



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

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**Monitoring War Crime Trials Report**

Reporting Period: 1 July – 20 November 2013

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## I. INTRODUCTION

### A. Project background and mandate

Since 2005, three human rights organisations monitor jointly war crimes cases before the courts in the Republic of Croatia (RC): *Documenta* – Centre for Dealing with the Past, Centre for Peace, Nonviolence and Human Rights-Osijek and Civic Committee for Human Rights (hereinafter referred to collectively as the „Monitoring team“).

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

The Monitoring team stresses the importance of efficiency and fairness of judicial system, which should respect both the rights of suspects and defendants as well as the rights of victims and witnesses. Therefore, when monitoring trials, our monitors apply the international fair trial standards which serve as a framework for the assessment of court actions.

The Trial Monitoring Programme relates to monitoring all war crime trials conducted before Croatian courts and a number of criminal proceedings that are ongoing before the courts in neighbouring countries (especially those involving war crimes committed in the RC territory). We also monitor indemnification proceedings as well as trials conducted at the International Criminal Tribunal for the Former Yugoslavia (ICTY).

This Quarterly Report deals with trials and related social and political events which took place from 1 July to 20 November 2013.



## B. Summary

The reconciliation process has been completely put on hold in the Republic of Croatia in the first months of its membership in the European Union (EU). Open display of intolerance against the Serb minority has seriously shattered inter-ethnic relations. Such developments clearly indicate a necessity that peace-building process needs to be revitalised. Only in a society based on trust it would be possible to resolve satisfactorily the issue of still missing persons and efficiently investigate a majority of committed war crimes prosecute their perpetrators.

During 2013, no investigation activities were initiated and no indictments were laid against members of Croatian military units. Some examples indicate that first-instance courts still tend to pronounce considerably more serious sentences against members of Serb- than to members of Croatian military units for the crimes which are comparable as to how they were committed and what were their consequences. Therefore, it is left to the Supreme Court of the Republic of Croatia (VSRH) to continue with correction of sentences and alignment of judicial practice.

The trend of suspension of proceedings against members of Serb military units who were previously indicted or sentenced *in absentia* continues. This indicates that many previous unfounded accusations/convictions were not removed, but also that the Croatian judicial bodies are capable to conduct proceedings in a more professional and unbiased manner than in the recent past. It is expected that a significant portion of proceedings against members of Serb military units following their arrests and/or extraditions will continue to be suspended.

Effective prosecution of perpetrators depends more and more on cooperation between judicial authorities of the states in the region. Croatian and Serbian prosecution offices signed protocols on cooperation in war crimes prosecution with the Prosecutor's Office of the Bosnia and Herzegovina (BiH) in the first half of 2013. Soon after that, BiH submitted their first war crimes cases to Croatia and Serbia. Although the number of exchanged cases between Croatian and Serbian prosecutors' offices has been significantly increased, a frequent non-promptness in cooperation raises suspicion in benevolent conduct. The differences in legal interpretations and practices only add up to this problem and support favour actually the impunity of persons who are suspected as the crime perpetrators.

Given that many crimes are still waiting to be investigated, it is expected that the European Court of Human Rights (ECHR) will determine that, in increasing number of cases submitted to it, certain convention rights were violated by the RC in respect of the claimants (family members of killed persons). In order to put an end to their further agony, Croatia should reach a settlement with victims' family members and pay them a fair indemnification, not only in the cases which are already before the ECHR but also in the cases that are still pending before domestic courts.



## II. THE BROADER CONTEXT

### A. Open display of intolerance against the Serb minority – reconciliation process is completely 'put on hold'

Inter-ethnic animosity and intolerance has invaded the public in Croatia in the first months of its membership in the European Union.

Nationalistic insurgency (dissatisfaction) initiated by the so-called *Headquarters for the Defence of Croatian Vukovar* because of the introduction of the Latin-Cyrillic plates in Vukovar, has spread all over the country. Messages of hate toward the Serb minority or violent removal of bilingual plates were also recorded in Dubrovnik, Split, Karlovac and the Knin area, Zagreb, Osijek, ...

The centre-left Government, repeatedly referred by the nationalists as "anti-nation", "communist" and "anti-Croatian" does not manage to resolve grave economic situation and serious political issues like: (unnecessary) dispute between the Croatian Government and the European Commission regarding the *Act on Judicial Cooperation in Criminal Matters with the Members States of the European Union* (known in the public as *Lex Perkovic*) - amended only a few days prior to Croatia's entry into the EU; the amendment of the Constitution so that criminal offences of serious murder would, among other, be exempted from the statute of limitation; the permissibility of a referendum on the constitutional definition of marriage as a life union between a man and a woman. The mentioned issues became a fertile ground for perpetually smouldering nationalism and deeply polarized the Croatian society. Instead of reasoned debates, the mentioned topics are commonly used as an object of daily political squaring of accounts. Moreover, such topics are a serious attempt of destabilizing the current government and causing early elections.

In addresses to the public, leaders of the Croatian Democratic Union (HDZ) and individual bishops of the Catholic Church use expressions which do not contribute to peace and reconciliation but, instead, they lead to intensification of conflicts. Absent in their addresses were very much required warnings that members of one ethnic group should in no way be condemned by withdrawing their rights guaranteed by constitutional law and that all perpetrators should be brought to justice.

„...in April 2013, leading the mass at the Franciscan Church of St. Philip and James, when referring to the attempt to introduce the Cyrillic script in the official use in Vukovar, Cardinal Bozanić said that „*the question of one script represents a summary of many questions to which answers are not given*“ and continued: „*The ones who guarded and built Vukovar are the ones who deserve to be put on first positions and not the ones who destroyed it*“. It is quite clear that by saying this, the Cardinal referred to Croats as guardians and defenders of Vukovar and Serbs as destroyers...

...Despite the fact that establishing of the constitutional right by the Serb minority in Vukovar caused violence and a wave of the hate speech, Cardinal Bozanić... in Marija Bistrica, instead of giving the message of peace stated the following: *'In my capacity as believer and bishop I cannot remain silent concerning the attempt that symbols of freedom are devaluated and that Croatian Vukovar wound is opened up on the cross of cold-heartedness of politicians. The question is who needs that in Croatia now and for the sake of whose wellbeing this is carried out'*...

...President of the Commission of the Croatian Bishops' Conference „Justitia et Pax“ and the Sisak Bishop Vlado Košić, radicalised additionally the view of episcopates when he gave support to the Headquarters for the Defence of Croatian Vukovar and stated that *'actual authority is anti-nation oriented'* because it is heading *'directly against our, Croatian people, it uses it as someone's doormat and does not respect any recommendations or justified requests'*.  
...”

Text from “**The Letter to the Pope Francis**”, communicated on 15 November 2013 by civic initiatives and organisations gathered in the **Campaign against the spreading of hatred and intolerance „For Croatia that Belongs to All of Us“**



*„...Everything is nice, solemn and dignified. We support the „Headquarters“ from the beginning and we find that they are right in all what they have been doing and therefore, we decided to respect their scenario today too. There are no separations....*

*...This is one column, there aren't two columns, this is one column from Dubrovnik to Ilok...“*

Certain parts of statements by Tomislav Karamarko, President of HDZ, after disgraceful manipulation of the forming of special *Memory Column* and preventing the entire state leaders to pay homage to the victims at the Vukovar Memorial Cemetery on 18 November 2013.

The reconciliation process, slow as it is, between the Croatian and Serb people has been put on hold with the protests against positive regulations of guaranteed right to official use of minority language and script. Such reconciliation process, despite its shortcomings, enabled common life without serious incidents.

The current situation indicates that all relevant actors: the ruling and opposition politicians, representatives of religious communities, homeland war veterans' associations, associations of victims, Serb and other minority groups and civil society representatives, must seriously address the issue of deeply disturbed inter-ethnic relations in order to revitalize the peace process and make a step towards an integrated community based on mutual trust, without fear from exclusion and/or mutual suppression. However, this requires a democratic capacity and a detachment from violent and destructive policy that, supported by the HDZ, is carried out by the so-called *Headquarters*.

## **B. The first visit of President Josipović to Serbia after inauguration of Nikolić – a path to revitalisation of relations between Croatia and Serbia**

Progress has been made in relations between the states in the region, which is very crucial for effective prosecution of crime perpetrators, in the middle of October 2013 on the occasion of the visit of Croatian President Josipović to the Republic of Serbia. This was Josipović's first official visit to Serbia since Nikolić's election in May 2012.

This visit did not result with the signing of any agreement. Despite that, central topics of the meeting indicated the need to reconcile and improve our international relations: the issue of missing persons during the war<sup>1</sup>, the position of Serb community in Croatia and of Croatian community in Serbia.

### **Nikolić surprised the public with his positive opinion expressed about the marking with memorial monuments the places of ex-concentration camp detainees**

*Association of Lawyers of Vukovar '91*, initiated several years ago erecting memorial monuments at the locations of former Serbian camps Stajićevo and Begejci, nearby Zrenjanin. However, the opponents to this initiative organised a protest in Zrenjanin. For that reason, erection of the memorial monument had to be cancelled „because of security reasons“. Boris Tadić, Nikolić's predecessor at the position of the President of Serbia, showed no persistence in realising the mentioned initiative.

At the meeting between Josipović and Nikolić, Croatian Minister of Defence Predrag Matić raised the issue of monuments (and he was also detained during the war in Serbian camps Stajićevo, Niš and Sremska Mitrovica). Nikolić, who is frequently criticized for previous close cooperation with Serb Radicals' Leader Vojislav Šešelj and who allegedly participated in crimes in Eastern Slavonija, pointed out that he had nothing against determining exact locations and exact number of missing persons and, by following the reciprocity principle, marking of places of suffering by Serbs and Croats at locations to be agreed by both sides.

<sup>1</sup> At present, 1684 persons are reported missing during the war in Croatia. Out of that number, 953 persons are from the period 1991/1992 and 731 persons, mainly Croatian citizens of Serb ethnicity, from 1995.



If we want to see it coming that leading politicians significantly contribute to prosecution of war crime perpetrators, the prior Josipović's initiative in February 2012 needs to be revitalised. This initiative constituted the idea of signing an international agreement between Croatia and Serbia, and where appropriate with BiH included, in order to achieve more efficient prosecution of war crimes and avoid further politicisations of war crime trials.<sup>2</sup>

### III REGIONAL COOPERATION OF JUDICIAL BODIES IN THE PROSECUTION OF CRIMES

#### A. The BiH sent first case files to Croatia and Serbia

The Protocol on cooperation between the prosecution offices of BiH and the Republic of Serbia was signed in January 2013. Later on in June 2013, the State Attorney's Office of the Republic of Croatia (DORH) and the Prosecutor's Office of Bosnia and Herzegovina signed the Protocol on cooperation in the prosecution of war crimes, crime against humanity and genocide. After this signing, however, the BiH sent only a few cases to Croatia and Serbia allowing thus prosecution of war crime perpetrators in those states. Goran Salihović, the BiH Chief Prosecutor pointed out that about 80 cases are being prepared for delivery.

The DORH signed agreements on cooperation in prosecution of war crime perpetrators, crimes against humanity and genocide with the competent Serbian and Montenegrin prosecution authorities back in 2006.

According to the data from the Office of the War Crimes Prosecutor of the Republic of Serbia (TZR), we are witnessing a significant increase in the number of exchanged cases between the DORH and TZR in the last eighteen months. From April 2012 until November 2013 this number was doubled. Alone in that period, the mentioned prosecution offices exchanged 66 cases so that the total number of exchanged cases has increased to 120.<sup>3</sup> However, despite the statistics which displays a significant progress in the field of cooperation, certain judicial officials indicate to a frequent non-promptness in cooperation and raise their suspicion in benevolent conduct.

#### **Effective prosecution depends on aligning/approximation of legal interpretations and practice of prosecution & court authorities in the region**

Efficient prosecution of perpetrators will depend on cooperation between judicial bodies of the countries in the region, but also on aligning/approximation of legal interpretations and practice.

Current disagreements between DORH and TRZ lead to impunity of potential crime perpetrators or command responsible persons.

For instance, TRZ rejected to act in accordance with the Osijek County State Attorney's Office's indictments issued against high-ranked JNA officers – in which Aleksandar Vasiljević and Miroslav Živanović are charged with the organisation of concentration camps and non-preventing the crimes committed against civilians and prisoners of war by soldiers subordinated to them, while Enes Taso is charged for the crimes which were committed in Dalj by his subordinates.

Disagreements whether a particular case represents a war crime where rape constitutes the guilty act (DORH) or is this a rape, for which the statute of limitation is enforced (TZR), also contribute to impunity of persons who were accused of the mentioned crimes.

<sup>2</sup> The signing of the agreement between Serbia and Croatia in February 2012, appeared to be feasible. Opinion of the Croatian President (Josipović) and the former Serbian President (Tadić) was that perpetrators of war crimes should be tried in the countries of their present residence. Bosnian-Herzegovinian side showed no willingness to signing such agreement because it was of the opinion that trials should be conducted in the state territory where actual crimes were committed.

<sup>3</sup> [http://www.tuzilastvorz.org.rs/html\\_trz/predmeti\\_lat.htm](http://www.tuzilastvorz.org.rs/html_trz/predmeti_lat.htm)



## B. Judgments by courts of other countries within the region

During the reporting period, the courts of other countries within the region rendered two judgments at first instance for the crimes which were committed in the territory of the Republic of Croatia or out of Croatia, against its citizens.

### 1. Serbian court sentenced the perpetrator of war crimes in Ovčara to 15 years in prison

*On 1 July 2013, the Higher Court in Belgrade sentenced the former member of Vukovar Territorial Defence Petar Čirić to 15 years in prison because he participated in the abuse and execution of more than 200 prisoners of war in Ovčara on 20/21 November 1991, after the fall of Vukovar.*

### 2. Low sentences to abusers in the Montenegrin Morinj camp caused reactions by ex-camp detainees and Montenegrin activists

*On 31 July 2013, the High Court in Podgorica in its third (second repeated) first-instance trial sentenced Ivo Menzalin to 4, Špiro Lučić and Boro Gligić to 3 each and Ivo Gojnić to 2 years in prison for the abuse of Croatian civilians and prisoners of war in Montenegrin camp Morin.*

This particular trial was considered, even before, by ex-camp detainees as judicial farce. After the judgement, *the Action for Human Rights*, a Montenegrin civil society organisation monitoring the trial, criticized low sentences and omission by the Montenegrin judicial authority to treat the crimes in the Morinj camp as organised system of abuse of prisoners and this is the reason why persons superior to direct crime perpetrators were not even indicted.

**War Crimes Trials in Montenegro – only six perpetrators convicted for war crimes by final judgment, and out of that number four persons were tried *in absentia*; no one has been convicted for war crimes in recent years**

The only persons who have ever been found guilty for war crime committed on Montenegrin territory are five members of the Army of the Republic of Srpska, who were convicted for the killing of three members of the Klapuh family from Foča, in Plužine in July 1992. The judgment case was rendered in 1994 and enforced only against one defendant, while the other four were tried *in absentia* and the judgment against them has not been enforced.

For the crime in Štrpci (BiH), the Higher Court in Bijelo Polje sentenced in 2002 one Serbian citizen to 15 years in prison because he, together with several persons, abducted nineteen civilians mostly Bosnians, Muslims, from the train operating between Belgrade-Bar on 27 February 1993 and killed them later on.

No one has been convicted for war crimes or crimes against humanity in Montenegro in recent years (2011-2013). Four trials for war crimes were in process or were concluded with final judgments. Out of twenty two persons accused for war crimes in Montenegro, four were found guilty by first-instance non-final judgements (in the Morinj case). The remaining 18 defendants have been acquitted, nine of which by final judgements.

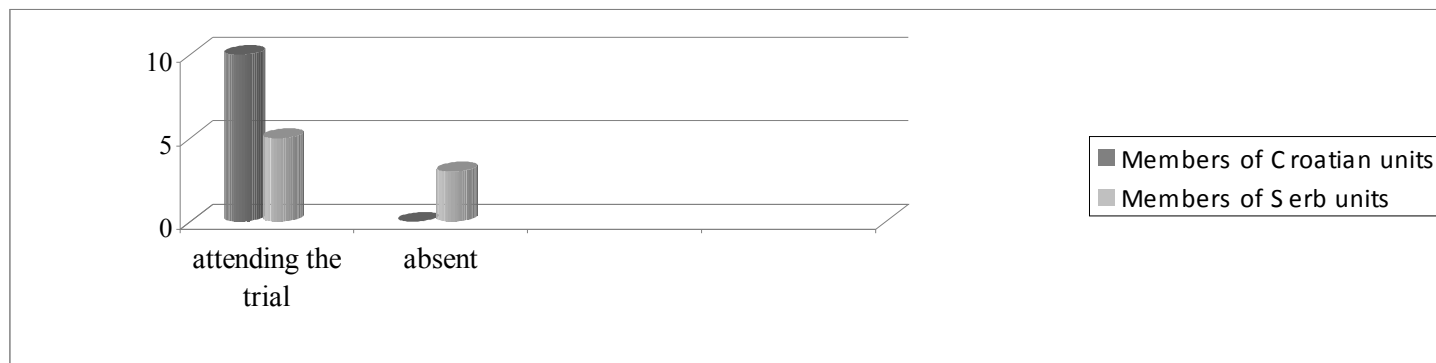
*From the „Report on War Crimes Trials in Montenegro“ of the Human Rights Action (HRA) organisation from Montenegro, published in May 2013.*



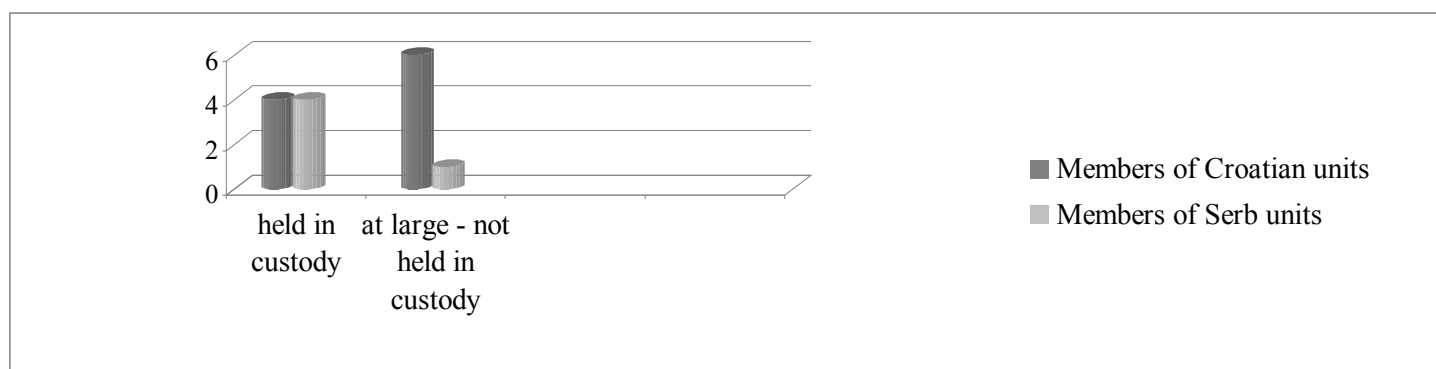


#### IV. TRIALS MONITORED IN CROATIA

Out of 14 trials in which court hearings are being regularly held, 7 trials are being held against 10 members of Croatian military units, and 7 trials against 8 members of Serb military formations.<sup>4</sup> All indicted members of Croatian units are present at the trials. Five indicted members of Serb military formations are present at the trials, while other three members of Serb military formations are being tried *in absentia*.<sup>5</sup>



Out of ten members of Croatian military units, six of them are currently not being held in custody, whereas four members of Croatian units are being held in custody. Four members of Serb military formations are being held in custody while just one member of Serb formations is not being held in custody during the trial.



In other three cases, which were initiated against thirteen members of Serb military formations, court hearings have been scheduled but they have not been held since the accused persons have remained unavailable to the Croatian judiciary while no decisions on conducting the trials in absentia have been passed in the meantime.

##### A. First-instance court judgements

During the reporting period, the first-instance court judgements have been passed in three cases, in respect of four members of Serb military formations. No first-instance court judgements have been passed in cases held against members of Croatian military formations.

<sup>4</sup> During the first trimester of 2013, trials/court hearings were held in 17 war crime cases, whereas during the second trimester 14 war crime cases were in the trial/court hearings phase.

<sup>5</sup> Table depiction of the trials monitored at county courts and the public sessions monitored at the Supreme Court of the Republic of Croatia is provided in the enclosed document.



All four members of Serb military formations have been convicted by the first-instance court judgements as follows:

### **1. Conviction for the Dalj war crime in which guilty act was committed by rape**

*On 04 September 2013, the War Crime Council of the Osijek County Court passed the first-instance court judgement sentencing Ljubinko Radošević and Vojislav Grčić, the Dalj Territorial Defence (TO) members, to 12 years in prison respectively.*

*Radošević and Grčić were found guilty of rape of a then 20-year old girl in front of her father, mother, minor sister and minor brother in their family house in Dalj in August 1991. The first-accused Radošević was also found guilty of another incident involving the same family of Croat ethnicity whose members Radošević had physically abused, whereas the second-accused Grčić was found guilty for another rape of the stated 20-year old girl which he had committed together with a now deceased person and an unknown member of the Territorial Defence in the vicinity of the Dalj railway station.*

### **2. Court judgements which point to the sentencing disparity between the members of Serb and Croatian military formations**

#### ***i. Fifteen years of imprisonment for killing an elderly married couple - three times longer than the sentence passed for the similar crime committed after the Military Operation "Storm"***

*On 23 September 2013, the War Crime Council of the Rijeka County Court found the defendant Zdravko Pejić guilty of killing the elderly couple Kata Dumančić and Nikola Dumančić, civilians of Croat ethnicity, by shooting them with an automatic rifle in the courtyard of the Dumančićs' family house in the hamlet of Šolaje on 12 November 1991 after the Serb military formations had occupied the village of Saborsko and other hamlets in the area. Zdravko Pejić, a former member of the Plaški Territorial Defence (TO), was tried in absentia.*

On 13 June 2013, at the Split County Court, a former member of the Croatian Army Božo Bačelić was found guilty of killing an elderly married couple of Serb ethnicity whom he had happened to see in front of their own house immediately after the conclusion of the Military Operation "Storm". In addition, Bačelić was also found guilty of killing a captured member of the so-called Republika Srpska Krajina Army. For the both crimes, Bačelić was given a joint sentence of 5 years and 10 months in prison.

#### ***ii. Nine years in prison for killing of two captured soldiers who had previously laid down their arms – twice longer than the sentence passed for the crime committed on the Korana river bridge***

*On 07 November 2013, the War Crime Council of the Karlovac County Court passed the first-instance court judgement sentencing Marko Bolić, a former member of the so-called Serb Autonomous Area of Krajina military formations, to 9 years in prison for killing two members of Croatian military formations which he had committed together with his son Rade Bolić, by shooting them with fire-arms on 04 November 1991. Immediately before they had been shot, upon spotting the so-called Krajina Serb Autonomous Area soldiers, the two members of Croatian military formations had laid down their arms and put their hands in the air as a sign of their surrender.<sup>6</sup>*

<sup>6</sup> The County State Attorney's Office formulated the qualification of the criminal offence as an illegal killing and injuring the enemy stated in Article 124, Paragraph 1 and Paragraph 2 of the Basic Criminal Code of the Republic of Croatia; however, according to the first-instance court judgement, the accused Bolić was convicted for commission of the war crime stated in Article 91, Paragraph 2, Item 6 of the (new) Criminal Code of the Republic of Croatia, which is more favourable in respect of Bolić.

On 07 September 2012, the Supreme Court of the Republic of Croatia passed the non-final verdict of guilty in respect of the accused Mihajlo Hrastov, a member of the Republic of Croatia Ministry of the Interior, for the crime of illegal injuring and killing of the enemy which he had committed by killing 13 captured reserve members of the Yugoslav National Army and by severely wounding two captured reserve members of the Yugoslav National Army.

The task of the Supreme Court of the Republic of Croatia is to act on correction of the pronounced sentences, i.e. on coordination of court practice/reduction of sentencing disparity between different crime perpetrators.

### **3. Cancellations of the proceedings against former Yugoslav National Army (JNA) officers – consequences of the previously issued biased criminal reports/convicting judgements**

During the reporting period, criminal proceedings have been dismissed against five former Yugoslav National Army officers who had been indicted/convicted *in absentia* during the 1990s for shelling of Croatian towns:

- after the County State Attorney's Office had withdrawn from further criminal prosecution, the Split County Court, at the end of July 2013 dismissed the criminal proceedings against Nikola Zdravković, Dragan Tarbuk, Radovan Štetin and Risto Zekanović, former members of the Yugoslav National Army accused of launching attack on Split and Split surroundings in 1991<sup>7</sup>;
- after the County State Attorney's Office had modified the legal qualification of the criminal offence stated in the indictment changing it from "war crime against civilians" into "armed rebellion", on 30 October 2013 the case was dismissed against Slobodan Dotlić, a former Yugoslav National Army officer who had been tried *in absentia* at the Gospić District Court in 1993, together with other 13 Yugoslav National Army officers, and sentenced to 15 years in prison for commission of war crime against civilians in Gospić/shelling of civilian targets in Gospić.<sup>8</sup>

All the above-stated information point to the fact that there has been a continued trend of cancellations of criminal proceedings against the members of Serb military formations previously accused/convicted *in absentia*.

During the first semester of 2013, the criminal proceedings were cancelled against Tihomir Kašanin, in 2001 accused of commission of crime in Baranja, while all charges against Milan Španović were dismissed in accordance with the first-instance court judgement in respect of Španović, who had been sentenced *in absentia* to 20 years in prison in 1993 for commission of war crime in Maja. Both stated persons had been extradited to Croatia from the United Kingdom. In the reopened proceedings, only the court judgement in respect of Radojko Radmilović remained effective according to which Radmilović had been sentenced *in absentia* in 2004 to 3 years in prison for commission of war crime in Bapska. Radmilović had been extradited to Croatia from Serbia. The extradition was feasible since Radmilović was not a citizen of Serbia.

The judgements passed in the stated reopened proceedings point to the fact that not all the previous unfounded indictments/convictions have been thoroughly eliminated to this day, as well as to the fact that the Croatian judicial bodies have indeed been able to conduct the court proceedings in a more professional manner and with significantly less bias than in the proceedings which were held in a recent past. It may be expected that the so-far adopted practice

<sup>7</sup> Thirty-two former Yugoslav National Army officers and non-commissioned officers had been tried in 1993. Thirty-one of them were sentenced *in absentia* mostly to long-term prison sentences, while the charges against the only accused person available to the Croatian judiciary were rejected. The Supreme Court of the Republic of Croatia in 1994 had quashed the first-instance court judgement in respect of seventeen accused persons.

<sup>8</sup> Dotlić was arrested at the Croatian-Hungarian border-crossing on 18 October 2013. The reopening of his case was approved as early as in 2011; however, the proceedings still have not been conducted since, due to the changes made to the court jurisdiction system, the case has been transferred from the Gospić County Court to the Rijeka County Court.



will be further continued in which significant number of proceedings would be dismissed in the period following the arrests and/or extraditions of accused persons.

During the reporting period, two former members of Serb military formations, who had been accused or convicted in Croatia for commission of war crimes, **were arrested abroad**:

- on 19 October 2013, German police arrested the Serbian citizen Ibrahim Kovačević, who had been accused/indicted in Croatia in 2001, together with 57 other persons, of crimes committed in Baranja;
- on 29 October 2013, members of the Border police of Bosnia and Herzegovina arrested the Serbian citizen Aleksandar Lazarević at the border-crossing between Bosnia and Herzegovina and Serbia; Lazarević had been convicted in 1997, together with other eighteen Yugoslav National Army officers, for shelling of Zadar and the Zadar surroundings.

Both arrested persons have been kept in custody, whereas the competent authorities of the Federal Republic of Germany and the institutions in Bosnia and Herzegovina will be making decisions on extraditions of Kovačević and Lazarević to Croatia.

#### A. Cases in which the trials/court hearings are pending

Also pending during the reporting period were the trials/court hearings in another **4 criminal proceedings** in which **four former members of Serb military formations had been indicted, out of whom only two persons were attending the trials**:

- in the case against the unavailable accused person Boban Arsić, charged with killing of a married couple and with abuse of three civilians in the village of Drinovci near Drniš;
- in the reopened case against the accused Nikša Beara, convicted in absentia by the Šibenik District Court in 1993 and sentenced to 6 years in prison for abuse of captured Croatian soldiers in the Knin prison;
- in the case against the accused Milan Đekić, charged with killing of one civilian after the fall of Vukovar;
- in the case against the unavailable accused person Dušan Kovačević, charged with killing of a severely wounded Croatian soldier on Bršljenovića hill near Plaški;

and in **6 criminal proceedings** in which **ten members of Croatian military formations** were accused of crime:

- in the case against Vladimir Milanković and Drago Bošnjak, accused of executions of 26 Sisak citizens of Serb ethnicity;
- in the case against Frane Drljo and Božo Krajina, accused of execution of six elderly civilians in the village of Grubori, near Knin, immediately after the conclusion of the Military Operation "Storm";
- in the case against Tomislav Merčep, war-time counsellor at the Croatian Ministry of the Interior, accused of issuing orders on unlawful arrests, abuse and executions of the civilians from the area of Kutina, Pakrac and Zagreb, in which 52 persons had been unlawfully arrested, out of which, 43 persons had been killed, and other three persons have been registered as missing persons;
- in the case against Ante Babac and Mišo Jakovljević, accused of execution of one prisoner of war captured at the Miljevci Plateau;
- in the case against Mirko Sivić, accused of execution of two civilians in Osijek;
- in the case against Velibor Šolaja, accused of execution of one female person in the Medak Pocket;
- in the case against Josip Krmpotić, accused of failure to act and prevent the firing-squad execution of four unidentified soldiers-members of the so-called Republika Srpska Krajina Army, and accused of ordering arson and destruction of the houses belonging to the population of Serb ethnicity in the Medak Pocket.

## **B. New investigations and indictments – members of Serb military formations are the only ones who are prosecuted**

According to the statements issued by the county state attorney's offices, **not a single investigation was launched against members of Croatian military units nor was a single indictment laid against them** during the reporting period.

The **indictments were laid against 16 former members of Serb military formations who are unavailable to the Croatian judiciary** whereas the **orders of investigation were issued against the same number of former members of Serb military formations, out of whom nine persons are being available to the Croatian judiciary:**

- *The Split County State Attorney's Office, at the end of September 2013, laid the indictment against seven former members of the Yugoslav National Army (who are unavailable to the Croatian judiciary) for abuse of a married couple in the occupied Drniš, as well as for rape and looting;*
- *The Osijek County State Attorney's Office, on 15 October 2013, laid the indictment against Boro Ivanović a.k.a. Konj (Horse) (who is currently unavailable to the Croatian judiciary), a former Yugoslav National Army officer and the Commanding Officer of the Osijek's "White Garrison", charging him with the crimes directly committed by Ivanović's subordinates in the villages of Tordinci, Čelije, Orlovnjak, Ernestinovo, Laslovo, Antunovac and Palača. During the occupation of the stated villages, 33 civilians had been killed whereas 15 civilians had been detained and abused. After their capture, seven Croatian soldiers had been killed.*
- *The Osijek County State Attorney's Office, on 14 November 2013, laid the indictment against eight citizens of Serbia who had been charged with unlawful arrests of civilians of non-Serb ethnicity, with physical and mental abuse of 21 civilians and one (captured) soldier, and with inflicting injuries upon detainees which resulted with the death of six detainees. The stated crimes had been committed in Stara Gradiška and Okučani in the period from August 1991 until December 1991.*
- *The Osijek County State Attorney's Office, in the middle of July 2013, issued the order of investigation of fifteen persons, out of whom nine male persons were arrested in the meantime, due to a founded suspicion that they, in their capacity as members of the Trpinja Territorial Defence and the Militia of the so-called Serb Autonomous Area of Krajina, had been unlawfully arresting, detaining and physically, mentally and sexually abusing and killing the civilians and prisoners of war. Twelve civilians and at least 60 captured Croatian soldiers had been killed or had gone missing whereas 14 persons had been injured;*
- *The Osijek County State Attorney's Office, in the mid-July 2013, ordered the investigation to be conducted against one person, unavailable to the Croatian judiciary, due to a founded suspicion that he, in his capacity as a member of the Militia in Erdut in 1991, had been battering two unlawfully arrested civilians during the interrogation.*

**For the first time ever in Croatia, a member of the victorious party has been indicted for the crimes committed during or after the World War II**

After more than two decades of recess, prosecution of the crimes committed during the World War II or immediately after the WW II has been continued. For the first time ever, a member of the People's Liberation Army has been indicted for crimes. According to the indictment laid in mid-September 2013 against Josip Boljkovac, the-then Chief of People's Protection Department (OZN) for the Town of Karlovac and the Karlovac District, Boljkovac has been charged with arrests and killing of 21 persons who had been suspected of collaboration with the Ustasha authorities.

## **C. Sessions of the appellate chambers of the Supreme Court of the Republic of Croatia**

During the reporting period, sessions of the appellate chambers of the Supreme Court of the Republic of Croatia were held in respect of five cases – **three cases** against accused members of Serb military formations and **two cases** against accused members of Croatian military formations.

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The first-instance court judgements were quashed in respect of two cases in which members of Serb military formations had been convicted, whereas the first-instance court judgement - with a guilty verdict - in respect of one case was upheld by the Supreme Court of the Republic of Croatia:

- *for the third time, the first-instance court judgement (with a convicting verdict) was quashed in the case against the accused Pero Đermanović, Dubravko Čavić and Ljubiša Čavić, former members of Serb military formations who had been charged with abuse and killing of one civilian as well as with arson of the houses in the villages along the Una river near Hrvatska Kostajnica. The case was reversed to the Zagreb County Court for retrial, which is to be held in front of the completely changed/newly constituted court panel/war crime council;*
- *for the second time, the first-instance court judgement with a convicting verdict was quashed in the case against the accused Milenko Vidak, former member of Serb military formations who had been charged with killing of the civilian Stjepan Sučić. The case was reversed to the Zagreb County Court for retrial<sup>9</sup>;*
- *on 18 September 2013, the Appellate Chamber of the Supreme Court of the Republic of Croatia upheld the first-instance court judgement passed by the Rijeka County Court, according to which – following the repeated first-instance court proceedings – former members of Serb military formations Željko Šuput and Milan Panić had been sentenced to 4 years in prison, i.e. to 3 years and 6 months in prison, respectively, for the abuse of the detainees in the Korenica prison;*

In the remaining two cases, the decisions of the Supreme Court of the Republic of Croatia are not known to us:

- *on 29 October 2013, a session of the Appellate Chamber of the Supreme Court of the Republic of Croatia was held following the appeals against the first-instance court judgement according to which Željko Belina and Dejan Milić, former members of Croatian military formations, had been sentenced to 10 years in prison and 9 years in prison, respectively, for killing three civilians and injuring one civilian in Novska in 1991;*
- *on 31 October 2013, a session of the Appellate Chamber of the Supreme Court of the Republic of Croatia was held following the appeal lodged by the County State Attorney's Office against the first-instance court judgement according to which Ivan Husnjak and Goran Sokol had been acquitted of charges initially pressed for arson of Serb villages of Pušine and Slatinski Drenovac which had been committed by their subordinates.*

#### **D. Proceedings for restitution of damages due to a death (killing) of a close family member**

##### **1. A large number of cases at the European Court of Human Rights filed for violations of the rights stated in the Conventions**

There are some twenty claims before the European Court of Human Rights filed against the Republic of Croatia in which family members of the victims killed in the war point to the violations of various rights prescribed by the (*European*) *Convention for the Protection of Human Rights and Fundamental Freedoms*.

Majority of cases (claims) were submitted by family members of the killed civilians of Serb ethnicity whereas fewer claims were submitted by family members of the killed Croats.

Almost all claims have pointed to an ineffective investigation of the committed crimes (Article 2 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms – Right to Life*). Some cases have pointed to the violations of the right of access to the court (Article 6 – *Right to a Fair Trial*); to the violations of the right to protection from torture and inhuman or degrading treatment (Article 3 – *Prohibition of Torture*); to the violations of Article 5 – *Right to Liberty and Security*; violations of Article 13 – *Right to an Effective Remedy*; discriminatory treatment (Article 14 – *Prohibition of Discrimination*), while in cases in which the killed victims' houses had been subsequently burnt down, the violations of the right to respect for home were registered (Article 8 – *Right to Respect for Private and Family Life*) and violations of the right to protection of property (Article 1 of the Protocol).

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<sup>9</sup> Milenko Vidak was extradited to Croatia based on the decision of the Grave Criminal Offences Court in Trabzon, Republic of Turkey, dated on 04 August 2009. Milenko Vidak still has been kept in custody.

**Cold-heartedness shown towards the owners of facilities/houses destroyed by planting explosive devices – the local authorities' threat to institute court proceedings for misdemeanour due to the current “status“ of the land plots**

During the reporting period, a property owner received an order issued by the Administrative Department for Communal/Utility Affairs of the town of Bjelovar to act within 30 days and have the construction land plot cleared; otherwise the Department would institute the misdemeanour proceedings against the property owner. The clearing of the construction land plot would mean the removal of the ruins remaining after planting of explosives in the property owner's house in 1992, which had been committed by, to this day, unidentified perpetrator(s).<sup>10</sup>

As being members of organisations which are dealing with protection of human rights, we believe that the actions of local authorities have not had any perspective on historical context of causes for the damages nor have those authorities and actions considered an absolute innocence of the property owners in causing the current status of their immovable property.

In the area of Bjelovar-Bilogora County, more than 600 facilities had been destroyed in the terrorist acts. Law and order enforcement officials failed to protect the property of those citizens, and subsequently they also failed to investigate and initiate the prosecution of perpetrators of the stated criminal offences. A large number of the property owners have not succeeded in obtaining any compensation for the destroyed property, neither through court proceedings nor through the program of an organised reconstruction.

Considering the fact that a large number of crimes still have not been investigated to this day, it may be expected that the European Court of Human Rights is to determine, for the majority of cases, that the certain Convention rights of the plaintiffs were violated.

In order to cease further agony of family members of the killed persons, caused by utter and complete cold-heartedness of the legislative as well as court authorities shown towards the victims' families, the Republic of Croatia should make settlements with the victims' family members and pay them just compensations.

In September 2013, the claimant party J.P. and the Government of the Republic of Croatia signed an amicable agreement. The claimant had submitted a claim on the basis of violation of the right to life, i.e. on the basis of the total lack of effective investigation.

*Ž.P., spouse of the claimant party, had gone missing in Vukovar on 10 August 1991. His body was found in the Danube river near the village of Neština (Republic of Serbia), where the body was buried as an unidentified (NN) person. The exhumation and identification of the body was done in 2003, and the body was handed over to the family in 2004. Subsequently, the civil lawsuit was initiated; however, the claim was rejected on several occasions due to the statute of limitation in relation to the initiation of the civil lawsuit. In addition to the above stated, the courts set as the beginning of the limitation at law - August 1991, and not the very moment of identification of the body in 2003, when the family members of Ž.P. got to know with certainty that Ž.P. had been killed and that it had been a violent death. The perpetrator(s) of the crime still have not been prosecuted.*

The agreed restitution amount is 33,000.00 EUR. Considering the fact that there are three claimant parties (victim's spouse and their two daughters) and having in mind the existing court practice, the agreed amount is rather small.

<sup>10</sup> Since we have not contacted the owner of the construction land plot, we are not stating the land owner's name or other specific information regarding the case.



**2. Costs of lost litigations – the first case in which, based on *the Regulation on the criteria, standards and the procedure for postponement of payment, debt instalment payment and the sale, write-off or a partial write-off of the debt*, the litigation costs were written-off to a family member of the killed person**

On 24 September 2013, more than a year after the submission of the claim, the Ministry of Finance of the Republic of Croatia waived the debt of Vjera Solar, mother of civilian Ljubica Solar who had been killed in Sisak in 1991. The debt incurred as a result of the lost litigation against the Republic of Croatia in which Vjera Solar claimed the restitution of non-material damage.

Vjera Solar's debt was written off as it was determined that Solar, considering her modest income, had actually met the criteria for the write-off of debt in accordance with the above-stated *Regulation*.

The write off of Vjera Solar's debt is the first case known to us in which the victim's family member's debt, which occurred as a result of lost civil lawsuit in which the victim's family member was seeking compensation of non-pecuniary damage from the Republic of Croatia, was waived. Unlike the stated example, many plaintiffs/victims' family members will not be relieved of the burden of obligation of paying the litigation costs since they will not fulfil the strict property criteria stipulated by the above-mentioned *Regulation*. The agony many of those persons are still going through, which is likely to be continued, should be urgently ceased by the Government of the Republic of Croatia passing a special regulation which would waive all its claims towards this category of plaintiffs.