

**CENTRE FOR PEACE,
NONVIOLENCE
AND
HUMAN RIGHTS**



**MONITORING OF
WAR CRIMES TRIALS**
ANNUAL REPORT '05

Edited by Katarina Kruhonja

**MONITORING OF
WAR CRIMES
TRIALS
IN
THE PROCESSES
OF
DEALING
WITH THE PAST**

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

**Altruist Centre, Split
Civic Committee for Human Rights, Zagreb
Croatian Helsinki Committee
Documenta**

Publisher:
Centre for Peace, Nonviolence and Human Rights – Osijek

For the Publisher:
Branka Kaselj

Editor:
Katarina Kruhonja

Translation:
Anamarija Vranješ Vučinić

Print and Layout:
Grafika, Osijek

Circulation:
100

ISBN: 953-7338-01-0

Osijek, 2005

All texts may be used with the reference to the source.

**MONITORING
OF
WAR CRIMES
TRIALS**

**FINDINGS AND
RECOMMENDATIONS**
ANNUAL REPORT '05

The report was compiled by
Veselinka Kastratović and Katarina Kruhonja
on the basis of reports of the monitoring team
and
the report
of the General Attorney's Office of the Republic of Croatia
and
comments given at the expert round table

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- **professional and just trials**
- **restorative justice**
- **sustainable peace**

Project was implemented with the support of:

**Delegation of the European Commission
to the Republic of Croatia**



**Embassy of the United States of America
to the Republic of Croatia**
Open Society Institute Croatia

WAR CRIMES TRIALS IN THE PROCESSES OF DEALING WITH THE PAST

Civil society organisations advocate putting an end to the practice of publicly negating the responsibility for crimes as well as its “collectivisation” and non-punishment through just and fair war crimes trials. The aim of civil society organisations is to establish restorative justice for victims and to foster the need for individualisation of legal, political and moral responsibility for events leading the war, destruction, and war crimes. Civil society organisations are working on the establishment of simultaneous and mutual processes for strengthening the cooperation of national entities with the International Criminal Tribunal for the former Yugoslavia as well as on the improvement of competences of national jurisdiction to prosecute the severest crimes. Both aspects, compliant with the international treaties through cooperation with the International Criminal Tribunal for the former Yugoslavia and, in addition, stabilisation of the Croatian institutions that guarantee democracy, rule of law, human and minority rights, in which process the jurisdiction plays an important role, are the key political standards for joining the EU (European Council, Copenhagen, 1993).

In case they are impartial, professional and fair, the war crimes trials contribute to the establishment of justice after the war and to the strengthening of the rule of law by being of benefit to:

- ☐ the restorative justice for **victims** (amends should be made for at least a part of their suffering by establishing facts and criminal responsibility of the perpetrators and by providing the victims with an opportunity to tell the truth about their loss and suffering)
- ☐ **defendants**, because the trials ensure the right to a professional, impartial and fair trial as well as enable the **perpetrators** to deal with their responsibility
- ☐ **community** in which a crime was committed, because an impartial, professional and fair trial provides for an opportunity to recognise and acknowledge victims’ sufferings and to distance oneself, morally, legally and politically, from crimes and condemn them and, by doing so, to individualise the responsibility
- ☐ **the Republic of Croatia** to establish moral, ethical, legal and political standards necessary for joining the EU countries

War crimes trials were monitored by:

Veselinka Kastratović
Maja Karaman
Hajdi Katinac
Jagoda Matas
Kristina Matičević
Slađana Panić

THE PURPOSE AND METHODOLOGY OF MONITORING

The purpose of monitoring war crimes trials by organisations working in the area of human rights is twofold – to exercise influence on the improvement of court practice and to contribute to the development of confidence in local courts. Namely, both aspects are of key importance in order for war crimes trials to contribute to restorative justice.

Monitoring teams. Systematic monitoring of war crimes trials in the Republic of Croatia in 2005, in accordance with a standardized reporting method, was conducted by monitoring teams of Altruist Centre from Split, Centre for Peace, Nonviolence and Human Rights from Osijek, Civic Committee for Human Rights from Zagreb and Croatian Helsinki Committee, consisting of 6 monitors. The project was financed by the European Commission.

The focus of monitoring was on criminal proceedings in relation to the publicity of trials, court proceedings and fairness of the sentence. The monitoring showed that it was necessary to take into account the entire judicial proceedings, including pre-investigation (conducted by the police), inquiry, the quality of indictments and engagement during the hearing of evidence (work of the General Attorney's Office), which required additional monitoring capacities.

Scope of monitoring. Since January 2005 the monitoring teams monitored most ongoing war crimes trials in the Republic of Croatia (with the exception of several proceedings conducted before the County Courts in Zadar and Slavon-ski Brod – in total 13 proceedings before 8 county courts, Appendix No. 1). The monitoring teams were present at all hearings.

Also, events related to pre-investigation and investigation with respect to establishment of circumstances and identification of perpetrators of unsolved murders that took place in Osijek in 1991 were monitored. Apart from the aforementioned, we also participated in the monitoring of criminal proceedings at a regional level (in Serbia and Montenegro (S&M) and Bosnia and Herzegovina (B&H)).

Reporting method. Using a standardized reporting form, the monitoring teams wrote comprehensive reports on each hearing. Based on those reports and court minutes as well as on other key documentation, short reports are compiled. Along with monitors' key observations and analyses conducted, and after first-instance sentences have been pronounced, these reports are published on the web site of the Centre for Peace, Nonviolence and Human Rights Osijek and Documenta (www.centar-za-mir.hr; www.documenta.hr). In exceptional cases a statement was issued.

- Improving judicial practice
- Building confidence in local courts
- Strengthening the capacities of organisations for human rights protection for the monitoring of trials

SUMMARY OF FINDINGS AND RECOMMENDATIONS

The progress in work of the administration of justice in the Republic of Croatia with respect to the prosecution of war crimes is noticeable in relation to:

- ☐ compliance of the work with the Statute of the International Criminal Tribunal for the Former Yugoslavia
- ☐ strengthening of statutory and institutional conditions for protection and support of witnesses
- ☐ establishment of cooperation between the Croatian General Attorney's Office and the prosecutor's offices for war crimes in S&M and B&H on the cases related to war crimes prosecution

However, the current situation requires an improvement of all stages in the prosecution of war crimes in order for victims and injured parties to realise a minimum of their needs for justice; in order to prevent incrimination of victims and injured parties during trials and situations where the defence puts its political views and judgements before the values of international humanitarian law and defend the crime rather than the defendant; and in order to ensure safety of witnesses since they are of key importance for the establishment of truth about committed crimes.

Fields to be improved:

- ☐ Partiality
- ☐ Trials in absence
- ☐ Indictments and a need to reopen and expand investigations
- ☐ The position of witnesses
- ☐ The position of victims and injured parties in criminal proceedings

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Partiality

In 2001 the Croatian administration of justice stepped forward from, by that moment, predominant, partial jurisdiction (General Attorney's Office) based on an uncritical political interpretation that a war crime cannot be committed in a defensive war. Since 2001 war crimes against international humanitarian law have been prosecuted where the accused were members of Croatian military and police forces. Before that only members of Serbian paramilitary groups were prosecuted for those crimes, with several exceptions such as the crime committed on the Korana bridge. In total, approximately 4448 persons have been reported, around 1544 persons have been accused, 600 have been sentenced and 55 persons have been acquitted. Furthermore, in line with the instructions of the Croatian General Attorney's Office, during 2004 all investigations were reviewed. Upon completion of the revision, investigative procedures against 485 persons were discontinued after their acts were requalified as armed rebellion or due to lack of evidence or they were acquitted in line with the General Amnesty Act.

Moreover, the direct political influence on the professional work of courts was decreased. Also, reports on the work of the General Attorney's Office published in 2003 and 2004 showed, based on the entirety of data and their analysis, a professional character and willingness to admit failures and to change practice

During 2005, 16 first-instance criminal proceedings were conducted before county courts in the Republic of Croatia. Four of them involved defendants who were members of Croatian military and police forces.

The partiality in the work of jurisdiction in relation to ethnic affiliation of the defendants and victims in the cases monitored was noticeable in the following:

- the ratio of condemnatory / acquitting first-instance sentences with respect to the national structure of defendants, which was also indicated by a high percentage of sentences nullified by the Supreme Court of the Republic of Croatia
- members of Croatian military and police forces were, in most cases, prosecuted only on charges of murder, whilst in cases of minor crimes they were neither investigated nor prosecuted
- the way in which during hearings of evidence the War Crimes Council allowed defence lawyers to incriminate witnesses or prosecuting witnesses who testified to the crimes committed by the members of Croatian military and police forces

Especially unacceptable is to let defence lawyers base their defence upon an arbitrary opinion that a civilian of Serbian nationality is not a civilian, but a Chetnik (in other words, a dangerous criminal) and, therefore, he deserved whatever happened to him. If such a way of hearing the evidence is tolerated during cross-examination of witnesses and prosecuting witnesses, three impermissible things happen. It is insinuated that the victim/injured party (this time in court) committed the alleged crime, which has never been appropriately presented to the victim, described or much less proved and on the basis of which the victim was, on pretence of “a good reason”, maltreated, tortured or even killed. Further, by doing so, lawyers of the defendants place their political views and judgements above the value of international humanitarian law and, thus, defend the crime, not their defendants. Also, the defence underestimates the competences of the War Crimes Council and uses the courtroom to exercise pressure on the Council through the public, which the defence tries to win over for its political views and interpretations, which are, on the other hand, not in line with the values of international humanitarian law.

The proceedings where it is necessary to discontinue with such defence practices are the trials for the *crime committed in Lora* and the *crime committed in Virovitica*.

Trials in absence

In spite of the instruction issued by the Supreme Court of the Republic of Croatia and the instruction of the General Attorney of the Republic of Croatia to separate proceedings against the present defendants from those against the defendants on the run, during 2005 there were three cases where trials were conducted on the basis of a joint indictment, despite the fact that a large number of the defendants were on the run.

Although these trials are to a large extent correct in procedural terms, the trials in absence are not acceptable for the following reasons:

- ☐ they cast doubts on politically motivated indictments as not being based on evidence against defendants
- ☐ potentially long-term/endless proceedings, which is not in compliance with the right to a fair trial against the present defendants and which is inefficient and inappropriate for victims and injured parties
- ☐ prosecuting witnesses have to testify again and, thus, are exposed to re-traumatisation
- ☐ proceedings are uneconomical

It is necessary to separate and correct indictments in the case of *crimes in Mikluševci, in Lovas, in Branjin Vrh* (corrections are in progress) and perhaps in the case of *the crime committed in Lora*.

Indictments and a need to reopen and expand investigations

The need to correct indictments and/or reopen investigations is common to joint indictments against a large number of defendants (for the crime act of genocide *in the case of the crime in Lovas and the crime in Mikluševci*).

Apart from the aforementioned, in the cases where defendants are the members of Croatian military or police forces, low-rank persons are accused, whilst commanders are neither investigated nor accused (the case of the *crimes in Bjelovar, crime in Virovitica, crime on the Korana Bridge and crimes in Lora*).

As regards incomplete indictments (against unknown perpetrators), discontinuation of proceedings and acquitting sentences for the severest criminal acts, where the crime is unquestionable (the death of the victim is established), but there is a lack of evidence, the General Attorney's Office needs to reopen the inquiry and not only to appeal to the Supreme Court of the Republic of Croatia (examples: *crime in Paulin Dvor; crime in Bjelovar, crime in Virovitica, crime on the Korana bridge*), because this only delays and prevents revealing of the truth about events and perpetrators.

So far there has been no case in which the General Attorney's Office has opened an inquiry into the act of concealing a crime where it has been established during investigative or judicial proceedings that evidence of a crime or the results of a crime investigation were concealed. This is a practice which must be introduced. Also, an expert discussion needs to be opened on the introduction of an amendment to the Criminal Justice Act, which would subsume the aforementioned acts under the act of a war crime.

The position of witnesses

With regard to the lapse of time, from the commission of an act to the inquiry, and frequent want of physical evidence, the witnesses play an important role in the evidence procedure. The War Crimes Councils must make witnesses

feel safe, so they can testify to the facts they know, and the defence must be provided with an opportunity to question witnesses directly. Witnesses and prosecuting witnesses are exposed, in trials which are now taking place before courts of the Republic of Croatia and which are monitored, to considerably different circumstances, depending whether they testify in favour of the ongoing indictment against members of Serbian paramilitary groups or members of Croatian military and police forces.

Witnesses, especially prosecuting witnesses, in the proceedings for crimes committed by members of Serbian paramilitary groups, do not say or show that they are under the pressure of public opinion or perpetrators and their supporters, but, since proceedings are time-consuming and frequently repeated, in the proceedings where most of the defendants are on the run (trials in absence), they do not see the purpose of the trial and they frequently state that they do not want to testify anymore.

Witnesses and prosecuting witnesses in the proceedings for crimes committed by members of Croatian military and police forces are put under pressure by a part of the public and/or perpetrators and their supporters, even by the manner in which defence lawyers try to question their credibility, which, in some cases, can be interpreted as a procedural error. It was recorded that witnesses showed fear, could not remember details and even changed their testimonies, which the representatives of the General Attorney's Office neither articulated nor questioned; however, it was not noticed that the provisions of the Witness Protection Act were applied.

A discussion should be opened on whether the valid Witness Protection Act should be improved, so it could be more broadly applied in practice, without infringing the defendants' right to defence.

Furthermore, the witnesses who lived outside the Republic of Croatia showed lack of trust in the jurisdiction of the Republic of Croatia and refused to testify. With the signing and implementation of the agreement on cooperation on the cases of war crimes between the Republic of Croatia, S&M, and B&H a significant step forward was made with respect to evidence presentation through direct examination of witnesses. Based on evidence given by witnesses who came from S&M, the established international cooperation proved to be of key importance for their motivation and willingness to testify in the re-trial for the crimes committed in the Military Research Centre "Lora". By doing so, the relevant Council fulfilled the key instruction given by the Supreme Court of the Republic of Croatia. The War Crimes Council at the County Court in Bjelovar, in

the *case of the crimes in Virovitica*, passed a decision on not inviting prosecuting witnesses to testify to that case.

It is important to further improve international cooperation on the cases of war crimes and use the possibility of testifying via a videolink.

Furthermore, the initiated institutional support to witnesses still has not become a reality, although it is a necessity. For this to happen, the cooperation with human rights organisations needs to be established.

The position of victims and injured parties in criminal proceedings

The quality of investigation, indictment, evidence collection and the engagement of prosecutors during evidence presentation are directly related to the public interest and special interests of victims and injured parties.

The right of victims and injured parties to be represented by an attorney in criminal proceedings for war crimes, where the state (through the General Attorney's Office) had the role of the public prosecutor, was realized only sporadically in the trials monitored. (Injured parties have their attorneys in two trials; at the moment, proceedings including 286 directly injured parties are being conducted).

In our opinion, it is necessary to initiate an expert discussion on how to make it possible for victims and injured parties to realise their right to be independently represented by an attorney in criminal proceedings for the severest criminal acts (such as war crimes), which could be realised, for example, by introducing an amendment to the draft of the Free Legal Aid Act.

Monitoring capacities

In order to enforce the compliance with the principle of publicity, it is necessary to strengthen the capacity of independent national monitors who monitor the work of the administration of justice (especially the quality of work of the General Attorney's Office in all proceeding stages, not only with respect to trials), including preinvestigative and investigative procedures.

SPECIAL RECOMMENDATIONS

The trial in the case of the crime on the Korana bridge: still below standard – the indictment needs to be delegated and corrected, the inquiry needs to be re-opened

The trial in the case of *the crime committed on the Korana bridge* against the defendant Mihajlo Hrastov before the County Court in Karlovac has been conducted for 13 years, now for the third time before the War Crimes Council in a completely new composition, but it is still below the standards that guarantee a fair, professional and just trial. Namely, the indictment was drawn up in such a way that the murder of 13 prisoners of war was defined as unlawful killing of the enemy, not as a war crime, and only one perpetrator was charged with that crime, although the inquiry indicated several perpetrators. The Council works under strong pressure of the public, which is also reflected in its work in the courtroom. During the proceedings the prosecutor failed to object to another delay of the trial and did not work enough on securing evidence given by witnesses. The last trial took place more than 6 months ago, which means that the proceedings should be reinitiated. The President of the Council, at a session out of the trial, passed a decision on conducting an expert evaluation, which was an essential violation of the proceedings.

By pointing out the fact that 13 prisoners of war were killed on the Korana bridge on 21st September 1991, that the investigation was initiated immediately, that the process has not been finished yet and that the perpetrators have not been identified, the Supreme Court of the Republic of Croatia set aside the acquitting sentence twice due to incomplete established facts. Since the trial conducted before the Council in the changed composition is neither professional nor impartial, we find it necessary to delegate the case to another court and to reopen the inquiry.

SPECIAL RECOMMENDATIONS

The inquiry into the crimes committed against civilians in Osijek: obstruction of the inquiry into the establishment of circumstances and perpetrators of unsolved murders of civilians in Osijek in 1991 should be penalised and the County Attorney Office from Osijek should be removed from the case.

The inquiry into the establishment of circumstances and perpetrators of several murders of civilians in Osijek in 1991 has not provided any results for fourteen years and the administration of justice has failed to provide complete information to the public about what actions it has taken. For years only certain media have indicated that the inquiry needs to be conducted and that perpetrators need to be prosecuted. This media has been waging a media battle against the local politicians who completely deny the commission of crimes. In this process, documents related to pre-investigative and investigative proceedings appeared in media, including the names of victims and potential witnesses. The mayor of Osijek stated several times that by reading the names of potential witnesses from the inquest request of the County Attorney's Office "he had exposed the false witness" (who was under police protection at that moment). The County Attorney's Office did not react to his statement.

Therefore, our opinion is that the Public Attorney should open an inquiry against Ante Đapić for committing a crime against the administration of justice by obstructing the inquiry and by intimidating the witnesses under police protection and should remove the County Attorney's Office in Osijek from conducting further investigative proceedings.

DETAILED REPORT ON THE RECORDED STATUS

General statistical data

According to the data provided by the General Attorney's Office of the Republic of Croatia, in the period between 1991 and 2004, approximately 4774 persons were reported on criminal charges, approximately 3232 were investigated, and approximately 1400 were charged. In this process, only since 2001 have war crimes – against international humanitarian law – been prosecuted in the cases where the accused were members of Croatian military and police forces, whilst before that only members of Serbian paramilitary groups were prosecuted for the same criminal acts, with the exception of cases such as the crime on the Korana bridge. Prior to that, also based on the data of the General Attorney's Office of the Republic of Croatia, members of Croatian military or police forces were prosecuted for criminal acts qualified as classical criminal acts (plundering, robbery, homicide), although they happened in the zone and period of war and the damaged civilians and property were Serbian (3970 persons were reported, 1492 were charged).

Until 2005, 603 persons were found guilty of war crimes and 245 persons were acquitted. The final condemnatory sentence in the case of war crimes committed by members of Croatian military or police forces was passed in two trials against 4 persons (defendant Norac, defendant Orešković and defendant Granić for the crime against civilians in Gospiš and Ivanković for the war crimes against civilians in Paulin Dvor).

In line with the instructions of the General Attorney's Office of the Republic of Croatia, during 2004 all investigations were reviewed and, upon completing the review, proceedings were discontinued against 485 persons due to lack of evidence or because their acts were requalified as armed rebellion or because they were acquitted in line with the General Amnesty Act.

In 2004 the General Attorney's Office filed 104 criminal charges (53 were new and 51 were transferred from the previous period). 36 criminal charges were rejected, whilst requests for investigation were filed against 32 persons. Courts passed 33 acquitting sentences, whilst for 15 persons a negative sentence was passed (acquitting and remitting sentence).

According to the data received from county courts of the Republic of Croatia, during 2005 in total 16 proceedings were conducted for war crimes (Articles

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120, 122 and 123 of the Croatian Criminal Justice Act), for the crime of genocide (Article 119 of the Croatian Criminal Justice Act) and for the crime of unlawful killing and wounding of the enemy (Article 124 of the Croatian Criminal Justice Act) before 8 county courts (Bjelovar (1), Karlovac (2), Osijek (4), Slavonski Brod (1), Split (1), Vukovar (3), Varaždin (1), Zadar (2), Zagreb (1)). The majority of cases, approximately 75% of them, were re-trials under the decision of the Supreme Court of the Republic of Croatia (in 12 out of 16 cases).

In total, criminal proceedings were conducted against 79 persons. In 12 trials, criminal proceedings were conducted against 62 defendants who were members of Serbian paramilitary groups. Out of that number 7 persons were held under detention, 16 were out on bail and 39 were on the run. As regards the defendants, members of Croatian military and police forces, 4 criminal proceedings are/were conducted against 17 persons, out of which four are/were held under detention, 9 are/were out on bail and four on the run.

Six sentences, which were not final, were passed – two acquitting (for 5 persons in total) and four condemnatory sentences (7 persons). With respect to criminal proceedings for the *crimes committed in Mikluševci* the General Attorney's Office dropped the charges against 8 defendants who had died and against another two persons due to lack of evidence (criminal proceedings for the *crime in Virovitica*).

The number of victims encompassed by indictments is 286. Out of this number, 19 were prisoners of war and 267 were civilians. Out of the total number of victims 98 persons were killed, 90 survived and 98 were exiled. Out of the total number of civilians there were 14 Serbs who survived and four were killed. The number of survived Croats is 77, whilst 71 were killed. Furthermore, there are 6 Ruthenians survivors, whilst four were killed. All 19 prisoners of war were Serbs (members of Yugoslavian National Army (YNA), Territorial Defence (TD), and Serbian paramilitary groups).

The injured parties were represented by attorneys in two cases (injured party in the case of the *crime on the Korana bridge* is Šarac Svetozar; in the case of the *crime in "Lora"* the injured party Knežević was killed).

Technical conditions

Courtrooms are of different sizes, only some of them have a separated space for defendants (Split), but in most cases they are spacious enough to seat defendants,

victims, witnesses and audience at a respectful distance. However, this is not the case with the courtroom of the County Court in Vukovar, which is rather small in size. Seats intended for defendants, victims and witnesses, audience members, and defence lawyers are not far from each other. The witness box where witnesses give evidence is located directly in front of defendants, which could have an effect on witnesses, making them feel frightened and uncomfortable.

None of the county courts has made or intends to make the use of the possibility to make audio and/or video records of the trial for the purpose of producing transcripts.

Most of the county courts are equipped for testimonies via a videolink; the court in Varaždin used that possibility within the courthouse for taking evidence from the prosecuting witness who had survived execution by fire squad in order to protect him from directly facing the defendants, for which the witness was not yet ready.

The monitoring conditions are different; the audibility is somewhat better in certain locations than others. During the trial for the crimes in "Lora" before the County Court in Split there are some technical difficulties caused by overloaded electrical installations (electricity outage and problems with heating during the hearing). In most cases there is enough space for monitors, journalists, and audience. This is not the case with the courtroom in Vukovar, where criminal proceedings are conducted against a large number of defendants. If they were all present, there would not be enough space (they are tried in absence).

Judicial police

- ☐ The prison police is present in all cases where defendants are held under detention.
- ☐ Whether the judicial police is present or not depends on the estimation of the President of the War Crimes Council who conducts the trial. Thus, the judicial police is not present in the courtroom in all cases where defendants are held under detention (e.g. trial before the County Court in Vukovar against the defendant Čurčić and others; trial before the County Court in Osijek against the defendant Stoisavljević), but they are present in some cases where defendants are out on bail and a large interest of the public is expected (e.g. trial before the County Court in Karlovac in the case of the *crime on the Korana bridge* against the defendant Hrastov).

- The rule stating that women's handbags can be searched only by a policewoman is in some cases always applied, in some cases only occasionally.
- In cases where defendants are members of Croatian military and police forces, the present judicial policemen (including also prison policemen) show that they know and support the defendants (especially during the trial for the *crime on the Korana bridge* and for the *crime in "Lora"*).

Publicity of trials

Information about the schedule of trials can be received upon inquiry – besides on court boards, information was not systematically published with the exception of the County Court in Vukovar, which published information on its web page every month and sent it to all interested monitors and journalists by fax. In the case in which the monitoring team was announced, most courts, in case the hearing was postponed, sent a note on postponement.

The presence of the public was provided for in all proceedings – except in parts of hearings where proceedings were closed under law.

Atmosphere in the courtroom: As regards the trials against defendants who were members of Serbian paramilitary groups, apart from journalists and monitors and a few friends or family members, the broader public was, in most cases, not present, including in some cases the injured parties and their family members. There was the impression that the public and the injured parties were not interested.

On the other hand, during the trials against defendants who are members of Croatian military and police forces, members of war veterans' organisations and fellow-soldiers are always present. Their presence, their muffled or open comments contribute to an atmosphere of pressure on the Council, the present public (monitors and defendants' friends and family members), and potential witnesses (especially noticeable at the trial against the defendant Hrastov for the *crime on the Korana bridge* and during testimonies given by witnesses from S&M and B&H, as well as during the proceedings for the *crime in "Lora"*). During the trial for the crime in "Lora" muffled or loud comments of defence lawyers significantly contributed to creating an atmosphere of pressure on witnesses. Defence attorneys also demonstrated their political views, and the President

of the Council was not able to keep their behaviour under control. It was also noticeable that friends and family members of the defendants in the aforementioned proceedings were usually not present in the audience or were difficult to identify (they did not demonstrate their views and feelings).

Journalists are present depending on the interest. In some cases journalists working for local media report in a very partial way, whilst in other cases they report unexpectedly little (radio "Jadran" in the case of the crimes in "Lora"). National media, including electronic media, report in the form of short information; there is no research work and critical comments or broadcasts on the very topical issue of war crimes trials in the Republic of Croatia.

Availability of documentation to monitoring teams: After the monitoring team was announced and documentation in writing was requested (court minutes, indictments and potential earlier sentences), approval was received from most of the Presidents of war crimes councils who were in charge of trials. The exception was the President of the Council in charge of the trial against the defendant Hrastov for the *crimes on the Korana Bridge*, but he allowed monitors to examine the record.

Pre-investigative proceedings

The monitors did not receive (or ask for) the entire record for examination. A certain amount of information on pre-investigative proceedings was collected only through the monitoring of hearings. In that process the monitors noticed irregularities, which were also stated by witnesses and/or parties to the proceedings and entered into court minutes.

Irregularities in work, in the pre-investigative proceedings, in the case of the *crimes in Bjelovar*:

- ☐ The crime investigations were conducted immediately after the crime was committed (within 24 hours). During the proceedings the casts of wheel tracks disappeared, which was an important piece of evidence and could have been used to identify the vehicle in which the victims were taken to the place where they were shot.
- ☐ After anonymous threats the Koprivnica Police Department was discontinued abruptly from investigation. In consequence, the police in Bjelovar were put in charge of the case.

- Operational officers from Koprivnica, who were conducting the crime investigation, were not at the crime scene, they were not present during the autopsy of victims' bodies, they only conducted operational interviews.
- The location of the report compiled after the crime investigation is still not known. There are two versions of this circumstance: one is that the report was handed over to the Head of the Bjelovar Police Department of that period and, thus, was in Bjelovar; according to the second version, the report was sent to the Croatian Ministry of the Interior in Zagreb.
- After the autopsy performed on victims' bodies at the Institute of Forensic Medicine in Zagreb, the bodies were handed over to a funeral director from Bjelovar. It is still not known where the victims were buried.

There is no information whether any investigation or measure was conducted or taken by the County Attorney's Office with respect to any of the aforementioned failures.

Irregularities related to the pre-investigative proceedings in the case of the *crimes on the Korana Bridge*, where no sketch of the crime scene was made, which was obvious from the ballistics report and the forensic expert's report. The said failure was also the subject of the appeal filed by the CAO from Karlovac, which the Supreme Court of the Republic of Croatia accepted and required a complete reconstruction of the crime scene.

During the pre-investigative proceedings in the case of the *crimes in Virovitica* the location of the body of the victim Bogdan Mudrinić from Virovitica was not established. There is no information about the scope in which the investigation was continued.

Inquiries

In relation to the proceedings monitored, the inquiries into the crimes committed against, in the first place, Croatian population – where defendants were members of Serbian paramilitary groups – were commenced in most cases in the first half of the 1990s, in the time when neither physical evidence nor perpetrators were available. Those inquiries resulted in joint indictments against a large number of defendants who were charged with the same criminal act (up to 35 defendants), where many of them were tried in absence. The case of

the crime in Kruševo (defendants Jurjević and Tošić) and the case of crime in Srebrenica and Podunavlje (defendant Davidović) indicate that new inquiries are being conducted.

As regards the crimes committed against mostly non-Croatian population, where defenants were members of Croatian military and police forces, the inquiries were opened in 2001 and later, i.e. ten years after the crimes were committed. An exception is the *case of the crime on the Korana bridge*, where the inquiry was opened immediately after the crime were committed in 1991.

In the *case of the crime in Paulin Dvor*, where 19 civilians were killed and two persons charged with that crime, the inquiry was conducted only halfway. In consequence, the indictment, apart from the names of the accused, also contains also the sentence: "with several unknown perpetrators". During judicial proceedings it was also stated that several unknown persons committed the act.

Inquiries conducted against members of Croatian armed and police forces cover the criminal acts committed by low-rank policemen and soldiers, but not commanders, i.e. superiors (e.g. in the *case of the crime in Bjelovar*, e.g. in the *case of the crime in "Lora"*, e.g. in the *case of the crime in Virovitica*, e.g. in the *case of the crime on the Korana bridge*).

Through media reports the investigative proceedings into the establishment of circumstances and perpetrators of *the murders of civilians committed in Osijek in 1991* were monitored.

The inquiry was intensified in July 2005 with the appearance of a new witness who claimed to have information about the ones responsible for the aforementioned murders and who also said he had participated in the execution. Based on information collected from the media, the inquiry was conducted by the County Attorney's Office in Osijek. The aforementioned witness is now under police protection. During the inquiry, at a press conference the mayor of Osijek and Member of Parliament Anto Đapić read from the inquest request of the Public Attorney's Office the names of nineteen potential witnesses. The statement of Mr. Đapić was quoted in several newspapers and several radio programs and broadcasted on STV (local Slavonian TV channel) on several occasions. In a period of one month the mayor repeatedly stated for the media that in such a way he "had exposed the false witness". By doing so, the mayor, due to violation of the confidentiality of investigative proceedings and the pressure on witnesses under police protection, committed crimes against jurisdiction. After the organisations for human rights protection reacted, the County Attorney's Office stated for the Croatian Radio Channel 1 that the inquiry into the aforementioned incident was in progress.

Indictments

Indictments from the early nineties were filed by the CAO* Osijek against defendants who were not available (in absence) and they concerned a large number of defendants, some of whom died in the meantime. In the case of certain defendants it is necessary to change the qualification of the act they are accused of, or it has already been done so.

Thus, for example, 35 persons were prosecuted on indictment for the criminal act of genocide committed in Mikluševci. The County Attorney's Office from Vukovar changed, on the basis of its report No. K-DO-71/01 as of 15th April 2005, the facts given in the indictment by the CAO Osijek (indictment was taken over by CAO Vukovar), due to considerably changed circumstance (proceedings against eight defendants, who died, were discontinued) and for the purpose of changing the statement about the time at which certain incriminating acts were committed, in line with collected documentation (on the date of village occupation and the decision on exiling). Thus, the indictment still includes 27 defendants, nine of which are present and 19 of which are tried in absence. The proceedings were not separated.

27 defendants were prosecuted on indictment for the criminal act of genocide committed in Branjin Vrh (only three were present at the trial). After conducting a supplementary investigation, the proceedings were discontinued under the provisions of the General Amnesty Act with respect to the 20th defendant. As regards three other defendants, the proceedings were discontinued due to their death. As regards the 19th and the 27th defendant, the proceedings were separated under the Decision of the County Court in Osijek. At the hearing held on 10th May 2005 the County Attorney's Office in Osijek proposed to separate the criminal proceedings against the three present defendants, to define a timeframe for the CAO from Osijek within which the facts of the indictment would be altered in relation to the three present defendants and the legal qualification and characterisation of the indictment would be rephrased. After altering the indictment in such a way, the proceedings will be continued against 16 absent defendants for the criminal act of genocide.

As regards the crime committed in Lovas, 18 defendants were prosecuted on indictment by the County Attorney's Office in Osijek, No. KT-265/92 as of 19th December 1994, changed into the number DO-D-9/00, for the criminal act of genocide and the criminal act of war crime against civilians. 2 defendants (also named in the indictment No. KT-265/02 as of 19th December 1994) were prosecuted on indictment by the County Attorney's Office from Vukovar, No. K-Do-

* CAO = County Attorney's Office

44/04 as of 1st October 2004, for the criminal act of war crime against civilians (joint indictment). Only the 18th defendant Ilija Vorkapić, who is out on bail, has been present at the hearings held before the County Court in Vukovar since 2003. 17 defendants are tried in absence. In their case proceedings are not separated.

The aforementioned indictments were partly altered during the criminal proceedings. Thus, the proceedings had to be conducted from the start, which is, due to a large number of witnesses, quite time-consuming. Apart from that, in all these cases many defendants are on the run (they are tried in absence), meaning it can be expected the proceedings are to be conducted again.

In the *case of Korana bridge* the charges were not brought for war crime against prisoners of war, but for the criminal act of unlawful killing and wounding of the enemy. The indictment includes only one person. Since 13 prisoners of war were killed, by accusing only one person, in contrast to such a large number of victims (who are qualified as enemies in the indictment), one gets the impression that the defendant is given an opportunity to defend himself by stating he committed, allegedly, a justifiable homicide in self-defence.

When comparing indictments, a lack of uniformity can be noticed with respect to the legal qualification of criminal acts, number of defendants, rank of defendants in relation to command responsibility and in relation to ethnic affiliation of defendants (i.e. in relation to membership in Serbian paramilitary groups or in Croatian military and police forces). Indictments against members of Croatian military and police forces are filed almost only in the case of murder. The murder of 13 prisoners of war on the Korana bridge was defined as unlawful killing of the enemy, not as a war crime, and only one person was charged, although there were indications that the crime was committed by several perpetrators. Two members of Croatian military forces and several unknown persons were charged with the murder of 19, mostly Serbian, civilians in Paulin Dvor. In the cases where defendants are members of Croatian military or police forces, low-rank persons were accused, not commanders: *the case of the crime in Bjelovar*, *the case of the crime in Karlovac*, *the case of the crime in Virovitica*, and *the case of the crime in "Lora"*.

It was not recorded that either inquiry or indictment was expanded due to concealing evidence (e.g. in the case of the *crime in Paulin Dvor*, where the bodies of 19 killed civilians were removed; in the *case of the crime in Bjelovar*, where pre-investigative proceedings were opened immediately, but they were soon discontinued, a part of evidence and the inquiry report disappeared; it is still unknown where the bodies of six shot persons, on which an autopsy was performed during the inquiry, were buried).

We also did not record an expansion of inquiry or indictment in relation to the commanders' area of responsibility, although the trials showed their relation to the accused (e.g. the *case of the crime in Bjelovar...*)

Court Councils

At all courts the trials are run by war crimes councils composed of three professional judges, in line with the provision of Article 13, paragraph 2, of the Law on Application of the Statute of the International Criminal Court and Prosecution for Criminal Acts against International, War and Humanitarian Law ("Official Gazette", No. 175/03).

In the *case of the crimes in Virovitica* (defendants are Iharoš and others) conducted before the County Court in Bjelovar, the Member of the Council is a judge who passed the first-instance sentence in the same case, which was set aside (under the decision of the Supreme Court of the Republic of Croatia) and reversed. Now the trial is being conducted before another Council. The work of the aforementioned judge in the War Crimes Council, in this case, can be considered a substantial violation of criminal proceedings.

The attorney of the injured party in the *case of the crimes on the Korana bridge* (defendant Hrastov) before the County Court in Karlovac filed a complaint (on several occasions verbally, later also in writing) about one member of the War Crimes Council, stating that the said member was not experienced enough to work on criminal cases, which the Council neither took into consideration nor entered into the court minutes.

The members of War Crimes Council actively contributed to the course of hearings only in exceptional cases.

Main hearings

The provision of Article 303 of the Criminal Proceedings Act lays down that the President of the Council opens a session and states the subject matter of the main hearing as well as the composition of the Council. It happens frequently that the President of the Council fails to introduce the Members of the Council, but only asks the Vice County Prosecutors and defence lawyers whether they have any objections to the composition of the Council and then states it for the record. During the hearing held on 5th and 6th September 2005 in the

trial for the *crime committed in Mikluševci*, a member of the Council was absent from the courtroom for a longer time, which is contrary to the provision of Article 296, paragraph 1, of the Criminal Proceedings Act that lays down that the President, the members and the keeper of the minutes, as well as assistant judges must be present at the main hearing the entire time.

All defendants, including those tried in absence, have defence lawyers. In the cases with a large number of defendants who are tried in absence, one defence lawyer defends several defendants (e.g. in the *case of the crime in Lovas*; in the *case of the crime in Mikluševci*). Only in several separated cases defence lawyers were not present at the hearing for a shorter period of time, without this fact being entered into the court minutes and without finding a replacement for them. The quality of the engagement of defence lawyers who are not appointed by the court should be monitored and analysed in more detail, especially if defendants are tried in absence.

As a rule, the injured parties do not have an attorney to represent them, with the exception of several separated cases.

During the trial in Varaždin in the *case of the crime in Bjelovar* and the trial in Bjelovar in the *case of the crime in Virovitica*, there were witnesses in the audience, whose testimonies had not yet been heard, contrary to the provision of Article 238, paragraph 1, of the Criminal Proceedings Act.

At the hearing of the *case of the crime in Mikluševci*, contrary to the provision of Article 7, paragraph 2, of the Criminal Proceedings Act, the President of the Council failed to provide for an interpreter for a prosecuting witness of Ruthenian nationality, who said she did not understand Croatian quite well and she found it difficult to answer the questions. The President even commented that, since the trial was conducted in the Republic of Croatia, the witness should speak Croatian.

Although these trials are to a large extent correct in procedural terms, the trials in absence (for the crimes in Mikluševci, Lovas and Branjin Vrh) can be objected to for the following reasons:

- ☐ they cast doubts on politically motivated trials, as not being based on evidence against defendants
- ☐ the present defendants are exposed to lengthy proceedings, which can start again in case any of the absent defendants becomes available to the Croatian administration of justice or reports himself/herself

- prosecuting witnesses have to testify again and, thus, are exposed to re-traumatisation; they do not see the purpose of their testifying as long as defendants are absent, because the perpetrators will not be faced with the suffering of injured parties (see *The position of witnesses in evidence procedure*)
- proceedings are uneconomical

The position of witnesses in the evidence procedure

With regard to the lapse of time, from the commission of an act to the inquiry, and frequent want of physical evidence, the witnesses play an important role in the evidence procedure. The War Crimes Councils must make witnesses feel safe, so they can testify to the facts they know, and the defence must be provided with an opportunity to question witnesses directly.

Witnesses and prosecuting witnesses are exposed, in trials which are now taking place before courts of the Republic of Croatia and which are now being monitored, to considerably different circumstances, depending whether they testify in favour of the ongoing indictment against members of Serbian paramilitary groups or members of Croatian military and police forces.

Witnesses, especially prosecuting witnesses, in the proceedings for crimes committed by members of Serbian paramilitary groups, do not say or show that they are under pressure of public opinion or perpetrators and their supporters (with the exception of one case, in the proceedings for the crime in Mikluševci when one of the prosecuting witnesses stated he was no longer glad to testify because they lived together in the village). However, as regards the cases of the crimes committed in Mikluševci, Lovas and Branjih Vrh, witnesses are exposed to lengthy proceedings (inquiries were opened ten or more year ago) and they already had to testify on several occasions to their sufferings, re-experiencing traumatic events. They do not see that the justice will be done through these court proceedings, since most of the defendants are not available to the Croatian administration of justice. Their testimonies do not force the perpetrators to face the acts they committed and, as witnesses, they do not have a complete insight into the case, but only a very partial experience of it related to their testimony. These witnesses frequently say they no longer want to testify.

Witnesses and prosecuting witnesses in the proceedings for crimes committed by members of Croatian military and police forces are put under pressure

by a part of the public and/or perpetrators and their supporters, even by the manner in which defence lawyers try to question their credibility, which, in some cases, can be interpreted as a procedural error. We recorded that witnesses showed fear, could not remember anymore and even changed their testimonies, which the representatives of the General Attorney's Office neither articulated nor questioned; however, it was not noticed that the provisions of the Witness Protection Act were applied.

Furthermore, the witnesses who lived outside the Republic of Croatia showed lack of trust in the jurisdiction of the Republic of Croatia and refused to testify. With the signing and implementation of the agreement on cooperation on the cases of war crimes between the Republic of Croatia, S&M, and B&H a significant step forward was made with respect to evidence presentation through direct examination of witnesses. Based on evidence given by witnesses who came from S&M, the established international cooperation proved to be of key importance for their motivation and willingness to testify in the retrial for the crime committed in the Military Research Centre "Lora". By doing so, the relevant Council fulfilled the key instruction given by the Supreme Court of the Republic of Croatia. The War Crimes Council at the County Court in Bjelovar, in the *case of the crime in Virovitica*, passed a decision on not inviting prosecuting witnesses to testify to that case.

The response of witnesses who lived in the Republic of Croatia, as regards the re-trial for the *crime committed in "Lora"*, was weak. Two witnesses stated openly that they were under pressure and threatened. The witness M. B., who, during the inquiry and the previous proceedings, testified to the conditions he had found in the Military Research Centre "Lora", stated that he asked to be placed in the witness protection programme, but the General Attorney refused to do so, which discouraged the witness. Also, by his interpretation that the aforementioned witness did not meet the criteria provided by the valid Witness Protection Act, the General Attorney validated, in an indirect way, the testimony of that witness as negative.

During the retrial *in the case of the crime committed in Virovitica*, which was conducted before the County Court in Bjelovar and in which defendants were Iharoš and the others, several witnesses changed their testimonies given during the inquiry and pre-investigative proceedings, some of them even apologised to the defendants in the courtroom. The President of the Council and the Vice General Attorney from Bjelovar, who was representing the indictment, did not question the witnesses on whether they had been put under pressure by either defendants or their supporters. They did not react even when the 4th defendant verbally attacked the witness, M. K., at the hearing. Moreover,

monitors noticed that two previous members of the Military Police (also witnesses to the case who were supposed to give evidence later under the same circumstances) were present in the courtroom, following the testimony of the witness – prison warder. In his earlier testimony, the prison warder gave evidence on the circumstances of the criminal offence commitment and certain details that were potentially incriminating for the defendants and even for one of the aforementioned witnesses present in the courtroom. After the witness denied the majority of statements given before, the aforementioned previous policemen left the courtroom together with the witness. Based on what was noticed, there are indications of pressure being exercised on the witness by the defendant's supporters.

The audience behaved in a threatening or provocative way towards witnesses at the trial for the *crime on the Korana bridge* and for the *crime in "Lora"*. Human rights organisations monitoring the trial for the *crime on the Korana bridge* before the County Court in Karlovac required the case to be delegated to another court due to a great pressure of the public during the re-trial and due to ineffectiveness and a failure of the President of the Council to intervene. The situation in the courtroom improved later on during the trial. When the President of the Council conducting the hearing of the *crime committed in "Lora"* was opened at the retrial, she warned the audience, since she knew what had happened during the previous trial, of everything she would not tolerate in the courtroom. She occasionally repeated her warning and used her authority to remove from the audience persons who failed to comply with her warning.

But more serious problems were noticed in relation to the way in which witnesses, especially prosecuting witnesses, were cross-examined by the defence. Presidents of Councils allowed for such cross-examination to happen, which, in the opinion of monitors, could be interpreted as a procedural error of unlawful pressure on and intimidation of witnesses. It frequently happened at the trial for the *crime committed in "Lora"* that the defence lawyers, by the way in which they questioned the witnesses or by comments they made, attacked the dignity of witnesses as persons (for example: after being warned by the President of the Council not to make comments while the President was examining the witness from B&H, the defence lawyer answered: "I just translated what the witness said"; another example: the lawyer of the defendant Emilio Bungura said: "I will not use a slang expression otherwise used to describe the witness and his credibility"; or some defence lawyers addressed witnesses in an informal way, by their first name).

Apart from the aforementioned, at the trial for the *crime committed in "Lora"* and the *crime in Virovitica* the Presidents and Members of the Council allowed the lawyers to build their defence by incriminating victims and the prosecuting wit-

ness. Thus, the defence expressed the opinion that a civilian of Serbian nationality was not a civilian, but a Chetnik (in other words, a dangerous criminal) and, therefore, he deserved whatever happened to him. Based on such an opinion, the indictment may become null and void (for example: if the victim could be seen in a photo, standing under the Serbian flag, at the Rašković gathering – it meant the victim was a dangerous Chetnik, not a civilian; for example: if the injured party, after the entire torture to which he or she was now testifying, agreed to be exchanged – it meant the injured party was a Chetnik, not a civilian; for example: after the defence lawyer asked the witness what the witness knew about the victim (who was killed), the witness answered he had heard that the victim had gone from Virovitica to Vojvodina during weekends in order to torture Croatian conscripts there, this statement was entered into the minutes).

By tolerating such a way of hearing the evidence during cross-examination of witnesses and prosecuting witnesses, three impermissible things happened. It was insinuated that the victim/injured party (this time in court) had committed the alleged crime, which had never been appropriately presented to the victim/injured party, described or much less proved and on the basis of which the victim had been, on pretence of “a good reason”, maltreated, tortured or even killed. The defence lawyers (in the cases when members of Croatian police and military forces were tried) placed their political views and judgements above the values of international humanitarian law and, thus, defended the crime, not their defendant. The defence underestimated the competences of the War Crimes Council, trying, through political interpretations of circumstances in which the crimes had been committed, to exercise influence on the evaluation of evidence by court – as if they had been in front of juror judges and not professional ones. Furthermore, it was quite obvious that the defence lawyers used the courtroom to exercise pressure on the Council through the public, which the defence tried to win over for its political views and interpretations.

Croatian courts have also introduced the hearing of evidence via a videolink into their practice. This method was successfully used by the War Crimes Council at the County Court in Varaždin, which used that opportunity in the courthouse for taking evidence from the prosecuting witness who had survived execution by fire squad in order to protect him from directly facing the defendants, which the witness was not yet ready for. The Special Court from Belgrade, in cooperation with the County Court in Zagreb, took evidence from the prosecuting witness via a videolink in the court proceedings for the *crime committed on the Ovčara farm*. The President of the Council in charge of the *case of the crime in “Lora”* refused, for now, the possibility of using a videolink to take evidence from witnesses living outside the Republic of Croatia, explaining her decision by difficulties in the application of the “legal aid” institute.

The position of victims and injured parties in war crimes trials

Since the General Attorney's Office of the Republic of Croatia should represent public and state interests as well as interests of its citizens in court proceedings, it is important to monitor to what extent particular interests of victims and injured parties can be fulfilled in that process.

The quality of investigation, indictment, evidence collection and the engagement of prosecutors during evidence presentation are direct concern of the public interest and special interests of victims and injured parties. Thus, for example, the lengthy proceedings conducted against a large number of defendants in absence do not meet the injured parties' needs for fairness. Apart from that, it is also a question to what extent it is necessary to meet special interests of victims, during criminal proceedings, outside the engagement of the General Attorney's Office.

The right of victims and injured parties to representation in war crimes trials, where the state, through the General Attorney's Office, was the prosecutor, was realised only sporadically in the monitored trials. Injured parties had their attorneys in two trials; the proceedings conducted until now include 286 directly injured parties. This happened for the following reasons: victims and injured parties are not informed sufficiently about the possibility to be represented by an attorney. Pursuant to valid statutory provisions, in the proceedings for severe criminal offences, including also war crimes, victims and injured parties can be represented only by lawyers, which is very expensive and unaffordable for the injured parties. Victims and injured parties are not informed about the possibility of *pro bono* representation and about the way in which they can realise that right. Since these proceedings take much effort and are quite time consuming, it is difficult to imagine that the Bar Council could provide a *pro bono* lawyer to all requesting injured parties.

Often injured parties were emotionally unable to sit in the courtroom because, as they experienced it, the prosecutor was not making enough efforts to clarify and establish the part of the truth related to their suffering. Moreover, the prosecutor failed to inform the injured parties on dropping a part of the charges, on reasons for such a decision, and on further possibilities and rights to which the injured parties were entitled; the injured parties found out about that at the hearing and were left confused as to what they were to do.

EMPHASES FROM THE EXPERT ROUND TABLE

The expert round table ***Monitoring of War Crimes Trials*** was held in the Human Rights Centre in Zagreb on 30th November 2005. The purpose of the round table was to discuss and, if necessary, correct and supplement the key findings and recommendations from this report. In that a dialogue was opened between different stakeholders¹ on possibilities, ways and priorities for the improvement of the existing judicial practice related to the prosecution of war crimes and monitoring of the work of the administration of justice by organisations working in the area of human rights protections.

Emphases

The task of organisations for human rights protection that monitor court proceedings is, in the first place, to provide **critical support**, i.e. to support governmental institutions to work in compliance with legal principles, criticising what they consider necessary either as positive or negative, trying to air their criticism internally where possible and not through media. It was agreed that this report should be presented in different places, starting with the Ministry of Justice of the Republic of Croatia and Judicial Academy, as well as at local expert round tables.

During the last several years **the Public Attorney's Office of the Republic of Croatia** conducted a revision of submitted inquest requests, issued instructions saying that charges were not to be brought against absent persons and that inquiries into war crimes were given priority. That way, an important step forward was made from the previous practice – namely, from a broader perspective statistical data indicating that a certain number of proceedings were incorrect and unfair. However, taking a closer look into this report of monitors, it becomes evident that the problems are still numerous and that instructions and policy of the Public Attorney's Office of the Republic of Croatia are not followed equally in county attorney's offices.

Moreover, apart from courts, the work of other governmental institutions participating in the prosecution of war crimes trials needs to be monitored, especially with respect to inefficiency of pre-investigative proceedings and inquiries conducted by local police services, investigative magistrates and public attorney's offices. Therefore, the reasons for **delegating the competence**

¹ The introduction into the discussion was given by professor Žarko Puhovski, D.Sc., Katarina Kruhonja, D.Sc., and Veselinka Kastratović, B.L.L., coordinator of monitoring teams from the Centre for Peace, Nonviolence and Human Rights Osijek. Vice Public Attorney of the Republic of Croatia, representative of the Judicial Academy at the Croatian Ministry of Justice, Law Faculty from Zagreb, representatives of organisations for human rights protection, attorneys, as well as representatives of the International Criminal Tribunal for the former Yugoslavia and OSCE were present at the discussion.

over inquiries, as considered justified by the Supreme Court, will have to be seriously established and explained.

Witnesses are afraid and/or distrustful of jurisdiction. It is important to improve **support to and protection of witnesses** and to insist on securing correct examination of witnesses, in procedural terms, at hearings, so that the facts about circumstances and perpetrators of crimes can be established during court proceedings. It would be important to conduct additional education for employees of public attorney's offices on the latest amendments to acts and laws and on ICTYY practice in connection with a more significant role of prosecutors in criminal proceedings, as well as in the proposing and presentation of evidence.

The focus of the public discussion related to war crimes trials is on perpetrators of crimes, i.e. whether they are guilty or not. Not enough or only very little attention is paid to what actually happened and what is with the victims. Unfortunately, this is, at least partly, a reflection of **the position of victims in judicial proceedings**, where they are visible only to the extent in which their suffering can contribute to the evidence procedure. The question is whether the point at issue is a disbalance of powers during the proceedings where usually there is one prosecutor per indictment, whilst each defendant has his/her attorney present (meaning that sometimes there are up to ten defence lawyers per trial). Many questions have been opened in connection with how the current judicial proceedings could be improved so the victims could also realize their individual interests related to the proving of their suffering.

Broadening of the discussion in relation to the report was twofold and only seemingly unconnected. It was pointed out that the capacities of human rights organisations should be developed for the following purposes: **to monitor the position of sentenced persons** and to monitor whether there are **sentenced persons who are actually not guilty** and, if yes, how to help them.

	Case	Criminal act / court / council	Indictment No./CAO ²
1	CRIME ON THE KORANA BRIDGE proceedings conducted for the third time before the Council in the changed composition	Unlawful killing and wounding of the enemy County Court in Karlovac War Crimes Council: Judge Marijan Janjac, President Judge Denis Pancirov, Judge Ivan Perković,	Indictment by CAO from Karlovac, No. KT- 48/91 Attorney for the prosecution: Ljubica Fiškuš Šumonja, CAO Karlovac
2	CRIME IN BJELOVAR retrial before delegated court completed without final sentence / acuitting sentence	War crime against civilians / war crime against prisoners of war County Court in Varaždin (delegated) War Crimes Council: Judge Zdravko Pintarić, President Judge Nevenka Bogdanović, Judge Stanka Vuk – Pintarić	Indictment by the CAO from Bjelovar, No. K-DO-57/01 as of 25 th September 2001 Attorney for the prosecution: Biserka Šmer – Bajt, Vice CA ³
3	CRIME IN VIROVITICA retrial	War crime against civilians County Court in Bjelovar War Crimes Council: Judge Milenka Slivar, President Judge Božidar Iverac, Judge Davorka Hudoletnjak	Indictment by the CAO from Bjelovar, K-DO-62/01 as of 15 th November 2001, modified on 24 th January 2002 Attorney for the prosecution: Darko Žegarac, Vice CA from Bjelovar
4	CRIME IN ERNESTINOVO retrial completed, sentence is not final / the defendant sentenced to a six-year term	War crime against civilians County Court in Osijek War Crimes Council: Judge Darko Krušlin, President Judge Katica Krajnović, Judge Zvonko Tomaković	Indictment by the CAO in Osijek, No. KT-190/92 as of 19 th November 2003, modified 15 th July 2004 Attorney for the prosecution: Zvonko Kuharić, Vice CA from Osijek

² CAO = County Attorney's Office

³ CA = County Attorney

Defendants	Names of victims
Mihajlo Hrastov, member of police forces of the Republic of Croatia, out on bail	<p>Victims - killed:</p> <p>Jovan Stipić, Božo Kozlina, Nebojša Popović, Milić Savić, Milenko Lukač, Nikola Babić, Slobodan Milovanović, Svetozar Gojković, Miloš Srđić, Zoran Komadina, Mile Babić, Vaso Bižić, Mile Počuča;</p> <p>Victim - wounded:</p> <p>Duško Brkić</p>
Luka Markešić, Zdenko Radić, Zoran Maras and Ivan Orlović, members of police forces of the Republic of Croatia, out on bail	<p>Victims - killed:</p> <p>Radovan Barberić, Zdravko Dokman, Radovan Gredeljević, Ivan Hojsak, Boško Radonjić, Mirko Ostojić</p> <p>Victim - wounded:</p> <p>Savo Kovač</p>
Željko Iharoš, Ivan Vrbanić, Anđelko Kašelj, Luka Perak, at the hearing held on 16 th November 2005 the CAO dropped a part of charges against the 2 nd and the 3 rd defendant Members of Croatian Military Forces out on bail	<p>Victims – died:</p> <p>Bogdan Mudrinić, dr Ranko Mitrić</p> <p>Victims – beaten up:</p> <p>Đuro Svorcan i Rade Svorcan</p>
Milan Stojisljević Member of a Serbian paramilitary group	<p>Victims:</p> <p>non-Serbian citizens were questioned, abused and tortured</p> <p>Victims – beaten up, bodily harmed:</p> <p>Franjo Šafran, Stjepan Kolomaz</p>

	Case	Criminal act / court / council	Indictment No./CAO
5	CRIME IN BOROVO SELO the County Court in Vukovar sentenced the defendant Jovan Čurčić to a fourteen-year term, the defendant Miloš Držajić to a ten-year term, the defendant Mladen Maksimović to a seven-year term, the defendants Dušan Mišić, Dragan (Čede) Savić, Jovica Vučenović to a six-year sentence respectively; the sentences are not final.	War crime against civilians County Court in Vukovar War Crimes Council: Judge Ante Zeljko, President Judge Stjepan Čolaković Judge Jadranka Kurbel	Indictment by the CAO in Vukovar, No. K-DO-17/03 as of 9 th September 2003 Attorney for the prosecution: Vlatko Miljković, Vice CA from Vukovar
6	CRIME IN BRANJIN VRH ongoing retrial	War crime against civilians County Court in Osijek War Crimes Council: Judge Damir Krahulec, President Judge Mario Kovač Judge Ante Kvesić,	Indictment by the CAO in Osijek, No. KT-123/94 as of 7 th May 1996, and KT-123/96 as of 30 th December 1996, (joint), supplementary investigation Attorney for the prosecution: Željko Krpan, Vice CA from Osijek
7	CRIME IN BRANJINA ongoing retrial	War crime against civilians County Court in Osijek War Crimes Council: Judge Damir Krahulec, President Judge Zvonimir Tomaković Judge Katica Krajnović	Indictment by the CAO in Osijek, No. KT-93/95 as of 23 rd November 1995 Attorney for the prosecution: Željko Krpan, Vice CA from Osijek
8	CRIME IN KRUŠEVO NEAR OBROVAC retrial completed / the first defendant sentenced to a four-year term; the second defendant to a fifteen-year term; the sentences are not final	War crime against civilians County Court in Zadar War Crimes Council: Judge Ante Anić, President Judge Vladimir Mikolčević Judge Branimir Zorica	Indictment by the CAO in Zadar, No. K-86/00 as of 18 th June 1997 Attorney for the prosecution: Radoslav Marjanović, Vice CA from Zadar

Defendants	Names of victims
<p>Jovan Ćurčić, Miloš Držajić, Mladen Maksimović (on the run), Dušan Mišić, Dragan (Čede) Savić (on the run), Jovica Vučenović (on the run)</p> <p>Members of Serbian paramilitia groups</p> <p>The present ones are held under detention</p>	<p>Victim – died from aftereffects of beating:</p> <p>Željko Hodak</p> <p>Victim – abused:</p> <p>Damir Tatar, Željko Bek, Nikola Perković, Darko Kiš, Josip Bošnjaković, Dobroslav Zadro, Josip Gorup, Željko Čiček, Ivica Milković, Nedeljko Krajinović, Ivan Vučković, Josip Vučković, Vlado Čizmar, Željko Jonek, Franjo Joh, Ivan Berender, Stjepan Tkalec, Luka Rožić, Darko Kiš, Renato Išpan, Luka Rožić, Karlo Babjaš, Branislav Škorak, Nedjeljko Dumančić, Božo Katalinić, Vilim Jajtić, Vlado Čizmar, Stjepan Jagetić, Pavo Zemljak, Željko Filipčić, Vladimir Zemljak, Ivan Zelember, Darko Kušić</p>
<p>Vaso Petrović and other present defendants: the 3rd defendant Goran Čuljak, the 16th defendant Slavko Kecman and the 26th defendant Branko Tomić,</p> <p>11 defendants, members of Serbian paramilitary groups, are on the run</p>	
<p>Savo Bošnjak,</p> <p>Member of a Serbian paramilitary group</p>	
<p>Milan Jurjević, Davor Tošić (on the run),</p> <p>Members of Serbian paramilitary groups</p> <p>The present defendant is out on bail</p>	<p>Victim - killed:</p> <p>Mile Brkić</p>

	Case	Criminal act / court / council	Indictment No./CAO
9	CRIME IN MIKLUŠEVCI ongoing proceedings since 2003	Genocide County Court in Vukovar War Crimes Council: Judge Nikola Bešenski, President Judge Zlata Sotirov Judge Nevenka Zeko	Indictment by the CAO in Osijek, No. KT-37/93 as of 29 th April 1996 and by the CAO in Vukovar, No. K-DO-71/01 as of 15 th April 2005 (modified facts of the indictment) Attorney for the prosecution: Zdravko Babić, Vice CA from Vukovar
10	CRIME IN LOVAS ongoing proceedings	Genocide / war crime against civilians County Court in Vukovar War Crimes Council: Judge Ante Zeljko, President Judge Zlata Sotirov Judge Nevenka Zeko	Indictment by the CAO in Osijek, No. KT265/92 as of 19 th December 1994, DO-K-9/00, and indictment by the CAO in Vukovar, No. K-DO-44/04 as of 1 st October 2004 (joint indictment) Attorney for the prosecution: Vlatko Miljković, Vice CA from Vukovar

Defendants	Names of victims
<p>Jugoslav Mišljenović, Milan Stanković, Dušan Stanković, Živadin Ćirić, Petar Lender, Zdravko Simić, Joakim Bučko, Mirko Ždinjak, Slobodan Mišljenović, Dragan Ćirić, Milan Bojanić, Jaroslav Mudri, Zdenko Magoč, Dušanka Mišljenović, Dragica Anđelić, Aleksandar Anđelić, Nikola Vlajinić, Zoran Nikolić, Jovan Cico, Đuro Krošnjar, Ljubica Anđelić, Čedo Stanković, Stanislav Simić, Darko Hudak, Saša Hudak, Srđan Anđelić, Janko Ljekar</p> <p>9 defendants are present, the others are on the run</p> <p>Members of Serbian paramilitary groups</p> <p>The present defendants are out on bail</p>	<p>Victims - killed:</p> <p>Julijan Holik, Veronika Holik, Mihajlo Holik, Slavko Hajduk</p> <p>Victims – beaten up, tortured:</p> <p>Đuro Biki, Eugen Hajduk, Vlatko Ždinjak, Mihajlo Hajduk, Emil Mudri, Željko Hirovati</p> <p>Victims – exiled from the village:</p> <p>98 persons</p>
<p>Ljuban Devetak, Milan Devčić, Milenko Rudić, Željko Krnjaić, Slobodan Zoraja, Željko Brajković, Ilija Kresojević, Milan Rendulić, Obrad Tepavac, Radovan Tepavac, Zoran Tepavac, Milan Tepavac, Milan Radojčić, Milan Vorkapić, Dušan Grković, Milorad Vorkapić, Đuro Prodanović, Ilija Vorkapić</p> <p>Only Ilija Vorkapić is present at hearings, the others are tried in absence, since they are on the run</p> <p>Members of Serbian paramilitary groups</p> <p>Out on bail</p>	<p>Victims – killed in the mine field: Božo Bađanac, Mijo Šalaj, Tomislav Sabljak, Slavko Štrangarić, Nikola Bađanjak, Marko Vidić, Mato Hodak, Tomo Sabljak – mlađi, Ivica Sabljak, Slavko Kuzmić, Petar Bađanjak, Marko Marković, Ivan Conjar, Ivan Kraljević – mlađi, Ivan Palijan, Josip Turkalj, Luka Balić, Željko Pavlić, Darko Pavlić, Darko Solaković, Zlatko Božić, Ivan Vidić, Antun Panjek, Zlatko Panjek (24 persons)</p> <p>Victims killed in another way: Danijel Bađanjak, Ilija Bađanjak, Antun Jovanović, Anka Jovanović, Kata Pavličević, Alojzije Polić, Mato Keser, Josip Poljak, Ivan Ostrun, Dragutin Pejić, Stipo Mađarević, Pavo Đaković, Stipo Pejić, Živan Antolović, Milan Latas, Juraj Poljak, Mijo Božić, Vida Kriznarić, Josip Kraljević, Mirko Grgić, Mato Adamović, Marko Sabljak, Zoran Krizmanić, Josip Jovanović, Marin Balić, Katica Balić, Josip Turkalj, Petar Luketić, Ante Luketić, Đuka Luketić, Jozefina Pavošević, Marijana Pavošević, Slavica Pavošević, Stipo Luketić, Marija Luketić, Josip Rendulić, Rudolf Jonak, Andrija Delićić, Pero Rendulić, Franjo Pandža, Božo Vidić, Zvonko Martinović, Marko Domjanović, Anica Lemunović, Đuka Krizmanić</p> <p>Victims – survived the mine field: Marko Filić, Emanuel Filić, Stjepan Peulić, Josip Sabljak, Stanislav Franković, Mirko Kefer, Ivica Mujić, Ljubo Solaković, Milan Radmilović, Zlatko Tomo, Josip Gešnja, Mato Kraljević, Petar Vuleta, Lovro Geistner, Dragan Sabljak</p> <p>Victims – survivors, bodily harmed: Mato Mađarević, Đuro Filić, Zoran Jovanović, Marija Vidić, ? Đuka Radočaj, Berislav Filić, Emanuel Filić, Pavo Antolović, Ivan Antolović, Željko ? Francisković, Ivan Šaković, Anđelko Filić, Zvonko Balić, Vjekoslav Balić, Man Pejak, Petar Sabljak Mirko Grčanac</p>

	Case	Criminal act / court / council	Indictment No./CAO
11	CRIME IN LORA ongoing retrial before the Council in the changed composition	War crime against civilians County Court in Split War Crimes Council: Judge Spomenka Tonković, President Judge Ljiljana Stipišić, Judge Damir Primorac	Indictment by the CAO in Split, No. KTO 131/02 as of 25 th March 2002 Attorney for the prosecution: Michelle Squicciarro, Vice CA from Split
12	CRIME IN THE PRISONER-OF-WAR CAMP FRKAŠIĆ ongoing retrial before delegated court	War crime against prisoners of war County Court in Karlovac (delegated) War Crimes Council: Judge Jasminka Jerinić-Mušnjak, President Judge Davorin Rukavina, Judge Mladen Kosijer	Indictment by the CAO in Gospić represented by Davorka Njerš-Katušić, Vice CA from Karlovac (in the meantime she was relieved from duty in the case of the "crime committed on the Korana bridge")
13	CRIME IN TRNOVO AND PODUNAVLJE the defendant was found guilty under the sentence No. K-rz-1/95, the sentence not being final, for the criminal act referred to in Article 120, paragraph 1, of the Croatian Criminal Justice Act and sentenced to a fourteen-year term; for the criminal act referred to in Article 122 of the Croatian Criminal Justice Act he was sentenced to a nine-year term: he was sentenced to a unique term of 15 years and kept under detention until the sentence became final.	War crime against civilians and war crime against prisoners of war County Court in Zagreb War Crimes Council: Judge Miroslav Šovanj, President Judge Dušanka Zastavniković-Duplanić Judge Marin Mrčela	Indictment by the CAO in Zagreb, No. K-DO-182/ 05 as of 8 th September 2005 Attorney for the prosecution: Ivan Plevko, Vice CA from Zagreb

Defendants	Names of victims
<p>Tomislav Duić (on the run), Tonči Vrkić, Miljenko Bajić (on the run), Josip Bikić (on the run), Davor Banić, Emilio Bungur (on the run), Ante Gudić, Anđelko Botić,</p> <p>Members of the Croatian Military Police</p> <p>The present defendants are under detention</p>	<p>Victims – killed: Nenad Knežević, Gojko Bulović</p> <p>Victims – tortured: Mirko Šušak, Lazo Ostojić, Branko Borojević, Tomo Krivić, Rade Krivić, Uglješa Bulović, Dušan Galić, Jovan Prkut, Milosav Katalina, Đorđe Katić</p>
<p>Svetozar Karan, member of a Serbian paramilitary group</p>	
<p>Slobodan Davidović, member of the Serbian paramilitary group “Scorpions”</p> <p>Under detention</p>	<p>Victims – killed: Azmir Alispahić, minor, Safet Fejzić, another four unidentified younger men</p> <p>Victims – tortured: Željko Junačko</p>

PUBLIC STATEMENTS

Organisations that have been monitoring the trials signed a statement of the organisations for human rights protection gathered around a non-formal forum on war crimes and on four occasions decided to release their statements, although judicial proceedings / inquiry were still in progress.

- ☐ **Statement of non-governmental organisations for protection of human rights on war crimes**
- ☐ **Statement on judicial proceedings against the defendant Mihajlo Hrastov**
- ☐ **Monitors' observations on the course of the retrial for the crime committed in Virovitica**
- ☐ **Monitors' observations on the course of the retrial for the crime committed in "Lora"**
- ☐ **Statement related to the obstruction of investigative procedures into unsolved murders in Osijek**

Good media coverage and response of the public were evident after the statement on judicial proceedings against the defendant Mihajlo Hrastov was released, in which a relocation of the proceedings from the County Court in Karlovac was requested, as well as after the statement pointing to the criminal and political responsibility of the mayor of Osijek for the obstruction of administration of justice during the inquiry undertaken for the purpose of solving the murders committed in Osijek and finding out who their perpetrators were.

Statement of organisations for protection of human rights on war crimes

Zagreb, 23rd December 2004

At the meeting of the below-listed non-governmental organisations for protection of human rights and other national and international experts on issues of war crimes, held in the premises of the Centre for Human Rights in Zagreb on 20th December 2004, the participants in principle took the following positions:

The participants of the meeting expressed their concern over the status of jurisdiction, holding the opinion that unique standards were not applied during war crimes trials in practice, so the course of judicial proceedings frequently depended on the nationality of defendants and victims.

The efforts taken so far by the Judicial Academy, Outreach Programme of ICTY and other governmental and non-governmental institutions working on the improvement of standards for war crimes trials were welcomed, as well as all future efforts taken in the same direction.

The participants found it extremely important to continue with the efforts related to the monitoring of ongoing war crimes trials as well as the future trials, especially taking into account the fact that the ICTY prosecution will not issue new indictments after 31st December 2004. In that way a contribution would be made to the improvement of judicial standards and practice and to the strengthening of confidence of citizens in the Croatian administration of justice.

Furthermore, attention of the public was drawn to the trial against Mihajlo Hrstov, who was tried for the third time (after two acquitting sentences had been passed) in the case of murdering thirteen and wounding of two detained reservists of YNA in Karlovac in September 1991. Recently, the Vice County Attorney in Karlovac Davorka Nyerš-Katušić, who was supposed to stand for the prosecution in the stated case, has submitted a request for relief from duty, because, as she put it, "she was not able to take a case doomed to failure from the start." Her request was acceded to. But doubt remained as to the fairness with which that trial was conducted.

The participants of the meeting expected a correct procedure in which attention of all judicial bodies would be focused on victims and on the establishment of responsibility for crimes, rather than on the protection of the accused, in the aforementioned and other war crimes trials, regardless of perpetrators' and victims' nationality.

Organisations for protection of human rights – participants of the meeting on war crimes:

Centre for Peace Studies
Civic Committee for Human Rights
Croatian Helsinki Committee for Human Rights
Centre for Peace, Nonviolence and Human Rights – Osijek
Altruist Centre, Split
Citizens' Association against Violence, Sisak
Human Rights Committee, Karlovac
Croatian Law Centre
Centre for Direct Protection of Human Rights
Serbian Democratic Forum
Centre for Women War Victims
Coalition for Promotion and Protection of Human Rights

Statement on judicial proceedings against the defendant Mihajlo Hrastov

8th February 2005

In our opinion, after 14 years it has become necessary to create conditions for a fair, impartial and professional trial of Mihajlo Hrastov, defendant in the case of the crime committed against prisoners of war, murder of 13 reservists from YNA (Yugoslavian National Army), on 21st September 1991 on the Korana bridge.

Namely, under the decision of the Supreme Court of the Republic of Croatia as of 9th March 2004 the acquitting sentence of the County Court in Karlovac as of 18 September 2002 was set aside for the second time and the case was returned to the first-instance court. The new trial, conducted before the Court Council of the County Court in Karlovac in a completely changed composition, started with the hearing held on 20th, 22nd and 23rd September 2004. The Court Council, presided by the judge Marijan Janjac, should try under the strong pressure of a part of the public and local media from Karlovac, which aggrandise the defendant, member of the Croatian Ministry of the Interior, as a war hero. The audience, which openly comments the course of the proceedings, and the court wardens, who do not hide their sympathy for the defendant, can affect the feeling of self-confidence of all those involved in the process, from victims' families, who should have free access to the trial, over independent monitors to witnesses and, eventually, responsible prosecutors who, on behalf of the administration of justice of the Republic of Croatia, conduct the proceedings.

The actions taken by the County Attorney's Office in Karlovac are also disturbing in this case. The County Attorney representing the prosecution, whose task is to establish material truth, failed to file an appeal against the findings and opinion of the ballistics expert and to submit a request for their exclusion, which she was entitled to do, for the purpose of establishing the material truth in compliance with Article 250 (paragraphs 1 and 2) of the Croatian Criminal Proceedings Act. Namely, the ballistics expert is employed with the same institution, the Ministry of the Interior of the Republic of Croatia, as the defendant Hrastov, which is not in accordance with the standards of an impartial and fair trial.

Furthermore, the public found out only later that Ms. Davorka Nyerš Katušić, Vice County Attorney should have stood for the prosecution, but she refused to do so just before the main hearing was supposed to be held and filed a request for relief from duty. According to her statement, published in the press,

“she was not able to take a case doomed to failure from the start.” Her opinion was that the County Attorney’s Office prevented her from holding a brief for the prosecution in line with the rules of the profession and in good conscience, from proposing an additional ballistics expert report for the purpose of establishing new evidence, and from requiring the exclusion of the proposed judges from the Council.

We find it necessary to exclude the County Court in Karlovac from conducting these judicial proceedings and transfer them without delay to one of four investigation centres for war crimes. Namely, pursuant to the Application of the Statute of the International Criminal Tribunal for the Former Yugoslavia Act investigation centres were established in Osijek, Zagreb, Rijeka and Split so the administration of justice of the Republic of Croatia could respond to requests for impartial, professional and fair trials for the severest criminal acts. We expect the General Attorney’s Office of the relevant centre to investigate whether there is, in line with the facts and evidence, a reason for the change of the existing indictment.

We insist, for the benefit of victims, the harmed, the defendant and the entire public, upon putting an end to the practice of delaying trials. Fair trials based on fact establishment are important for individual and social processes of dealing with the past, for normalisation and for joining Europe.

Statement signed by:

Human Rights Committee
Karlovac

Centre for Peace,
Nonviolence and Human
Rights Osijek

Centre for Peace Studies

Humanitarian Law Centre
Belgrade

Civic Committee for
Human Rights Zagreb

Croatian Helsinki Committee

Monitors' observations on the course of the retrial in the case of the crime committed in Virovitica

26th October 2005

At the hearing held on 19th October 2005 at the County Court in Bjelovar before the War Crimes Council presided by the judge Milenka Svila the monitors observed the following problems:

1. The defendants were not under detention, although they were charged with the war crime against civilians, which was contrary with the provision referred to in Article 102, paragraph 1, item 4, of the Criminal Proceedings Act.
2. Evidence procedure: contrary to the provision referred to in Article 238, paragraph 1, of the Criminal Proceedings Act, laying down that witnesses shall be questioned separately, one at a time and without other witnesses being present, two witnesses, M.M. and N.B., followed the hearing of witnesses in the courtroom before they testified about the same circumstances to which the previous witnesses also testified.
3. It was not entered into the court minutes on the main hearing that the defence lawyer or defendant was absent from the last part of the hearing that day and who replaced the defence lawyer, which is in sharp contrast to the provision referred to in Article 306 of the Criminal Proceedings Act. In the specific case, the point at issue was the trial for the criminal act of war crime with a prison sentence of at least five years or a prison sentence of twenty years, where, pursuant to the provision referred to under Article 65, paragraph 1, of the Criminal Proceedings Act, the defendant must have an attorney.
4. Neither the President of the Council nor Vice County Attorney from Bjelovar reacted when the fourth defendant verbally attacked the witness M.K. during the evidence procedure.
5. Neither the President of the Council nor Vice County Attorney from Bjelovar made an attempt to stop the hearing of a witness, which was conducted in a way that incriminated victims and injured witnesses. On the contrary, the said incriminations were entered into court minutes.
6. Judicial police, which could have reacted if there was such a need for that, was not present in the courtroom.

Statement signed by

Centre for Peace,
Nonviolence and Human
Rights - Osijek
Altruist Centre, Split
Croatian Helsinki
Committee for Human
Rights
Civic Committee for
Human Rights, Zagreb

Monitors' observations on the course of the retrial for the crime committed in "Lora"

20th November 2005

On 12th September 2005 the retrial against eight defendants, members of the Military Police of the Croatian Army, four of which were on the run and tried in absence, started before the County Court in Split. The defendants are prosecuted on indictment by the County Attorney's Office from Split No. K-DO-131/01, as of 25th March 2002, for the criminal act of war crime committed in the period from March to September 1992 over Serbian civilians in the Military-Research Centre "Lora". The acquitting sentence passed during an earlier trial was set aside under the Decision of the Supreme Court of the Republic of Croatia No. I KŽ-259/03, as of 25th March 2004, in the first place due to incompletely established facts.

In the aforementioned decision, the Supreme Court of the Republic of Croatia ordered that the retrial should be conducted at the County Court in Split before a War Crimes Council in a completely changed composition, where all the evidence from the first trial was to be presented again and the witnesses from Serbia and Montenegro and Bosnia and Herzegovina, who had not been heard during the first trial, were to be heard.

The retrial for the war crime against civilians has been conducted in compliance with the instructions of the Supreme Court of the Republic of Croatia on presenting all the evidence again and hearing the witnesses from Serbia and Montenegro.

The witnesses who came from Serbia and Montenegro pointed out that the cooperation on war crimes cases established between courts and the police of the Republic of Croatia and the Republic of Serbia proved to be of key importance for their decision to come to the trial. They were satisfied with the manner in which the President of the War Crimes Council provided for their testimonies and with the professional approach of members of the Croatian and Serbian police to their security during the travel and presentation of evidence. Both countries are obliged to constantly improve their cooperation for the purpose of establishing facts and serving justice in the case of victims and of conducting fair trials in the case of defendants.

However, the response of prosecuting witnesses who live in Croatia has been weak thus far. Namely, subpoenas for seven prosecuting witnesses were re-

turned to the Court as undelivered, because the witnesses, according to the data provided by the Split and Dalmatia Police Department, no longer lived at the addresses delivered to the Court by the County Attorney's Office. Two prosecuting witnesses excused themselves owing to their deteriorating health. The prosecuting witness Đ.K. sent a letter to the President of the Council, stating his address in Australia and his willingness to testify in the retrial, as well as the fact that he wanted to testify during the first trial, but had never received any subpoena. In his letter he also informed the Court that, since he was disabled and afraid, he was in no position to come to the trial, but he offered the opportunity to testify via a video-conference link.

Apart from poor responses, a certain number of witnesses from Croatia expressed fear of testifying in a free and open way. Two witnesses, former members of the Military Police, stated they were exposed to threats. The witness M. I. excused himself and did not come to the Court. The witness M. B., who had testified during the inquiry and previous trial to the status he found in the Military-Research Centre "Lora", did not deny his previous testimony at the retrial, but he referred to partial memory. He stated that he asked the General Attorney for special protection measures in compliance with the Witness Protection Act, but he was denied protection.

During the retrial it was noticed that the War Crimes Council failed to react on several occasions in the cases where during direct questioning of witnesses defence lawyers or defendants asked questions or gave comments that were insulting to the personal integrity of witnesses.

The evidence procedure is in progress. So far it seems unquestionable that also civilians were detained in the Military-Research Centre "Lora" and that a certain number of detainees were abused.

Through the media, the public is well informed about the course of the trial.

Statement signed by

Centre for Peace,
Nonviolence and Human
Rights - Osijek

Altruist Centre, Split

Croatian Helsinki
Committee for Human
Rights

Civic Committee for
Human Rights, Zagreb

The publishing of potential witnesses' names listed in the inquest request is a criminal act against the administration of justice

27th December 2005

The publishing of the names of potential witnesses listed in the inquest request of the General Attorney's Office is a criminal act against the administration of justices, which discourages and intimidates witnesses and, in consequence, obstructs the establishment of circumstances and perpetrators of crimes committed over civilians in Osijek during the war in 1991. The conduct of the Member of Parliament and mayor of Osijek, which reveals that not only he does not support the inquiry into the committed crimes, but that he directly contributes to the lack of safety for witnesses or even to the escalation of violence towards those who advocate the establishment of the truth, is unacceptable from the political point of view.

At the media conference held on 25th November 2005 the Mayor of the City of Osijek and Member of Parliament Mr. Anto Đapić read from the inquest request of the General Attorney's Office related to the case of unsolved murders of civilians in Osijek the names of nineteen witnesses. His statement was quoted in several newspapers and radio shows and broadcasted on STV (Slavonian Television) on several occasions. A month later, on 23rd December, local newspapers published his press release in which he justified his earlier statement as legal and permitted and declared that by doing so he "revealed a false witness".

We do not know why the General Attorney's Office has failed to respond so far, since the point at issue here is a criminal act against the administration of justice due to obstruction of the inquiry (Article 305 of the Croatian Criminal Justice Act) and putting in danger life and limb as well as property of witnesses. *The International Criminal Tribunal for the Former Yugoslavia* called attention to that incident with good reason. According to the statements of witnesses and journalists who contacted us, his statement could actually have an unintended effect on the inquiry.

We invite the General Attorney's Office to restore lost confidence of citizens and witnesses and to take the appropriate actions. Each citizen is obliged before the administration of justice of the Republic of Croatia to testify truthfully about committed crimes he/she has knowledge of, whilst the state is obliged to provide an opportunity for such testifying and safety for the witness. The

failure of the General Attorney's Office in Osijek to respond to any obstruction of the inquiry conducted by that Office, including this one, is a compelling reason for delegating the inquiry to another court.

Along with the criminal responsibility, we also point to the political responsibility of the Member of Parliament and Mayor of Osijek, who not only expressly failed to support the inquiry into committed crimes, which he, with respect to his position, should have done, but also obstructed the inquiry. Croatia can become a member of the European family only when the institutions of a legal state prevent politicians from creating, by obstructing inquiries into crimes committed over civilians, "affairs" such as "the City of Osijek affair".

Statement signed by:

Centre for Peace,
Nonviolence and Human
Rights Osijek

Civic Committee for
Human Rights Zagreb

Croatian Helsinki
Committee for Human
Rights

Documenta

- **professional and just trials**
- **restorative justice**
- **sustainable peace**

CENTRE FOR PEACE, NONVIOLENCE AND HUMAN RIGHTS OSIJEK

The Centre for Peace, Nonviolence and Human Rights Osijek was founded in 1992 as a reaction to the war when a few men and women joined together. By publicly demonstrating their choice to work on bringing the war to an end and on finding solutions by agreement, as well as against the idea of an ethnically clean state and the practice of ethnical cleansing and other violations of human rights, the members of the Centre for Peace made an effort to give their small contribution to the protection and development of values and individual and social capacities important for building a democratic society and sustainable peace based on the culture of nonviolence.

The first activities, conducted during the war, were **human and psychosocial support to displaced persons**, women, displaced teachers and children. The members of the Centre for Peace took **a stand against violation of human rights** in their community by providing nonviolent support to their co-citizens who were, under threats, displaced from their homes. They also participated in the monitoring and direct legal and humanitarian support immediately after the military-police action in West Slavonia and thus contributed to the prevention of violation of human rights and law on war with respect to civilians.

They supported **the peace process in East Croatia** when few believed that the war could be ended without another military action. In cooperation with peace organisations from Switzerland and Serbia, they organised meetings in Hungary for approximately 1300 persons from war-separated families, friends, previous neighbours, women, youth. During a two-year period of peaceful integration of East Slavonia, Baranja and West Srijem about twenty activists provided their support to the return of displaced persons and integration of the remaining part of the Serbian population, as well as to the preparation and monitoring of local elections. A network of peace teams, including lawyers and local volunteers have been working on the prevention of violence, reduction of tensions, trust building and community recovery of ten multi-ethnic local communities.

Centre for Peace supports **development of individual and social processes of facing the past** in order to build a sustainable peace through working towards restorative justice for victims, interruption of the culture of denial, collective guilt and impunity by supporting and insisting on impartial and fair war crimes trials; encourage social and political responsibility for the events that led to the war, devastation, and war crimes; collecting and publishing documentation in order to open a dialogue about the interpretation of war events, based on facts, and the manner in which society and the state relate to that matter, and its consequences; support of social atmosphere and the war trauma recovery capacities of society at an individual, trans-generation and social level.

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DOCUMENTA - CENTRE FOR DEALING WITH THE PAST

In their endeavour to initiate the process of dealing with the past and the establishment of a factual truth about the war and contribution to shifting discussions from the level of disputes over facts (number of fatalities and similar) toward a dialogue on interpretations, the *Centre for Peace, Nonviolence and Human Rights Osijek*, *Centre for Peace Studies*, *Civic Council for Human Rights* and the *Croatian Helsinki Committee* decided to found *Documenta – Centre for Dealing with the Past* (hereinafter: *Documenta*).

The key reason for this is the experience of suppression and falsification of war crimes and other war incidents between 1941–2000 and which affected the newer history of both Yugoslavia and post-Yugoslavian countries.

The activities of *Documenta* include:

- ☐ gathering, documentation and research of materials on war incidents and their assumptions, war crimes and violations of human rights and the establishment of a searchable database
- ☐ publication of documentation, research and results of the materials analysis
- ☐ documentation and promotion of examples of resistance, solidarity and non-violent engagement
- ☐ deepening of public dialogue and initiating public policies which stimulate dealing with the past
- ☐ following judicial processes at a local and regional level as a contribution to the advancement of judicial standards and practice in the processing of war crimes
- ☐ creation of a network for the support of victims and witnesses
- ☐ contact with others involved in war incidents

In the realization of its goals, *Documenta* cooperates with the organizations of the initiators, organizations of families of missing persons, other civil initiatives, governmental institutions, international institutions and organizations, institutions of state and local self-governments, scientific-scholarly institutions, religious communities, media, and other interested parties.

The *Humanitarian Law Fund* from Belgrade, the *Centre for Documentation and Research* from Sarajevo and the preparatory committee for the founding of *Documenta* from Zagreb signed a protocol on cooperation in Sarajevo, 6 April 2004.

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CIVIC COMMITTEE FOR HUMAN RIGHTS

The Civic Committee for Human Rights (CCHR) is a non-governmental and non-for-profit organisation that has been working in the area of human rights protection and promotion in Croatia since 1992. It was founded as a respond to mass violations of human rights in Croatia. So far, it has developed into a highly regarded, internationally acknowledged non-governmental organisation for human rights protection and humanitarian aid.

Within its scope of activities, CCHR has been following court proceedings in Croatia for more than 10 years by directly monitoring court proceedings, publicly stating arguments against outrageously partial and unfair sentences, providing support to people in whose cases there are strong proofs that they have been sentenced although they are innocent, and providing help in the organisation of defence in connection with the proceedings where there is a reasonable doubt that the trial is rigged or in conflict with the basic principles of justice and human rights. Following are some examples:

In 1993 and 1994 CCHR cooperated with attorneys from Belgrade who were defending Croats indicted in the rigged trial in the self-proclaimed "Republic of Krajina".

CCHR organised the defence of conscientious objectors before the military court. That was the first such case with successful defence resulting in the release of the accused after 45 days spent under detention (Karlovac, 1994).

In the period 1994-1995 CCHR monitored the proceedings conducted before the military court against the Dalmatian Action, regional political party, accused of blowing up its own premises.

After "Bljesak" ("Flash") and "Oluja" ("Storm") in 1995, a great number of Serbs who were mobilised by the army of the "Republic of Krajina" was charged with armed rebellion and/or war crimes, quite frequently without any convincing evidence. CCHR helped to organise defence for 130 people and monitored the trials.

CCHR lawyers regularly monitored trials conducted before the Municipal Court in Gvozd after the clients aired complaints about corruption or an unfair treatment due to their ethnical affiliation. Based on our and other people's complaints about the work of the court, the President of the Court in Gvozd was investigated and removed from the position of the judge in Gvozd.

A larger number of persons in whose case the final sentence was pronounced and who were serving their sentences in Lepoglava (21 of them) contacted CCHR, asking for help and claiming they were innocent. Based on collected evidence and insight into documentation the activists and lawyers of CCHR established that one of the aforementioned prisoners was in all likelihood innocent (sentenced to a fifteen-year term), so CCHR will initiate the revision of proceedings, and that another prisoner was sentenced based on falsified evidence.

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CROATIAN HELSINKI COMMITTEE FOR HUMAN RIGHTS

Croatian Helsinki Committee for Human Rights is the leading organisation for protection and promotion of human rights in Croatia. Founded on March 31, 1993. by independent intellectuals, artists, lawyers, journalists committed to protection and promotion of human rights, it has been dedicated to the following goals:

- to support, promote and implement the principles of the Final Act Conference of Security and Co-operation in Europe, signed in Helsinki in August 1975, and all documents resulting from this Act: principles of the UN relating to human issues, and implement in practice the documents of the Council of Europe;
- to support the development of democratic institutions, and promote the rule of law, human rights, and education for these values;
- to organise research and documentation regarding human rights in Croatia;
- to help victims of violations of human rights and those whose rights are threatened.

CHC provides assistance in an average of 2000 new cases of violation of human rights each year, involving up to 5000 persons. Besides the central office in Zagreb CHC also keeps 5 field offices (Slavonia /Osijek, Vukovar/, Karlovac, Knin, Split, Dubrovnik), by which it ensures coverage of the most critical areas of the country, notably the areas that were directly affected by the war 1991-1995. CHC contributes to resolution of numerous cases of human rights violations each year, based on interventions at responsible instances of the system, lobbying, actions in public, and cooperation with relevant authorities.

CHC documented civilian victims of the military operations "Bljesak" ("Flash") and "Oluja" ("Storm") in May and August 1995 and monitored several trials of war crimes in Croatia.

Further, CHC organises and conducts education for human rights; advocating legislation relevant to human rights; monitoring of freedom of information and expression, defence of rights of journalists, as well as of persons whose rights have been violated by media (privacy, personal dignity, etc.).

Croatian Helsinki Committee for Human Rights also participated in the project "Disclosing hidden history: Lustration in the Western Balkans", wherein it cooperated with similar organisations in the region of South-Eastern Europe.

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