

**CENTRE  
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**MONITORING  
WAR CRIME TRIALS:**  
SUMMARIZED FINDINGS ON  
WAR CRIME TRIALS IN REPUBLIC OF  
CROATIA FOR 2006

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**MONITORING  
WAR  
CRIME  
TRIALS  
IN  
THE  
PROCESS  
OF  
DEALING  
WITH  
THE  
PAST**

**Centre for Peace, Nonviolence and Human Rights, Osijek**  
in cooperation with

**Documenta**  
**Citizens' Committee for Human Rights**  
**Croatian Helsinki Committee for Human Rights**

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were monitored by:**

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based on the reports provided by the monitoring teams  
and  
the excerpts of the report by the State Attorney's Office of the  
Republic of Croatia for 2006,  
and  
statistical data collected from the County Attorney's Offices**

# SUMMARIZED FINDINGS AND OPINION ON WAR CRIME TRIALS

The purpose of this report on the monitoring of war crime trials, which were taking place at county courts in the Republic of Croatia during 2006, is mainly to provide information – our intention was to collect data that are not easily accessible and present the information in one place.

However, we also tried from the perspective of the established situation to grasp current trends and anticipate possible future trends, and point to the issues related to war crime trials, which in our opinion, have the greatest potential for achievable and necessary changes. Steps forward towards the professional and unbiased war crime trials have been made in recent years at the highest judicial instances in the Republic of Croatia, in the way that the activities and procedures were coordinated and performed in line with the Statute of the International Criminal Court, the current practice of the State Attorney's Office was analysed and revised, legal and institutional preconditions for protection and support of witnesses were initiated, and regional cooperation on war crime trials was established. The transfer of the case of the accused Rahim Ademi and Mirko Norac from the International Criminal Tribunal for the former-Yugoslavia to the judiciary of the Republic of Croatia, i.e. the transfer of the court trial to Croatia, has shown that the international factors appreciate the mentioned steps towards changes. However, the extent of its influence on changes of practice at the level of the (County) District Attorney's Offices and the County Courts is currently insufficient and slow.

Despite establishing the four Centres for Investigation of War Crimes (in Osijek, Rijeka, Split and Zagreb), war crime trials in Croatia are being held according to the local competence - at the County Courts - which multiplies the issues related to availability of court personnel and technical facilities, not to mention the exposure of the courts to the pressure within the local communities.

Political support that the Croatian Parliament provided to the State Attorney's Office of the Republic of Croatia, with a significant and not-quite-encouraging reluctance, for initiating the investigation procedures against Branimir Glavaš, the Parliament representative and Osijek Defence Commander during 1991/1992, and ordering his detention due to suspicion that he had committed a war crime against civilians, is probably one of the turning-points in war crime trials in Croatia. At the same time, the mentioned investigation procedures led to the exposure of weaknesses of the institutions and revealed the challenges which the judiciary and the courts have been facing in mostly, collectivist, political and ideological context, and in new circumstances including a powerful media and Internet information technology, and the harmful effects of the poor court practices related to war crime trials that were previously employed in Croatia, became apparent.

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**Already at symbolic level, the regional cooperation should communicate the message that the perpetrators of crime will no longer be protected.**

**Repeated trial for the crimes against civilians committed in the “Lora” military prison; a repeated trial for the crime in Baranja.**

## Positive trends

Improvement of war crime trials practice is clearly visible in the following:

### 1. The State Attorney’s Office of the Republic of Croatia has continued to:

- strengthen the regional/international cooperation on war crime trials;
- insist on discontinuation of court practice of conducting war crime trials in absence;
- launch investigation procedures for the crimes committed against ethnic non-Croatian population, and investigation on the persons who are responsible for crimes according to the command responsibility;<sup>4</sup>
- proceed with a trend of gradual opening up towards the public by providing an increased availability and access to information.

### 2. During 2006, at the first-instance court trials before the county courts:

- no major violations of the regulations of the Law on Criminal Procedure were registered;
- no incidents in the court lobbies, or obstruction of work of the War Crime Councils, or obstruction of work of the parties involved in court trials, provoked by the audience in the courtroom, were registered;
- several repeated court trials were completed in a correct manner;
- cooperation between the judiciary and the police of the Republic of Croatia, Serbia, and Bosnia and Herzegovina, on bringing the witnesses to the court, has started functioning.

## Weaknesses

Deficiencies of the war crime trials practice in the Republic of Croatia are mainly a result, and some of them are the repeating, of the previously employed, poor judicial practices. These deficiencies point to unwillingness, ineffectiveness, and/or partiality in conducting war crime trials.

The key deficiencies are as follows:

**court trials held in absence of the accused**

**insufficiently detailed indictments**

**repeating of court trials**

**non-standardized practice of ordering detention**

**insufficient support to the witnesses and the victims**

<sup>4</sup> Launching investigations into crimes committed against civilians in Osijek, and instruction issued by the State Attorney’s Office to the County Attorney’s Offices, in which area of competence the unsolved murders were happening, to proceed and treat such cases as if they were war crimes, in order to prevent a possibility of archiving them and the cases entering the limitation period for instituting legal proceedings.

### War crime trials held in absence of the accused

The war crime trials in Croatia are still held, to a great extent, in absence of the accused. In 18 court trials which we monitored in 2006, 157 persons were accused. Following the instructions by the Supreme Court and the State Attorney, the indictments on 6 cases were modified in the way of separating indictments against 87 accused persons who were available to the judiciary of the Republic of Croatia, while the court trials against 70 accused persons who were unavailable, were suspended for the time being. However, court trials on 5 cases against 49 indictees (i.e. 56%) are still being held in absence of indictees. Therefore, only 38 indictees (44%) were present at all the trials which we were monitoring.

The mentioned situation is partly a legacy from the nineties (indictments containing a large number of indictees; at the same time the indictments are insufficiently precise – concrete effects of such indictments are unclear; the description of indictee's actions when committing the criminal act that he/she was charged for is also unclear); it is partly a result of non-implementation of the State Attorney's Office's prescribed policy on discontinuation of court practice of trials in absence of the accused, at the level of the County Attorney's Offices; and the attitudes at some County Courts also contribute to the mentioned situation.<sup>6</sup>

The attitude at some County Courts is that the time lapse might jeopardize the process of establishing facts, and that "the crimes must be brought to courts". Since the evidence, which is collected in a legal investigation procedure, is legally valid and credible, a danger of time lapse primarily refers to a possibility of instituting investigation procedures behind their time. Trials in absence of the accused significantly violate the right of the accused to defence and yet these trials do not fulfil their purpose – the verdicts are passed but the sentences cannot be carried out since the persons sentenced in absence are protected by the law/practice on non-extradition and - what is even worse – they are protected by nationalist public opinion which resist to the individualization of responsibility and guilt. The victims and injured parties view such a "justice" as a new injustice – they rightly fear the trials which purpose is not to establish the truth and accountability of the perpetrators but serve the purposes of specific political and ideological goals, or the attorney's offices' and courts' statistics. The verdicts passed in the court trials in absence of the accused are subject to the request for re-institution of the trial at the request by the accused once he/she is available to the judiciary of the Republic of Croatia. Although we may criticize that the majority of the indictees deliberately evades the trials by fleeing to another country, the Law is clear. The indictee is innocent until proved guilty of the crime which is legally prescribed as a criminal act; the indictee must be tried in a legal procedure in which he/she is given an opportunity to present his/her defence, refute or explain all the evidence, and supply his/her own evidence.<sup>7</sup> Except the fact that repeating of trials increases material expenses, and additionally burdens the judges and courts, it also exposes the witnesses and injured parties to a long-lasting, possibly reiterated, and therefore frustrating, testifying.

**Trials in absence are still held: only 44 % of the accused are present in 18 cases .**

**Trials in absence do not provide a chance to the accused to exercise their right to defence, neither they give an appropriate satisfaction to the victim.**

<sup>6</sup> It is particularly worrying that the Vukovar County Court did not allow the separation of the case, considering the newly-issued indictment for the crime against civilians in Sotin.

<sup>7</sup> In 2006, the repeating of criminal procedures was approved (beginning with the investigation phase) in two cases, in which the accused were tried in absence and then extradited to the Republic of Croatia following the international arrest warrant and their arrest. One of them had been sentenced in absence to 20 years of prison, while his court-appointed attorney had not appealed to the Supreme Court of the Republic of Croatia.

**The same factual description of criminal acts of the war crime and the armed rebellion substantiates biases that the implementation of Amnesty Law led to granting amnesty to perpetrators of war crimes!**

Court trials in absence have become more unjustifiable after the international agreements on cooperation were signed with Serbia, Montenegro, and Bosnia and Herzegovina, since signing the agreements implicitly include the trust in judicial authorities of the countries- signatories.

The mere separation of indictments, without re-institution of investigation procedures, will not contribute to the establishing of facts about committed crimes and accountability of perpetrators, and without regional cooperation on the issues of war crimes, it will not be possible to discontinue the usual practice of court trials in absence and the practice of impunity of those charged for war crimes.

Therefore, there are high expectations of the State Attorney's Office of the Republic of Croatia to coordinate and stimulate the initiative for implementation of regional cooperation at the operational level in order to promote good practices, such as the practice adopted by the County Attorney's Offices in Split, Dubrovnik and Zagreb and to convey such practice to all other County Attorney's Offices.

### Insufficiently precise indictments

*Partiality* that has been blamed on the judiciary of the Republic of Croatia<sup>8</sup> for many years, does not refer only to unevenness of the number of accused members of the Serb paramilitary formations in relation to the number of accused members of the military and police units of the Republic of Croatia, neither it means that there is a request for balancing these numbers. The major issue is whether the trials of members of the Serb paramilitary formations are impartial and if they are done in a professional manner, and what is the method of investigation and dealing with the crimes that have been committed against ethnic non-Croats.

The contents and explanations of the indictments of the court trials which we were monitoring during 2005 and 2006 point to an uneven qualification of criminal acts in view of the number of indictees, their rank and command responsibility (in relation to ethnicity of indictees, i.e. their participation in the Serb paramilitary formations, or in the military and police units of the Republic of Croatia).

In that sense, insufficiently precise indictments against members of the Serb paramilitary units which relate to a large number of indictees are problematic, as well as the fact that the majority of indictees are tried in absence. The actual problem is with the indictments which do not clearly and accurately state the concrete actions of the criminal act of war crime and link these actions to the concrete person -indictee who is charged for committing these crimes. We have registered several indictments which do not present at all the actions the indictee is charged for, or description of the actions is presented in such a manner that the actions of the criminal act of armed rebellion may be identified instead. Investigation procedures in these cases were mostly launched in the early nineties, when it was important to initiate court procedures, while material evidence, or perpetrators, were not available since the areas where the crimes had been committed were occupied. Instead of a consistent implementation of the Amnesty Law, along with a thorough investigation of the

<sup>8</sup>In the period from 1991 to 2006, 1,428 persons in the Republic of Croatia were accused of crime of violating the international humanitarian law, and 611 persons were sentenced for the same crime. Out of the total number, 12 members of the Croatian army and the Ministry of Interior of the Republic of Croatia were sentenced.

committed crimes, the charges were urgently pressed, investigations were urgently launched and indictments for war crimes were hastily passed against a large number of persons. However, it appears that the most visible effect of such indictments and trials is the fact that indicted persons do not return to Croatia, while the establishing of facts and accountability of perpetrators is usually omitted.

*We have registered 6 cases where separation and modification of such indictments was carried out (indictments in 5 cases currently tried at the County Courts in Vukovar, Zadar and Rijeka still have not been modified). Yet, we have noticed another problem in the process of modification of indictments. In the repeated criminal proceedings for the crime against civilians in Beli Manastir and other towns and villages in Baranja, after the Supreme Court of the Republic of Croatia had quashed the guilty sentence, the Osijek County Attorney's Office modified the indictment in the way of accusing some indictees for armed rebellion, without changing the factual description of the criminal act. Therefore, it appears that during the previous court proceedings the indicted persons had been accused and sentenced for war crime on the basis of the same description of actions of the criminal act of armed rebellion.<sup>9</sup> Although, it may seem to be more concise and pretty simple, such a method has its weaknesses which make it inappropriate and it is necessary to avoid this method in the future practice.*

It is unjust from the perspective of the indictees since it does not return an explicit acquittal of the charges for war crimes which were brought against them several years before the modification of the indictment. Moreover, non-modification of indictments (which means that the same indictment is passed, both, for the war crime and the armed rebellion) substantiates the attitudes/stereotypes prevailing in the Croatian public which believes that the implementation of the Amnesty Law has granted amnesty to the perpetrators of war crimes – members of the Serb paramilitary formations.

### Repeating the court trials

There is a large number of repeated first-instance court proceedings for which the Supreme Court of the Republic of Croatia has brought the decision on repeating. The repeating of court trials is a result of incorrectly established facts.<sup>10</sup>

The court trial at the Karlovac County Court is held against the accused Mihajlo Hrastov for the criminal act of illegal killing and injuring the enemy, stated in the Article 124 of the Basic Criminal Law of the Republic of Croatia. The procedure is being held since 1992, therefore, it has already lasted for 14 years. The verdict of acquittal was quashed on two occasions due to incorrectly and incompletely established facts. The second repeated trial is being held since 2004. Non-functioning of the legal order in this specific case is manifested in unwillingness of the judicial authorities to establish the true factual situation, and in a lengthy, time-consuming second repeated process. This primarily causes harm to the victims of the crime, but also keeps the accused in a lasting state of legal uncertainty (although, in this case, the community is not unfriendly towards the accused).

**Repeating of court trials:  
the lack of willingness  
and  
courage to reach the  
“unpopular” verdicts.**

<sup>9</sup> In this way, the court trials for war crime in Branjin Vrh and the war crime in Branjina (held at the Osijek County Court) have ended against several accused persons leaving them a right to appeal, after the cases were characterized as armed rebellion.

<sup>10</sup> In 2006, there were 10 repeated first-instance court trials out of 18 monitored trials.



**The majority of the accused is not kept in custody during the trial.**

**Non-insisting on ordering detention may speak of the lack of conviction by the County Attorney's Offices about the indictments and the evidence presented in them.**

Presupposing a high level of professional competence by the judges, a large number of repeated first-instance court trials have raised the issue of judges' willingness, i.e. their courage in reaching "unpopular" verdicts. Therefore, it points to their important, yet hidden, dependence upon external, non-judicial factors.

These court trials are also problematic due to:

- their lengthy procedure<sup>11</sup> and
- resultant influence on the process of (non-)ordering detention.

### **Non-standardised practice of ordering detention**

The majority of the accused tried in 18 court proceedings that we have monitored, are not being kept in custody during the trial; only 12 accused persons were kept in custody during the trial.<sup>12</sup>

The Law on Criminal Procedure, in its Article 102, Paragraph 1, Item 4, stipulates that the detention may be ordered in case of most serious crimes, which do include criminal offences committed against humanity and international law, and in case when it is necessary due to especially difficult circumstances of the criminal offence commitment. The monitored court practice of ordering detention has shown as non-standardised and uneven. It does not seem that the Supreme Court of the Republic of Croatia has been standardising the practice, and for that reason, each of the County Courts where even the most serious crimes are currently being tried, has its own criteria for ordering detention.

Some criminal procedures have lasted too long (over two years) which result in obligatory discontinuation of the previously ordered detention and the release of the accused person(s). The fact that the County Attorney's Offices do not insist on ordering detention for criminal acts of war crime, genocide and crimes against humanity, may also speak of the lack of conviction by the County Attorney's Offices about the indictments they have issued and the evidence presented in those indictments.

War crime trials, in which accused persons are not kept in custody, have a discouraging effect on the victims, injured parties, and witnesses, which obviously has not been a matter of concern to the current court practice. It is of great importance to emphasize this specific aspect, since the danger of current practice of war crime trials, in which the accused are not kept in custody during the trial, may emerge and influence the future court trials, even the process of (non-) ordering detention for the accused at the beginning of investigation.

### **Insufficient support to the witnesses and victims**

The witnesses and injured parties testify at war crime trials about their own terrible sufferings and they face the perpetrators, causing them re-traumatisation and put-

<sup>11</sup>In cases when the first-instance trials were repeated, and in the cases with a large number of inditees tried in absence (trial for the crime in Miklušević and the trial for the crime in Lovas), the total duration of the proceedings is more than two years.

<sup>12</sup>In 2006, out of 38 accused persons present at the war crime trials that we monitored, 26 accused persons were not kept in custody during the trial, and 12 accused were kept in custody. 20 accused members of the Serb paramilitary formations, and 6 members of military or police unit of the Republic of Croatia, were not kept in custody during the trial, usually in cases of lengthy trials in absence with a large number of the accused, in the repeated first-instance court trials (where the verdict of acquittal was passed) and in cases of problems for health reasons.

ting them under pressure of the community, the accused, and the supporters of the accused. Repeating of court trials and lengthy trials in absence of the accused additionally burdens the witnesses and injured parties.

Harmful consequences of the insufficient support and protection are inflicted upon the individuals taking the roles of witnesses and injured parties during the trial, and at the same time, those consequences influence the court trial itself (i.e. they influence the willingness of the witnesses and victims to contribute to the process of establishing the truth).

The needs, and a lot of possibilities, for improvement of the support to witnesses and victims, may be seen in the following observations:

- trials are also being held in the courtrooms where the distance between the witnesses and the accused is inappropriate and small;
- only a few County Courts have separate waiting rooms for witnesses, the public, and the accused, which are usually not being used;
- programme of the Department for Support to Witnesses and Participants of Criminal Acts of War Crime is intended to provide support to the witnesses involved in international cooperation on investigations and war crime trials, while the support in trials held before the courts in the Republic of Croatia is omitted;
- only the Vukovar County Court has been providing support to the witnesses and victims through a pilot project named Voluntary Services for Providing Support to Witnesses and Victims, therefore the witnesses and injured parties usually hear about the support procedure during the main hearing;
- the witnesses are neither informed about the possibilities of support programme available to them, nor the injured parties are informed on possibilities of their participation in the criminal proceedings by giving authorization to their legal representatives.

Moreover, we wish to emphasize that the witnesses and injured parties cannot feel they have received support and they cannot feel safe until the policies of the State Attorney's Office and the investigation courts (especially those courts in the war crime investigative centres) on ordering detention for the accused during the investigation procedures, are developed and formulated with the sole intention of protection of credibility of the investigation and witness support, by taking the following actions:

- insisting on ordering legally prescribed detention, and
- exercising all other legal regulations and possibilities for instituting a criminal prosecution in case of obstruction of the investigation or when disrespect for the court is shown.

**The Voluntary Service for Support to Witnesses and Victims is present only at the Vukovar County Court.**

## Summarized findings and opinion on war crime trials

<sup>13</sup> Considering the seriousness of the criminal act, the Investigation judge and the Judicial Council of the Zagreb County Court themselves, could have ordered detention of the accused. However, despite the inadmissible interference of the accused into the investigation procedure through media, the Investigation judge rejected on three occasions, and the Judicial Council rejected twice during the period of 4 months, the suggestions/appeals by the State Attorney's Office for ordering detention. However, the Investigation judge at the Osijek County Court declared that the Osijek County Court was unauthorized in the case against Branimir Glavaš and did not order his detention although he had previously ordered investigation and detention of the accused co-perpetrators. The chronology of the decisions suggests that the circumstances the investigation judges were working in (previously employed, poor practice in war crime trials in the Republic of Croatia; coordinated pressure organized by political subjects and the legal defence, launched through the media; and even the media themselves; uncertainty of the possible consequences of hunger strike staged by the accused; and political context of the court trial against the governing party dissident), have surpassed the willingness and readiness of judges to reach an "unpopular" decision. Therefore, unwillingness and indecisiveness of investigation judges in ordering detention, has placed the first-accused Branimir Glavaš in a privileged position in relation to other accused persons, but also in relation to the witnesses.

Non-ordering detention during the investigation procedure to the persons accused of war crime discourages the current and potential prosecution witnesses; it conveys a message to the public that there is unwillingness to thoroughly investigate the case; and it continues with the judicial practice which favours the silence of the witnesses, non-investigation and concealment of war crimes. From that perspective, it is necessary to analyse and consider the course of investigation procedure against Branimir Glavaš, the first-accused of committing war crimes against civilians in Osijek.<sup>13</sup>

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