

Centre for Peace, Nonviolence and Human Rights Osijek, *Documenta* - Centre for dealing with the past, Civic Committee for Human Rights Zagreb

Main Trends and Issues in War Crimes Trials

Reporting period: May - August 2012



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CONTENTS

I. INTRODUCTION

- A.** Mandate and background
- B.** Executive summary
- C.** Recommendations

II. THE BROADER CONTEXT

- A.** Presidential and parliamentary elections in Serbia
- B.** Balanced statements at the anniversary of Operation 'Storm'
- C.** Denial of crimes committed in Osijek by HDSSB
- D.** Litigation costs still not written off
- E.** Croatia funds the defence of generals indicted by the ICTY and the defence of Tomislav Merčep

III. COURT PROCEEDINGS

- A.** Lack of physical capacity at the County Court in Zagreb and a possible need to increase the number of judges
- B.** The monitored trials in Croatia
 - 1.** Proceedings against members of Croatian forces
 - a. Ongoing trials*
 - b. First-instance verdicts*
 - c. Supreme Court cases*
 - 2.** Proceedings against members of Serbian forces
 - a. Suspended trials*
 - b. First-instance verdicts*
 - c. Ongoing trials*
 - d. Indictments and investigations*
 - 3.** Proceedings for obtaining compensation for death of close family members
- C.** Cases in The Higher Court in Belgrade

I. INTRODUCTION

A. Mandate and background

Since 2005, three human rights organisations have jointly monitored war crimes cases before the courts in Croatia. These organisations are: Centre for Peace, Nonviolence and Human Rights (Osijek), *Documenta* - Centre for dealing with the past and Civic Committee for Human Rights (hereafter referred to collectively as the “Trial Monitoring Program”).

Objectives of monitoring war crimes trials are: an increase in the effectiveness of prosecution of war crimes, improvement of the legal framework for their processing, improvement of the position of victims in the criminal proceedings, the intensification of regional cooperation and indemnification of all victims of war.

The Trial Monitoring Program stresses the importance of efficiency and fairness in the judicial system, which should respect both the rights of defendants and suspects, as well as the rights of victims and witnesses.

The Trial Monitoring Program monitors all proceedings for war crimes conducted in the Republic of Croatia, and a number of proceedings that are ongoing before the courts of neighbouring countries (especially those involving war crimes committed in Croatia), as well as the trials before the International Criminal Tribunal for the former Yugoslavia (ICTY).

This quarterly report deals with trials and events during the period from May to August 2012.

B. Executive Summary

We have noted a number of positive developments during the reporting period. This primarily refers to the commencement or resumption of war crimes trials, which had for years been held-up due to a lack of willingness to prosecute and which involve cases where a larger number of Serbian nationals were liquidated or mistreated¹. Secondly, cooperation between Croatian and Serbian prosecutors has resulted in trials against members of Serbian troops before the Higher Court in Belgrade. In June 2012 twenty defendants were convicted in a non-final judgement in two cases involving crimes committed on Croatian territory against Croatian citizens². Thirdly, the Croatian Supreme Court rendered a decision holding that it is possible to award compensation to victims of war crimes regardless of whether the perpetrator is known. Fourthly, a positive tone of this year's anniversary celebration of the "Storm" was set by the messages from the President Josipović, Prime Minister Milanović and Minister of War Veterans Matić in which they gave tribute to veterans, honoured all victims and supported the prosecution of war crimes.

However, the Trial Monitoring Program has identified a number of areas of concern. Firstly, following the stipulation of exclusive jurisdiction and transfer of cases to the four county courts, several proceedings against members of Serbian troops were suspended due to unfounded charges. This suggests that courts and state attorney's offices in smaller communities have often

¹ Crimes committed in Sisak, in prisons in Gajeva Street in Zagreb and Kerestinec, in Pakračka Poljana and Zagrebački velesajam.

² For the purpose of conducting criminal proceedings the Office of the State Attorney of the Republic of Croatia provided data and evidence to the Serbian Prosecutor's Office in 31 cases involving in total 56 persons residing in the territory of the Republic of Serbia and with Serbian citizenship so they can not be extradited to Croatia. Of this number 14 have been sentenced in final judgements before the Belgrade Higher Court.

not been acting with the competence or dedication necessary to conduct the trials professionally and impartially against all perpetrators. In many cases which were transferred from smaller courts, the accused members of Serbian forces were unavailable to Croatian judicial bodies, which points to the need to improve regional cooperation.

Secondly, the transfer of jurisdiction to the four courts and four state attorney's offices has led to certain problems relating to the arrival of witnesses to courts, increased workload for already overworked judges and prosecutors, and the necessity of conducting field interrogations of witnesses³.

Thirdly, the problem of collecting payment of litigation costs from family members of civilian victims killed in the war has still not been resolved adequately. These family members lost lawsuits in which they claimed non-pecuniary damages from the Republic of Croatia for the loss of their loved ones. Although in July 2012 the Croatian Government issued the *Regulation on the criteria, standards and procedures to delay payments, introduce instalment payments and sale, write-off or partial write-off of debt* on the basis of which litigation costs could be written off for the most socially vulnerable plaintiffs, it should be noted that this has not solved the problem to a satisfactory level. It is imperative that the Government urgently issues a decision to categorically write off the costs of lost lawsuits for all plaintiffs who failed to obtain non-pecuniary damages for the death of their loved ones and to refund those who have already paid litigation costs.

The support of the most important regional political actors for prosecuting all perpetrators of crimes was undermined after the May elections in Serbia and the election of Tomislav Nikolić as a new Serbian president, a person burdened with a wartime past, and the formation of the government led by Iвица Dačić, in the 1990s a close associate of Slobodan Milošević. The election results and Nikolić's statements raised tensions in the countries of the region and this could adversely affect their cooperation in the prosecution of war crimes.

C. Recommendations

- The Ministry of Justice (MOJ) should provide necessary funds for a larger number of adequate courtrooms in the Zagreb County Court and for the renovation of the Osijek County Court buildings;
- Due to the complexity of war crimes cases, judges appointed to war crimes councils in the county courts should be properly rewarded and motivated;
- The MOJ should ensure that vehicles and funds are available to the Victims and Witnesses Support Service or departments of support at courts so as to enable systematic transportation to / arrival of witnesses at court;
- The Croatian Government should issue a Regulation to categorically write off costs of lost lawsuits for all claimants / injured parties who failed to obtain non-pecuniary damages for death of their close relatives, and to provide for refunds for those who have already paid the costs or whose property was seized;
- The Croatian Government should rescind *the Act on nullity of certain legal acts of judicial authorities of the former Yugoslav People's Army, former Yugoslavia and Republic of Serbia* because it threatens the judicial cooperation between Croatian and Serbian judicial bodies;

³ In the Baćin crime case, in which nine defendants were charged with killing at least 56 civilians of Croatian nationality, which was transferred from the Sisak County Court to the Rijeka County Court, the investigation is, due to the poor quality of investigation and poorly prepared indictment, 'being conducted' both in the main hearing and in extra-trial interrogation of numerous witnesses in places of their residence, which makes it difficult for the court to conduct the trial and reduces public accessibility.

- The Croatian Ministry of the Interior should publicly disclose details of all war crimes defendants whose defence costs are covered from the state budget, as well as information on the amount of money spent.

II. THE BROADER CONTEXT

A. Presidential and parliamentary elections in Serbia

Progress in regional cooperation between the judicial authorities of the countries in the region is necessary so that the largest possible number of perpetrators is brought to justice. However, the initiative of Croatian President Ivo Josipović, supported by the then President of Serbia, Boris Tadić, to sign an interstate agreement to facilitate cooperation between judicial authorities and the prosecution of war crimes, was brought into question after the victory of Tomislav Nikolić in the presidential elections in Serbia in May 2012., a person burdened with a wartime past, and the formation of the new Government led by Iвица Dačić, former close associate of Slobodan Milošević.

Although he now declaratively supports Serbian accession to the European Union, Nikolić's capacity as Serbian President is burdened with his wartime past: he was a Chetnik duke, he used to closely cooperate with the Serbian Radicals' leader Vojislav Šešelj⁴, he had a role in organizing Serbian volunteer troops in the war, and he was present in the Croatian village of Antin, where crimes were undoubtedly committed.

Nikolić's statements made during the election campaign (the Croats have no reason to return to Vukovar because it is a Serbian town) and after the election (that a serious crime occurred in Srebrenica, but that it did not amount to genocide) demonstrate his unwillingness to face what are today almost universally accepted facts and which were also established in final and conclusive judgements. Consequently, Nikolić's presidential inauguration was marked by a boycott of virtually all leaders of the countries in the region.

In addition to the existing problems - mutual lawsuits for genocide, the unresolved missing persons' issue, Croatian *Act on nullity of certain legal acts of judicial bodies of the YNA, former Yugoslavia and Republic of Serbia*⁵ and the inability to agree on the jurisdiction to prosecute perpetrators of crimes with Bosnia and Herzegovina⁶ - the election of Nikolić as the President of Serbia raised tension in the countries of the region, and could have a negative impact on cooperation in the prosecution of war crimes.

⁴ Vojislav Šešelj was indicted at the ICTY for crimes committed against non-Serbian population in Croatia, Bosnia and Herzegovina and Vojvodina. In early 1991 Šešelj founded the Serbian radical party, and served as its president. Nikolić served as the vice-president. Šešelj and Nikolić only separated politically in 2008.

⁵ The Croatian Constitutional Court will decide on the issue of abolition of the Nullity Act, since President Josipović has applied for the assessment of its constitutionality. Numerous persons pointed to the need for repealing the Act as it could jeopardize regional cooperation. Although according to the Chief State Attorney, Mladen Bajić, judicial bodies seek to avoid its application, the Nullity Act is by its mere existence a politically harmful act.

⁶ Both the Croatian and Serbian view is that perpetrators of war crimes should be tried in the countries of their present residence, while the view of Bosnia and Herzegovina is that trials should be conducted in the country where the crimes were committed.

B. Balanced statements at the anniversary of operation "Storm"

At the celebration marking the anniversary of Operation "Storm" and the National Thanksgiving Day, the highest state officials condemned the crimes committed during and after the Operation. The statements of the President and the Prime Minister instil hope that Croatia can celebrate the liberation of the occupied areas of Croatia whilst acknowledging the suffering of the civilian victims of the "other side." However, negative comments were fostered by the statement of Defence Minister Kotromanović which, even if it was given in good faith and intended to condemn crimes committed against Serbian civilians during and after "Storm", demonstrates his ignorance and refusal to recognize the existence of the state based on the rule of law⁷.

C. Denial of crimes in Osijek by HDSSB

In recent months the leaders of the Croatian Democratic Party of Slavonia and Baranja (HDSSB), the dominant political party in Eastern Croatia, continued to publicly deny the commission of certain crimes committed in Osijek despite the conviction of Branimir Glavaš and others. After a visit to Osijek and Osijek-Baranja County, the U.S. Ambassador to Croatia James E. Foley expressed concerns about the ties of the city and the county with Branimir Glavaš. At a press conference entitled "Response to the scandalous behaviour of the American ambassador" County Prefect Šišljagić and Mayor Bubalo stated that they would never forsake Branimir Glavaš, who has been "innocently convicted in a politically motivated process," and added that they would not allow insults and lies directed at Croatian generals. Thus the formal leaders of HDSSB continued to subordinate political and economic interests of the city and the region which they rule to the interests of Branimir Glavaš, their informal party leader⁸.

D. Litigation costs still not written-off

The issue of collecting payment of litigation costs from victims of war crimes has still not been satisfactorily resolved. Most plaintiffs, whose claims for non-pecuniary damages were rejected, have been ordered to pay the costs of lost litigation. In the 70-odd registered proceedings in which plaintiffs / injured parties are liable for costs, total litigation costs amount to more than two million HRK. This mainly concerns pensioners on a minimum income whose assets are subject to foreclosure: usually very modest pensions are seized, but also other movable and immovable property. The Trial Monitoring Program holds that threats with property seizure or execution due to owed litigation costs represent the continuation of injustice which had started by killing the victims and the non-prosecution of the perpetrator.

Although on 5 July 2012 the Government introduced the *Regulation on the criteria, standards and procedures to delay payment, introduce instalment payment and sale, write-off or partial*

⁷ In an interview published on 5 August 2012 on the website Politika+, Kotromanović said: 'I think that we should have shot some bandits right on the spot, if they had been killing innocent people, looting the villages and compromising this impeccable military action.' In a later statement of the Ministry of Interior it was stated that the statement was made in 2009 and that the Minister 'has always respected democratic institutions of the Republic of Croatia and the rule of law.'

⁸ The trial in the case against Osijek businessman Drago Tadić began in May. He is accused of attempted bribery of judges of the Croatian Supreme Court so that the Court, deciding on appeal, renders a verdict more favourable to Branimir Glavaš. Before commencement of the trial, the remaining four defendants, including Ivan Drmić, MP of HDSSB, pleaded guilty and reached a settlement with USKOK after which they all received a suspended prison sentence. All relevant dailies report on the case against Tadić, except the 'Voice of Slavonia', a regional daily controlled by Branimir Glavaš and HDSSB.

write-off of debt which allows litigation costs to be written for the most vulnerable plaintiffs, the issue of litigation costs has not been solved entirely and to a satisfactory level.⁹ The issue of refunding those claimants who have already paid litigation costs has also not been solved.

To resolve this issue satisfactorily, the Croatian Government should issue a decision that will:

- (1) Clearly and unambiguously write off the litigation costs of all claimants who were unsuccessful with lawsuits in which they sought non-pecuniary damages for the death of a close family member;
- (2) Provide for refunds for those who have already paid the costs or whose property was seized.

E. Croatia funds the defence of generals indicted by the ICTY and the defence of Tomislav Merčep

While we have for years been expecting the Government to write off the costs of litigation of plaintiffs / injured parties who failed with their claims for compensation for their emotional suffering caused by the death of their close family members, the costs of legal representation for three Croatian generals indicted by the ICTY, paid for by the Government, amount to an enormous sum. According to data published in *Jutarnji list*, in the period from 2006 to 2011, legal representation for General Gotovina, Čermak and Markač cost the Croatian tax-payer HRK 169,315,205.91.¹⁰

In addition, in July it was published that legal costs for defence of Tomislav Merčep, a war-time adviser at the Ministry of Interior accused of crimes against Serbian civilians, cost the Ministry of Interior HRK 389,616.00 in 2011 and 2012. The reasoning of the MoI for covering defence costs is that Article 98 of the *Law on police duties and powers* stipulates that the police officer has the right to have legal aid secured at the expense of the MoI in case of the opening of proceedings against him due to the use of means of coercion and other measures while performing his police duties, even in the case when the person is no longer employed by the Ministry of Interior.

The Trial Monitoring Program considers it wrong to interpret the cited legal provision in such a way which removes a distinction between the 'use of means of coercion and other measures while performing police duties' and torture and killing of civilians. In proceedings involving the latter defence costs should not be covered based on the *Law on police duties and powers*.

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

We do not know whether other former employees of the MoI, accused of war crimes or unlawful killing of prisoners of war, used the privileges provided by the interpretation of Article 98 of the

⁹ The Regulation was published in the Official Gazette no. 76/12.

¹⁰ <http://www.jutarnji.hr/koliko-smo-platili-obranu-gotovine--cermaka-i-markaca--169-milijuna-za-odvjetnicke-timove-generalala-u-sest-godina/1031523/>

Law on police duties and powers by the Directorate for Legal Affairs and Human Resources of the Ministry of Interior.¹¹

III. COURT PROCEEDINGS

A. Lack of physical capacity at the County Court in Zagreb and a possible need to increase the number of judges

After amendments to the *Act on Application of the ICC Statute*, giving exclusive jurisdiction in war crimes cases to county courts in Zagreb, Split, Rijeka and Osijek, numerous war crimes cases have been transferred from smaller county courts. Of the 17 war crimes cases followed during the reporting period, 15 were held at these four county courts.

County courts in Zagreb, Split, Rijeka and Osijek, previously the only competent courts for handling cases of corruption and organized crime, have been further burdened by stipulating exclusive jurisdiction in war crimes cases. These courts generally have the necessary technical equipment and a sufficient number of courtrooms, apart from the Zagreb County Court which suffers from the greatest workload and where trials are often held in rooms which are too small and inadequate, and which cannot accommodate the entire interested public. Given that presidents of these courts generally emphasize that even before the amendments to the *Act on Application of the ICC Statute* judges had been overworked, it is possible that it will be necessary to engage more judges.

By stipulating exclusive jurisdiction of the four courts in war crimes cases, county state attorney's offices in the said cities have also become solely responsible. However, it is quite common that transferred cases are represented by deputy state attorneys who had represented them before the transfer. Although this to a certain extent relieves the position of state attorneys, in the 2011 *Report on the work of state attorney's offices* it is stated that due to exclusive jurisdiction in war crimes cases of the four county courts, and thus the four county state attorney's offices, it is necessary to review county courts' jurisdiction *ratione materiae*. If jurisdiction in certain crimes was eliminated, county courts and county state attorney's offices would be significantly unburdened.¹²

The new exclusive jurisdiction and transfer of cases has also led to problems associated with witnesses appearing for trial. Witnesses, often older people who reside in rural areas not connected by public transport with cities in which proceedings are held, are often unable to provide their own transportation to appear in court. For example, in the Baćin case, which was transferred from the Sisak County Court to the Rijeka County Court, the presiding judge conducted field interrogations of some 50 witnesses at the Municipal Court in Hrvatska Kostajnica as witnesses were unable to get to Rijeka due to age, health, and lack of transport. We think that the Ministry of Justice should ensure vehicles and funds for the Victims and Witnesses Support Service to enable transport of witnesses to court.

¹¹ By way of monitoring war crimes trials in Croatia, we have learnt that the proceedings against the following members of the MoI were conducted or are still ongoing: Frano Drlja, Božo Krajina and Igor Beneta (crime in Grubori), Đuro Brodarac, Vladimir Milanković and Drago Bošnjak (crime in Sisak), Mihajlo Hrastov (crime on the Korana bridge in Karlovac), Željko Gojak (crime in Sajevec in Karlovac), Željko Sačić and Frano Drlja (crime in Ramljani), Luka Markešić, Zdenko Radić, Zoran Maras and Ivan Orlović (crime in Bjelovar) and Ivica Mirić (crime in the Brezovica forest in the vicinity of Sisak). In addition to these war crimes cases, we followed the proceedings against Antun Gudelj, the MoI employee, convicted of killings committed in Tenja in a final judgement.

¹² This especially applies to drug abuse crime as described in Article 173 paragraph 2 of the Croatian Criminal Act.

Although the increase in the activity of courts and state attorney's offices responsible for the prosecution of war crimes necessarily increases spending, the budgets of these courts and state attorney's offices, compared to last year, decreased or remained the same.

B. Monitored trials in Croatia

Of 17 cases monitored, 9 trials were conducted against a total of 20 members of the Croatian forces, while 8 trials were conducted against a total of 17 members of the Serbian forces. All members of Croatian forces were tried in their presence; 10 were held in detention during trial. Of the Serb defendants, only 7 attended and the rest were tried *in absentia*; five were kept in custody during trial.¹³

1. Cases against members of Croatian forces

a. Ongoing trials:

During the reporting period two trials began: the case against Vladimir Milanković and Drago Bošnjak, charged with murder of 26 citizens of Sisak of Serbian nationality; and the re-trial of Božo Bačelić, Ante Mamić, Luka Vuko and Jurica Ravlić, accused of killing a prisoner of war and two elderly civilians of Serbian nationality after the military operation "Storm".¹⁴

The following trials resumed:

- Frano Drlja and Božo Krajina, accused of killing six senior civilians in Grubori near Knin after "Storm",
- Tihomir Šavorić, Ivica Krklec and Alen Toplek, accused of killing four civilians in 1995 in the Mrkonjić Grad surroundings (Bosnia and Herzegovina),
- Stjepan Klarić, Dražen Pavlović, Viktor Ivančin, Željko Živec and Goran Štrukelj, accused of abusing civilians and prisoners of war in prisons in Gajeva Street in Zagreb and in Kerestinec,
- Tomislav Merčep, wartime advisor in the Ministry of Interior, accused of having ordered unlawful arrests, torture and execution of civilians from the area of Kutina, Pakrac and Zagreb.¹⁵

In the proceedings against Merčep and against Klarić et al., witnesses testified to the awareness of the Croatian political leadership about the arrests, abuse and killings, despite which the crimes have not been prosecuted until the present day.

b. First-instance verdicts:

¹³ A tabular presentation of monitored trials in county courts and hearings / meetings at the Supreme Court can be found in the attached document.

¹⁴ The proceedings against Božo Bačelić and others had been interrupted for years. Bačelić was on the run, and after his arrest in Germany in February 2012 and extradition to Croatia, the procedure has resumed.

¹⁵ Merčep, charged with unlawful detention of 52 persons, of whom 43 were killed and three are missing, was released from custody in early July 2012. The extra-trial chamber of the Zagreb County Court held that Merčep was not able to receive adequate medical care and the necessary physical therapy in the Hospital for persons deprived of liberty.

During the reporting period, two members of Croatian units were sentenced in a first-instance verdict:

- Miljenko Bajić, previously sentenced *in absentia* to six years in prison for his involvement in the abuse of Serbian civilians in the Split military-investigative prison "Lora", where two were killed; after arrest and a re-trial, he was sentenced to 4 years and 6 months in prison.

- Enes Viteškić was found guilty and sentenced to 11 years in prison before the Osijek County Court, after completion of the third (second repeated) first-instance proceedings for participation in the killing of 18 elderly Serbian civilians in Paulin Dvor.

A first-instance judgment was also rendered in the case of defendant Ivica Pintarić, charged with killing two unidentified civilians in 1995 near Mrkonjić Grad in Bosnia and Herzegovina.¹⁶ Pintarić was acquitted in a first-instance verdict.

c. Supreme Court cases:

Appellate sessions were held before the Supreme Court in two cases in which, during the 1990s, the accused members of Croatian forces were unjustifiably amnestied:

The Supreme Court accepted the prosecution's appeal and quashed the first-instance verdict rejecting the charge rendered by the Sisak County Court in respect of the 1st defendant Željko Belina and the 2nd defendant Dejan Milić. The first instance verdict rejecting the charge was confirmed in respect of the 3rd defendant Ivan Grgić and the 4th defendant Zdravko Plesec. Belina and Milić are charged with killing three civilians and wounding one civilian. In November 2010, the Sisak County Court rejected the charge because it was of the opinion that this case had already been tried resulting with a final verdict. Namely, in 1992 the trial against the defendants was concluded by applying the Amnesty Act. Following the decision on detention issued by the Supreme Court, the repeated first instance proceedings in respect of Belina and Milić will be conducted before the Zagreb County Court.¹⁷

In July, the Supreme Court heard an appeal from the Sisak County Court. In this case, the trial court found the first-accused Damir Vide Raguž guilty (*in absentia*) and sentenced him to 20 years in prison for killing four civilians of Serbian nationality. It acquitted the second accused, Željko Škledar, who was present during the trial. The decision of the Supreme Court will be issued soon.¹⁸

¹⁶ Explaining the verdict, the President of the Trial Panel pointed out that it had not been proved that the defendant committed the crime with which he was charged, that the testimony of the only witness against the defendant is too narrow, that the bodies of the killed hadn't been found, that their identity remains unknown as does the name of the village where the alleged crime was committed.

¹⁷ The session of the Appellate Chamber of the Croatian Supreme Court was held in February 2012. We found out about this decision subsequently.

¹⁸ It is still uncertain whether perpetrators in the third analogous case will be prosecuted. Namely, in its 1992 Decision regarding the case against Robert Ahmetagić, Damir Šarić, Dragan Kostrić and Vinko Kovačević, the Military Court in Zagreb applied The Amnesty Act and thus suspended the criminal proceedings against them. They were charged with murder of Damjan Žilić in the Jakuševac landfill near Zagreb. In April 2010 the Zagreb County Attorney's Office dismissed the criminal complaint filed by the wife of deceased Žilić in which these persons were reported as perpetrators of the war crime. The Zagreb County Attorney's Office held that the criminal proceedings cannot re-commence because they were suspended in 1992 in a final and conclusive decision. Using a counsel, the wife of deceased Žilić then applied for the opening of an investigation, but her application was denied. The case is currently pending appeal at the Supreme Court. According to the statements issued by the State Attorney's Office, if the Supreme Court takes the view that a re-trial with a new legal qualification is possible (war crime instead of murder), the State Attorney's Office will take over the prosecution from the injured party.

2. *Cases against members of the Serbian forces*

a. *Suspended cases:*

Shortly after their transferral to one of the four county courts, several cases against members of the Serbian troops were suspended.¹⁹ This mostly concerns cases in which indictments or verdicts which had previously been rendered *in absentia*, were ill-prepared or ill-founded, which speaks in favour of the claim that transferral of cases from local county courts was necessary because these courts did not have sufficient staff capacity and often lacked courage or willingness to conduct trials in a professional and impartial manner.

Certain presidents of courts and judges show their concern about ill-prepared indictments in transferred cases, in which defendants are largely unavailable to authorities, pointing out that it might be necessary to "conduct investigation during trials."²⁰

All of the above indicates that the internal review of cases, conducted in the past several years by state attorney's offices, has not removed all consequences brought about by earlier unprofessional and biased indictments and judgements.

b. *First-instance verdicts:*

First-instance judgements of conviction were rendered in two cases:

- In June, the County Court in Osijek sentenced Čedo Jović for the fourth time, after the Supreme Court on three occasions quashed the first instance judgements of conviction. He was sentenced to 5 years of prison for failing to prevent his subordinates from abusing civilians, which resulted in the death of one civilian.²¹

- Željko Šuput and Milan Panić were, in a re-trial at the County Court in Rijeka, sentenced to 4 years and 3 years and 6 months in prison for abuse of civilians detained in the Korenica prison.

¹⁹ Thus:

- On 31 May 2012 The Zagreb County Court dismissed the case against Borislav Mikelić, a wartime prime minister of the so-called Republic of Serbian Krajina, after the Sisak County Attorney's Office concluded that no evidence had been found which would point to Mikelić's involvement with the crimes for which he had been found guilty in a final and conclusive judgement. The proceedings re-opened on Mikelić's request, and in 1993 the Sisak County Court sentenced him to 20 years in prison for crimes committed in the Petrinja area;

- On 4 June 2012 the Rijeka County Court dismissed the case against Vladimir Bekić, who was charged by the Sisak County State Attorney with shooting one civilian in the area of Ilovačak village near Glina in October 1991. The established facts did not conclusively point to the defendant as a perpetrator, and thus the County State Attorney in Rijeka amended the indictment, charging the defendant with crime of armed rebellion after which the Panel suspended the proceedings *ex lege*;

- The Croatian Supreme Court dismissed the State Attorney's appeal against the Split County Court decision (the case had been transferred from the Zadar County Court) which suspended the proceedings against Nebojša Baljak and Stevo Ivanišević. The proceedings were suspended because already in 1996 the defendants were found guilty and sentenced to maximum prison sentence for war crimes against civilians committed in the same area and during the same time period, and the quantity of criminal charges for which they were convicted exceeds the quantity of criminal charges for which they are charged in the new indictment.

²⁰ For example, the case against Branko Dmitrović et al. which was transferred from the Sisak County Court to the Rijeka County Court.

²¹ Following the publication of the judgement, the detention was extended for the defendant who has been detained since July 2008.

c. *Ongoing trials:*

The trial in the case against Branko Dmitrović and another eight defendants commenced. They are accused of killing at least 56 inhabitants of Cerovljani and Hrvatska Dubica.²² A re-trial against Nikola Munjes, extradited from Montenegro and accused of abusing civilians in Perušić, also started.

The proceedings have continued in the case against Renato Petrov, who was extradited from Germany and accused of killing an elderly civilian in Škabrnja, and against Milorad Momić, extradited from France and charged with killing and sexual abuse of three female persons in Berk near Vukovar.²³

The trial re-opened against Mile Dakić at the County Court in Karlovac. Dakić, who is 80 years old and who was a Director of the Memorial Area Petrova Gora before the war, was arrested in May 2011 in Bosnia and Herzegovina and extradited to Croatia several months later. He had been sentenced *in absentia* to 20 years in prison for inciting the murder of three Croatian policemen and wounding one policeman in August in 1991 in Budačka Rijeka in the Karlovac area.

The Trial Monitoring Program wishes to emphasize that no hearings were held regarding two cases:

- The proceedings against Marko Bolić, who is in custody and charged with unlawful killing of two members of Croatian troops - the last hearing was held in November 2011 before the Karlovac County Court.
- In the third (second repeated) trial against Rade Miljević²⁴, charged with facilitating the killing of four detained civilians - the last hearing was held in April 2011 at the County Court in Sisak.

d. *Indictments and investigations:*

In late July, the Osijek County Attorney's Office raised an indictment against a defendant, unavailable to the authorities, who stands accused of, as commander of the police station in the area of Erdut and Aljmaš, unlawfully detaining, imprisoning and abusing civilians and ordering the subordinate members of the militia to do the same, and then agreeing with Željko Ražnatović "Arkan" to hand over the civilians to members of the so-called Arkan's troops with the intention of their killing; indeed 12 civilians were killed in such a way.

²² The eighth-accused Marin Krivošić is the only defendant available to the Croatian authorities. Others are tried *in absentia*.

²³ The Osijek County Attorney's Office released the information in early July that it had taken over the prosecution of Milorad Momić from the Serbian Prosecutor and ordered investigation based on justified suspicion that Momić committed another war crime against civilians. It is suspected that in July 1995 in Godinske Bare near Trnovo in Bosnia and Herzegovina as a member of the unit 'Scorpions', which was attached to the Army of the Republic of Srpska, he participated in the liquidation of six Bosniaks, of whom three were minors. Due to the fact that Momić was extradited from France on charges of committing a crime in Berk, it is necessary to seek another removal from the French authorities so that he can be prosecuted for the crime committed in Bosnia and Herzegovina.

²⁴ Miljević is standing trial while free. He was in detention from March 2006 to December 2010, i.e. for the maximum possible detention period.

In late May two persons were arrested who are suspected of, as members of Territorial Defence Dalj units, physically, mentally and sexually abusing and forcibly detaining members of a Croatian family. The investigation is ongoing.

In mid-August, the Rijeka County Attorney's Office ordered an investigation into two persons suspected of having ordered (the first suspect) or killed (the second suspect) five civilians in Podvožić (Barilović municipality).²⁵

3. *Proceedings for obtaining compensation for death of close relatives*

Documenta has collected data and analyzed 121 court cases in which plaintiffs demanded compensation for non-pecuniary damages for the killing of a close relative during the Homeland War. So far, 15 claims have been adopted and 86 claims were rejected. Generally, plaintiffs have succeeded in lawsuits when a perpetrator had already been found criminally liable. In cases filed without a previously established criminal liability, plaintiffs almost always failed.

However, on 18 January 2012 the Supreme Court quashed the first-instance judgement of the Knin Municipality Court and the second-instance judgement of the Šibenik County Court, which had rejected the plaintiffs' claim (Jovan Berić, Branka Kovač and Nevenka Stipišić) for non-pecuniary damages for emotional distress caused by the death of their parents Marija and Radivoj Berić, killed in a village Varivode near Knin on 28 September 1995.²⁶ The case was remitted to the first-instance court for a re-trial.

In the reasoning for its decision the Supreme Court found that the plaintiff's father and mother were shot and killed in the yard of their house, that on the same day nine elderly persons of Serbian nationality were killed in the same village, that the death of the plaintiffs' parents was caused by a terrorist act in order to cause fear, terror and personal insecurity of citizens, and that the Republic of Croatia is responsible for such an act under the provisions of the *Act on Liability for Damage Caused by Terrorist Acts and Public Demonstrations*. The Act also stipulates that an obligation of compensation exists independent of whether the party who caused damage has been discovered, prosecuted or found guilty.²⁷

Although this decision of the Supreme Court does not hold the effect of a precedent, it sends a clear message to lower courts which, when deciding in other cases, may, if they think that the responsibility of the Republic of Croatia indeed exists, rule in favour of the plaintiff, regardless of whether the perpetrator is known or not.

If this decision, however, fails to affect the decision-making of lower courts in similar cases, the plaintiffs / injured parties will be forced to realize their right to pecuniary satisfaction outside Croatia. In two decisions of the European Court of Human Rights (Jularić against Croatia and

²⁵ In this case the State Attorney's Office provided evidence to the Serbian War Crimes Prosecutor's Office on 21 August 2012 with the aim of possible take over of prosecution. Evidence was provided under the *2006 Agreement on cooperation in the prosecution of perpetrators of war crimes, crimes against humanity and genocide*.

²⁶ The above judgments ordered the plaintiffs to jointly pay the costs of litigation in the amount of HRK 54,000.00.

²⁷ Members of the Croatian forces Ivan Jakovljević, Pero Perković, Nedjeljko Mijić, Zlatko Ladović, Ivica Petrić and Nikola Rašić were charged with committing the crime in Varivode, victims of which were, among others, the plaintiffs' parents, but in 2002 the proceedings against them were suspended. The crime was at the time defined as murder.

Skendžić against Croatia) Croatia was ordered to pay damages to plaintiffs for failing to carry out adequate investigation of the crimes.

The current Government should act proactively to bring justice through indemnification of civilian war victims. The Government should adopt a *National programme and Law on the Establishment of a fund to compensate all victims of the war* that would regulate compensation in accordance with the *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.

C. Cases in the Higher Court in Belgrade

With regard to two cases in which the cooperation between the Croatian Office of the State Attorney and the Serbian War Crimes Prosecutor's Office was realized, the High Court in Belgrade published the first instance judgements of conviction in June 2012:

- All four former members of the special police so-called SAO Eastern Slavonia, Baranja and Western Srem were convicted of the killing of six non-Serb civilians, unlawful detentions, intimidation and torture committed in October 1991 in Beli Manastir.²⁸
- All fourteen defendants (four members of the local civil-military government, four active / reserve YNA members and six members of the paramilitary "Dušan Silni") were found guilty of liquidating 70 civilians in October 1991 in Lovas, and were sentenced to prison for a total of 128 years.

During the sentencing hearing for crimes committed in Lovas, the President of the trial chamber pointed out that during the four-year-long first-instance proceedings, the evidence material was gathered allowing for an investigation of the responsibilities of senior military and political structures for the committed crime.²⁹

Since the conclusion in 2006 of the *Agreement on the cooperation in the prosecution of perpetrators of war crimes, crimes against humanity and genocide* between the Croatian State Attorney's Office and the Office of the War Crimes Prosecutor of the Republic of Serbia, the State Attorney's Office has provided evidence to the Serbian prosecutor's office regarding 31 cases involving 56 persons residing in Serbia. The suspects hold Serbian citizenship and therefore cannot be extradited to Croatia. Out of this number, The Higher Court in Belgrade has convicted 14 so far - all for committing war crimes on Croatian territory, harming Croatian citizens.³⁰

²⁸ Zoran Vukšić received a maximum prison sentence of 20 years, Slobodan Strigić 10, Branko Hrnjak 5, and Velimir Bertić one year and six months. The State Attorney's Office announced that it would lodge an appeal in order to obtain longer sentences.

²⁹ Judge Olivera Anđelković condemned the shameful testimonies given by the YNA officers, their behaviour during critical events in Lovas, and the Military Prosecutor's attempt to cover up the crime. Among other things, she said: "In this courtroom we heard full names of other actors in the critical events, some were our witnesses, and it would therefore be just towards the victims and the accused, that the prosecutor fulfils his promise made in the final speech and tackles their criminal responsibility. In addition, a significant segment of the events in these areas - emigration of Croatian civilians, remained beyond the scope of this indictment. How did it happen that Croatian civilians were displaced from the area under the control of the YNA (Lovas, Ilok and other places)? This is just one of many questions the answers to which should be provided by some higher military and political structures, and these issues should be dealt with by the prosecutor."

³⁰ Data from the 'Statement regarding the verdict of The Higher Court in Belgrade', State Attorney's Office, 27 June 2012

Although the cooperation between the prosecutors' offices has shown results, we expect that, especially after the transfer of war crimes cases to the 4 county state attorney's offices, cooperation with the Serbian prosecution will be made easier and that the number of cases in which the data and evidence will be transferred will significantly increase. Also, we expect that the Serbian War Crimes Prosecutor will begin to investigate the role of senior YNA officers in numerous atrocities committed on Croatian territory.³¹

³¹ The four accused of the crime in Lovas (Lieutenant Miodrag Dimitrijević, at a critical time the active officer of the Territorial Defence Valjevo, together with reserve officers Captain Darko Perić and lieutenants Radovan Vlajković and Radisav Josipović) are the only members of active / reserve units of the YNA / Territorial Defence who were prosecuted by Serbian judicial authorities for crimes committed in Croatia. In the case against Vladimir Kovačević Rambo, the YNA general, which was ceded by the ICTY Prosecutor to the Serbian judiciary, the indictment was rejected because of defendant's procedural incapacity. In all other proceedings defendants are exclusively members of local civil and military structures, or volunteer / paramilitary formations.