



Humanitarian Law Center  
Documentation and Memory

# Humanitarian Law Center

## **Annual report 2007**

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Swedish Helsinki Committee
for Human Rights



## Contents

<b>Mission</b> .....	7
<b>Summary</b> .....	7
<b>1. Documentation and Memory</b> .....	12
1.1. Research.....	12
1.1.1. Register of killed and missing persons in Kosovo – Kosovo Book of the Victims .....	13
1.1.1.1. Victim identification .....	14
1.1.1.2. The writing of the Kosovo Book of the Victims .....	14
1.1.1.2.1. Examples of victim records.....	14
1.1.2. Oral histories on war events .....	16
1.1.3. Monitoring respect for the rights of ethnic minorities in Kosovo .....	16
1.1.3.1. Annual report on respect for the rights of ethnic communities in Kosovo in 2006 .....	17
1.1.3.2. Research into application of the law .....	17
1.1.3.2.1. Application of Law on the Use of Language in education .....	18
1.1.3.2.2. Application of Law on the Use of Language in the institutions.....	19
1.1.3.2.3. Application of the Anti-Discrimination Law and the Law on the Use of Language in public companies.....	20
1.2. Transfer of ICTY documentation .....	20
1.3. Protection of war crimes documentation.....	22
1.3.1. Archiving printed and DVD documentation.....	22
1.3.2. Archive Digitization .....	23
1.4. Database on war crimes and human rights violations.....	25
<b>2. Justice and Institutional Reform</b> .....	26
2.1. War crimes trials in Serbia .....	26
2.1.1. The Lekaj case .....	27
2.1.2. The Scorpions case .....	27
2.1.3. The Emini case .....	28
2.1.4. The Pakšec case .....	29
2.1.5. The Morina case .....	29
2.1.6. The Bytyqi case .....	29
2.1.7. The Ovčara case .....	30
2.1.8. The Zvornik case .....	30
2.1.9. The Suva Reka case .....	31
2.1.10. The Orahovac case.....	32
2.1.11. The Dubrovnik case.....	33
2.1.12. The Tuzla column case .....	33
2.1.13. The Slunj case .....	34
2.1.14. The Lovas Case.....	35
2.2. Support to victim-witnesses in war crimes trials in Serbia.....	35
2.2.1. The Scorpions case .....	35
2.2.2. The Ovčara case .....	35

2.2.3. The Zvornik case .....	36
2.2.4. The Suva Reka case .....	37
2.2.4.1. Establishing the context of events .....	38
2.2.5. The Bytyqi case .....	38
2.2.6. The Lovas Case .....	39
2.3. War crimes trials before the War Crimes Unit of the Court of BiH .....	40
2.3.1. The Šimšić – Višegrad case .....	40
2.3.2. The Kravica case .....	41
2.3.4. The Kurtović case .....	42
2.3.5. The Lašva Valley case .....	42
2.3.6. The Raščević and Todović case .....	43
2.4. War crimes trials in Croatia .....	44
2.4.1. The Cerna case .....	44
2.4.2. The Medak Pocket case .....	45
2.4.3. The Sellotape and Garage cases .....	45
2.4.4. The Korana Bridge case .....	46
2.4.5. The Mikluševci case .....	47
2.4.6. The Paulin Dvor case .....	48
2.5. Trials for ethnically motivated crimes and war crimes in Kosovo .....	48
2.5.1. The Kiqina case .....	49
2.5.2. The Morina case .....	49
2.5.3. The Kurteshi and Sylejmani case .....	50
2.5.4. The Kurti case .....	50
2.5.5. The Islami et al case .....	51
2.5.6. The Gashi case .....	51
2.5.7. The Krasniqi case .....	52
2.5.8. The Jakupi case .....	53
2.5.9. The Jakupi II case .....	53
2.5.10. The Fejza case .....	53
2.5.11. The minor AD case .....	54
2.5.12. The Simić case .....	54
2.5.13. The Vučković case .....	54
2.5.14. The Ejupi case .....	55
2.5.15. The Esmine Hamza and minor A.K. case .....	56
2.5.16. The KPS case .....	56
2.5.17. The Runjeva case .....	56
2.5.18. The Musliu case .....	57
2.5.19. The Rape case .....	57
2.5.20. The Murder of Minor in Gračanica Case .....	57
2.5.21. The Llapi Group Case .....	58
2.6. Impunity watch .....	58
2.7. Reparations .....	59

2.7.1. Promotion of minority rights through pecuniary compensation .....	60
2.7.2. Representing victims of torture, discrimination, forced enlistment and other forms of human rights violations .....	62
2.7.3. Representing Roma victims of torture and discrimination .....	62
2.7.4. Judgements in cases brought by HLC .....	62
2.7.5. Representing victims of forced mobilization .....	63
2.7.6. Representing members of OTPOR .....	63
2.7.7. Representing victims of other forms of human rights violations .....	63
2.7.8. Representing victims human rights violations in criminal proceedings .....	63
2.7.9. Building a collection of ICTY trials transcripts in B/C/S languages .....	64
<b>3. Public Information and Outreach .....</b>	<b>64</b>
3.1. Public information .....	64
3.1.1. Collection of transcripts from the Milošević trial in the B/C/S languages .....	64
3.1.2. Regional debate: the International Court of Justice genocide judgement .....	65
3.1.3. Ethnic communities in Kosovo in 2006 .....	66
3.1.4. Forum for Transitional Justice .....	66
3.1.5. Transitional Justice Bulletin .....	66
3.1.6. HLC website .....	67
3.1.7. HLC library .....	67
3.2. Outreach .....	67
3.2.1. Čelebići 1992 – beyond reasonable doubt .....	67
3.2.1.1. Public debates on local TV channels .....	68
3.2.2. Scorpions Home Movie .....	68
3.2.3. Conferences .....	68
3.2.3.1. From impunity to accountability .....	68
3.2.3.2. Regional debate: the International Court of Justice genocide judgement .....	69
3.2.3.3. Carla's List .....	69
3.2.3.4. Reparations Seminar .....	69
3.2.3.5. Round table on respect for the rights of ethnic minorities in Kosovo in 2006 .....	70
3.2.3.6. Round tables on the application of the Law on the Use of Language and the Anti-Discrimination Law in Kosovo .....	70
<b>4. Regional cooperation .....</b>	<b>71</b>
4.1. Civil society consultations on truth-seeking and truth-telling about war crimes .....	71
4.1.1. The first regional forum .....	72
4.1.2. The second regional forum .....	73

4.1.3. National consultations.....	74
4.1.4. Regional consultation with youth .....	75
4.1.5. Regional consultation with journalists.....	76
4.1.6. Regional consultation with human rights organizations .....	77
4.2. Training of monitors of national war crimes trials .....	77
<b>5. HLC's 15th anniversary .....</b>	<b>77</b>
<b>6. Donor support.....</b>	<b>78</b>

# Annual report

January - December 2007

## Mission

The Humanitarian Law Center (HLC) helps societies in the territory of the former Yugoslavia to establish the rule of law and to come to terms with the legacy of massive human rights violations in order to prevent their recurrence, establish the criminal responsibility of the perpetrators and ensure that justice is done.

## Summary

Since completing its programmatic and organizational transformation in December 2005, HLC has engaged in activities conducive to the establishment of transitional justice as a condition of the development of a democratic society. In 2007, HLC and other human rights organizations operated in an unfavourable political climate. HLC was the target of constant attacks and accusations by the Serbian Radical Party (SRS), extremist nationalist groups and media establishments under the influence of conservative political parties and groups of being a mercenary organization operating to the detriment of the Serbs who fought to defend their people. The government and the president of the state took no action whatever, despite their duty under the law, to protect human rights organizations and defenders and to enable them freely and critically to monitor the protection of human rights. Although the President of Serbia declined the opportunity to address an HLC-organized meeting, he often attended gatherings of nongovernmental organizations which publicly support the views of government members from the ranks of the Democratic Party (DS). Specifically, in connection with the war crimes trials, HLC had fruitful and professional cooperation with the War Crimes Prosecutor's Office and the Ministry of Interior –MUP (Witness Protection Unit, and the Office of the Minister of the Interior). For all the problems it experienced, HLC succeeded in helping the victims to exercise their rights to truth and justice. HLC also continued its four-year successful cooperation with the Research and Documentation Centre–IDC (BiH) and Documenta (Croatia), thanks to which many important regional activities and initiatives have been launched.

i. HLC advocates the idea of founding a regional body to establish and disclose the truth founded on facts about war crimes, being deeply convinced, above all, that a regional body alone can offer guarantees that, unlike in the past, there will be no more crimes in the future. HLC and its regional partners, the IDC and Document,

which also favour a regional approach to dealing with the past, proceed from the belief that the establishment of such a mechanism requires international support as well as the mobilization of a broad civil society coalition including, in addition to human rights nongovernmental organizations, victims' and war veterans' associations and youth organizations. With this aim in view, the partner organizations in the region initiated regional civil society consultations in the form of regional forums and national and regional consultations with human rights organizations, young people, women's groups, victims' and war veterans' associations, professional groups, political parties and members of Parliament. The 2007 events included a Regional Forum in Zagreb, national consultations with youth in Serbia, Croatia and BiH, and regional consultations with human rights organizations, journalists and young people. Participants in the debates so far have strongly upheld a regional approach to establishing and disclosing the truth founded on facts about war crimes, using ICTY documentation as the most reliable source in the process of establishing the facts and making recommendations with a view to institutionalizing the idea of a regional body.

## 8

ii. In order to muster support for setting up a regional body for establishing and disclosing the truth founded on facts about war crimes, HLC followed in the footsteps of its partner organization IDC and began, late in 2005, to compile a list of killed and missing persons in Kosovo. The list will be published in a document entitled *the Kosovo Memory Book* at the end of 2009. According to estimates from several independent sources, some 13,000 Albanians and about 3,500 Serbs, Roma, Bosniaks and Albanians held by the Albanian community to have collaborated with the Serbian regime were killed or disappeared during the armed conflict in Kosovo by December 2000. By the end of 2007, HLC had collected full information about some 7,000 victims serving as the basis of a credible record about their fates. From September 2007, when records about individual victims began to be made, to the end of the year, a total of 1,128 records had been made concerning the fates (killing or disappearance) of 2,336 victims.

iii. Based on the experience of other post-conflict societies of the process of truth-searching, HLC promotes victim public hearings to let the public in Serbia hear victims' personal accounts instead of political speeches made in their name. One such hearing was organized in February, giving an opportunity to former Serb detainees in the Čelebići camp to tell of their ordeal. In the audience were a number of Bosniaks from Prijedor, members of the *Izvor* association, whose presence at the event signified their solidarity with the victims from the Serb ethnic community.

iv. The question of the future of the ICTY archives gained in importance during 2007. HLC plays an active role in the professional debate about the legacy of the ICTY archive concerning, among other things, access to and storage of the original



documents and copies and priorities in their use. HLC is of the view that the original documents ought to stay in The Hague under UN administration, with satellite archives containing copies of ICTY documents being set up in all interested states in the territory of the former Yugoslavia. HLC's wish and aim is to become a repository of a satellite ICTY archive in Serbia. In this connection, in June 2007 HLC sent a letter of intent to the members of the UN Security Council, the Office of the UN Under-Secretary-General for Legal Affairs [Under-Secretary General for Legal Affairs and UN Legal Counsel] and the ICTY Secretary, seeking support for this idea. In addition, that month HLC Executive Director met the head of the Office of the Under-Secretary-General for Legal Affairs, Nicholas Michel, informing him of an initiative by nongovernmental organizations to set up a regional body to establish and disclose the truth founded on facts about war crimes and pointing out that it could only operate with strong ICTY archive support.

Because ICTY documentation is indispensable for objective information and education about the armed conflicts in the former Yugoslavia, and because it is the strongest bulwark against any attempt at revision and the most reliable source of facts about the war crimes, in February 2005 HLC began to copy audio-video recordings of trial days and documents from the ICTY archive under an arrangement with the ICTY Secretariat, subject to the funds available to it. By the end of December 2007 HLC had made electronic format copies of 4,385 trial days and of 53,155 items of documentary evidence.

9

v. In view of the fact that criminal trials of massive human rights violations in the past are the chief prerequisite for the establishment of the rule of law, HLC supports and takes part in war crimes trials in Serbia in many ways: making specific initiatives to encourage cooperation among prosecutors in the region; affording access to documents at its disposal to encourage prosecutors to initiate investigations and to help them to establish contact with victim-witnesses; representing injured parties in court; ensuring the participation of victim-witnesses and insider witnesses; suggesting protection measures for victim-witnesses; making arrangements for victim's relatives to attend trials; and keeping the public informed about the course of the proceedings. In 2007, HLC represented victims in *Scorpions* (shooting of six Muslims from Srebrenica), *Zvornik* (torture and killing of detainees and deportation of Muslims), *Suva Reka* (killing of 49 members of the Berisha family), *Bitiqi* (killing of three US citizens of Albanian descent) and *Ovčara* (retrial for killing of 250 Croat prisoners); made available to the war crimes prosecutor in Suva Reka the statements of 22 victim-witnesses; initiated cooperation between the Cantonal Prosecutor's Office in Tuzla and the War Crimes Chamber of the Belgrade District Court; identified three victims in *Scorpions* case; organized the participation of 25 victim-witnesses; and made arrangements for 67 relatives to attend war crimes trials in Serbia.

In addition, HLC monitors those war crimes trials in which it does not act on behalf of the victims. HLC-Kosovo is the only non-governmental organization monitoring trials of war crimes and ethnically-motivated crimes in Kosovo. In 2007, HLC Kosovo office monitored six trials for war crimes and eight trials for ethnically-motivated crimes. As part of a regional project of monitoring national war crimes trials, an HLC monitor attended the Srebrenica genocide trial before the Court of BiH (*Kravica*) and the trial for war crimes against Bosniak civilians in Višegrad before the Appeals Chamber (*Šimšić*). Before the Zagreb County Court HLC monitored the trials of Mirko Norac and Rahim Ademi on charges of war crimes in the Medak pocket (against Serb civilians), the trial of Branimir Glavaš and others, for the killing of Serb civilians in Gospić, and the *Mikluševci* trial involving charges of genocide against Croat civilians before the Vukovar County Court.

10

**vi.** As part of its support for national war crimes trials, HLC is preparing transcripts of ICTY trials in the B/C/S (Bosnian, Croatian, and Serbian) languages. In 2007, HLC completed transcription of audio records from the Milošević trial and edited and published 45 volumes of transcripts based thereon. The volumes are used by war crimes prosecutors and judges in all the post-Yugoslav countries, the ICTY, libraries, universities, professional associations, human rights organizations, victims' associations, lawyers, researchers, students and interested members of the public.

**vii.** In Serbia, victims of human rights violations may enforce their right to pecuniary compensation [a form of reparation] only through action against the state. Such proceedings, however, are inappropriate in relation to the context and nature of the human rights violations for several reasons: the burden of proof rests with the victim, the proceedings are long, the costs of litigation are substantial, the monetary compensation awarded is not proportionate to the crime committed, the courts tend to protect the state, etc. For this reason HLC keeps instituting proceedings to prompt the state, in keeping with its obligations under international law, to initiate a debate and adopt a programme of reparations for human rights violations committed in the past, especially during the rule of Slobodan Milošević. From its establishment in 1992 to the end of June 2007 HLC represented over 2,000 victims of basic human rights violations. Last year HLC instituted 22 proceedings for the payment of damages [reparations proceedings] against Serbia, Montenegro and interim institutions in Kosovo on behalf of 93 victims of ethnically-motivated human rights violations in the past.

**viii.** The situation of ethnic minorities in Kosovo improved in 2007 compared with 2006. Based on over 200 interviews with minority community members and Kosovo institution representatives, HLC-Kosovo published a Report on the State of Minority Rights in Kosovo in 2006, which was launched at a roundtable in Priština/

Prishtinë in February 2007. Also in 2007, HLC-Kosovo published three reports on the application of the laws on the right to the use of language, employment, and prohibition of discrimination. These reports too were discussed at round-table meetings in Priština/Prishtinë by members of minority communities and representatives of Kosovo institutions, including public company representatives. All these reports include findings and recommendations made to the Kosovo government. Both the findings and recommendations of HLC-Kosovo and the round-table discussions received extensive coverage by the Albanian-language media. In Serbia, on the other hand, the daily *Danas* alone reported on ethnic minority affairs of the basis of HLC-Kosovo reports.

ix. In 2007, HLC produced its first documentary film. The film entitled *Scorpions – Home Movie* is about the police unit *Scorpions*, whose member Saša Cvjetan has been sentenced for a war crime against Albanian civilians (the killing of 14 women and children), with four others receiving sentences for a war crime against Bosniak civilians from Srebrenica. The film was premiered by TV B92 on 10 April 2007, after the War Crimes Chamber of the Belgrade District Court had convicted several members of the unit and acquitted one. That day, the film was seen by some 320,000 people in Serbia. In May, the film was screened in Stockholm on the anniversary of the Helsinki Committee for Human Rights in Sweden; in June, the National Endowment for Democracy [NED] organized screenings in New York and Washington; on 5 July the international nongovernmental organization No Peace Without Justice showed the film to the European Parliament; and in November the film was shown at Leeds Metropolitan University and in London [Goldsmiths, University of London, and *Frontline* media centre].

x. In addition to the 45 volumes of the Milošević trial transcripts, HLC also published 500 copies of the report on the state of ethnic minority rights in Kosovo in 2006, the first issue of the periodical *Transitional Justice Forum* (also in 500 copies), 11 bulletins on transitional justice and transcripts from a regional debate on the International Court of Justice genocide judgement (1,000 copies). In cooperation with its regional partners, HLC published in December the first Regional Transitional Justice Report, which relates to 2006. The report deals in depth with official responses and unofficial [nongovernmental] initiatives concerning massive human rights violations in the past.

xi. Other than regional debates with young people and human rights organizations, HLC also organized other public discussions on matters of transitional justice: two conferences, five round-table meetings of which four were held in Kosovo and one in Belgrade, a seminar and a debate on the ICTY's achievements during the term of Chief Prosecutor Carla Del Ponte, which took place simultaneously in Zagreb, Sarajevo, Belgrade and The Hague.

**xii.** In December, the HLC Interim Board took a decision to elect a Managing Board, the appointment of which should be verified by the beginning of March 2008 at the latest. The HLC's founder was tasked with carrying out consultations with the proposed candidates and with informing the Interim Board thereon. A member of the present Interim Board [Iavor Rangelov] was put forward for membership of the future Managing Board. With a view to a more efficient conduct of affairs, Executive Director, Nataša Kandić appointed Sandra Orlović her deputy in October.

**xiii.** On 5 December, HLC commemorated its 15th anniversary. The event focused on the early period during which HLC documented war crimes and human rights violations linked to the armed conflict. Ivanka Kostić, Danica Vučenić, Sanda Kosanović, Filip Švarn and Nora Ahmetaj reminisced about their part in documenting the war crimes and police repression. Professor Dejan Janča, the first Council president, was also among the speakers. Executive Director Nataša Kandić introduced to the guests Natalija Lazić, from Veliko Gradište, as someone who had been courageous enough to stand up against injustice, with Sandra Orlović telling of how Lazić had been taken to court on charges of *slander* merely for daring to speak up in public about the sexual abuse of an underage Roma boy in Veliko Gradište.

## 1. Documentation and Memory

HLC researches war crimes and human rights violations committed in the past, as well as collecting and archiving data and documents which could be of use in war crimes trials and proceedings to help ensure reparation, prevent manipulation of the number of victims, create a historical memory and to educate the young generations about the legacy of the past. Indispensable to every activity of HLC is its War Crimes Database containing information on over 20,000 victims of armed conflicts in the former Yugoslavia according to location, date and international humanitarian law violation in question.

HLC documentation comprises the statements of witnesses, victims and victims' families and oral history of particular events gathered by HLC since its foundation, reports by HLC and other human rights organizations, national court and ICTY documents, exhumation reports by the ICMP, video, DVD and audio recordings, photographs, media reports and other relevant documents about war crimes and serious violations of human rights (medical and forensic reports and governmental and inter-state institution reports).

### 1.1. Research

During 2007, HLC focused its research on gathering data on the victims of the armed conflict in Kosovo, perpetrators of war crimes in the armed conflicts in

the former Yugoslavia, on creating an oral history of particular incidents, and on respect for ethnic minority rights in Kosovo.

### **1.1.1. Register of killed and missing persons in Kosovo<sup>1</sup> – *Kosovo Book of the Victims***

Estimates by several independent sources say that some 8,000-10,000 Albanians were killed and 3,500 disappeared during the conflict in Kosovo. Also, some 2,000-2,500 Serbs, Roma, Bosniaks and 'disloyal' Albanians are believed to have been killed, with some 1,300 missing, according to estimates released in December 2000. International Committee of the Red Cross (ICRC) documentation lists 2,047 people [belonging to all ethnic communities] as still missing.<sup>2</sup>

Research in Kosovo is conducted by 10 researchers and in Serbia by one. They take statements from witnesses, family members and other persons in possession of information about the fate of the victims. These statements and other documents relating to the victims are analyzed by eight researchers/analysts, who use this material to compile victim records arranged according to time of incident, place of incident and source.

13

In 2007, HLC took statements from 2,783 witnesses and relatives of killed and missing persons in Kosovo. On the basis of these statements HLC was able to register 4,694 persons who were killed or disappeared from January 1998 to December 2000.

During the monitored period, HLC-Kosovo interviewed 2,670 witnesses and members of victims' families and documented the killing or disappearance of 4,510 victims, including 4,471 Albanians (4,310 civilians and 161 members of the Kosovo Liberation Army–UCK), eight Serbs (one civilian and seven members of the Army of Yugoslavia–VJ), 15 Bosniaks (civilians), 14 Ashkali (civilians), one Egyptian (civilian), and one Roma (civilian).

During the same period, HLC in Serbia interviewed 113 witnesses and family members living in Serbia. The statements were used to document the fate of 185 victims: 178 Serbs (133 civilians, 43 soldiers and two policemen), one Albanian (civilian), one Roma (civilian), two Bosniaks (civilians), two Montenegrins (civilians) and one Turk (civilian). Besides interviewing witnesses and family members HLC in Serbia

1 The register includes all victims, killed and missing persons during the armed conflict in Kosovo, as well as those who were killed and went missing from June 1999 to the end of December 2000. The latter period is also covered on account of the considerable number of killings, kidnappings and disappearances of non-Albanians and Albanians whose fate is blamed by Albanians in general on their alleged collaboration with Serbs.

2 The ICRC list of missing persons, 15 June 2007.

gathered other documents about deaths and disappearances in Kosovo including transcripts from the Slobodan Milošević, Fatmir Limaj and Ramush Haradinaj trials before the ICTY, transcripts from the trials of Serbian MUP members before the War Crimes Chamber for crimes committed in Kosovo, books, death certificates, gravestone inscriptions, etc.

#### 1.1.1.1. Victim identification

From the start of the project on 1 October 2005 to 31 December 2007 HLC registered 11,984 victims by name. In 2007 alone, it identified 3,193 victims who had not previously figured in the War Crimes Database. These victims include 2,275 Albanians, 624 Serbs, 43 Roma, 11 Bosniaks, seven Turks, five Montenegrins, four Hungarians, three Macedonians, three Egyptians, one Russian and one Montenegrin, the ethnicity of 333 victims not having been established. During the same period, HLC gathered additional data about 5,927 victims from the list of 11,984 who had been registered before 2007.

#### 1.1.1.2. The writing of the *Kosovo Book of the Victims*

14

On 1 September 2007 the researchers/analysts began making brief records about killed, abducted and missing persons according to date, location and source of information. Every record contains the victim's particulars, a factual description of the incident and the source. The records are based on witness and family member statements and other relevant documents about killings and disappearances in Kosovo.

By the end of December 2007, the researchers/analysts had made a total of 1,128 records documenting the fates of 2,336 victims or 19.49 per cent of the total registered [11,984]. In 107 of the records there is mention of 66 mass incidents<sup>3</sup> involving 876 victims. Most of these victims were killed or disappeared between 24 March and 15 June 1999 while the Serbian police and army were present in Kosovo.

##### 1.1.1.2.1. Examples of victim records

###### *Record I*

**Sofe (Jupe Kurpejoviq) Kelmendi** (b. 1932, Albanian from Zać/Zallq, municipality of Istok/Istog, mother of ten, housewife)

**Bahrije (Uke Krzeyiu) Kelmendi** (b. 25 August 1968, Albanian from Zać/Zallq, municipality of Istok/Istog, mother of six, housewife)

**Fate (Daut Pukaj) Kelmendi** (b. 1969, Albanian from Zać/Zallq, municipality of Istok/Istog, mother of four, housewife)

<sup>3</sup> According to HLC standards, a mass incident involves the deaths of five or more persons.

**Albulena (Sadri) Kelmendi** (b. 13 March 1989, Albanian from Zać/Zallq, municipality of Istok/Istog, school pupil)

**Bledar (Beke) Kelmendi** (b. 1 September 1991, Albanian from Zać/Zallq, municipality of Istok/Istog, school pupil)

The family of Bekë Kelmendi fled their village of Zać/Zallq on 27 July 1998 owing to frequent police threats. They stayed with parents in Ljutoglava/Lutogllavë until **6 May 1999**. That day Serbian forces attacked the village, causing the villagers and refugees, including the family of Bekë Kelmendi to set out for the village of Trstenik/Trestenik in tractors. Near the water-mill in Trstenik/Trestenik the refugee column came under fire from the Serbian forces. Bahrije and Bekë's son Bledar, Fate and Sadri's daughter Albulena, and Bahrije and Bekë's mother Sofe were wounded. Bledar and Albulena died on the spot. The survivors went on until they were forced by shooting to halt by an Albanian house near the road. A shell exploded shortly afterwards hitting the wounded women. Sofe and Fate died by the tractor and Bahrije died half an hour later. The bodies were left lying on the road and the wounded taken by Serb soldiers to the hospital in Peć/Pejë. After the war, in July 1999, the bodies of Sofe and Fate were found at the cemetery in Peć/Pejë and reburied. The bodies were exhumed again at the end of 2006 because a pathologist feared there might be a case of mistaken identity. The bodies were not returned to the family until July 2007. The bodies of Bahrije, Albulena and Bledar are yet to be discovered. Albulena, Bahrije and Bledar are registered on the ICRC list of missing persons as BLG-803814-01, BLG-803815-02 and BLG-803815-01 respectively.

**Source:** statement by witness B.K., archival No. FHP-14023, IS, KO/07, Persons missing in relation to the events in Kosovo from January 1998, ICRC, August 2006, [Nestale osobe u vezi sa događajima na Kosovu od januara 1998, MKCK, avgust 2006.], archival No. FHP-9795, IZ, KO/06

## ***Record II***

**Rifat (Avdullah) Bajoku** (b. 1919, Albanian from Podujevo/Podujevë, father of five)

**Vesel (Avdullah) Bajoku** (b. 1924, Albanian from Podujevo/Podujevë, father of nine, labourer)

**Ferat (Azem) Bajoku** (b. 15 May 1941, Albanian from village of Duz/Dyz, municipality of Podujevo/Podujevë, father of ten, farmer)

**Ragip (Rexhep) Mulolli** (b. 5 February 1945, Albanian from village of Šajkovac/Shajkoc, municipality of Podujevo/Podujevë, father of ten, watchman)

After the NATO bombing raids started refugees from Podujevo/Podujevë and surrounding villages converged on the village of Duz/Dyz. Ferat provided accommodation to some 30 relatives and refugees including Vesel, Rifat, his son and Ragip

Mulolli. Serbian forces began to shell the village about 9.30 am on **18 April 1999**. The soldiers advanced on the part of the village where Ferat's house stood, blocking the residents' and refugees' escape route. Ferat was shot as he and Ragip ventured out briefly to find out what was going on. He died on the spot. Soon afterwards the soldiers burst into the house and drove Rifat, Vesel and Ragip into the yard, where they killed them. After the soldiers had gone, the survivors left the village leaving the bodies behind unburied. On 22 April 1999, members of the UCK buried the bodies in a field in the village of Duz/Dyz. The bodies were reburied in the village cemetery when the family returned to the village in July 1999. In October 2000 ICTY forensic experts exhumed the bodies to establish the cause of death. On their return on 12 October 2000, the remains were buried in the victims' cemetery in the village of Duz/Dyz.

**Source:** statement by witness F.B., archival No. FHP-12950, IS, KO/07; statement by witness L.M., archival No. FHP-12532, IS, KO/07

### **1.1.2. Oral histories on war events**

Because the ICTY has stopped and the national prosecutor's offices only begun investigating war crimes, and because their capacity is limited, there is the danger that many of the misdeeds will remain undocumented and that the truth about them will never be told. For this reason HLC continues to document war crimes not only by taking statements from witnesses and victims, but also by creating oral history records about particular events and misdeeds in the past.

In 2007, HLC conducted six interviews with the victims' closest relatives (mothers, sisters and children) who attended the trial of the members of the Scorpions unit<sup>4</sup> charged with executing six Srebrenica Muslims on orders from the unit's commander.

Work on the oral history about the mothers and children shot by the Scorpions was still in progress at year's end.

Having been approached by VJ members' parents, who hold the army and the state responsible for the deaths of their children, HLC began creating an oral history about forcibly enlisted soldiers, their deaths in Kosovo and the attitude of the army and state towards their families. In the course of the year, HLC conducted 15 interviews with the killed soldiers' fathers and mothers.

### **1.1.3. Monitoring respect for the rights of ethnic minorities in Kosovo**

HLC monitors and reports on respect for the rights of ethnic minorities in Kosovo. Based on interviews with minority members, local government representatives and

<sup>4</sup> Five members of the Scorpions police unit were indicted for and convicted of war crimes against civilian population.



relevant interlocutors, as well as based on an analysis of how the law is applied, HLC-Kosovo published four reports and organized four relevant round-table meetings to discuss respect for minority rights, the Law on the Use of Language and the Anti-Discrimination Law.

#### **1.1.3.1. Annual report on respect for the rights of ethnic communities in Kosovo in 2006**

The *Ethnic Communities in Kosovo in 2006* report<sup>5</sup> was based on 262 interviews (statements) with minority community members and local and central government representatives, analyses of the Constitutional Framework for Provisional Self-Government, the Law on the Use of Language, the Law on Access to Official Documents, the Regulation Establishing the Housing and Property Directorate and the Housing and Property Claims Commission, the Regulation on the Transformation of the Right to Use Socially Owned Immovable Property, the Law on Electronic Media and the Law on Radio Television of Kosovo, and on data from the December 2006 OSCE report on the use of minority languages in Kosovo.

#### **1.1.3.2. Research into application of the law**

In 2007, HLC-Kosovo conducted research into the application of the Law on the Use of Language, the Anti-Discrimination Law and the Constitutional Framework for Provisional Self-Government in Kosovo. The object of the research was to find out whether minorities enjoyed equal access to administrative bodies, whether they could use their mother tongues in school, whether they could seek employment in public companies, and whether there were any obstacles to a viable return of internally displaced persons. *The results of the research were published in three reports: Application of the Law on the Use of Language in the Process of Minority Education in Kosovo, Application of the Law on the Use of Language in Kosovo Institutions, and Application of the Anti-Discrimination Law and the Law on the Use of Language in Kosovo Public Companies.*

HLC-Kosovo investigated other matters affecting the situation of the minorities such as the supply of electricity to minority members receiving social welfare benefits, use and restitution of property, desecration of Orthodox religious facilities, a bomb attack on an Adio tours company bus operating between Štrpce/Shterpcë and Belgrade, and ethnically motivated incidents including the attacks on the elderly Serb woman, Vukosava Ivanović, in Priština/Prishtinë and the Croat woman, Marija Čibarić-Čolaković in the village of Janjevo/Janevě.

<sup>5</sup> The report was presented at the round table meeting in Priština/Prishtinë on 14 February 2007.

#### **1.1.3.2.1. Application of Law on the Use of Language in education<sup>6</sup>**

The report on the application of the Law on the Use of Language in education in Kosovo is based on research HLC-Kosovo conducted from March to May 2007. According to the findings, the Law on the Use of Language is generally respected in Kosovo in relation to the Turks, Bosniaks, Ashkalia, Egyptians and part of the Gorani who attend classes in the Bosnian language. Schoolchildren belonging to these ethnic communities receive instruction according to the plan and curriculum of the Ministry of Education, Science and Technology (MONT) of Kosovo. Curricula prescribed by the Ministry are written in Albanian, Bosnian, and Turkish. The Serbs and those Gorani who receive instruction in the Serbian language follow the plan and curriculum of the Serbian government. The Kosovo government has not yet adopted a plan and curriculum in the Serbian language. On the other hand, in spite of an official and public invitation by the MONT to help draw up these documents in the Serbian language, the Serbs refuse to do so. There is no instruction in the Romany language in either the schools within the jurisdiction of the MONT or those operated by the Serbian Ministry of Education.

18

The MONT issues diplomas, certificates, pupils' report books and class registers in Bosnian, Turkish and Albanian for primary and secondary schools under the jurisdiction of the Kosovo Government. Lack of textbooks is the biggest problem in the education of minority community members attending schools operated by the MONT.

The official languages in use at the University of Priština/Prishtinë are English and Albanian. The MONT has made arrangements for 30 Turkish students to enrol in an Albanian-language faculty course each year.

With a view to eliminating implementation gaps that arise in practice, HLC-Kosovo adopted a set of recommendations including a recommendation to the Kosovo government to develop mechanisms for the full application of and respect for the Constitutional Framework for Provisional Self-Government in Kosovo and the Law on the Use of Language, which guarantee the minorities their right to receive instruction in their mother tongue. It recommended that MONT make an immediate start on developing plans and programmes of study in the Serbian language for the Serb and Gorani pupils receiving education in Serbian, as well as to keep insisting that the Serb and Gorani teachers participate in discussions about improving the plans and programmes of study in Serbian in the future.

6 For more information on the application, findings and recommendations, see HLC Kosovo office report on the application of the Law on the Use of Language in Education in Kosovo, July 2007.

#### **1.1.3.2.2. Application of Law on the Use of Language in the institutions<sup>7</sup>**

The HLC-Kosovo report, published in October 2007, indicates that there is only partial respect for the Law on the Use of Language on the part of Kosovo institutions. Generally the Law is respected mostly in multiethnic municipalities. Prizren/Prizren is an example of a municipality that fully abides by the Law, whereas in the municipality of Gnjilane/Gjilan the Law is not fully applied.

Concerning mono-ethnic municipalities, there is greater respect for the Law on the Use of Language in areas with an Albanian majority than in those where Serbs form the majority. In mono-ethnic Albanian municipalities, the Law on the Use of Language is respected most in the municipality of Srbica/Skenderaj and least in the municipalities of Glogovac/Gllogovc, Mališevo/Malishevë and Deçane/Deçan.

In municipalities with a Serb majority the Law on the Use of Language is generally not respected. Encouraging signs are in evidence only in the municipality of Štrpce/Shtërpçë, which has a substantial Albanian population. In the Serb municipalities in the north of Kosovo, Leposavić/Leposaviq, Zvečan/Zveçan and Zubin Potok/Zubin Potok, the Law on the Use of Language is not respected at all, with municipal officers doing nothing to ensure that the Law is respected. Officers in these municipalities say they operate as part of the Serbian government and that they have stopped communicating with the Kosovo government.

19

The Law on the Use of Language is fully applied in the central Kosovo institutions such as the Kosovo Assembly, the Priština/Prishtinë District Court and the Property Agency. The health centres in Priština/Prishtinë are the exception: they do not apply the Law on the Use of Language at all and their staff are totally ignorant of its provisions.

Two municipal administrations operate in the municipality of Mitrovica/Mitrovicë, one in the southern part and the other in the northern part of the town. Although municipal officers in the southern part make efforts to ensure respect for the Law on the Use of Language, it is generally not respected. In the northern part of the municipality, the Law is not applied at all, the municipal officers having no contact with their colleagues in the southern sector.

HLC-Kosovo recommended the Kosovo government to launch a campaign to inform citizens and public institution employees about the institutions' obligations flowing from the Law on the Use of Language.

<sup>7</sup> For more information on the application, findings and recommendations, see HLC Kosovo office report on the application of the Law on the Use of Language in Kosovo Institutions, October 2007.

### **1.1.3.2.3. Application of the Anti-Discrimination Law and the Law on the Use of Language in public companies<sup>8</sup>**

Based on research conducted from October to mid-December,<sup>9</sup> HLC-Kosovo on 24 December 2007 published a report on the application of the Anti-Discrimination Law and the Law on the Use of Language in public companies in Kosovo. HLC-Kosovo found that the Anti-Discrimination Law was not being adequately applied regarding employment of minority community members. Their numbers in Kosovo's public companies were not proportionate to their share of the total population of Kosovo. Although the Law on the Use of Language was not being fully applied, progress was registered in the Kosovo Energy Corporation [KEK] and Post and Telecommunications of Kosovo [PTK], as well as in urban sanitation companies. This applies above all to the issuance of employment contracts to minority members, chiefly Serbs, in their mother tongues. The only ones not issued contracts in their mother tongue were the Roma. Bosniaks and Muslims received their contracts mostly in Serbian, and Turks in Albanian.

Evidence of respect for the Law on the Use of Language was greatest at Priština/Prishtinë Airport of all public companies in Kosovo.

20

With a view to resolving problems in practice, in connection with the Anti-Discrimination Law, HLC-Kosovo recommended the Kosovo government, among other things, bring the percentages of public company minority employees into line with their share of the total population, taking care in the process not to jeopardize the operation of public companies for the benefit of all citizens of Kosovo. Regarding the application of the Law on the Use of Language, HLC-Kosovo among other things called on public companies to have their operating procedures, employment contracts and all other public and internal documents translated into the official languages of Kosovo, also recommending municipalities in which languages other than official languages have that status, to have their operating procedures, employment contracts and all public and internal documents translated into the official languages in use those municipalities.

## **1.2. Transfer of ICTY documentation**

In February 2005, HLC began making copies of the ICTY public archives under arrangements with the ICTY Secretariat. The object of the project is to encourage war crimes trials, stimulate social dialogue about the past and create the conditions

<sup>8</sup> See the report on the application of the Anti-Discrimination Law and the Law on the Use of Language in public companies, HLC Kosovo office, December 2007.

<sup>9</sup> HLC-Kosovo researchers conducted 45 interviews with minority members and relevant individuals during the period.

for researchers, journalists, victims, victims' families and interested individuals to gain access to the documents on which the judgements are based.

Thanks to the support of the US Congress, HLC set up in The Hague in 2005 a Hague Archive Transfer Team (HATT). The team makes recordings of trials in progress and copies of recordings of completed trials. It also makes copies of documentary evidence (ICTY witness statements, expert reports and supporting court documents). The ICTY documents recorded in DVD format are transferred to HLC to be copied, used to make transcripts from trials in the local languages and for website clips and entered in the database.

From 2005 to the end of December 2007, HATT made recordings of a total of 4,385 trial days in DVD format and of 53,155 documents used during trials. In 2007, HATT made DVD recordings of a total of 1,654 trial days and of 23,060 documents (used in evidence) in electronic format.

	Number of recorder trial days
1. Milutinović	163
2. Popović	144
3. Prlić	117
4. Martić	4
5. Dragomir Milošević	107
6. Blagojević/Jokić	2
7. Zelenović	7
8. Haradinaj	105
9. Trbić	2
10. Stanišić/Simatović	3
11. Stakić	95
12. Gotovina/Čermak/Markač	5
13. Perišić	1
14. Brđanin	137
15. Margetić	1
16. Bralo	2
17. Delić	53
18. Mrkšić/Radić/Šljivančanin	4
19. Šešelj	9
20. Limaj	5
21. Krajišnik	3
22. Boškovski/Tarčulovski	86
23. Hadžihasanović/Kubura	1
24. Mićo Stanišić	2
25. Tolimir	3
26. Lukić	2
27. Đorđević	2
28. Halilović	3
29. Slobodan Milošević	295
<b>Total number of trial days</b>	<b>1423</b>

In 2007, the HATT made copies of a total of 19,659 items of documentary evidence in electronic format.

Case	Number of items of documentary evidence copied	English	B/C/S
1. Krajišnik	5.411	4.307	1.104
2. Slobodan Milošević	550	550	0
3. Galić	1.537	1.167	370
4. Brđanin	6.773	3.803	2.970
5. Martić	2.251	1.359	892
6. Simić	2.101	1.381	720
7. Kvočka	1.036	652	384
<b>Number of items of documentary evidence copied</b>	<b>19.659</b>	<b>13.219</b>	<b>6.440</b>

### 1.3. Protection of war crimes documentation

Because the documentation of human rights nongovernmental organizations is of great importance for the process of dealing with the past and must therefore be preserved, HLC began in 2005 to archive the printed documentation it had collected since its foundation. In June 2007, HLC commenced a second stage of protecting its documentation by digitizing its printed documentation and video archives.

#### 1.3.1. Archiving printed and DVD documentation

Every inspected document is given its archival address, which is entered in the War Crimes Database and stored with other material arranged according to content.

A total of 8,993 printed documents were archived from the time the process was started (2005) until June 2007, when archived documents and video recordings began to be converted into digital format. Documents from war crimes and ethnically motivated crimes trials before national courts are the most numerous [a total of 4,679 documents] consisting of: 320 indictments, 360 judgements, 444 trial transcripts, 542 main hearing minutes, 472 witness examination minutes, 243 defendant examination minutes, 2,298 miscellaneous court documents [various court decisions, investigation orders, defence counsel appeals, official letters, etc], 2,263 witness or victim statements about war crimes in Kosovo collected by HLC, 23 HLC reports on national war crimes trials, 17 HLC reports on human rights violations, 1,133 documents with the Kosovo ombudsman's office as their primary source and

873 newspaper articles. In 2007, HLC archived 1,241 printed documents including: 64 indictments, 63 judgements, 51 main hearing minutes, 96 main hearing transcripts, 17 defendant examination minutes, 23 witness examination minutes, 730 miscellaneous court documents [various court decisions, investigation orders, defence counsel appeals, official letters, etc] and 197 newspaper articles.

It also archived DVD recordings of 1,423 trial days before the ICTY and of 66 days of trials [DVD format] before the BiH State Court (completed and pending).

### 1.3.2. Archive Digitization

In June 2007, HLC set up a team for digitizing printed and video archives materials (TDA). Printed documents are converted into electronic format by scanning and the content of video cassettes converted into DVD or DV format. At a later stage, the digitized material will be entered in the War Crimes Database and arranged in funds to be created later.

Since 1 June 2007, the TDA has digitized 1,293 hard copy documents consisting of 6,789 A4 format pages. The documents are grouped together in four funds:

	Number of scanned documents	Total number of pages
Trials of Albanians before courts in Serbia	1.091	5.189
Domestic war crimes trials/ Serbia	28	265
Domestic war crimes trials/ Croatia	106	650
Trials for ethnically and politically motivated crimes	67	643
Trials before the ICTY	1	42
<b>Total number of documents and pages</b>	<b>1.293</b>	<b>6.789</b>

In 2007, the TDS digitized a total of 119 VHS cassettes from which it abstracted 299 contributions (converted to DVD format), totalling 164 hours, 32 minutes and 5 seconds. The contributions are arranged in 20 funds as follows:

<b>Fund</b>	<b>Item number</b>	<b>Total contribution duration in minutes</b>
Humanitarian Law Center	31	1.878
Nataša Kandić	51	2.129,5
Nongovernmental organizations	3	27
Specific crimes	18	627
Domestic war crimes trials	4	73.5
Trials before the ICTY	25	485,72
Documentary films and clips about the ex-Yugoslavia conflict	38	2.085,4
Clips on cooperation with the ICTY	16	136,5
Kosovo – status, minorities	26	476,22
Politicians and public personages from the Milošević era	11	261
Dealing with the past – others' experience	11	249
Police torture	7	90
Unlawful detention of Albanians in Serbia and of Serbs in Kosovo	5	8
Minorities in Serbia	9	514
Basic human rights	6	208
Legislation	15	270.87
Documentary films and contributions on relations between states of the former Yugoslavia	14	104,97
Art in transition	5	151.2
Documentary films on other states' institutions	2	78
Political-economic changes in Serbia	2	5.35
<b>Total number</b>	<b>299</b>	<b>9.859.23</b>



## 1.4. Database on war crimes and human rights violations

The War Crimes Database constitutes the foundation of the organization and its programme. It contains documents of which HLC is the primary source (witness statements, oral histories, trial reports), transcripts of trials before the ICTY and national courts, witness statements under Rule 92 bis, evidence, forensic and medical reports, reports by experts, human rights organizations and governments, data from books and publications concerning violations of the international humanitarian law, etc.

In 2007, the development of the Database relied chiefly on the project *Kosovo Book of the Victims*, as well as the projects *Monitoring Domestic War Crimes Trials*, *Transfer of ICTY Documentation* and *Reparations for Past Human Rights Violations*.

A total of 7,789 documents were entered from January 2005, when the Database became operational, to 31 December 2007. HLC is the primary source of 5,853 documents [5,101 witness statements, 568 reports, 184 official letters, announcements, complaints, publications, etc], with 1,936 documents originating from war crimes trials.<sup>10</sup> The Database also contains 2,094 victim photographs.

25

From 1 January 2007 to 31 December 2007, a total of 2,447 electronic format documents were entered in the Database: 2,149 documents produced by HLC and 298 court documents.<sup>11</sup>

Throughout 2007, the team of programmers that created the Database continued to improve it and to deal with problems emerging during the process of data entry and analysis. Thanks to their efforts, the Database can be used with greater ease and effectiveness.

10 1,115 ICTY documents [406 transcripts from the Slobodan Milošević and Mitar Vasiljević trials; 285 statements by 152 witnesses under Rule 92 bis in the Milošević case]; 87 trial days in DVD format; 319 items of evidence; 18 documents are reports, indictments, judgements and decisions of the ICTY Trial Chambers; b) Trials in the region [150]: 40 transcripts from the Ovčara trial before a War Crimes Chamber of the Belgrade District Court; 29 documents from the trial of Tomislav Madi before the Vukovar County Court, 30 documents—indictments, judgements, rulings and DVD video recordings from the Boban Šimšić trial and 45 documents from the Kravica genocide trial before the State Court of BiH; three documents on the trial of Dragiša Petrović before the Military Court in Niš, three documents on the trials of Boban Petković and Đorđe Simić before the Požarevac District Court and 671 documents from other sources.

11 a) 65 ICTY documents [44 transcripts from the Slobodan Milošević trial; 10 witness statements under Rule 92 bis in the Milošević case; seven items of evidence; four expert witness statements]; b) 150 documents on trials before national courts [40 transcripts from the Ovčara trial before; 29 documents from the trial of Tomislav Madi before the Vukovar County Court, 30 documents from the trial of Boban Šimšić and 45 documents from the Kravica genocide trial before the State Court of BiH; three documents from the trial of Dragiša Petrović before the Niš Military Court, three documents on the trial of Taban Petković and Đorđe Simić before the Požarevac District Court; c) 83 documents from other sources].

## 2. Justice and Institutional Reform

HLC supports establishment of responsibility for past misdeeds, establishment of justice for the victims, and removal of human rights violators from the institutions. It therefore plays an active role in war crimes trials, starts initiatives for the removal from the institutions of those responsible for war crimes, and brings actions for damages in connection with past human rights violations. HLC represents victims of war crimes before courts and prosecutor's offices in Serbia and in other states in the territory of the former Yugoslavia, makes available its documentation on the subject-matter of investigations or indictments (witness statements or ICTY documentation), encourages witnesses to give evidence at trials, renders psychological support to insider witnesses, eyewitnesses and victim-witnesses, makes arrangements for victims' families to attend trials, publishes transcripts of ICTY trials in the B/C/S languages, reports on war crimes trials in Kosovo, Croatia and BiH, and represents victims in civil reparation cases.

### 2.1. War crimes trials in Serbia<sup>12</sup>

26

Trials for war crimes take place before the War Crimes Chamber of the Belgrade District Court, which was established in July 2003. Also, two members of the Serbian MUP are on trial before the Požarevac District Court on charges of a war crime in Kosovo (*Orahovac* case), two members of the Serbian MUP have been found guilty in first-instance proceedings before the Niš District Court of murder committed during the armed conflict (*Emini* case), and the Novi Sad District Court has delivered a first-instance judgement for murder and rape (*Pakšec* case).

The War Crimes Prosecutor's Office and the War Crimes Chamber are often the target of criticism by the Serbian Radical Party (SRS), whose deputies abuse the platform in the National Assembly to oppose the holding of war crimes trials of Serbs. In October, the media reflecting the opinions of the SRS and extreme nationalist political groups attacked the president of the Belgrade District Court for dismissing Judge Gordana Božilović-Petrović and accused the War Crimes Prosecutor's Office, HLC and the US Embassy in Belgrade of being instrumental in the judge's dismissal over the sentencing of the Scorpions members.

Because the War Crimes Prosecutor's Office is not an independent authority, it often brings indictments for political reasons (e.g. the *Morina* and *Tuzla Column* cases) under pressure from the executive and populist public opinion.

The war crimes trials are not a topic to which the media give due attention. Trials are not accompanied by social dialogue on war crimes and on the responsibility and

12 See: Report on War Crimes Trials in Serbia, HLC, January 2007.

obligations of the state toward the victims and future generations. Nonetheless, but for these trials the ideas promoted by the champions of the legacy of the former regime would still predominate in Serbia.

### ***2.1.1. The Lekaj case***

On 18 September 2006, a trial chamber found Anton Lekaj guilty of a war crime against the civilian population and sentenced him to 13 years in prison. The defendant was charged with four murders, illegal detention of 13 persons, double rape, infliction of two serious injuries, and unnatural acts. Twenty-five witnesses, including five victim-witnesses, were examined during the trial. An international judge in Kosovo examined four defence witnesses. In the opinion of the trial chamber presided over by Judge Olivera Anđelković, there was not enough evidence to convict the defendant of the murders of Bajram Krasniqi, Zvezdan Lushaja and Rade Gagović. The prosecutor also failed to prove that the defendant had kept Mehmet Kërshi and Rade Gagović in illegal detention. The trial chamber established that as a member of the armed formation UCK the defendant had violated the provisions of the Fourth Geneva Convention and of Protocols I and II thereto. The judgement against the member of the UCK for the war crime against the civilian population committed in June 1999 took effect on 26 February 2007.

27

### ***2.1.2. The Scorpions case***

The trial of the five members of the Scorpions unit started on 20 December 2005 before a trial chamber presided over by Judge Gordana Božilović-Petrović. A total of 38 main hearings were held. Of these, six were held in 2007. A total of 22 witnesses were examined, including six victim-witnesses and three expert witnesses. On 10 April 2007, the trial chamber found the Scorpions members Slobodan Medić, Branislav Medić and Pera Petrašević guilty as co-perpetrators of a war crime against the civilian population under paragraph (1) of Article 142 in conjunction with Article 22 of the Criminal Code of the Federal Republic of Yugoslavia (KZSRJ) and Aleksandar Medić guilty of being accessory to the same crime under paragraph (1) of Article 142 in conjunction with Article 24 of the KZSRJ. It sentenced the defendants as follows: Slobodan Medić and Branislav Medić to 20 years in prison each, Pera Petrašević to 13 years and Aleksandar Medić to five years. The detention of Slobodan Medić, Branislav Medić and Pera Petrašević was extended pending further determination by the court and that of Aleksandar Medić discontinued. The same judgement acquitted Aleksandar Vukov of the charge of being accessory to a war crime under paragraph (1) of Article 142 in conjunction with Article 24 of the KZSRJ.

One would be hard put to find a criminal case such as this, where every item of evidence presented – material evidence, expert testimony, eyewitness statements and defendant confessions – served as conclusive proof of the defendants' guilt.

To begin with, there exists compelling material evidence in the shape of the video footage of the complete incident involving the shooting of the six Bosniak civilians that was described in the courtroom. The authenticity of the video footage was confirmed by expert witness testimony, another significant piece of evidence of great validity in the evidence presentation process. The examination of eyewitness Slobodan Stojković, who recorded the entire incident and confirmed the rest of the evidence, is a third piece of evidence of great validity. Lastly, there is the full confession of Pera Petrašević bearing out in whole and in every detail the evidence presented at the main hearing. With the exception of Slobodan Medić, all the others made partial confessions and confirmed the factual allegations set out in the indictment. The identity of the victims was established by examination of the next of kin and by DNK matching. In view of the aforesaid, the acquittal of Vukov and the light penalty to which Aleksandar Medić was sentenced are contrary to the evidence and facts established by the trial chamber during the hearing of evidence.

In the matter of establishing responsibility for the Srebrenica genocide in the context of the ruling of the International Court of Justice, the judgement delivered by the court was actuated by political rather than legal considerations, which bears out its intention to accommodate the views of government and public opinion in Serbia and show consideration for the patriotic sentiments of some of the Scorpions members.

### *2.1.3. The Emini case*

On 15 June 2007, the Niš District Court acquitted Serbian MUP member Miloš Simonović and MUP reservist Dragiša Marković of the charge of committing murder under paragraph (1) of Article 47 of the Criminal Code of the Republic of Serbia (KZRS). The trial chamber, presided over by Judge Zoran Krstić, found that the allegation that the defendants murdered an Albanian, Isa Emini,<sup>13</sup> in Priština/Prishtinë on 5 May 1999 had not been substantiated. Although the murder was committed during the armed conflict in Kosovo, the prosecutor failed to re-designate the criminal offence of murder as a war crime against the civilian population. The injured party, Ramiza Emini, who attended nearly every main hearing, was represented by an HLC lawyer. The hearing of evidence was completed in December 2006. The proceedings were conducted in a perfunctory manner from the very start. The investigation was incomplete, the on-site investigation was only carried out the following day, the scene of the crime was not dusted for fingerprints, no one checked whether objects had been moved around, the injured party was not given medical assistance, and not all neighbours who might have witnessed the act and been able to help clarify the facts in issue had been interviewed. The defendants are not being held in custody. On a number of occasions they failed to appear at a main hearing. The trial was conducted in private.

13 Iso Emini was murdered in his flat in Priština/Prishtinë on 5 May 1999.

#### ***2.1.4. The Pakšec case***

On 9 June 2006, the District Public Prosecutor in Novi Sad, Veronika Vencel, brought an indictment against Slavko Petrović, Petar Ćirić and Nikola Dukić on charges of murder under subparagraphs 4) and 6) of paragraph (2) of Article 47 of the KZRS and rape under paragraph (2) of Article 103 in conjunction with paragraph (1) of the KZRS, the charges involving the deprivation of life of four members of the Croat family Pakšec and forcing a Serb woman to engage in sexual intercourse in the Croatian town of Vukovar on 9 April 1992. An HLC lawyer represented the victims. In order to protect the victim of rape and her dignity, the trial was held in private. The trial chamber presided over by Judge Zoran Drecun delivered its judgement on 19 October 2007, finding Slavko Petrović guilty of both offences and sentencing him to 40 years in prison, giving Nikola Dukić a lighter sentence of 30 years in prison because he had pleaded guilty. Petar Ćirić was acquitted of murder and sentenced to 12 years in prison for rape. The appeal proceedings are pending.

#### ***2.1.5. The Morina case***

On 20 December 2007, a trial chamber presided over by Judge Olivera Anđelković acquitted the Albanian Sinan Morina of the charge of being a co-perpetrator in a war crime against the civilian population under paragraph (1) of Article 142 of the Criminal Code of the Federal Republic of Yugoslavia (KZSRJ) in conjunction with Article 22 of the KZSRJ. Giving the reasons for the judgement, the trial chamber president said that the indictment was vague and that it had not been proved that the defendant took part in an armed attack on Serbs in the village of Opteruša/Optershë on 17-18 July 1998, beat a woman named Slavica Banzić and took 500 German marks and a police vest from her. Morina was arrested in Montenegro on the basis of a wanted notice of the Serbian MUP and extradited to Serbia. The War Crimes Prosecutor's Office brought the indictment on 13 July 2005 and the trial started on 17 October 2007. During the hearing of evidence, 20 witnesses, mostly residents of Opteruša/Optershë, were examined. At the main hearing, the witness/injured party, Slavica Banzić, gave a description of the incident differing from that given to the investigating judge, her son (witness Milan Banzić) gave the names of the Albanians his mother had told him immediately after the incident but omitted to mention Sinan Morina, and other women victim-witnesses fail to confirm that Slavica and other women had been beaten by UCK members during their capture in Opteruša/Optershë.

#### ***2.1.6. The Bytyqi case***

The trial of two Serbian MUP police officers on active duty, Sreten Popović and Miloš Stojanović, on charges of being accessories to a war crime against prisoners of war under Article 144 of the KZSRJ in conjunction with Article 22 of the KZSRJ, started on 13 November 2006 before a trial chamber presided over by Judge Vesko Krstajić. The prosecutor is Dragoljub Stanković. By the end of 2007, a total

of 19 main hearings had been held and 63 witnesses examined, including one witness/injured party. The main characteristic of the trial is that no proceedings have been instituted against those who gave the orders or the direct perpetrators. There is strong circumstantial evidence that the man in charge of the camp at Petrovo Selo, Goran 'Guri' Radosavljević, fled the country with the knowledge of the MUP, Serbian government and War Crimes Prosecutor's Office before the proceedings were instituted, in spite of the fact that there was a suspicion as to his responsibility for the crime. The defendants are members of the Special Police Units (PJP) suspected of assisting in the commitment of the criminal offence. After the three Bytyqi brothers were released from the Prokuplje District Court on 8 July 1999, the defendants arrested them unlawfully, took them to the PJP camp at Petrovo Selo and locked them up in a room with bars. After that, all trace was lost of the brothers until June 2001, when their bodies were discovered in a mass grave near the camp.

#### ***2.1.7. The Ovčara case***

The retrial of Vukovar Territorial Defence (TO) members and Serbian Radical Party volunteers belonging to the Leva Supoderica unit on charges of a war crime against prisoners of war under Article 144 of the KZSRJ opened on 13 March 2007. By the end of 2007, 26 main hearings had been held, including three from which the public was excluded. On being re-examined, the defendants reiterated the statements they had made at the previous trial. By the end of the year, 30 witnesses and two expert witnesses had been examined. On 18 December 2007, the court examined Milan Milanović, who at the time of the Ovčara crime was minister of transport in the Krajina Serb government. Miroslav Radić was examined on 19 December 2007, having been acquitted of responsibility for the crime by a final judgement of the ICTY. The course of the proceedings so far has borne out the full legal groundlessness of the Supreme Court of Serbia decision of December 2006 to quash the first-instance judgement.

#### ***2.1.8. The Zvornik case***

The trial of the former president of Zvornik municipality, Branko Grujić, former TO commander Branko Popović and volunteers Dragan Slavković, Ivan Korać, Siniša Filipović and Dragutin Dragičević on charges of a war crime against civilians started on 28 November 2005 before a trial chamber presided over by Judge Tanja Vuković. The court held 84 main hearings between 28 November 2005 and the end of 2007. It examined 81 witnesses examined and read the statements of four victim-witnesses made during the investigation. The public was excluded from five main hearings. Sixteen of the witnesses gave evidence using pseudonyms. HLC provided seven victim-witnesses in 2006 and its attorneys put forward four witnesses in 2007, a proposal the court accepted.

Under steadfast insistence of the victims' attorneys, the court permitted at the very start the adducing of evidence pertaining to the context of the incidents which constitute the subject-matter of the indictment. Most significant of all in this context was the resolution of the question of responsibility of Branko Grujić and Branko Popović for the death of over 700 Muslims from 15 villages in Zvornik municipality: on 1 June 1992 they were separated from the women and small children at Bijeli Potok, taken to Zvornik and confined in the Technical School, all trace of them being lost until 1997, when the remains of some of them were discovered in mass graves in the territory of Republika Srpska. Some 300 bodies have been discovered so far. The evidence about the incident presented during the main hearing was of such high credibility that the War Crimes Prosecutor made a request to open an investigation against Branko Grujić and Branko Popović. In the course of the investigation evidence was obtained pointing to the identity of the direct perpetrators beyond any reasonable doubt. At the end of September 2007, the investigating judge notified the fact to the War Crimes Prosecutor, in keeping with the Criminal Procedure Act (ZKP). The War Crimes Prosecutor had taken no action by the end of the year. The trial opened as far back as 2005. A large number of witnesses were examined. Many of the facts established during the proceedings indicate that the description in the indictment of the incidents with which the defendants are charged differs from what actually took place. It is for this reason that the War Crimes Prosecutor ought to have made the indictment more specific before the end of 2007 in order to prevent delaying the proceedings and clouding the issue.

#### ***2.1.9. The Suva Reka case***

The trial of eight Serbian MUP members for a war crime against the civilian population started on 2 October 2006 before a trial chamber presided over by Judge Vinka Beraha-Nikčević. From the start of the trial to the end of 2007, 48 main hearings were held and 56 witnesses examined. Three of the witnesses gave evidence under pseudonyms and one from a separate room. Only the members of the trial chamber, the defendants, prosecutor, defence counsel and attorneys for the injured parties were allowed to see his image. Thirty-five main hearings were held during 2007.

At the start of the trial, the court opposed the attempts of the defence counsel to burden the atmosphere in the courtroom with the political Kosovo status rhetoric prevalent in Serbia. The trial was adjourned on 1 October 2007 after the defence counsel, following a change in the trial chamber composition,<sup>14</sup> insisted on the exemption of the trial chamber president and members, the president of the Belgrade District Court, and the president of the Supreme Court of Serbia. The trial

<sup>14</sup> The president of the Belgrade District Court returned Judge Gordana Božilović-Petrović, member of the Trial Chamber trying the Suva Reka and Bytyqi cases, to her duties in the District Court and appointed Judge Snežana Nikolić-Garotić in her place.

was resumed on 5 November 2007 after the Supreme Court of Serbia turned down this request (at a plenary session). In media interviews, Judge Božilović-Petrović blamed her dismissal on pressure from foreign embassies and from Nataša Kandić, linking the hearing of the *Suva Reka* case to the Kosovo talks. The next reaction came from the defence counsel, Goran Petronijević and Veljko Đurđić, who asked the trial chamber to bar Nataša Kandić from acting as attorney for the injured parties in future hearings. They argued that the fact that Nataša Kandić was representing the injured parties in her capacity as HLC Executive Director was contrary to the ZKP, which stipulates that only individuals are allowed to act for the interests of injured parties. The trial chamber dismissed the motion on the grounds that Nataša Kandić had been authorized by the injured parties to represent them. The victims' attorneys succeeded in introducing into the main hearing agenda the subject of other killings in Suva Reka/Suharekë during the NATO bombing that are not included in the indictment. As a result, the court is establishing facts relating to mass killings in Suva Reka/Suharekë committed on 22 and 25 March 1999. A distinctive feature of this trial is the fact that three police officers, members of the active-duty and reserve components, gave evidence about the circumstances of the murder of 48 members of the Berisha family. A group of Roma, who were either minors or young adults at the time of the crime and who were ordered by the authorities to remove the bodies of the Berisha men, women and children from the pizza parlour in which they had been shot and load them onto trucks, gave evidence about their part in the incident. Their testimony was very clear, specific, credible, honest and objective. The victim-witnesses and one witness from Kosovo, under escort from two members of the Kosovo Police Service, gave evidence in December.

#### ***2.1.10. The Orahovac case***

Serbian MUP reservist Boban Petković from Velika Hoča and MUP member on active duty Đorđe Simić from Orahovac were charged on 12 November 1999 with murder and being accessory to murder respectively. The indictment was brought by the deputy prosecutor at the District Prosecutor's Office in Požarevac (Dobrivoje Perić), who served before 1999 as prosecutor at the District Prosecutor's Office in Prizren. On 19 July 2000 the trial chamber presided over by Judge Jovica Mitrović found Petković guilty of murdering three Albanian civilians on two separate occasions and sentenced him to a prison term of four years and 10 months. Simić was also found guilty and sentenced to one year in prison. On 18 December 2001, the Supreme Court of Serbia set the judgement aside and referred the case back to the first-instance court for a retrial.

The district public prosecutor in Požarevac, Dimitar Krstev, amended the indictment on 19 February 2003 and charged Petković with a war crime against the civilian population under paragraph (1) of Article 142 of the KZSRJ and Simić with being accessory to a war crime against the civilian population under paragraph (1)



of Article 142 of the KZSRJ in conjunction with Article 24 of the KZSRJ. On 21 August 2003, the trial chamber president, Judge Jovica Mitrović, found Petković guilty of a war crime against the civilian population and sentenced him to five years in prison, as well as imposing the security measure of compulsory psychiatric treatment at liberty, and acquitted Simić of the charge.

On 25 May 2006, the Supreme Court of Serbia, having heard the appeals of the district public prosecutor in Požarevac and the defence counsel, set the judgement aside as a whole and referred the case back to the first-instance court for retrial. The main hearing started before a trial chamber of the Prizren District Court established in Požarevac. The trial chamber president, Judge Dušan Spasić, summoned the prosecutor to the courtroom over his cell phone and, not waiting for the prosecutor to arrive, opened the hearing with the words: 'Let us begin, he won't be long.' The recording clerk dictated the greater part of the decision to stay the main hearing, with the trial chamber president merely repeating her words. The trial was put off because defendant Đorđe Simić failed to comply with the summons.

#### ***2.1.11. The Dubrovnik case***

The ICTY referred the case to the War Crimes Prosecutor's Office under Rule 11 bis of the Rules of Procedure and Evidence. Vladimir 'Rambo' Kovačević, a Yugoslav People's Army (JNA) officer serving under convicted Admiral Miodrag Jokić and convicted General Pavle Strugar, has been charged with a war crime against the civilian population under paragraph (2) of Article 142 in conjunction with paragraph (1) of the KZSRJ and in conjunction with Article 22 of the KZSRJ for ordering members of the units under his command to attack the Stari grad district of Dubrovnik by indiscriminate shelling, as a result of which two civilians, Pavo Urban and Tonči Skočko, were killed and three civilians wounded, six buildings destroyed and 46 facilities damaged. The trial has not started yet because the defendant is undergoing medical treatment.

#### ***2.1.12. The Tuzla column case***

On 9 November 2007 the War Crimes Prosecutor's Office brought an indictment against Ilija Jurišić from Tuzla in BiH on charges of employing prohibited means of warfare under paragraph (2) of Article 148 in conjunction with paragraph (1) of the Criminal Code of the Socialist Federal Republic of Yugoslavia (KZSFRJ). According to the indictment, on 15 May 1992, in his capacity as officer in charge of a command operations group, attached to the Public Security Centre, who had authority to issue orders to all armed formations in the Tuzla region, he employed a means of warfare prohibited by international law by issuing a direct order to attack a JNA column in spite of an earlier agreement between BiH and the Federal Republic of Yugoslavia (FRY) on a peaceful withdrawal of the JNA from the territory of BiH to the FRY and, consequently, contrary to an agreement reached between representatives of civilian

and military authorities in Tuzla. At least 92 JNA members were killed and at least 33 wounded in the attack.

Ilija Jurišić was arrested at Belgrade airport on 11 May 2007. Until then, he had been to Serbia on innumerable occasions without a problem. Soon after his arrest, the BiH Ministry of Justice requested his extradition and referral of the case,<sup>15</sup> invoking Article 30 of the European Convention on the Transfer of Proceedings in Criminal Matters, signed by Serbia and BiH, but the War Crimes Chamber of the Belgrade District Court denied the request without transmitting its formal decision ruling.

On 9 November 2007, the War Crimes Prosecutor's Office brought the indictment against Ilija Jurišić and published it in the media before the investigation was over. On that day, pursuant to a letter from the War Crimes Chamber, the BiH Prosecutor's Office examined witnesses appearing in the proceedings, with the participation of the investigating judge of the War Crimes Chamber of the Belgrade District Court, Milan Dilparić, and the deputy war crimes prosecutor, Dragoljub Stanković.

34

The bringing of the indictment before the completion of the investigation and the persistent refusal of the Serbian judicial authorities to refer the criminal case to the BiH Prosecutor's Office, which was also investigating the incident, leads to the conclusion that political reasons are involved and that the War Crimes Prosecutor's Office brought the indictment to defend itself against accusations that it prosecutes only Serbs.

After a number of media establishments in BiH alleged that Jurišić was being maltreated in the Belgrade District Prison, Nataša Kandić and Biljana Kovačević-Vučo, the president of the Lawyers Committee for Human Rights, paid a visit to Jurišić and found that his emotional and health condition was very poor and that he was at a loss to understand what was happening to him. He made no complaint about being abused in the prison.

#### **2.1.13. The Slunj case**

Based on evidence obtained from the General Attorney's Office of the Republic of Croatia and on an investigation, the War Crimes Prosecutor's Office of the Republic of Serbia on 8 November 2007 brought an indictment against Zdravko Pašić on

15 'Any Contracting State which, before the institution or in the course of proceedings for an offence which it considers to be neither of a political nature nor a purely military one, is aware of proceedings pending in another Contracting State against the same person in respect of the same offence shall consider whether it can either waive or suspend its own proceedings, or transfer them to the other State,' Article 30 of the European Convention on the Transfer of Proceedings in Criminal Matters

charges of being accessory to a war crime against the civilian population in Slunj in Croatia. Pašić is charged with the murder of medical practitioner Dragutin Krušić during the night of 22-23 December 1991, in collusion with a man already convicted of the crime, Milan Grubješić. In 2001, the Karlovac County Court sentenced Pašić in his absence to 12 years in prison. Grubješić was also found guilty and is serving his sentence in Croatia.

#### **2.1.14. *The Lovas Case***

On 29 November 2007, the War Crimes Prosecutor's Office brought an indictment against 14 persons members of the former JNA, TO and the *Dušan silni* paramilitary unit on charges of committing war crimes against Croat civilians in Lovas in Croatia in October and November 1991. This is the first time that officers and reservists of the former JNA have been indicted.

## **2.2. Support to victim-witnesses in war crimes trials in Serbia**

HLC encourages and provides witnesses to help the court to render justice to both defendants and victims, gives victim-witnesses psychological support, helps victims' families to attend trials and represents injured parties in the proceedings. The team for the provision of legal-psychological support to witnesses and victims consists of HLC Executive Director, a lawyer, a psychologist and three assistants. Nataša Kandić and lawyer Dragoljub Todorović are representing or have represented victims [injured parties] in the *Scorpions*, *Zvornik*, *Bytyqi*, *Ovčara*, *Emini* and *Pakšec* cases.

#### **2.2.1. *The Scorpions case***

HLC played many roles in this case, i.e. procuring and delivering to the War Crimes Prosecutor's Office the video recording of the execution of the six Srebrenica prisoners, identifying three of the victims, securing the participation of victim-witnesses, enabling the families to attend the trial, and providing representation to the injured parties by Nataša Kandić and Dragoljub Todorović. The victims' mothers, sisters and children and representatives of the Srebrenica Women's Association attended the trial under arrangements made by the HLC. All of them had complete confidence in the court until the end of the hearing of evidence. They were greatly disappointed, however, when on 10 April 2007, in pronouncing the sentences, the trial chamber president announced that it had not been established that the victims had been brought from Srebrenica.

#### **2.2.2. *The Ovčara case***

During the retrial, the victims' attorney, lawyer Dragoljub Todorović, took part in all main hearings and Nataša Kandić in four held at the start of the retrial. The witnesses adhered to their previous testimony, with Todorović asking them to clarify

some of their allegations and minor discrepancies between their previous and latest statements. The victims' families are not attending the retrial in protest against the quashing of the first-instance judgement.

### **2.2.3. The Zvornik case**

At the initiative of HLC, the Cantonal Prosecutor's Office in Tuzla and the War Crimes Chamber established cooperation which they formalized by signing an agreement to set up a joint team to investigate the war crimes committed in the municipality of Zvornik in February 2007. However, the agreement was not renewed on 30 May 2007 because no arrangements to that effect between the competent prosecutor's offices of BiH and Serbia had been made. The cooperation, however, continues in practice.

Thanks to the insistence of the victims' attorneys, in April 2007 the War Crimes Prosecutor's Office filed a request to open an investigation against the defendants Branko Grujić and Branko Popović in connection with the killing of over 700 Muslims from 15 villages in Zvornik municipality, who were on 1 June 1992 separated from their families (women and small children) in Bijeli potok, transferred to the technical school in Karakaj, and taken out in groups and shot. The bodies of some 300 of them have been discovered in mass graves in the territory of Republika Srpska. The investigation was still pending at the end of the year.

The attorneys made a valuable contribution to establishing whether or not the Muslims of Kozluk left their village of their own free will. Specifically, in reply to the attorney's questions, several witnesses said that the Muslims were forced to leave because the Serb authorities were planning to let their houses be occupied by Serb refugees from parts of BiH under the control of Muslim forces. The attorneys also helped to establish in more specific terms that the civil authorities controlled the camps in the municipality of Zvornik. Answering the attorneys' questions, the witnesses replied that *Drina-trans* company buses were used to transport the detainees, that food for the detainees was brought from the Hotel Drina, that the detainees held on the premises of the municipal assembly were robbed of their valuables, and that the situation in the camps was discussed by the government at its weekly meetings. Thanks to the insistence of the attorneys on clarifying the context of the incidents which are the subject-matter of the indictment, it became clear that SRS volunteers from Serbia arrived in buses in Zvornik before 8 April 1992, carrying weapons and wearing uniforms issued to them in the JNA facilities at Bubanj potok near Belgrade. Witnesses' replies concerning the role of the JNA in Zvornik municipality, an issue on which the attorneys insisted, left no doubt that JNA units took part in establishing Serb control in Zvornik in April 1992.

The trial was regularly monitored by four, and on occasion by six, representatives of the Association of Families of Missing and Killed Persons in the Municipality of

Zvornik. The examination of witness Fadil Banjanović was attended by 50 Bosniaks from Kozluk, and the examination of the protected witnesses/former prisoners by 15 victims' family members from Divič. Their transport and accommodation in Belgrade was organized by HLC.

#### **2.2.4. *The Suva Reka case***

The security of the victim-witnesses poses the greatest problem in the Suva Reka case. Distrust in Serbian institutions and fear of measures the Serbian government may take after Kosovo declares its independence are the main reasons why it is hard to persuade witnesses in Kosovo to appear before Serbian courts. In addition, it is for political reasons that the War Crimes Prosecutor's Office and the War Crimes Chamber approach UNMIK to help them to find witnesses, because any cooperation with the local courts and prosecutors' offices would be tantamount to recognition of the Kosovo institutions and Kosovo as an independent state. Aware of the problems in communication and cooperation between UNMIK and Albanians, Nataša Kandić organized at the beginning of September 2007 meetings for prosecutor Dragoljub Stanković with the president of the Association of Families of Killed and Missing Persons in Suva Reka/Suharekë and with the ICTY witness Hysni Berisha. The prosecutor's arrival in Suva Reka/Suharekë under escort consisting of four UNMIK vehicles, two international police vehicles and several armed policemen attracted great attention and disturbed the residents. Fearing an incident, Nataša Kandić suggested to the prosecutor to leave Suva Reka/Suharekë together with the escort and hold the meeting somewhere outside the town. At the meeting, the president of the Association said that he and other witnesses did not trust the Serbian MUP Witness Protection Unit and sought help from an international institution. The meeting ended with Nataša Kandić proposing that the witnesses be accompanied by members of the Kosovo Police Service (KPS), a suggestion the president of the Association accepted as the best solution.

Preparatory to the examination of witnesses in December, HLC and the Association of Families of Killed and Missing Persons in Suva Reka/Suharekë arranged several meetings with members of victims' families and witnesses to make them realize how important it is for victim-witnesses to participate in establishing the responsibility of the defendants. The witnesses decided to take part in the proceedings upon learning that the court had agreed to Nataša Kandić's proposal that they be escorted by two KPS members.

In December 2007, the court examined four Albanian witnesses including three injured parties. Witness Shyrete Berisha, who lives outside Kosovo, arrived in Belgrade in the company of an ICTY representative. During their journey and stay in Serbia, the witnesses from Kosovo were under constant protection of the two KPS members, the first visit to Serbia by Kosovo policemen on official business.

From the border crossing at Merdare, the witnesses, KPS members and victims' families were accompanied by members of the Serbian MUP Witness Protection Unit. At the end of December, the war crimes prosecutor and Nataša Kandić drew up a list of witnesses which the prosecutor submitted to the trial chamber president. The trial chamber plans further examinations of victim-witnesses during the main hearing scheduled for February 2008.

#### **2.2.4.1. Establishing the context of events**

The attorneys also play an important role in throwing light on the context of the numerous mass killings of Albanians other than the murder of the 49 members of the Berisha family, which is the subject-matter of the indictment. As a result of their efforts, the court began to establish the facts in connection with the mass killings on 22 and 25 March 1999. Hysny Berisha gave a detailed account of the 20 March killing while Muharem Shala, a survivor, described the shooting of six Albanians on 25 March.

38

The attorneys challenged the allegations of the Serb witnesses from Suva Reka/Suharekë that the Albanians moved out to escape the bombing. They pointed out that Albanians stayed in those villages in which they were not subjected to pressure from the Serbian forces. Answering a question from the attorneys, witness Milutin Miljković, a senior Prizren Police Department (SUP) official assigned to the police station in Suva Reka/Suharekë during the NATO intervention, said that no Albanians fled his village of Ljubižde/Lubizhde.<sup>16</sup> The victims' families attend the hearings regularly thanks to HLC arrangements. They are given Serbian police escort from the Merdare border crossing to their hotel, on their daily journeys from the hotel to the court and back, during their movement through the town, and back to the Merdare border crossing on their return to Kosovo. The families were moved by the candid testimony of the three Roma<sup>17</sup> who were under age at the time of the incident. They felt deeply about the fact that the very children who once were forced by the Serbian authorities to load bodies onto trucks should now have been used by a Serbian court to help establish the existence of the crime.

#### **2.2.5. The Bytyqi case<sup>18</sup>**

The victims' attorneys phrased their questions so as to encourage the witnesses to disclose what they knew about the bringing of the Bytyqi brothers to the police centre at Petrovo selo, but all their efforts were in vain, with nearly all the witnesses insisting that they learned of the episode from the media several years later. Nonetheless, thanks to the attorneys, it was established that the Bytyqi brothers

16 The village's population consisted of Albanians, Serbs and Bosniaks.

17 The witnesses were examined on 3 and 4 April 2007.

18 The trial chamber trying the Bytyqi case is presided over by Judge Vesko Krstajić.

were brought to the camp at Petrovo selo village for a purpose other than their transfer to a territory outside Serbia, that is, contrary to what the defendants claimed. Thus witness Sreten Popović said that the brothers were taken to a particular room because it was equipped with bars and could be locked, an admission that they were detained in the camp.

During the examination of witness Radomir Đerić,<sup>19</sup> the attorneys succeeded in establishing that a pit next to the camp had been dug up to bury bodies rather than refuge. They also pointed out that the pit had been dug up two or three days before the arrival of the trucks with the bodies, and that the location of the pit had been chosen by the head of the training team Mića Petraković, although that would have been a job for the custodian, warehouseman or head of the camp. As a State Security officer, he was the most confidential person in the camp and a logical choice to be entrusted with the state secret of body disposal. The fact that bodies were dumped into the refuse pits twice in a row is a strong indicator of the real purpose of the pits, namely that there had been preparations in advance at the Petrovo selo camp for the disposal of bodies from Kosovo. HLC organized the transport from the United States to Kosovo and then to Belgrade of Fatos Bytyqi, the victims' brother. Fatos Bytyqi gave evidence on 12 February 2007. Owing to telephone threats on the eve of the hearing, the US drove Fatos Bytyqi in one of its vehicles to the Merdare border crossing on 15 February 2007. In spite of the threats, Fatos Bytyqi attended the hearings in February, March and April 2007. The HLC Witness Support Team was with him all the time. The trial was regularly attended by some 10 members of the former Special Operations Unit (JSO) in civilian clothes, towards whom the court guards are very kind and respectful. Although on 21 March 2007 several of them were late for the start of the hearing, the guards let them in, a permission they deny to both injured parties' families and observers. The guards do not caution the policemen who make loud comments in praise of witness's replies, laugh or make insults against the victims' attorneys.

39

#### **2.2.6. The Lovas Case**

On 15 December 2007, Nataša Kandić and lawyer Dragoljub Todorović talked in Lovas with local government representatives and victim-witnesses about the forthcoming trial and the importance of their participation in it. They also invited the victims' families to attend the trial.

19 The witness was examined on 21 March 2007.

## 2.3. War crimes trials before the War Crimes Unit of the Court of BiH

In 2005, HLC and its partners in the region, Documenta in Croatia and the Research and Documentation Centre in BiH, established a Regional Team for Monitoring National War Crimes Trials. In 2007, the team monitored the following trials in BiH:

### 2.3.1. *The Šimšić – Višegrad case*

On 14 August 2007, the Appeals Chamber of the War Crimes Unit of the Court of BiH rendered and published its verdict founding Boban Šimšić guilty of a war crime against the civilian population under subparagraph h) of paragraph (1) of Article 172 of the Criminal Code of BiH (KZBiH) in conjunction with subparagraphs a), e), f), g) and i) of paragraph (1) of Article 172. Šimšić was sentenced by a final judgement to a term of imprisonment of 14 years. The proceedings before the Appeals Chamber started on 9 March 2007. During the 19 main hearings the Chamber examined 45 witnesses including 27 prosecution witnesses (three protected witnesses), 16 defence witnesses and two witnesses summoned by the court. Five expert witnesses and the defendant were also examined. The Chamber examined the material evidence and saw video footage of an on-site investigation and site identification.

The prosecution stated in the indictment that from April to July 1992 the defendant and other members of the Serb army and police assisted and took part in the persecution of the Bosniak civilian population in the territory of the municipality of Višegrad. From May to July 1992, the defendant took part in attacks on the villages of Žlijeb, Velji Lug, Kuka and others in the municipality of Višegrad, as well as taking part in incidents involving murder, rape, infliction of serious injuries, torture, confiscation of money and jewellery, unlawful detention and forced disappearance of civilians of Bosniak nationality from the Hasan Veletovac primary school and the fire station in Višegrad. In the first-instance proceedings, Šimšić was found guilty and sentenced to five years in prison for helping members of the Serb army in incidents involving forced disappearance and rape, although he had been charged with persecution as a form of crime against humanity.

The first-instance trial chamber conducted the main hearing in a responsible and professional manner, taking account of the rights of the parties to the proceedings, but in delivering its judgement it showed fear of responsibility and let the court of second instance shoulder the burden of just determination. The Appeals Chamber corrected this shortcoming to a certain degree by pronouncing a sentence that is more commensurate with the gravity of the crime and the degree of criminal responsibility of the perpetrator. All the same, it is felt that the punishment might have been more severe, given that the KZBiH punishes the criminal offence of crime



against humanity with imprisonment ranging from at least 10 years to long-term sentences (45 years), especially if one considers the consequences of the crime.

### **2.3.2. *The Kravica case***

On 3 February 2006, 11 former members of the Republika Srpska MUP and Army went on trial before a trial chamber of the War Crimes Unit of the Court of BiH on charges of genocide committed in the warehouse of the Kravica farming cooperative in July 1995, an offence punishable under Article 171 of the KZBiH. From the start of the trial to the end of 2007, 91 main hearings were held and 117 witnesses examined, including 49 prosecution witnesses and 68 defence witnesses. Protected witnesses also gave evidence, three for the prosecution and two for the defence. The protected witnesses gave evidence via video beam from a separate room, with the use of image- and voice-altering devices. The court summoned five expert witnesses to present their findings and opinions and the defence produced one. The four statements of three of the defendants made during the investigation (Brana Džinić and Miladin Stevanović one each and Petar Mitrović two) were read. If the trial chamber admits these statements, submitted by the prosecution, as evidence, it will be deemed that the defendants have been directly examined. In such a case the defence counsel for the remaining eight defendants will be entitled to examine these three in their capacity as witnesses, raising the possibility of a separation of proceedings. Forty-three main hearings were held during 2007. In the course of the trial so far the prosecution has produced a large body of material evidence relating to the context of the incidents which are the subject-matter of the indictment. Most of this evidence originates from the ICTY. The defence for its part focused on establishing alibis for the defendants and proving absence of their criminal responsibility. The War Crimes Unit of the Prosecutor's Office of BiH brought the indictment No. KT-RZ-10/05 on 12 December 2005 against Miloš Stupar, Milenko Trifunović, Petar Mitrović, Brana Džinić, Aleksandar Radovanović, Slobodan Jakovljević, Miladin Stevanović, Velibor Maksimović, Dragiša Živanović, Branislav Medan and Milovan Matić. The defendants are in detention except for Matić, whose detention was discontinued on 17 May 2007. The trial is being conducted in a professional manner. Nevertheless, the question has been raised concerning the temporal application of the criminal legislation. The defendants are namely being tried under the KZBiH adopted in 2003 rather than under the KZSFRJ, which was in force at the time the criminal offence was committed. The maximum penalty for the crime in question under the KZSFRJ is 20 years in prison, whereas the KZBiH envisages long-term imprisonment of up to 45 years. Because the defendants went on hunger strike in January 2007 demanding retroactive application of the criminal legislation, no main hearing session took place in that period. When, in the opinion of the court, the defendants tried to obstruct the proceedings by staging another hunger strike, the court took correct action and resumed the presentation of evidence.

The trial was regularly monitored by the OSCE, Balkan Investigative Reporting Network (BIRN), Regional Team for Monitoring National War Crimes Trials and the daily *Oslobođenje*.

#### **2.3.4. The Kurtović case**

On 10 May 2006, the Prosecutor's Office of BiH brought an indictment against Zijad Kurtović on charges of a war crime against the civilian population under paragraph (1) of Article 173 of the KZBiH in conjunction with subparagraphs c), e) and f), a war crime against prisoners of war under Article 175 of the KZBiH in conjunction with subparagraphs a) and b), and a violation of the laws and customs of war under paragraphs (1) and (2) of Article 179 of the KZBiH in conjunction with subparagraph d). As the commanding officer of a Military Police platoon of the *Drežnica* Independent Battalion operating as part of the Army of BiH, Kurtović is alleged to have tortured and abused 20 prisoners of war of Croat nationality, inflicting on them physical and mental injuries, in the Church of All Saints at Donja Drežnica village near Mostar in the second half of 1993. According to the indictment, the defendant also ordered members of Civil Defence, during the same period, to use Croat civilians and prisoners of war as human shields in the lines of combat between the Army of BiH and the Croat Defence Council (HVO). The main hearing started on 27 August 2007, with the prosecution presenting its evidence at the time of writing. During the 11 main hearings held before the end of 2007, 17 prosecution witnesses, including two protected witnesses, were examined before the trial chamber presided over by national Judge Minka Kreho. The protected witnesses gave evidence under pseudonyms 'A' and 'B' at a main closed hearing session. According to the indictment, in October 1993, Kurtović and Hasan Delić forced two brothers prisoners of war serving with the HVO, whose identity the Prosecutor's Office protected under the pseudonyms 'A' and 'B', to engage in an oral sexual act. The defendant is not held in custody.

#### **2.3.5. The Lašva Valley case**

The ICTY referred the case to the War Crimes Unit of the Prosecutor's Office of BiH under Rule 11 *bis* of the Rules of Procedure and Evidence.

Pursuant to the ZKPBiH and the Law on Transfer of Cases,<sup>20</sup> the Prosecutor's Office of BiH on 15 December 2006 brought and the Court of BiH on 21 December 2006 approved an amended indictment against Paško Ljubičić on charges of a crime against humanity under Article 172 of the KZBiH in conjunction with subparagraphs a), h), e), f) and k), a war crime against the civilian population under Article 173 of the KZBiH in conjunction with subparagraphs a) and f), and a violation of

20 Law on the Transfer of Cases from the International Criminal Tribunal for the Former Yugoslavia to the Prosecutor's Offices of Bosnia and Herzegovina and the Use of Evidence Collected by the International Criminal Tribunal for the Former Yugoslavia in Proceedings before the Court of Bosnia and Herzegovina

the laws and customs of war under Article 179 of the KZBiH in conjunction with subparagraph d). The defendant has been in detention since his transfer from the ICTY detention unit at Scheveningen on 22 September 2006.

Because Ljubičić was the commanding officer of the Fourth Battalion of Military Police, which operated within the HVO Central Bosnia Zone of Operations (OZSB), and because as such he had formal and de facto control over the HVO Military Police and the OZSB, he is considered responsible for the crimes committed by the HVO against Bosniaks in the areas of Vitez and Busovača. According to the indictment, hundreds of Bosniaks held by the HVO at Vitez and Busovača were subjected to severe beatings as well as physical or psychological abuse. Ljubičić is also charged with crimes committed in April 1993 in Ahmići and the neighbouring villages of Nadioci, Pirići and Šantići, in which some 100 civilians were killed. A member of the Military Police, Miroslav Bralo, was given a 20-year first-instance prison sentence by the ICTY in connection with the crimes committed in the Lašva Valley. The main hearing, conducted by national Judge Šaban Maksumić, started on 11 May 2007. The presentation of prosecution evidence was in progress at the time of writing. During the 23 main hearings, including two closed hearings, 27 prosecution witnesses, including 12 protected witnesses whose identity had not been disclosed, were examined.

43

#### ***2.3.6. The Rašević and Todović case***

On 5 September 2006, an ICTY Trial Chamber made a final decision to transfer the case of Mitar Rašević and Savo Todović to the War Crimes Unit I of the Prosecutor's Office of BiH. Pursuant to the ZKPBiH and the Law on Transfer of Cases, the Prosecutor's Office of BiH on 22 December 2006 brought an amended indictment against Paško Ljubičić and Savo Todović on charges of a crime against humanity under subparagraph h) of paragraph (1) of Article 172 of the KZBiH. The Court of BiH approved the indictment on 29 December 2006. The defendant has been in detention in BiH since his transfer from the ICTY detention unit on 3 October 2006.

Rašević and Todović are charged with persecution, murder, torture, detention and enslavement of Bosnian Muslims and other non-Serbs in the detention unit of the correctional institution in Foča from April 1992 to October 1994. According to the indictment, Rašević was the commander of the guard and Todović a member of the correctional institution administration, holding the post of, among others, deputy governor from April 1992 to August 1993. The prosecution charges that, in the aforementioned period, the Foča correctional institution bore all the hallmarks of a camp, in which at least 700 prisoners of non-Serb nationality were illegally detained. Rašević was in charge of at least 37 prison guards over whom he had effective control, and Todović, as number-two man, had similar legal powers and duties to those

of the governor. The facility's governor during the period, Milorad Krnolejac, was sentenced by the ICTY to 15 years in prison.

The main hearing started on 6 April 2007, with the prosecution presenting its evidence at the time of writing. During the 21 hearings held before the end of 2007, the prosecution presented its material evidence. Thirty-eight witnesses, 33 for the prosecution and five for the defence, were examined. Two pathologists were also examined in their capacity of expert witnesses. Only three of the witnesses examined gave evidence without recourse to protection measures. The identity of the protected witnesses was not disclosed and they gave evidence under pseudonyms.

## 2.4. War crimes trials in Croatia<sup>21</sup>

War crimes trials in Croatia are conducted before the county courts in Zagreb, Vukovar, Varaždin, Karlovac, Osijek, Split, Rijeka, Zadar, Bjelovar, Sisak, Šibenik, Gospić and Požega. The Regional Team for Monitoring National War Crimes Trials monitored the hearings of the *Cerna*, *Medak Pocket*, *Korana Bridge*, *Miluševci*, *Paulin Dvor*, and *Sellotape and Garage* cases.

### 2.4.1. The *Cerna* case<sup>22</sup>

On 29 December 2006, the district attorney in Vukovar brought an indictment against Tomislav Madi, Mario Jurić, Zoran Poštić, Davor Lazić and Mijo Starčević, members of a sabotage and reconnaissance company, on charges of murdering the four-member Olujić family in Cerna in February 1992. The main hearing started before the Vukovar County Court on 28 March 2007. By the time of writing, 27 main hearing sessions had been held at which the defendants put forward a defence and 53 witnesses and eight expert witnesses were examined.

Although the proceedings appeared efficacious in view of the volume of evidence presented, the trial nevertheless moved forwards at a sluggish pace. For instance, it was only at the main hearing that three of the five defendants (Madi, Jurić and Starčević) first put forward their defence as well as replacing their defence counsel, thus causing postponements of scheduled hearings and making it necessary to present new evidence. The presentation of evidence at the main hearing that could have been presented during the investigation stage (DNK testing, exhumation for that purpose, etc), as well as the presentation of evidence that had lost much of its credibility 15 years after the fact (e.g. repeated identification of items seized from the defendants), caused additional delays in the conduct of the proceedings. The

21 See: Report on War Crimes Trials in Serbia, HLC, January 2008..

22 Tomislav Madi et al are charged with a war crime against civilian population under paragraph (1) of Article 120 of the Basic Criminal Law of the Republic of Croatia (OKZRH).

judicial police permitted the defendants to exchange greetings with their relatives before and after hearings, thus imparting an air of familiarity to the proceedings. But in spite of the shortcomings set out above, the trial was being conducted in a professional manner.

#### **2.4.2. *The Medak Pocket case***<sup>23</sup>

The criminal case against the two Croatian generals, defendants Rahim Ademi and Mirko Norac, is an ICTY case referred to the Croatian judiciary on 14 September 2005. The prosecution took a year to bring the text of the indictment into line with Croatian legislation. On 22 November 2006, it brought a direct indictment in connection with war crimes against civilians and prisoners of war committed in the Medak Pocket in September 1993, resulting in the death of 27 persons. The main hearing started on 18 June 2007 before the Zagreb County Court. By the time of this writing 47 main hearing sessions had been held, during which the defendants put forward their defence, a large number of items of evidence were presented, and 58 witnesses were examined including seven protected witnesses (enjoying full identity protection). The public was excluded from the examination of two witnesses at their own request.

45

The proceedings were being conducted in a highly professional manner regarding both schedule and content. For this, the president of the trial chamber, Judge Marin Mrčela, is chiefly to commend. The fact, however, that of the 28 protected witnesses invited only seven had been examined, constitutes the only serious flaw in the proceedings. The trial chamber president said on 23 October 2007 that the parties to the proceedings had not transmitted to the court the protected victims' correct addresses. Playing upon the opposition of the defendants' counsel, the prosecutor very often let them take the initiative, a situation in which he appeared to be playing a very passive part.

The media remained as keenly interested in the trial as ever. The print and electronic media reported on it daily, occasionally giving prominence to statements favouring the defendants without conveying the substance of the witnesses were saying.

#### **2.4.3. *The Sellotape and Garage cases***<sup>24</sup>

Branimir Glavaš, Ivica Krnjak, Gordana Getoš Magdić, Mirko Sivić, Dino Kontić, Tihomir Valentić and Zdravko Dragić have been charged with the murder of 10 and the attempted murder of one person during November and December 1991. The district attorney in Zagreb has also indicted Glavaš for a criminal offence of the

23 Rahim Ademi and Mirko Norac are charged with a war crime against civilian population under paragraph (1) of Article 120 of the OKZRH and of a war crime against prisoners of war under Article 122 of the OKZRH.

24 Branimir Glavaš et al are charged with a war crime against civilian population under paragraph (1) of Article 120 of the OKZRH.

same type, charging him with ordering and failing to prevent the commission of murders, torture and other forms of inhuman treatment against several civilians in Osijek from July to September 1991. A single main hearing based on both indictments started before the Zagreb County Court on 15 October 2007. By the time of writing 11 hearings had been held at which evidentiary motions were submitted, the trial chamber made a decision on the evidence to be presented during the hearing of evidence, and the defendants put forward a defence.

This highly complex criminal case encountered major difficulties at the very start of the trial. Branimir Glavaš has been on hunger strike since 8 November 2007. Although he does not look well, he has been very alert and active during the hearings so far. A legal problem concerning Glavaš arose the moment he was re-elected to the Parliament (January 2008), with the competent Parliamentary bodies due to decide again on his immunity to detention and on the further conduct of the criminal proceedings in question. The conduct of the trial has been marked by procedural flaws, with the trial chamber president, Judge Željko Horvatić, not fully exercising his statutory authority to ensure an adequate level of procedural discipline during the main hearing. Besides, he has let the defendants on a number of occasions to pronounce themselves on facts contained in documents not entered in the case file and, as it later turned out, bearing the mark of confidentiality. The deputy district attorney in Zagreb, Jasmina Dolmagać, has been correcting such shortcomings in so far as her status in the proceedings allows this. A key matter raised already at this juncture concerns the validity for criminal law purposes of the minutes of the defendants' questioning by the police, that is, their validity as evidence in the proceedings. Specifically, the indictment in the *Sellotape* case has its factual basis in the statements of some of the defendants, who have meanwhile changed them alleging that the statements were given under duress and after ill-treatment by the police. In view of the fact that Branimir Glavaš is still a politician of influence, the case continues to attract considerable media attention in Croatia. Since the start of the trial Glavaš has addressed the public on several occasions and even sent several messages to the voters ahead of an election in the form of video footage recorded in the detention facility in violation of the rules.

#### **2.4.4. The Korana Bridge case<sup>25</sup>**

On 25 May 1992, the district attorney in Karlovac indicted Mihajlo Hrastov, a Croatian policeman, for killing 13 and wounding two JNA reservists on the bridge on the Korana river in September 1991. The first-instance judgements having been twice set aside by the Supreme Court of the Republic of Croatia (VS RH), the Karlovac County Court acquitted the defendant for a third time on 27 March 2007 on the grounds that he had acted in self-defence. Pursuant to the ruling of the VS

<sup>25</sup> Mihajlo Hrastov is charged with unlawful killing and wounding of the enemy under Article 124 of the OKZRH.

RH, the third trial took place before a trial chamber composed of different judges, with the presentation of evidence specified. There were 16 main hearing sessions between September 2004 and March 2007. Three surviving reservists were examined as witnesses for the first time. The trial took place under strong pressure from the public and local media, the defendant was hailed a war hero, the proceedings were unnecessary delayed, and the judicial authorities committed numerous professional errors. Deputy District Attorney Davorka Nyerš Katušić, who was to have represented the indictment, refused to do so shortly before the trial was due to start and filed a request to be relieved of duty: 'I can't conduct a proceeding that is lost in advance.' She was replaced by Ljubica Fiškuš-Šumonja, who classified the criminal offence as unlawful killing and wounding of the enemy, although it was committed during an armed conflict and therefore ought to have been categorized as a war crime. The trial chamber presided over by judge Marijan Janjac found in the judgement that the defendant had killed 13 and wounded two persons acting in self-defence. The trial failed to satisfy the standards of objectivity and professionalism.

#### **2.4.5. The Mikluševci case<sup>26</sup>**

The indictment against 35 persons in connection with the case was brought by the district attorney in Osijek on 29 April 1996. As the indictment was taken over by the district attorney in Vukovar on 25 April 2005, the proceedings are now being conducted before the Vukovar County Court against 27 defendants, since nine have meanwhile died during the course of the trial. The trial is being attended by defendants Joakim Bučko, Slobodan Mišljenović, Jaroslav Mudri, Zdenko Magoč, Dušanka Mišljenović, Darko Hudak and Saša Hudak, none of whom are held in custody while the rest are being tried in absentia. The defendants face charges of intimidating, ill-treating and killing non-Serbs in the area of the village of Mikluševci, stealing their property and confiscating it on behalf of the illegal government of the Serb Autonomous Region (SAO) of Krajina with the object of expelling the non-Serb population from their own homes to prevent and destroy their further existence.

In the course of 2007, the third year of the trial, there were 10 main hearing sessions at which 14 witnesses were examined, of whom 10 for the first time, and the defendants put forward their defence. The prosecution faces the complex task of proving a genocide. In this connection, at one point it amended the indictment by re-classifying the criminal offence as a war crime against the civilian population, but then it continued to prosecute the defendants for genocide in accordance with its very next brief. It remained unclear why it did that, given that no evidence had been submitted in the meantime warranting a legal re-classification of the offence.

<sup>26</sup> Jugoslav Mišljenović et al are charged with genocide under Article 119 of the OKZRH.

#### **2.4.6. The Paulin Dvor case<sup>27</sup>**

On 12 March 2003, the District Attorney's Office in Osijek indicted Croatian Army members Nikola Ivanković and Enes Viteškić of killing 18 persons of Serb nationality in Paulin Dvor on 11 December 1991 with bursts of fire from automatic weapons to avenge the death in combat of a fellow soldier. On 8 April 2004, the Osijek County Court sentenced Ivanković to 12 years in prison and acquitted Viteškić of the charges. In relation to Ivanković, the VS RH varied the judgement increasing his prison sentence to 15 years, whereas in relation to Viteškić, it set the judgement aside and referred the case back for a retrial. During the retrial in 2007, the court held three main hearings, three witnesses were examined, and the parties and defence counsel presented their closing arguments. On 29 January 2007, the trial chamber presided over by Judge Zvonko Vekić delivered a judgement acquitting Enes Viteškić of the charges on the grounds that it was not possible to prove during the proceedings that he committed the criminal offence with which he had been charged. The court had a difficult task because the defendant's culpability, if any, had to be ascertained on the basis of indirect, circumstantial evidence in the absence of any direct evidence. The retrial complied with the formal requirements. The evidence, which had for the most part been already presented, was adduced again. However, the prosecutor did not propose examining the only surviving witness, who lives in Serbia. The reasons given for the new acquittal do not differ substantially in terms of content and argumentation from those given for the judgement set aside by the VS RH.

### **2.5. Trials for ethnically motivated crimes and war crimes in Kosovo**

HLC-Kosovo is the only nongovernmental organization in Kosovo monitoring trials of war crimes and ethnically motivated criminal offences in Kosovo. In 2007, HLC-Kosovo monitored 117 main hearing sessions in of 21 cases before municipal and district courts, as well as four cases before the Supreme Court of Kosovo. The persons examined in these [monitored] cases included 119 witnesses (two of whom were protected witnesses) and five ballistic experts and neuropsychiatrists. In all these cases the indictments were brought and represented by international prosecutors. All the trial chamber presidents are international judges, with local judges serving as trial chamber members.

<sup>27</sup> Nikola Ivanković and Enes Viteškić are charged with a war crime against civilian population under paragraph (1) of Article 120 of the OKZRH.



### 2.5.1. *The Kiqina case*

On 31 January 2005, International Prosecutor Thomas Hickman brought an indictment against Jeton Kiquna on charges of murder, attempted murder, association with 12 other defendants in a separate case<sup>28</sup> with a view to committing criminal offences, murder of five members of the Hajra family and attempted murder of Pranevere Hajra near Glogovac/Glogoc on 20 August 2001. The trial was held before the Priština/Prishtinë District Court from 29 June 2005 to 8 August 2007. There were a total of 38 main hearings. In 2007, two main hearing sessions were held at which two defence witnesses were examined. Kiqina gave evidence in his capacity as witness and three witness statements made during the investigation were read. The international trial chamber, presided over by Judge Vinod Boolell, found Kiqina guilty and sentenced him to 16 years in prison. In view of the fact that the court used a great many items of evidence from the *Halili et al* case, the trial took unnecessarily long. All the same, it should be borne in mind that the court had problems organizing interpretation and translation into Swedish, which the defendant, who understands that language best, requested and to which he was entitled.

### 2.5.2. *The Morina case*<sup>29</sup>

On 20 October 2003, International Prosecutor Cecilia Tillada brought an indictment against Xhavit Morina on charges of terrorism, commanding a terrorist organization, murder, multiple murder, illegal possession of arms and causing public danger which he allegedly committed as a member of the Kosovo Liberation Army (UCK), the Preševo, Medveđa and Bujanovac Liberation Army (UCPMB) and the Albanian National Army (ANA/AKSh), which UNMIK declared a terrorist organization by its Regulation 2003/9. The defendant was charged with killing three Macedonian citizens – two members of the Democratic Union for Integration (BDI) and a passer-by. The first-instance trial took place before the Priština/Prishtinë District Court from 29 March 2004 to 26 April 2004. After seven main hearing sessions, the international trial chamber, presided over by Carol Peralta, sentenced Morina to 13 years in prison. The Supreme Court of Kosovo quashed the sentence and referred the case back for a retrial. The retrial started on 27 February 2007 and ended on 8 March 2007. After four main hearing sessions, the international trial chamber, presided over by Judge Vinod Boolell, sentenced Morina to 12 years in prison. The one witness examined during the retrial reiterated in whole the statement he had made at the previous trial.

28 Skender Halilal, Burim Ramadani, Arsim Ramadani, Arben Kiqina, Zeqir Kiqina, Florim Kiqina and Blerim Kiqina are charged under a single indictment of 16 September 2003 with murder, attempted murder and association with a view to committing criminal offences. The trial held before the Gnjilane/Gjilan District Court for security reasons was in progress when Jeton Kiqina was charged with the same criminal offences.

29 Xhavit Morina was one of the seven detainees who escaped from Dubrava prison on 18 August 2007. His body was discovered on 2 November 2007 near the village of Odri in Macedonia, following a clash with the armed group of Agim Krasniqi.

### 2.5.3. *The Kurteshi and Sylejmani case*

On 14 August 2006, International Prosecutor Cecilia Tillada brought an indictment against Mirsad Kurteshi and Kadri Sylejmani on charges of serious criminal offences against general safety, participating in a group that commits a criminal acts and inciting national, racial and religious hatred, discord and intolerance against persons of Serb nationality during the March 2004 violence in Obilić/Obiliq. Specifically, the defendants were charged with leading a group of Albanians on 18 March 2004 who threw petrol bombs at and set fire to the *White Building* in which Serbs named Zorica Ivanišević, Milovan Ivanović, Branko Stojković, Dragan Petković, Gorica Petković, Milenko Andrić, Goran Stankov and Boban Stanković lived. The proceedings were conducted by an international trial chamber presided over by Judge Tron Gundersen. The trial lasted from 21 August to 8 November 2007. After nine main hearing sessions, the trial chamber sentenced the defendants to prison for a term of one year and nine months, suspended for three years on probation. Twelve witnesses, including 10 for the prosecution and two for the defence, were examined during the trial. Most of the witnesses were members of the KPS. One of them adhered firmly to his earlier testimony and the rest toned down theirs appreciably at the main hearing. The monitors got the impression that the injured parties failed to identify the defendants as participants in the violent acts partly because they continued to live in Kosovo and were afraid. The fact that the court was unable to establish the defendant's alleged leadership of the violent group was obviously of considerable influence on the pronouncement of the very lenient sentence.

### 2.5.4. *The Kurti case*

On 31 May 2007, International Prosecutor Andrew Mayes brought an indictment against Albin Kurti on charges of participating in a group obstructing an official in the performance of official duties, participating in a group that commits criminal acts and inciting resistance, which he allegedly committed during demonstrations staged by the Self-Determination/Vetevensodje movement in Priština/Prishtinë on 10 February 2007. During the demonstrations, members of UNMIK police (from Romania) fired rubber bullets injuring two members of the movement. The two died the next day. Kurti was held in detention from 13 February to 10 May 2007, after which he was placed under house arrest. Until the indictment was confirmed, Kurti was detained again, then placed under house arrest for a second time. On 21 December 2007, the court discontinued all such security measures. Kurti's trial started on 19 September 2007 before an international trial chamber presided over by Judge Maurizio Salustro. Four main hearing sessions took place before the end of the year. A prosecution witness was examined who had alleged during the investigation that Kurti had hit him in the leg with a rock during the 10 February 2007 demonstration. At the main hearing, the witness kept insisting that he had been injured but could not say who had thrown the rock. The defendant continued to refuse the services of the counsel assigned to him at the start of the trial. He said that he did

not recognize the court trying him because he did not recognize the UN administration in Kosovo. On account of his past (he was a leader of a student movement opposing the Milošević regime and was imprisoned for this), the defendant enjoys wide popular and media support in Kosovo, with some human rights organizations demanding his release.

#### **2.5.5. *The Islami et al case***

On 16 February 2007, International Prosecutor Cecilia Tillada brought an indictment against Skender Islami, Mustafa Islami, Ramadan Islami, Omer Sylejmani and Gazimend Morina on charges of committing in Kosovo Polje/Fushë Kosovë during the March 2004 violence criminal offences of participating in a group that commits criminal acts, grave offences against general security and inciting national, racial and religious hatred, discord and intolerance against persons of Serb nationality. Specifically, the defendants were charged with setting fire on 17 and 18 March 2004 in Kosovo Polje/Fushë Kosovë to the *Živin gaj* restaurant and house of the Serb Miroslav Veličković, a kiosk in front of his house, the hospital, health centre, pharmacy and *Sveti Sava* primary school building (institutions not incorporated in the Kosovo system and financed by the Serbian Government), as well as several vehicles parked outside the hospital and health centre, mostly owned by Serbs. The trial started on 22 October 2007. By the end of 2007 seven main hearings had been held and 28 prosecution and three defence witnesses examined.

51

In common with other proceedings connected with the Kosovo Albanian violence in March, the indictment was raised long after the incident. The policemen who appeared as witnesses adhered to their earlier statements of having seen the defendants in the group that set the facilities on fire; others, however, varied their statements, claiming that during the interrogation the policemen pressed them to incriminate the defendants and to sign statements written by the police in advance. As most of these witnesses were underage at the time of the police interviews, they were questioned in the presence of their parents or social workers. The court confronted some of the witnesses and policemen who were alleged to have applied pressure to them. Both adhered to their earlier allegations. The trial continues in 2008.

#### **2.5.6. *The Gashi case***

On 8 February 2007, International Prosecutor Robert Dean brought an indictment against Idriz 'Galani' Gashi for a war crime against the civilian population, on charges of killing, in August 1998 during the armed conflict in Kosovo, the Albanian Sanije Balaj near Vranovac/Vranoc village in Peć/Pejë municipality over her collaboration with the Serbs. At the end of the trial, held from 9 May to 22 June 2007 before the Peć/Pejë District Court, an international trial chamber presided over by Vinod Boolel found Gashi guilty and sentenced him to a term of imprison-

ment of 15 years. A total of eight main hearings were held, at which 11 witnesses (including an expert witness) were examined, 10 of whom for the prosecution and one for the defence. The remains of the victim were discovered in September 1998 in the Radonjičko/Radoniq Lake canal. The identification of the victim by DNK matching was made during the trial in May 2007. The murder of Sanije Balaj is cited in the ICTY indictment brought against the former Kosovo Prime Minister, Ramush Haradinaj. The Gashi trial was the shortest first-instance trial for war crimes in Kosovo after the establishment of the UN mission. During the hearing of the evidence, a prosecution witness gave a detailed description of Balaj's execution, which he attended in person. The defendant alleged that Balaj had been killed by the witness's brother who is no longer alive. Although the trial was attended by a large audience (the defendant's relatives, former KLA members, journalists and professional members of the public), the media coverage of the event was scant and sketchy. Characteristically for this trial, the witnesses relied on information obtained from others, some of whom had lost their lives during the war and others under mysterious circumstances later.

#### **2.5.7. The Krasniqi case**

52

On 15 September 2006, International Prosecutor Andrew Mayes brought an indictment against Bedri Krasniqi on charges of attacking a vehicle with members of the Kosovo Police Service (KPS) on 24 November 2003. Two policemen were killed and one wounded in the attack. The policemen had been investigating politically motivated murders in the region of Dukagjini, including those of Tahir Zemaj, former commander of the military formation FARK, a witness in the *Idriz Balaj et al* case [Balaj is on trial before the ICTY in the *Haradinaj* case] and a potential witness in the Haradinaj trial. At one time the defendant was a member of Haradinaj's escort. The trial before the Peć/Pejë District Court started on 15 May and ended on 19 September 2007. The trial chamber presided over by Judge Tron Gundersen found the defendant guilty and sentenced him to a long-term prison sentence of 27 years. A total of 11 main hearings were held. Twenty witnesses were examined including 15 for the prosecution. One of the prosecution witnesses, R.S., who had had the status of protected witness in a previous proceeding, gave evidence in public at his own request, speaking in support of the defendant. He had made no such request during the previous proceeding. Also, one of the prosecutor's protected witnesses failed to appear although the court had changed the venue specifically for this occasion. The prosecutor abandoned the presentation of this evidence without publicly explaining why. This trial was characterized by very many proceedings in camera, with the participation of only the prosecutor, the defendant's counsel and the attorney for the injured party. The audience in the courtroom was separated: the defendant's family members sat on one side and those of the injured party on the other.

### 2.5.8. *The Jakupi case*

On 14 March 2005, International Prosecutor Cecilia Tillada indicted Lirim Jakupi on charges of kidnapping, unlawful detention and blackmail. According to the indictment, as a member of a group under the command of Shefqet Musliu, the former commander of the UCPMB, Jakupi, Besim Tahiri and others took part in the kidnapping of four persons (identified in the indictment as injured persons 1, 2, 3, and 4) in September 2000 with a view to obtaining illicit material gain. The kidnapped persons are said to have been abused and physically tortured by the kidnappers for several days. The trial before a mixed trial chamber of the Gnjilane/Gjilan District Court, presided over by International Judge Vinod Boolell, started on 13 July 2006 and ended on 14 February 2007. Jakupi was sentenced to a term of imprisonment of six years. A total of five main hearings were held. One hearing was held before the Vranje District Court [Serbia]. The defendant used silence as a defence. The injured parties were the only witnesses for the prosecution. Only two of them were examined. Since the other two gave evidence earlier in the *Shefqet Musliu* case, their statements were used as evidence without their being directly examined.

### 2.5.9. *The Jakupi II case*

On 13 July 2005, International Prosecutor Cecilia Tillada brought an indictment against Lirim Jakupi for the attempted commission of the criminal offence of terrorism. According to the indictment, as a member of the ANA/AKSh, Jakupi took part with others in an explosives and weapons smuggling operation preparatory to the commission of terrorist acts. The incidents took place in March 2003 at a border crossing between Kosovo and Serbia designated as G5 (CP 75). The trial started on 21 June 2007 before a mixed trial chamber of the Gnjilane/Gjilan District Court with Judge Vinod Boolell acting as president. The defendant raised objections about the composition of the trial chamber, especially because it was presided over by the judge who had sentenced him to a six-year prison sentence [for kidnapping] in a previous proceeding. With the main hearing adjourned pending decision on the application, Jakupi escaped from the prison.<sup>30</sup>

### 2.5.10. *The Fejza case*

Under an indictment brought on 26 January 2001 and amended by 27 July 2007 by International Prosecutor Cecilia Tillada, Sadat Fejza was charged with carrying out an armed attack, together with unidentified persons, on an Opel Vectra car on the Gnjilane/Gjilan–Vitina/Viti regional road near Klokot/Kllokot in an attempt to kill three Serbs including an Orthodox Church priest. On 24 May 2001, the Gnjilane/Gjilan District Court found Fejza, who had been tried in absentia, guilty of attempted commission of murder and sentenced him to a term of imprisonment of six years and six months. The judgement took effect in May 2002. Fejza was

<sup>30</sup> Lirim Jakupi, one of the seven detainees who escaped from Dubrava prison on 18 August 2007, is still at large.

tracked down and arrested on 15 April 2005 for the purpose of serving his sentence. However, his attorney requested a reopening of the main hearing in this case. A trial chamber of the Gnjilane/Gjilan District Court dismissed the request in June 2005. Having heard the appeal, the Supreme Court of Kosovo referred the case back for a retrial. The retrial of Sadat Fejza before a mixed trial chamber of the Gnjilane/Gjilan District Court (presided over by International Judge Maurizio Salustro) started on 7 September 2007. During the five main hearings held before the end of the year, the defendant and two injured parties appearing as witnesses for the prosecution were examined. At a hearing, the witnesses identified the defendant in a photograph.

#### ***2.5.11. The minor AD case***

On 14 December 2006, International Prosecutor Marcelo Maresca brought an indictment against minor A.D. on charges of carrying out a bomb attack on the Dolce Vita café in the north part of Mitrovica/Mitrovicë on 26 August 2006, on which occasion nine civilians, seven Serbs and two foreigners, sustained serious and light bodily injuries, thereby committing the criminal offences of causing serious injury to body, inciting national, racial and religious hatred, discord and intolerance and causing public danger. The trial before a mixed trial chamber of the Mitrovica/Mitrovicë District Court, presided over by International Judge Timothy Bland, started on 8 February 2007. Six main hearings had been held by the end of the year, discussing only certain procedural matters and the defendant's physical and mental capacity to attend the trial. A.D. was examined by psychiatrists during the trial and three neuropsychiatrists gave evidence. The public is excluded from the trial.

#### ***2.5.12. The Simić case***

On 20 June 2000, Kosovo Prosecutor Jusuf Mejzini brought an indictment against Serb Igor Simić on charges of genocide, involving the brutal murder on 15 June 1999 of married couple Halit and Mevlyde Sylejmani whose bodies he burned. The first-instance proceedings against Igor Simić and others started on 5 December 2000 before a mixed trial chamber of the Mitrovica/Mitrovicë District Court presided over by Judge Christer Karphammer. After the 22 main hearing, International Prosecutor Michael Hartman abandoned the indictment on 9 April 2001. The court rendered a judgement of non-suit the same day and the injured party continued with the prosecution of the case. On 17 April 2007, an international trial chamber of the Mitrovica/Mitrovicë District Court, presided over by International Judge Timothy Baland, held the first main hearings in the civil case. Because the defendant and his counsel failed to appear before the court, the trial was adjourned for an indefinite period of time.

#### ***2.5.13. The Vučković case***

Proceedings against Miroslav Vučković were instituted before the Mitrovica/Mitrovicë District Court on 12 May 1999 on charges of grand larceny. After several

extensions of charges, the local prosecutor on 29 November 1999 brought an indictment against Vučković on charges of genocide. On 18 January 2001, at the end of the 21st court hearing, the competent trial chamber of the Mitrovica/Mitrovicë District Court found Vučković guilty of genocide and sentenced him to a prison term of 14 years. On 31 August 2001, the Supreme Court of Kosovo set the first-instance judgement aside and referred the case back for a retrial, recommending the Prosecutor's Office to re-classify the criminal offence as a war crime and participating in a joint criminal enterprise. The retrial of Vučković under the amended indictment started in January 2002. On 25 October 2002, after 44 days of trial, the Mitrovica/Mitrovicë District Court found Vučković guilty and sentenced him to 12 years in prison. In May 2004, the Supreme Court of Kosovo quashed the sentence again and referred the case back for a retrial. The third retrial before an international trial chamber of the Mitrovica/Mitrovicë District Court, presided over by International Judge Lolita Dumlao, started on 16 August 2007. There were a total of 19 main hearings before the end of the year. The court examined the defendant and 16 injured parties in their capacity of prosecution witnesses as well as six defence witnesses. Evidence obtained from Serbian judicial authorities was presented and the statements read of three prosecution witnesses unable to appear due to old age. With the agreement of the parties, three statements by defence witnesses who failed to comply with the court summons to appear were also read. At the opening of the third first-instance trial, the indictment was represented by International Prosecutor Marija Baldini, who played a very passive part. In November 2007, the indictment was taken over by International Prosecutor Erwin Patilos. During the December 2007 hearings, the prosecutor, who at first played a very prominent part, left the proving of the charges entirely to the trial chamber.

The ascertainment of the truth in this case was additionally made difficult by the fact that the key witnesses were elderly people who had meanwhile forgotten many important details. Judging by the evidence hearing so far, the prosecutor may amend the indictment and charge the defendant with a grand larceny instead of with a war crime.

#### **2.5.14. The Ejupi case**

On 17 May 2006, International Prosecutor Thomas Hickman brought an indictment against Florim Ejupi on charges of committing several criminal offences [murder, attempted murder, causing public danger, unlawful possession of explosives] during an attack on a *Niš Express* bus near Podujevo in February 2001, resulting in the death of 11 and serious injuries of 18 passengers. The trial started on 18 October 2007 before an international trial chamber of the Mitrovica/Mitrovicë District Court presided over by Judge Hajnalka Karpati. Two main hearings took place before the end of the year. Two victim-witnesses were examined. The trial has been postponed several times on security grounds, as well as because the injured parties refused to appear at the new trial venue in Dubrava prison where the defendant was

kept in detention. The indictment has been amended on several occasions, with International Prosecutor Gianfranco Galo announcing another amendment at the latest hearing.

#### ***2.5.15. The Esmin Hamza and minor A.K. case***

On 8 March 2006, International Prosecutor Roberta Baldini brought an indictment against Esmin Hamza and minor A.K. on charges of inciting ethnic, racial and religious hatred and intolerance, causing public danger and participating in a group that commits criminal acts during the March 2004 violence. Taking part in the violence, the defendants set fire to and looted the house of Mladen Gligorijević from Prizren and set fire to several UNMIK vehicles parked outside the Prizren Municipal Assembly building. A mixed trial chamber of the Prizren District Court opened the trial on 26 November 2006 and held 18 main hearings before the judgement was pronounced. It examined nine prosecution and two defence witnesses. The public was excluded from the main hearing.

On 15 June 2007, the trial chamber presided over by Judge Lolita Dumlao sentenced Esmin Hamza to a term of imprisonment of four years and on minor A.K. the correctional measure of committal to a correctional centre for at least two years.

56

#### ***2.5.16. The KPS case***

The municipal prosecutor in Uroševac/Ferizaj instituted proceedings against KPS members Zoran Tasić, Violeta Jovanović, Stojan Jovanović and Slavko Stanković on charges of faking a terrorist attack on their service vehicle, thereby committing the criminal offences of causing public danger, false reporting and causing damage to others' property. At the main hearing on 22 January 2007, the Uroševac/Ferizaj Municipal Court refused jurisdiction *ratione loci* and referred the case to the Štrpce/Shterpcë Municipal Court.

#### ***2.5.17. The Runjeva case***

In a trial lasting from 5 October 2004 to 12 May 2005, an international trial chamber of the Priština/Prishtinë District Court, presided over by Judge Martin Karopkin, convicted Ejup Ranjeva, Rustem Demi and Enver Axhami of a war crime. Runjeva was sentenced to eight years in prison and Demi and Axhami to six years each. The court held a total of 57 hearings. It examined 21 witnesses, including 18 for the prosecution (one of them a protected witness), three for the defence, and one expert witness. During the first-instance proceedings, the indictment was represented by International Prosecutor Paul Flinn. On 22 March 2007 the Supreme Court of Kosovo heard the counsel's appeals, its determination thereon remaining unknown until the end of the year.



### **2.5.18. *The Musliu case***

In a proceeding conducted from 10 February to 24 June 2004 before an international trial chamber of the Gnjilane/Gjilan District Court (presided over by Judge Vinod Boolell), Shefqet Musliu, Besim Tahiri and Feriz Qerimi were found guilty of criminal association. Musliu was sentenced to 12 years in prison and Tahiri and Qerimi to five years each. Thirteen witnesses, including four protected witnesses, were examined during the trial. The indictment was represented by International Prosecutor Cecilia Tillada. On 27 March 2007, the Supreme Court of Kosovo heard the appeals and matters of procedural law relating to the case. A main hearing was started before this court in this case to examine a protected witness proposed by the prosecutor during the first-instance proceeding but not heard. The hearing of the case before the Supreme Court was additionally complicated by the discovery that the presiding member of the trial chamber in charge of the *Musliu* case sat as a member on the trial chamber that decided on the defendants' detention. The second-instance decision has not yet been made public.

### **2.5.19. *The Rape case***

In a proceeding conducted from 1 June 2005 to 1 March 2006 before the Gnjilane/Gjilan District Court, Astrit Shala was convicted of raping an 80-year-old Serb woman in August 2003. Shala was given a prison sentence of two years. The trial lasted 10 days. Eleven witnesses and two expert witnesses were examined. On 2 August 2007, the Supreme Court of Kosovo revised the judgement of the Gnjilane/Gjilan District Court prolonging the imprisonment to five years.

### **2.5.20 *The Murder of Minor in Gračanica Case***

On 10 September 2004, International Prosecutor Cecilia Tillada brought an indictment against minor A.K. from Priština/Prishtinë and Labinot Gashi for aggravated murder (of Serb minor D.P. in Gračanica on 5 June 2004) as well as for several attempted murders and illegal carrying of arms.

The first-instance proceedings, comprising 29 hearings, started on 16 November 2004 before a mixed trial chamber of the Priština/Prishtinë District Court and ended with the pronouncement of the judgement on 3 June 2005. Twenty-two witnesses were examined, including four expert witnesses, the father of the deceased D.P., five victim-witnesses (three as anonymous witnesses) and two eyewitnesses. The other witnesses were KPS members who were on duty on the day in question. The public was excluded from the proceedings, but was allowed to attend the sentencing of A.K. to a term of juvenile imprisonment of six years for aggravated murder and illegal carrying of arms. A.K. was acquitted of other charges of attempted aggravated murder. Gashi was acquitted of all the charges. On 17 May 2005, the Supreme Court of Kosovo dismissed the appeal of A.K.'s counsel and varied the judgement of the first-instance court, imposing on A.K. a single term of juvenile imprisonment of nine years on charges of aggravated murder, attempted aggravated

murder and illegal carrying of arms. In response to the judgement of the Supreme Court of Kosovo, A.K.'s counsel filed a request for protection of legality. Pursuant to the request, a main hearing was opened before an international trial chamber of the Supreme Court of Kosovo, presided over by Judge Alain Block, on 14 December 2007. For the same offences, A.K. was again sentenced to a term of juvenile imprisonment of nine years. The judgement is effective.

#### **2.5.21. The Llapi Group Case**

On 4 February 2003, International Prosecutor Gary McCuaing brought an indictment against Rrustem Mustafa, KLA commander in the Llap Zone of operations from August 1998 to mid-June 1999, commander Nazif Mehmeti in charge of KLA Military Police in the Llap Zone, Latif Gashi, Security Service chief in the Llap Zone, and Naim Kadriu, KLA Military Police member in the Llap Zone on charges of a war crime under Article 142 of the KZSRJ in conjunction of Articles 24, 30, 22 and 26 of the KZSRJ. According to the indictment, they are guilty of commission, giving orders, aiding and abetting, omission, complicity and participating in a joint criminal plan for the purpose of commission of war crimes. The first-sentence proceedings were conducted from 17 February to 16 July 2003 before an international trial chamber of the Priština/Prishtinë District Court presided over by Judge Timothy Clayston. The court sat on 40 days and examined 60 witnesses. The defendants were found guilty and sentenced as follows: Rrustem 'Remi' Mustafa to 17 years in prison, Nazif Mehmeti to 13 years, Latif Gashi to 10 years, and Naim Kadriu<sup>31</sup> to five years. The case was referred back for retrial by a second-instance court judgement of 8 July 2005. A preparatory hearing for the main hearing of the case took place on 29 November 2007 before an international trial chamber of the Priština/Prishtinë District Court presided over by International Judge Carol Peralta. The indictment is represented during the retrial by International Prosecutor Erwin Patilos.

### **2.6. Impunity watch**

Together with the Youth Initiative for Human Rights, Lawyers Committee for Human Rights and Helsinki Committee for Human Rights in Serbia, HLC participates in an initiative to help combat impunity in post-conflict societies called *Impunity Watch* of the Netherlands nongovernmental organization Solidaridad. The project consists of two phases: researching the causes of impunity and obstacles for ensuring full accountability for past crimes and advocacy of strategies and solutions for identified problems. The project is being implemented simultaneously in Guatemala and Serbia.

31 The accused has meanwhile died in a traffic accident.

The research is based on monitoring and analyzing the work of institutions having competence for the creation of a responsible society according to the principles of the rule of law and respect for human rights. Based on identified causes of impunity and obstacles to ensuring accountability, Impunity Watch and local partner organizations will draw up a report and recommendations to be sent to the government and competent institutions with a view to their implementation. Monitoring the implementation of the recommendations is envisaged.

In line with the allocation of duties on the project, the HLC's researcher, member of the project team, had collected by the end of 2007 complete court documentation [indictments and judgements] relating to the war crimes cases tried before Serbian courts. The member also set up a collection of legal and sub-legal acts regulating the work of the Ombudsman for Public Information and a collection of transition legislation including reports on the application of those laws. The member gathered information on measures taken by the state and civil society to help develop guarantees for the non-repetition of crimes. There is also a collection of laws and enactments regulating the establishment, operation and financing of courts and other state organs in Serbia which are concerned with establishing individual criminal responsibility<sup>32</sup> and which hear individual actions for reparation [pecuniary compensation]. Furthermore, human rights organizations' reports as well as reports and contributions in hard copy and video formats concerning accountability and impunity have been obtained. The documentation includes reports on mass graves exhumations in the territory of Serbia and reports and notes of domestic forensic examiners and pathologists and international organizations such as the ICPM.

59

## 2.7. Reparations

In Serbia, victims of human rights violations may enforce their right to pecuniary compensation [a form of reparation] only through an action against the state.

Such proceedings, however, are inappropriate regarding the context and nature of human rights violations for several reasons: the burden of proof rests with the victim, the proceedings are long, the costs of litigation are substantial, the monetary compensation awarded is not proportionate to the crime committed, the courts tend to protect the state, etc. For this reason HLC keeps instituting proceedings to prompt the state, in keeping with its obligations under international law, to initiate

32 The collected documents relate to the Belgrade District Court, War Crimes Prosecutor's Office, War Crimes Chamber of the Belgrade District Court, War Crimes Detection Unit, Unit for Assistance and Support for Injured Parties and Witnesses at the Belgrade District Court, Unit for the Protection of Parties to Criminal Proceedings and Supreme Court Chamber for hearing appeals in war crimes cases.

a debate and adopt a programme of reparations for human rights violations in the past, especially during the rule of Slobodan Milošević.

Since 2005 HLC has represented in courts victims of war crimes, illegal detention, discrimination and torture in actions for damages against the states of Serbia and Montenegro and institutions in Kosovo.

In addition, HLC continues to represent victims of forced enlistment, unfounded deprivation of liberty and torture on whose behalf it filed actions for damages until 2005. The object of this is for the courts to determine the responsibility of the state for violations of basic human rights and to force it to pay pecuniary and non-pecuniary damages to the victims of such violations and to respect human rights.

From its establishment in 1992 to the end of June 2007 HLC represented over 2,000 victims of basic human rights violations.

#### **2.7.1. Promotion of minority rights through pecuniary compensation**

60

In 2007, HLC instituted 22 proceedings for the payment of damages [reparations proceedings] against Serbia, Montenegro and interim institutions in Kosovo on behalf of 93 victims of ethnically-motivated human rights violations in the past.

In January 2007, HLC brought an action for damages against Serbia on behalf of 24 family members of the 14 Albanian women and children murdered in Podujevo/Podujevë in March 1999 by members of the Scorpions, a reserve unit of the Serbian MUP. One of them, Saša Cvjetan, was sentenced by a final judgement to a term of imprisonment of 20 years, while four other former members of the unit are being investigated.

During 2007, HLC filed seven actions for damages against Serbia on behalf of seven Sandžak Bosniaks tortured by members of the Serbian MUP from 1991 to 1995. Although no weapons were found in their possession, they were taken to a police station on suspicion of being in possession of illegal weapons and participating in anti-state activities. At the police station, policemen and State Security Service (DB) members ill-treated them for several hours at a time to make them admit to committing criminal offences against the constitutional order. The victims still suffer from serious consequences of this torture.

In 2007, HLC brought three actions against Serbia on behalf of five Kosovo Albanians illegally detained during the rule of Slobodan Milošević. Serbian policemen illegally arrested and detained these victims, as they did two thousand other Albanians in Kosovo during the NATO bombing. The Albanians on whose behalf

HLC brought the actions spent from four to 11 months in Serbian prisons without any cause.

On behalf of 25 family members of 16 Bosniaks from Severin in Serbia, who were kidnapped and killed by members of the Army of Republika Srpska (VRS) on 22 October 1992, HLC brought an action against Serbia for financing the VRS and failing to prevent the kidnapping. On that day, the victims were on their way to work in Priboj in a bus on its regular service from Rudo to Priboj when they were stopped by members of the Avengers formation near Mioče in BiH. The passengers' identity cards were checked and only Bosniaks were taken off. They were next taken to Višegrad in BiH territory under Serb control, ill-treated in the Vilina Vlas motel, and finally murdered on the banks of the river Drina. Their bodies have not been found yet.

In July, November and December 2007, HLC brought three actions for damages against Serbia on behalf of 11 Bosniaks from Žepa (BiH) who had been detained in camps in Šljivovica and Mitrovo Polje. In August 1995, after Serbs took control of Srebrenica and Žepa, over 800 Bosniaks fled for Serbia. At the border, they were arrested by the Army of Yugoslavia (VJ) and police and taken to the camps in Šljivovica and Mitrovo polje, where they were daily subjected to torture, inhuman and degrading treatment and starvation. Three murders and several cases of sexual abuse were registered. These Bosniaks still suffer from serious consequences of their imprisonment in Serbia.

61

In October, HLC brought two actions against the Republic of Montenegro on behalf of three family members of two Bosniaks from Bukovica, whose deaths are blamed on members of the Montenegrin MUP and the VJ. During the armed conflict in BiH, a large number of VJ reservists, paramilitary formation members and Montenegrin policemen were deployed in Bukovica territory. On the pretext of looking for illegal weapons, they tortured, searched, robbed, ill-treated and abused Bukovica Bosniaks. According to HLC data, seven Bosniak civilians were murdered in the period.

In 2007, HLC attorneys represented 140 victims of human rights violations on whose behalf actions for damages had been brought before 2007 against Serbia, Montenegro and Kosovo institutions.

During the preparation of the actions, HLC researched in 2007 10 cases of massive and individual ethnically motivated violations of human rights committed in the territories of Serbia, Montenegro and Kosovo during the armed conflicts. HLC researchers interviewed 89 victims and witnesses of torture and illegal detention.

96 victims and family members authorized HLC to represent them in any future reparation proceedings.

Pursuant to the actions brought, Serbian courts delivered six judgements finding for the victims in five of the cases.<sup>33</sup> The courts ordered Serbia and individuals to pay damages to the victims of torture, illegal detention and racially motivated attacks totalling 3,940,000 dinars [about €50,000].

### **2.7.2. Representing victims of torture, discrimination, forced enlistment and other forms of human rights violations**

In 2007, HLC represented 37 victims before courts in Serbia and Montenegro in proceedings instituted from 1998 to 2004. In the monitored period, courts in Serbia delivered 14 judgements in cases brought by HLC lawyers by 2004 over discrimination and violations of the right to freedom from torture and of other basic human rights.

### **2.7.3. Representing Roma victims of torture and discrimination**

In September 2007, pursuant to an action brought by the HLC, the Veliko Gradište District Court ordered Ivan Životić to pay by way of compensation for non-pecuniary damage 550,000 dinars to Roma I.R., who was under age when he was sexually abused by Životić.

### **2.7.4. Judgements in cases brought by HLC**

Pursuant to an action brought by the HLC, the Belgrade First Municipal Court delivered a judgement in July 2007 ordering Serbia to pay Radmila and Dragomir Petrović 1,000,000 dinars each for the death of their son on the premises of the police station in the Belgrade district of Vračar in January 2002.

33 In June 2007, the Novi Pazar Municipal Court accepted the HLC's claim brought on behalf of Bosniak Fazlija Đerlek, who had been tortured in October 1995, ordering the Republic of Serbia to pay 500,000 dinars in damages. The Belgrade First Municipal Court dismissed the HLC's action brought on behalf of Antun Siladev, a Croat from Senta in Vojvodina, who was seriously wounded at his workplace by unidentified VJ members in September 1991. HLC appealed the decision within the statutory time-limit.

The Niš Municipal Court rendered a judgement in August 2007 ordering the persons who attacked the Roma Dragiša Ajdarević on racial grounds to pay him 150,000 dinars in damages. HLC appealed the judgement.

In July 2007, the Belgrade First Municipal Court delivered a judgement ordering the Serbian state to pay Himzo Kamberović and Kasim Hajdarević 1,690,000 dinars in damages for being subjected to police torture during a weapons collection action in Sandžak in February 1994.

In October 2007, the Belgrade First Municipal Court ordered the Serbia state to pay 300,000 dinars in damages to Munir Šabotić, who was abused by members of State Security in Novi Pazar in 1994 in an attempt to extract from him false evidence against accused Party of Democratic Action (SDA) officials. HLC appealed the judgement.

In November 2007, the Belgrade First Municipal Court ordered the Serbian state to pay Alija Halilović of Novi Pazar 1,300,000 dinars in damages for his illegal 498-day detention during 1993 and 1994.

On 4 October 2007, the Belgrade District Court confirmed the February 2007 judgement of the Belgrade First Municipal Court awarding the plaintiffs, Zoran Todorović and Danijela Bogojević, compensation for non-pecuniary damage totaling 1,220,000.<sup>34</sup>

On 18 April 2007, the Belgrade District Court confirmed the judgement of the Belgrade First Municipal Court ordering Serbia to pay damages of 120,000 dinars to Đorđe Lazarević for being tortured in September 2000 by members of the Serbian MUP during an opposition protest against the Milošević regime.

#### **2.7.5 Representing victims of forced mobilization**

In 2007, HLC continued to represent 53 victims of forced enlistment on whose behalf it had brought seven actions for damages before Serbian courts from 1998 to 2001. The courts delivered six judgements in the period, finding Serbia guilty in five of the cases of illegal arrests and refugee enlistment and ordering it to pay 49 refugees by way of compensation for non-pecuniary damage sums ranging from 40,000 to 680,000 dinars (about €500 to €8,500).

#### **2.7.6. Representing members of *OTPOR***

During 2007, HLC represented 11 members of the *OTPOR* movement on whose behalf it had brought four actions for damages in the second half of 2000 on charges of illegal deprivation of liberty during the Milošević rule. In 2007, the Supreme Court of Serbia delivered two judgements ending proceedings instituted by HLC on behalf of 10 *OTPOR* members, ordering the state to pay those illegally deprived of their liberty a total of 1,170,000 dinars.

#### **2.7.7. Representing victims of other forms of human rights violations**

During 2007, HLC began representing victims of other forms of human rights violations. It represented 10 victims of property rights violations, unlawful displacement and discrimination.

#### **2.7.8. Representing victims human rights violations in criminal proceedings**

On 19 April 2007, the Belgrade Fourth Municipal Court found Aleksandar Nikolić, a security guard employed by the *Akapulko* club, guilty of violating the equality of citizens by denying entry to three Roma in July 2003. The court sentenced on Nikolić to a suspended prison term of two years. The second defendant, Aleksandar Sabo, was acquitted.

34 During the night of 21-22 January 2003, several policemen entered their flat in Kruševac by mistake, beating up Zoran Todorović and ill-treating Danijela Bogojević.

### 2.7.9. Building a collection of ICTY trials transcripts in B/C/S languages

The ICTY publishes transcripts of trials in English and French, but prosecutors, judges, lawyers, victims' families and interested individuals from states in the territory of the former Yugoslavia who do not speak these languages cannot obtain a full insight into the proceedings. When the trial of Slobodan Milošević opened on 12 February 2002, HLC started making preparations to launch a project involving the building up of a collection of ICTY trials transcripts in the B/C/S languages. At the beginning of 2004, HLC began transcribing audio records from the Milošević trial hearings held during 2002. By the end of February 2007, it had finished the transcription and editing of transcripts of 476 trial days.

By the end of 2007, HLC had transcribed audio recordings from 731 trial days on some 33,000 A4 pages: 476 relating to the Milošević trial, 60 to the Naser Orić trial, 64 to the Mitar Vasiljević trial and 131 to the Mrkšić trial. From January to December 2007, HLC produced 8,719 A4 pages of transcribed and edited material from a total of 207 trial days. By April audio recordings from 64 trial days had been transcribed in the B/C/S languages. By the end of the year, transcriptions had been made from 12 days of the Orić trial and 131 days of the Mrkšić trial.

## 3. Public Information and Outreach

As part of its efforts towards the establishment of transitional justice, HLC keeps the public, Serbian institutions and interstate organizations informed through statements, reports, conferences, bulletins, *Forum for Transitional Justice*, news conferences, web pages and publications. In 2007, HLC published 67 statements,<sup>35</sup> 11 transitional justice bulletins, several issues of the *Forum for Transitional Justice* periodical, one documentary film, one video record from an examination of witnesses, 45 volumes of transcripts from the ICTY trial of Slobodan Milošević in the B/C/S languages, one transcript from a round table entitled *Genocide Judgement of the International Court of Justice* and five reports on the state of minority rights in Kosovo.

### 3.1. Public information

#### 3.1.1. Collection of transcripts from the Milošević trial in the B/C/S languages

HLC printed 11 volumes of transcripts from the Milošević trial in 2006 and the remaining 34 volumes, in 1,000 copies, in 2007.

<sup>35</sup> The HLC's announcements are carried by the media, mostly by the daily *Danas*, which publishes them without comments; on the other hand, the tabloids *Kurir* and *Pravda* regularly present them in a negative context.



The volumes do not follow the chronological sequence of the proceedings: volumes 1–11 relate to the prosecution’s presentation of evidence regarding Kosovo, and volumes 12–26 contain transcripts from trials at which the defence presented its evidence regarding the armed conflict and incidents in Kosovo.

The volumes 27–45 relate to the Prosecution’s presentation of evidence under the Croatia and BiH indictments.

The volumes have been made available to prosecutor’s offices and war crimes courts in Serbia, Croatia, BiH and Montenegro, lawyers participating in war crimes trials, state institutions, libraries, universities, university professors of history, law, sociology and political sciences, political parties, human rights organizations, associations of victims’ families, and researchers of the armed conflicts in the former Yugoslavia. 250 copies of volumes 1–26 were distributed in Kosovo and volumes 27–45 in BiH and Croatia. In Serbia and Montenegro, the complete series (volumes 1–45) was distributed. HLC distributed a total of 800 copies and has kept 200 copies for the time when social dialogue opens on war crimes and responsibility.

### **3.1.2. Regional debate: the International Court of Justice genocide judgement**

In September 2007, HLC published discussion transcripts from the round table on the International Court of Justice genocide judgement, held in Belgrade on 29 June. The book was published in English and Serbian in 500 copies. It was the first book in the region on the judgement delivered by the International Court of Justice in the BiH genocide case. Other than to the round table participants, copies of the book were given to all university libraries in the states in the territory of the former Yugoslavia. Fifty copies of the book were kept.

The book presents the opinions and positions of the participants in the debate, including members of the Bosnian and Serbian teams. For instance, the book contains the opinion of Sakib Softić, head of the BiH team, that although the judgement did not bring justice to the genocide victims to the extent they expected, he hoped that the judgment would set in motion a process of amending the BiH Constitution with a view to primarily changing the territorial organization of BiH, that is, abolishing Republika Srpska (RS). On the other hand, the speakers from RS argued that since only some members of the RS Army and MUP committed the genocide, the Army and MUP as a whole could not be held responsible. Experts from the BiH Federation insisted that the fact that some members of the RS Army and MUP committed the genocide was proof enough of the responsibility of the RS Army and MUP for the crime. In their opinion, the participation and responsibility of Serbia were proved by the ICJ’s finding that the conflict in BiH was an international armed conflict with the participation of the BiH Army and the Army of the SFRY, that is, of the FRY and its successor Serbia.

The book quotes members of the Serbian team as saying that in their opinion they succeeded ‘professionally – as lawyers’ in preventing the establishment of a link between Serbia and the genocide. The members of the Serbian team dismissed the objection that the ICJ had not taken into account the existence of edited parts of documents, saying that the ICJ had judged such documents unnecessary.

### **3.1.3. Ethnic communities in Kosovo in 2006<sup>36</sup>**

In September 2007, HLC published a report on respect for the rights of ethnic communities in Kosovo in 2006, jointly with a report on a round table discussion held in Albanian, Serbian and English on 17 February 2007. The report, entitled *Ethnic Communities in Kosovo in 2006*, was printed in 500 copies. The report was made available to institutions in Kosovo and Serbia, UNMIK, embassies and offices of EU member states, nongovernmental organizations for human rights and media. The report was transmitted in electronic format to some 300 addresses.

### **3.1.4. Forum for Transitional Justice**

In April 2007, HLC published the first issue of the periodical *Forum for Transitional Justice* which addresses the problems and challenges of post-conflict societies in the states in the territory of the former Yugoslavia regarding the establishment of justice for the misdeeds committed during the armed conflicts.

The periodical features texts on transitional justice mechanisms, application of transitional justice mechanisms in the states in the territory of the former Yugoslavia, documents such as the report of UN Secretary-General Kofi Annan on the rule of law and transitional justice, a statement by the late Miroslav Deronjić, a witness in the Milošević case, about the formation of the Red Berets unit in BiH and his meeting with the former head of Serbian State Security, defendant Jovica Stanišić, on the eve of the Serb forces’ entry into Srebrenica, as well as texts under the joint title *Challenges of Transitional Justice*.

### **3.1.5. Transitional Justice Bulletin**

In 2007, HLC published 11 bulletins on transitional justice in English and Serbian. The bulletins include interviews with the ICTY Chief Prosecutor, Carla Del Ponte, with the brother of the three Bytyqi brothers murdered by members of the Serbian MUP after their release from the Prokuplje District Prison, and with the leading human rights activist in Peru, Francisco Soberon. In addition, the bulletins contain information about actions for damages for past human rights violations, civil society regional consultations on the establishment of the truth about war crimes, war crimes trials, and the future of the ICTY archives.

<sup>36</sup> The report is available in electronic format on the HLC web page.

### 3.1.6. HLC website

In the second half of 2007, HLC began building a new website featuring statements, bulletins, reports, analyses, transcripts from trials, regional conferences on truth-searching in relation to past events, round tables, video records of events, transcripts from public victim hearings and other material, contributions and data regarding transitional justice and HLC activities to establish responsibility, justice and truth about war crimes. The new website will be launched in the first quarter of 2008.

### 3.1.7. HLC library

The library consists of volumes dealing with transitional justice. There are a total of 2,674 titles including 2,411 books and 263 periodicals. The library stock also includes photocopies of 101 books that are yet to be appropriately electronically catalogued. In 2007, HLC obtained or was presented with 272 titles including 251 books and 21 periodicals.

## 3.2. Outreach

HLC organizes public discussions on matters of transitional justice in the form of conferences, round tables, seminars, consultations, public victim hearings and judicial truth promotion. HLC makes video recordings of each event available on its website. In 2007, HLC produced the documentary about the Scorpions unit.

### 3.2.1. Čelebići 1992 – beyond reasonable doubt

On 24 February 2007, HLC organized the fifth conference on war crimes, dedicated to the judicial truth established by the ICTY and the voice of victims. Investigators of the Prosecutor's Office and legal officers with the trial chamber that delivered the judgement in *Mucić et al* spoke about the war crimes committed against the Serb civilians, residents of villages in the municipality of Konjic (BiH), who were detained in the Čelebići camp. Victims of illegal detention and eviction next testified about the injustice and suffering to which they had been subjected. The conference was held in cooperation with the ICTY Belgrade Outreach Office and attended by 224 people including victims, representatives of Serbian institutions and international organizations, political party members and nongovernmental organization activists. There were also 70 university students and secondary school graduates from Belgrade, Novi Sad, Niš and Zrenjanin. Representatives of the Bosniak association Izvor from Prijedor were also in the audience, the first public manifestation in Serbia of solidarity by victims from one ethnic group with victims from another ethnic group.

A crew from *XY films* from Sarajevo produced a 30-minute video report on the conference that was shown by several local TV stations in Serbia.

### 3.2.1.1. Public debates on local TV channels

Video footage from four conferences on judicial truth and the voice of the victims organized by HLC in 2005 and 2006 – Srebrenica – beyond reasonable doubt, Foča '92 – beyond reasonable doubt, Prijedor – beyond reasonable doubt, and Čelebići – beyond reasonable doubt – was shown by four local TV stations: Spekter in Sombor, TV Mladenovac, TV Valjevo and TV Kuršumljija.

### 3.2.2. Scorpions Home Movie

HLC is the producer of the documentary about the Scorpions unit which is responsible for the killing of six prisoners from Srebrenica in July 1995 and 14 Albanian women and children in Kosovo in March 1999.<sup>37</sup> The film was shown on B92 television on 10 April 2007, the day the War Crimes Trial Chamber announced its judgement against five members of the unit. The film was next screened in Stockholm in May, New York and Washington in June, the European Parliament in July, at Leeds Metropolitan University on 18 November 2007, and in London (Goldsmiths, University of London and Frontline media centre) on 21 November 2007.

By the end of the year, the documentary had also been shown on television in BiH and Kosovo. Invitations have been extended to screen the film at the documentary film festivals in Zagreb in March and Prague in June 2008. HLC has made 500 copies of the film in DVD format: 200 in English and 300 in Serbia. The disks are available together with a booklet containing a transcript of the film.

### 3.2.3. Conferences

In 2007, HLC organized two conferences, five round tables, a seminar, and a public discussion of the ICTY's achievements during the term of Chief Prosecutor Carla Del Ponte.

#### 3.2.3.1. From impunity to accountability

On 17 March 2007, HLC held in Belgrade a conference entitled *From Impunity to Accountability* with 148 participants including university students and secondary school pupils. The speakers discussed impunity for war crimes, the willingness of the institutions to address the problem, and the role of media and journalists in creating a culture of accountability for past war crimes. The session entitled *Politically and Ethnically Motivated Murders* was devoted to a discussion of the impunity of the perpetrators of numerous crimes with a political and ethnic background, trials of politically motivated killings and pressure on the courts.

<sup>37</sup> The War Crimes Chamber of the Belgrade District Court sentenced Slobodan 'Boca' Medić, the unit's commander, and Branislav Medić to 20 years in prison, Pera Petrašević to 13 and Aleksandar Medić to five years, acquitting Aleksandar Vukov of the charges of a war crime against the Bosniak civilians from Srebrenica.

### **3.2.3.2. Regional debate: the International Court of Justice genocide judgement**

On 29 June 2007, HLC organized a regional debate in Belgrade on the genocide judgement of the International Court of Justice. Thirty-five experts from BiH, Croatia and Serbia took part in the discussion. The event was attended by 60 observers: students and representatives of nongovernmental organizations, the Srebrenica victims' association, and international institutions and foreign embassies. Among the participants were also members of the BiH and Serbian teams of lawyers representing the prosecution and defence respectively. The discussion took place in three sessions: *Legal Analysis of Sentence Merits*, *Moral, ethical and Political Consequences of Judgement* and *Questions and Answers*. The victims – mothers and children of those killed in Srebrenica – spoke at the last session.

The conference was reported on by many print and electronic media from Serbia, Croatia and BiH conveying the opinions and arguments of the participants. The conference was also covered by Radio Free Europe, ARD and Deutsche Welle.

### **3.2.3.3. Carla's List**

On 13 December 2007, HLC screened, jointly with the Centre for Cultural Decontamination, the documentary film *Carla's List* in Belgrade's Veljković Pavilion. There was also a discussion of the achievements, problems and challenges of the ICTY during the term of Carla Del Ponte as Chief Prosecutor. The film was shown the same day in Sarajevo, Zagreb and The Hague. The organization Pravo Ljudski and the Research and Documentation Centre screened the film in Sarajevo, Document screened it in Zagreb, and Stichting Movies That Matter screened it in The Hague. The panellists in Belgrade were Nataša Kandić, Biljana Kovačević Vučo, YUCOM president, Borka Pavićević, Centre for Cultural Decontamination director, and Dejan Anastasijević, journalist with the weekly *Vreme* and witness at the Milošević trial. The participants commended the determination and energy of Carla Del Ponte, who has succeeded in bringing many ICTY indictees to justice though not the two most wanted ones, Ratko Mladić and Radovan Karadžić. As the ICTY's and Carla Del Ponte's greatest achievement, the participants pointed out the fact that the culture of impunity in the states in the territory of the former Yugoslavia had been dealt a blow by trying the wartime leaders.

The film was screened on the last day of Carla Del Ponte's term as ICTY Chief Prosecutor. HLC produced a 10-minute video recording of the film.

### **3.2.3.4. Reparations Seminar**

In September, HLC held a seminar in Belgrade dealing with reparations for victims of past human rights violations. The lecturers, international experts, spoke about the victims' rights to reparation, the experience of other countries, the role of civil society – especially the role of human rights organizations and victims' associations

in the process of proposing, formulating and developing reparation programmes. The panellists included experts of the International Centre for Transitional Justice (ICTJ) and Francisco Soberon, founder and director of APRODEH. Soberon is a leading human rights activist in Peru and the world. The seminar was attended by some 90 people including representatives of human rights organizations, associations of victims' families and associations of camp detainees from BiH, Croatia, Serbia, Montenegro, and Kosovo.

### ***3.2.3.5. Round table on respect for the rights of ethnic minorities in Kosovo in 2006***

The report *Ethnic Communities in Kosovo in 2006* was presented on 14 February 2007 at a round table in Priština/Prishtinë attended by minority community representatives (26) and 46 representatives of central, local, and international institutions in Kosovo. The round table and the finding of HLC-Kosovo were reported by Radio Television of Kosovo, RTV 21, *Koha Ditore*, *Zeri*, *Yeni Donem*, *Alem*, and the foreign media establishments Voice of America and AFP. Of the Serbian media, the daily *Danas* and the production house Mreža also covered the event.

70

### ***3.2.3.6. Round tables on the application of the Law on the Use of Language and the Anti-Discrimination Law in Kosovo***

In 2007, HLC-Kosovo organized three round tables: Application of the Law on the Use of Language in the Process of Education of Minorities in Kosovo, Application of the Law on the Use of Language in Kosovo Institutions, and Application of the Anti-Discrimination Law and the Law on the Use of Language in Public Companies in Kosovo.

The round table on the application of the Law on Use of Language in the education process in Kosovo took place in Priština/Prishtinë on 9 July 2007. The discussion centred on HLC-Kosovo report distributed to the participants in advance. A total of 34 representatives of municipal education offices and of the Ministry of Science and Technology of Kosovo took part. The round table was attended also by teachers of schools instructing pupils from minority communities in Kosovo. The round table was covered by RTK and RTV 21. The second round table, held on the occasion of the publication of the report on the Application of the Law on Use of Languages in Kosovo Institutions took place in Priština/Prishtinë on 22 October 2007. All the participants were given copies of the report in advance. Thirty-five representatives of local and central Kosovo institutions, international nongovernmental organizations and the OSCE mission in Kosovo took part in the discussion. The event was covered by reporters for RTV 21, Radio Blue Sky, and RTK. The third round table, on the application of the Anti-Discrimination Law and the Law on Use of Language in Public Companies in Kosovo was held in Priština/Prishtinë on 24 December 2007. Thirty-two representatives of public companies, UNMIK and UNHCR, and

local nongovernmental organizations took part in the discussion. The round table was covered by RTK, RTV 21 and Radio Kosovo. These round tables caught the attention of the body politic and media in Kosovo.

## **4. Regional cooperation**

On 6 April 2004, the regional partner organization HLC, IDC, and Documenta signed a protocol on cooperation in documenting war crimes and the fight against impunity in states in the territory of the former Yugoslavia. The partner organizations held three meetings in 2007 at which they discussed continuing projects and a joint regional programme of transitional justice 2008-09. The programme was finalized in December 2007. It consists of three projects: development of a joint information system, holding regional consultations on establishing and telling facts about war crimes, monitoring national war crimes trials, drawing up lists of actual victims, and monitoring the process of establishment of transitional justice at regional level. Furthermore, the partner organizations held two meetings with their international partner, the International Centre for Transitional Justice (ICTJ) concerning consultations to set up a regional body to ascertain facts about past misdeeds.

71

In 2007, the partner organizations had two joint regional projects: monitoring war crimes trials<sup>38</sup> and civil society consultations on establishing facts about war crimes.

### **4.1. Civil society consultations on truth-seeking and truth-telling about war crimes**

The regional partner organizations held the first meeting on truth-seeking and truth-telling about the past in Belgrade on 5 September 2005, with ICTJ expert support. The meeting was addressed by Juan Mendez, ICTJ president. Participants included 15 representatives of human rights nongovernmental organizations from the region. The participants agreed that there was a social need for an effective and independent regional instrument for truth-seeking and truth-telling about past crimes. The participants also concluded that the setting up of such a mechanism calls for international backing as well as wide support of civil society including human rights nongovernmental organizations and victims' and youth associations. After the initial meeting, the partner organizations started preparations for organizing consultations. They opted for a coalition and for consultations in the form of regional forums and small-group discussions, in the shape of national and regional consultations. By the end of 2007, the HLC, Documenta and the IDC had organized

38 For further information on monitoring national trials, look up national war crimes trials in Serbia, Croatia, BiH and Kosovo in Justice and Institutional Reform.

a regional forum in Sarajevo and another in Zagreb. Each forum had over 300 participants: representatives of victims' veterans' and refugees' associations, political analysts, historians, sociologists, judges and prosecutors, political party members, national parliament deputies and representatives of international institution and human rights nongovernmental organizations.

Small-group regional consultations (35 participants) were held with artists in Belgrade in December 2006, and with young people, journalists and human rights organizations from the region in 2007. National consultations with young people were also held in 2007. Unlike the forums, consultations take place within small groups (35 participants). The initial meeting with victims' associations' representatives from all post-Yugoslav societies, organized by the ICMP, took place in Brčko (BiH) on 3 March 2007. The partner organizations introduced the truth-seeking and truth-telling initiative and presented the results of the making of name lists of killed and disappeared persons in BiH. Representatives of associations from Serbia and Republika Srpska were critical of the HLC, objecting to its alleged disregard for the Serb victims, while those of victims' associations from Croatia and the BiH Federation praised their cooperation with the HLC. All the 34 participants in the meeting expressed their approval of a regional approach to ascertaining the truth about war crimes.

#### **4.1.1. The first regional forum**

##### **Establishing the Truth in the Post Conflict Period: Initiatives and Perspectives**

The forum was held in Sarajevo on 5-6 May 2006, the participants including human rights organizations and victims' associations from states in the territory of the former Yugoslavia, representatives of the ICTY, Court and Prosecutor's Office of BiH, members of the Presidency of BiH, international and regional transitional justice experts, representatives of the Office of High Representative in BiH and OSCE, and members of parliamentary political parties jointly preparing with the US Institute of Peace a draft law on the establishment of a national commission for establishing the truth and confidence in BiH.

The conference participants expressed their support of the trials before the ICTY as well as of national war crimes trials with a view to establishing the individual criminal responsibility of war crimes perpetrators, being aware that criminal trials alone are not enough to establish the truth about the recent past, ensure justice for the victims and prevent a repetition of violence.

Participants in the discussion stressed the need for public debates and broad consultations on the ways and initiatives to establish the truth. The debates and consultations would take place within the framework of civil society, parliament



and other institutions. The participants agreed to the forum organizer's proposal that following civil society consultations the parliaments of the post-Yugoslav states should be invited to launch discussions on instruments for facing the past, adopt a programme and formulate strategies for the establishment of justice in relation to past human rights violations. The debate underlined the importance of a regional approach to establishing the truth and the need to intensify regional cooperation regarding war crimes trials.

The participants encouraged the organizers of the Sarajevo conference to continue regional consultations on initiatives and perspectives for establishing the truth, and to include in the debate associations of victims, veterans, refugees and displaced persons, journalists, artists, writers, historians, experts and political party and institution representatives.

#### **4.1.2. The second regional forum**

##### **Establishing the truth about war crimes and conflicts**

The forum took place in Zagreb on 8-9 February 2006. There were about 300 participants including representatives of victims', veterans' and refugees' associations, activists of human rights organizations from the region, and representatives of international organizations, Croatian, BiH and Serbian judiciaries, and the ICTY. The event was also attended by artists, historians, journalists and regional parliament deputies.

The participants adopted the following conclusion: Societies in the region need to discuss and critically examine their own responsibility for the heavy burden of the past, as well as to document all cases of plight and injustice committed against all victims, regardless of their ethnic, political, and social background. The regional partner organizations, Documenta, HLC and IDC, will continue to organize public discussions and consultations within the civil society in a more energetic effort to encourage the governments and parliaments in the region to take part in debates on the procedures and model of establishing and telling the truth with a view ensuring respect for the dignity of the victims and building a culture of accountability. The necessity of a regional approach to establishing and telling the truth has been borne out in practice by the cooperation in the region between prosecutors' offices, court, human rights organizations and victims' associations, making it possible for the voice of the victims to be heard during war crimes trials. Regional artists have undoubtedly shown their willingness to help fight the culture of silence, lies, war crimes denial, and attempts to revise historical facts about the past by tackling these issues in their work. Regional partner organizations will encourage cooperation between government institutions, victims' associations, human rights organizations, and educational institutions in their effort to support debates and consultations on truth-telling and truth-seeking mechanisms. Regional partner organizations will organize forums on transitional justice in Kosovo and in Montenegro which will

also include civil society organizations from Macedonia and Slovenia. Once discussions and conclusions from all debates and consultations held with representatives of victims' associations and other groups and organizations in civil and political societies are unified, and no later than the beginning of 2008, ideas the participants wanted to convey will be much cleared, and it will be possible to identify the needs of victims' associations and other groups with respect to injustices inflicted upon them in the past, as well as their need to know the truth and see the justice done. A very significant role in truth-telling and truth-seeking processes belong to ICTY archives, which must be readily available to all interested parties in the region and must be preserved for future generations. All conference participants agreed that it is necessary to compile a list of names of all victims in order to create a historic memory and thwart revisionism attempts. Regional partner organizations will organize the next forum in Belgrade at the end of May, 2007. In the meantime, consultations with victims' associations, war veterans' associations, and other marginalized groups such as women's, refugees', and youth initiative groups will be held. Meetings will be also held with professional groups and transitional justice experts.

#### **4.1.3. National consultations**

**74**

On 27 June 2007, the IDC organized consultations with youth organizations from BiH. Besides those from the IDC and the HLC, participants included representatives of nine youth organizations: Quaker Peace Social Witness [QPSW], young Liberals of BiH, Youth Forum – Faculty of Economics, IAN, Civitas, Youth Information Agency, Sarajevo Faculty of Law and Human Rights Youth Initiative. They stressed that the system of formal education must keep up with the process of dealing with the past and that the subject of human rights must become its component part. They believe that young people must be given access to facts about the past and the opportunity to pass them on to others through peer-to-peer education.

On 8 July 2007, HLC held consultations in Belgrade on truth-searching and truth-telling mechanisms with 24 young activists of nongovernmental organizations, student associations, young political party members and the Youth Initiative for Human Rights from Serbia. The participants agreed that a regional approach was important for the very fact that the wars themselves were regional in character and that a narrower approach might thwart the process of facing the past. The young participants attached prime importance to institutionalizing the process of dealing with the past both through setting up a commission tasked with gathering and presenting facts and through influence on state organs to recognize and support such an institution. They also pointed out the importance of building a truth-seeking mechanism from the bottom up, that is, from civil society to state, not vice versa. The problems of young people – apathy, lack of interest, insufficient regional mobility and poor knowledge of facts – stem from the legacy of the past. There is also the need to modify the system of education first of all by taking small steps to 'gain

entry' into the system, through cooperation with civic education teachers which would gradually lead to direct contacts with primary and secondary school pupils. The participants chose the following key words that best sum up their attitudes to facing the past: *activism, regional integration and institutionalization*. On 20 July 2007, Documenta organized in Zagreb *consultations with youth organizations on dealing with the past*. The participants were 17 activists and representatives of non-governmental organizations, student associations, young political party members and student organizations. The participants adopted the following recommendations: within the framework of the education system, it is necessary to develop mechanisms for appropriate and multi-perspective presentation to young people of facts from Croatia's more recent past and to run continuous workshops for secondary school pupils to that end. National and regional volunteer camps should also be organized to focus on peace education and dealing with the past. It was also found necessary to set up creative workshops to address questions linked to dealing with the past, with the possibility of jointly preparing exhibits for *Our Three-Day Museum* events at such workshops. Cooperation with the schools must be strengthened. A regional conference devoted to various activities connected with dealing with the past would also be important. In view of this, it is necessary to map out the existing civil society initiatives and projects on dealing with the past.

75

#### **4.1.4. Regional consultation with youth**

On 21 October 2007, there was a consultation in Belgrade with 37 young participants from Croatia, BiH, Serbia, Montenegro, Slovenia, Macedonia and Kosovo. There were also 10 monitors. The young approved the regional initiative on establishing the truth about the war crimes committed. In their opinion, their role will be to create a positive context in the region in support of a regional truth-seeking and truth-telling body. In this connection, they suggested regional travelling schools, volunteer camps, various seminars and training courses to offer young people education in transitional justice. The existing human rights schools could focus part of their activities on transitional justice instruments. In common with the other participants in the consultation, the young ones would like to play part in the debate on the mandate of the regional body. Victim name lists and the public naming of mass war crimes sites were suggested as important tasks of the regional body. The young participants said that the regional fact-finding body initiative must have civil society's transparent support in order to be legitimate in relation to the national governments and the UN. Such support could be in the form of a broad regional coalition or petition for the establishment of the regional body. It was proposed to create an interactive Internet portal for presenting video and audio records, photographs, documents, court documents, testimony, documentaries and other materials helping to establish facts about war crimes and armed conflicts in the former Yugoslavia. Informing and educating young people on a factual basis was said to be the condition of building a future, values and respect for human rights. For this to

be possible, facts that are accepted throughout the region must be established, and this can only be achieved by dialogue. Young people will engage in various forms of cooperation within volunteer camps, regional travelling schools, exhibitions, training courses, seminars and so on to encourage regional dialogue on the war crimes committed, human rights, liberties, youth policies. Participants in regional dialogue ought to develop joint reaction mechanisms in response to any denial of judicially established war crimes or glorification of persons charged with war crimes and genocide. It was also seen necessary to map out the initiatives and projects in the region which are concerned with the past and which could provide backing for a regional initiative to establish the facts about the war crimes. This is necessary in order to ascertain possible gaps and trigger synergies for new activities and projects. Besides the regional context, local and national levels are also important sources of support for the initiative to set up the regional truth-seeking and truth-telling body. A *youth friendly* approach is important for youth activation. Information and communication concerning past event must be developed so as to take account of young people's style, language, message and attitude to the past and future. A multi-disciplinary approach is acceptable to the young.

#### **4.1.5. Regional consultation with journalists**

The consultations were organized on 29 September 2007 in Sarajevo in cooperation with the 'BH Journalists' Association, Independent Society of Journalists of Vojvodina, Independent Association of Journalists of Serbia, International Centre for Education of Journalists (Croatia) and the ICTJ. The participants included 31 journalists, two youth organization activists and three representatives of the ICTJ.

The participants stressed that the creation of a regional public context for establishing and telling the truth about the war crimes committed in the former Yugoslavia were indispensable to breaking with the legacy of the past and to building a democratic future. They agreed that the only way to prevent manipulation of victims and recurrence of crimes in the future is to create regional-level public opinion supportive of seeking and telling the truth substantiated by facts.

The participants' specific initiatives included launching a Regional Journal with reports from war crimes trials, documentaries and stories about war crimes and society's response to them, to be broadcast once a month by the public television establishments in the region. At first, the journal would consist of war crime reports broadcasts by national public TV channels and later, depending on the availability of funds, reports specially produced for the journal. The regional consultation organizers took it upon themselves to ask the public TV channel directors and news programme editors to support the production and operation of the regional channel. The participants also proposed creating a Regional *Dealing with the Past* Portal for materials relating to war crimes and breaking with the past, such as films, reports, video records, oral history, photographs, texts, books, etc.

#### **4.1.6. Regional consultation with human rights organizations**

Consultations with representatives of human rights organizations (33) from Serbia, BiH, Croatia, Kosovo, Montenegro, Macedonia and Slovenia, also attended by three young participants in regional youth consultations and 20 monitors, were held in Belgrade on 29 October 2007. The participants discussed regional and other initiatives for regional truth-seeking and truth-telling about war crimes.

The human rights organizations from the region approve of the initiative for setting up a regional, independent and official body for truth-seeking and truth-telling about war crimes committed in the former Yugoslavia. The human rights organizations' priority is the establishment of a coalition to publicly advocate the setting up of the body. Because the regional truth-seeking and truth-telling body for war crimes must focus on the victims, the creation of a public platform for public hearing of victims is equally important. The human rights organizations support making victim name lists in Serbia, Croatia, Montenegro and Kosovo, such lists having already been made in BiH. Human rights organizations regard creating a portal storing materials relating to dealing with the past a priority in their future cooperation. Representatives of human rights nongovernmental organizations proposed that the process of consultation should include victims and victims' associations, war veterans, religious groups, professional associations, representatives of political parties and legislative, judicial and executive power and distinguished individuals. The participants consider that debate should be launched as soon as possible on the character of the regional truth-seeking and truth-telling body in order above all to define its objectives, mandate, structure and method of work.

77

#### **4.2. Training of monitors of national war crimes trials**

The regional partner organizations, Documenta and the Centre for Peace, Non-violence and Human Rights from Osijek (Croatia), coordinator of the Monitoring National War Crimes Trials, organized a two-day training course for national war crimes monitors (29-30 November 2007).

### **5. HLC's 15th anniversary**

On 5 December, HLC commemorated its 15th anniversary. The event focused on the early period during which HLC chiefly documented war crimes and human rights violations linked to the armed conflict. Ivanka Kostić, Danica Vučenić, Sanda Kosanović, Filip Švarn and Nora Ahmetaj reminisced about their part in documenting the war crimes and police repression. Professor Dejan Janča, the first Council president, was also among the speakers. Executive Director Nataša Kandić introduced to the guests Natalija Lazić, a girl from Veliko Gradište, as someone who had been courageous enough to stand up against injustice, with Kandić's deputy Sandra

Orlović adding that Lazić had been taken to court on charges of *slander* merely for daring to speak up in public about the sexual abuse of an underage Roma.

## **6. Donor support**

In 2007, HLC's activities were supported, through projects and institutional support, by the following foundations, agencies and embassies: Austrian Development Agency, Charles Stewart Mott Foundation, Council of Europe, European Commission, Fund for an Open Society in Serbia, Kosovo Foundation for an Open Society, Swedish Helsinki Committee for Human Rights, Open Society Institute, United States Institute of Peace, US National Endowment for Democracy, Freedom House, Impunity Watch, King Baudouin Foundation, KIOS Finnish Foundation for Human Rights, Robert Bosch Foundation, Tides Foundation, USAID, OAK Foundation, OSCE, Swiss Ministry of Foreign Affairs, German Ministry of Foreign Affairs, and the British, Netherlands, and US embassies in Belgrade.

In 2007, the HLC's financial affairs and reports were audited by two audit firms: Konsultant–revizija and the international audit firm Fabel, Werner & Schnittke GmbH. Both audit firms found that HLC had highly professional financial systems and financial operations.



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34

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