lawyers Branko Baričević and Olivera Baričević (for the fourth-accused); lawyers Gordana Grubeša and Andrijana Vukoja (for the fifth-accused); lawyers Domagoj Miličević and Valentina Gacik (for the sixth-accused)

Opinion

The first-instance court trial was held at the Požega County Court against six members of the former platoon of Military Police of the 76th Battalion of the Croatian National Guard for illegal detention, abusing and killing of civilians of Serb ethnicity from the hamlets of Kip and Klisa in the village of Marino Selo near Pakrac.

According to the (non-final) first-instance court verdict, pronounced on 13 March 2009, the defendants were found guilty and sentenced to prison terms.

Although they had been indicted and found guilty according to the command responsibility, defendants Damir Kufner and Davor Šimić were sentenced, by applying the provisions on mitigation of penalty, to prison sentences below the mandatory minimum prescribed for criminal act of war crime against civilians.

The defendant Kufner was sentenced to a joint prison sentence in duration of 4 years and 6 months, whereas the defendant Šimić was sentenced to one year in prison. The defendant Šimić has spent in custody the amount of time which almost equals the duration of the prison sentence passed on him by the first-instance court verdict.

Other defendants, direct perpetrators of the crime, were found guilty and sentenced to following prison terms: Pavao Vancaš – 3 years; Tomica Poletto – 16 years; Željko Tutić – 12 years; and Antun Ivezić – 10 years[61].

However, according to the provisions of the Basic Penal Code of the Republic of Croatia, prison sentence in duration of 16 years, which was passed on the defendant Poletto, cannot be pronounced by court whatsoever. Namely, provisions in the general section of the mentioned Code prescribe that a prison sentence cannot be shorter than 15 (fifteen) days or longer than 15 (fifteen) years, while a prison sentence in duration of 20 years may be pronounced for the most serious and grave forms of a criminal act committed with intention. Prison sentence in duration between 15 and 20 years cannot be imposed whatsoever.

The Croatian judiciary did receive the materials from the ICTY investigation teams which had been investigating the crimes committed against persons of Serb ethnicity in vicinity of Pakrac and the specific activities of the members of the reserve units of the Ministry of Interior of the Republic of Croatia, commanded

[61] *By application of the Law on Juvenile Courts, the defendant Antun Ivezić, who was 19 years old at the time when the crime was committed, could receive the maximum penalty of up to 12 years of imprisonment.*

by Tomislav Merčep, in his capacity as Assistant to the Minister of Interior of the Republic of Croatia at the time concerned.

During the pre-investigatory proceeding which was carried out in Bjelovar and the investigation proceeding which was conducted in Požega, a well founded suspicion that they had committed the crime of killing eighteen civilians of Serb ethnicity in Marino Selo was cast on the members of the Military Police Platoon of the 76th Battalion under the command of Damir Kufner and Davor Šimić.

Since the moment the investigation was launched, all aforementioned defendants were remanded in custody. During the main hearing, after the modification of indictment and after the prosecution dropped a part of the charges, defendants Davor Šimić and Pavao Vancaš were released from custody. The defendant Damir Kufner was released from custody at the sentencing hearing, right after the announcement of the verdict, since he received the prison sentence in duration below 5 years.

During the five-month trial, 55 witnesses were heard; the three witnesses out of those 55 are the injured parties who survived the detention in Marino Selo. Two surviving victims were testifying via video conference link. The two surviving victims were giving their testimonies in the District Court building in Belgrade, while the War Crime Council, parties at the trial, and defence lawyers were located in the Osijek County Court building, since the Požega County Court does not possess the required technical equipment for audio/visual transmission.

In addition to the above mentioned technical flaw, the courtroom at the Požega County Court, in which the trial was conducted, is too small for multiple-defendants trial and the trials which attract a lot of public attention.

In the courtroom, the witnesses were giving their depositions standing in the close vicinity of the audience (public), which was putting additional pressure and burden onto the witnesses, since some of the representatives of Homeland war veterans' associations and some local politicians were also sitting in the audience who came to the trial to support the defendants with their presence.

The witnesses did not receive any psychological support or protection whatsoever. Although some of the witnesses stated that they had received threats and that they were scared to testify, there was only one single injured party who testified following the exclusion of the public.

In case of a possible repetition of the trial before an altered War Crime Council, either in this case or some other war crime trial, it is questionable, considering the number of judges, whether the Požega County Court would be able to constitute another, new Council, which would comprise of three judges with previous experience in criminal branch. If the mentioned proves to be impossible, the case would have to be delegated i.e. referred to some other county court. This issue is actually one of the reasons why we are advocating for the war crime trials to be conducted exclusively at the county courts in Zagreb, Split, Rijeka and Osijek.

CENTRE FOR PEACE, NONVIOLENCE AND HUMAN RIGHTS

Trg Augusta Šenoe 1
HR-31 000 Osijek

phone: + 385 31 206 886
fax:+ 385 31 206 889

e-mail:
centar-za-mir@centar-za-mir.hr

web:
www.centar-za-mir.hr

DOCUMENTA - for Dealing with the Past

Odranska 1
HR-10 000 Zagreb

phone: + 385 1 457 2398
fax:+ 385 1 549 9744

e-mail:
kontakt@documenta.hr

web:
www.documenta.hr

CIVIC COMMITTEE FOR HUMAN RIGHTS

Ulica grada Vukovara 222
HR-10 000 Zagreb

phone/fax: + 385 1 61 71 530

e-mail:
goljp@zamir.net

web:
www.goljp.hr