



## Organization for Security and Co-operation in Europe Mission to Croatia

### BACKGROUND REPORT: DOMESTIC WAR CRIME TRIALS 2002

#### I. EXECUTIVE SUMMARY

In 2002, the OSCE Mission to Croatia continued to observe a trend toward increased efforts by the Croatian authorities (prosecutors and judiciary) to pursue all individuals responsible for war crimes, regardless of the national origin of perpetrators and the victims. For example, a judicial investigation against two Croats for the killing of Serb and Hungarian civilians in Paulin Dvor was initiated, at least in part based on evidence obtained through cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY).

Nevertheless, war crime prosecution in Croatia in 2002 continued, in spite of these efforts, to be affected by procedural and substantive problems, particularly related to the national origin of both defendants and victims.

- Large discrepancies continued in the numbers of Serbs and Croats that faced prosecution.
- *In absentia* proceedings, a judicial phenomenon applied almost exclusively to Serbs, continued.
- A significant differential between Serbs and Croats was observed in the rate of conviction and acquittal.
- Nearly one-quarter of convicted Serbs and all convicted Croats received sentences less than the legally prescribed minimum for the most serious criminal offenses due to the generous use of mitigating circumstances.
- The Supreme Court reversed a very high percentage of Serb convictions and upon re-trial, a majority of Serbs previously convicted were exonerated.
- Other remaining concerns include the length of proceedings on both ends of the spectrum, very fast proceedings as well as delays in proceedings.

Taken together, these observations indicate that despite reform-oriented statements by central authorities, reforms have not been consolidated throughout the institutions responsible for the even-handed administration of criminal justice. They also suggest that the Supreme Court must serve as a significant corrective for the actions of trial courts.

#### II. INTRODUCTION

1. This report represents the first review by the Mission of all war crime proceedings it followed during a prior calendar year. The discussion, analysis, and conclusions are based on first-hand court monitoring at the local and appellate level as well as a review of relevant laws and case

documents. The cases are generically referred to as “war crime” cases; they do, however, include charges for a range of criminal acts such as genocide, war crimes against civilian population, and war crimes against prisoners of war alleged or proven to have occurred during the armed conflict from 1991 to 1995 in various parts of Croatia. The report examines through the use of statistical data general trends observed in all cases monitored during 2002. A similar report for 2003 will be issued in spring 2004 and will include an expanded discussion of individual cases.

2. Government information about the scope of domestic proceedings for war crimes since 1991 varies significantly depending upon the source [see Appendix X].<sup>1</sup> However, some general observations can be extrapolated. Final verdicts have been entered against 800 to 900 persons. Procedures are pending against another 1400 to 1500 persons, including indictments against 450 to 500 people and judicial investigations against another 850 to 900 persons.

Most proceedings were initiated during or immediately after the conflict. However, an increasing but still relatively small number of proceedings have been initiated in recent years. Two-thirds of the proceedings were initiated in a handful of courts, but nearly three-quarters of Croatia’s county courts have been involved in war crime proceedings.<sup>2</sup> The Government acknowledges that of the more than 550 convictions since 1991, most were obtained in *in absentia* proceedings.<sup>3</sup> Many proceedings involved criminal allegations against large groups of individuals, ranging to more than 400 persons in some cases.

3. The Mission has monitored war crime trials since its inception in 1996, primarily through its legal staff deployed across the country. Initially, the Mission was concerned by the lack of basic fair trial guarantees for defendants, the overwhelming majority of whom were Serbs accused of crimes against Croats. In numerous cases, convictions and lengthy prison sentences, many imposed after *in absentia* trials on mass indictments, were based on evidence of questionable quality. Many proceedings were characterized by notions of collective guilt rather than individualized determinations of guilt under generally applicable standards of due process.

The Mission devoted considerable resources to this monitoring not only because of the rule of law questions involved, but also due to the significant impact such proceedings have on the perception among the Serb community, both inside and outside Croatia, regarding the feasibility of their return and re-integration into Croatian society as a national minority.

4. The Mission’s concerns have been validated by candid statements by some Government officials in recent years who have advocated remedial measures and who have focused on the need

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<sup>1</sup> As highlighted in Appendix X, Government statistics about the total number of indictments range from a low of approximately 1400 to a high of approximately 1700. While the total number of verdicts is between 800 and 900, there is a significant difference in the distribution of convictions and acquittals, with the number of convictions ranging from a low of approximately 550 to a high of 780, and acquittals from a low of 93 to a high of 230.

<sup>2</sup> Government of Croatia response to EU questionnaire, Annex 12. War crime proceedings were initiated in the following 15 of Croatia’s 21 counties: Bjelovar (622 persons – 11 cases; 427 persons in one case); Dubrovnik (210 persons – 12 cases); Gospic (102 persons – 21 cases); Karlovac (115 persons – 34 cases); Osijek (592 persons); Pozega (159 persons – 14 cases); Pula (3 persons – 3 cases); Rijeka (9 persons – 2 cases); Sibenik (147 persons – 28 cases); Sisak (371 persons); Split (142 persons); Varazdin (6 persons); Vukovar (465 persons); Zadar (219 persons); Zagreb (7 persons).

<sup>3</sup> Government of Croatia response to EU questionnaire, p. 449.

to individualize guilt. In July 2002, the Chief State Prosecutor, acknowledging irregularities in earlier proceedings, issued instructions to local prosecutors mandating continuation of the review initiated in 2001 of approximately 1850 pending war crime cases to determine the sufficiency of the evidence prior to continuing with prosecution.<sup>4</sup> The former Minister of Justice in February 2003 was quoted in the media as stating *‘The Government decided two years ago that uncovering, investigating and processing war crimes committed during and after the Homeland War was unsatisfactory.’*<sup>5</sup>

In contrast, some judicial representatives have blanketly asserted that the judiciary is fully prepared to conduct war crime proceedings<sup>6</sup> without raising any questions about the judiciary’s past handling of war crime prosecutions.

5. Since 2001, the Mission has observed increased efforts by the authorities (prosecutors, and judiciary) to pursue all individuals responsible for war crimes, regardless of the national origin of the perpetrators and the victims. The Mission’s concerns about the impartiality of tribunals conducting trials against minority defendants remain. However, the more ethnically balanced approach to prosecution has led to a new concern, namely, whether state institutions are able to dispense impartial justice in cases involving members of the ethnic majority accused of crimes against the minority.

6. The Mission has also followed implementation of the 1996 Amnesty Law, which, while excluding war crimes, is applicable to other crimes committed from August 1990 to June 1996. In numerous instances where Serbs were originally charged with war crimes, the charge was later re-classified as one subject to the Amnesty Law. Although individuals who have been amnestied are relieved of criminal consequences, they often continue to face problems in daily life. For this reason, the Mission continues to follow the use of amnesty, which has been applied to more than 21,255 persons, the overwhelming majority of which are Serbs.<sup>7</sup> However, extensive discussion of the implementation of the Amnesty Law is beyond the scope of this report.

### III. CASES MONITORED AND GENERAL TRENDS

1. In 2002, the Mission monitored approximately 75 war crime proceedings in 12 county courts (trial courts) as well as in the Supreme Court (court of appeal). In general, the court proceedings were conducted in the presence of the defendant, although there continues to be some proceedings that are conducted fully or partially *in absentia* (20 per cent of total cases). The proceedings were nearly evenly split between those against groups of defendants and those against

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<sup>4</sup> Those instructions stated: ... [i]t is a fact that at the time of the Homeland War and also afterwards, county state prosecutors’ offices were submitting investigation requests indiscriminately in a number of cases, and based on insufficiently verified criminal charges, they were issuing dubious indictments for war crimes against a significant number of people on the basis of investigations conducted in an inferior manner, while those indictments did not concretize the illegal activity on the part of the particular defendants containing elements of war crimes.” 11 July 2002 Instructions from the Chief State Prosecutor Mladen Bajic to all County State Attorneys.

<sup>5</sup> Interview in *Jutarnji List* on page 5, 23 February 2003

<sup>6</sup> See also Government of Croatia response to EU questionnaire, p. 449.

<sup>7</sup> Source: Ministry of Justice, Criminal Registry Office, 31 October 2002.

individuals. The monitored cases involved more than 200 persons, out of whom four-fifths were Serbs, one-fifth were Croats, with very small numbers of other minorities, i.e., Bosniaks, Macedonians, and Hungarians. Two Serbs were extradited from third countries, i.e., one each from Switzerland and Hungary, on the basis of international arrest warrants.

2. The proceedings monitored by the Mission account for 80 to 90 per cent and more (depending upon the stage of procedure) of all war crime proceedings reported by the Chief State Prosecutor in his 2002 Annual Report. Hence, they constitute a sufficiently representative sample from which general conclusions can be drawn. Because of the significant differences in the number of proceedings initiated against Serbs and Croats, the conclusions regarding trends affecting Serbs are more reliable than trends concerning Croats.

#### **A. The degree of evenhandedness based on national origin**

1. The vast majority of war crime proceedings monitored in 2002 involved Serbs alleged to have committed war crimes against Croats. At all stages of proceedings, except for acquittals, Serbs constituted the bulk of the defendants, e.g., 28 of 35 arrests; 29 of 51 releases; 114 of 131 persons under judicial investigation; 19 of 32 persons indicted; 90 of 115 persons on trial; 47 of 52 persons convicted, and 64 of 80 persons with appeals to the Supreme Court. Croats constituted 14 of 22 persons acquitted.

2. Verdicts issued in 2002 demonstrated a significantly different rate of conviction and acquittal depending upon the national origin of the defendant. While 83 per cent of all Serbs were found guilty, only 18 per cent of Croats (sample based on a limited number of cases) were convicted.

3. *In absentia* proceedings continued in 2002, ranging from a low of 1 to a high of more than 50 *in absentia* defendants in a given case. *In absentia* proceedings were brought almost exclusively against Serbs. A majority of all Serbs convicted of war crimes in 2002 were convicted *in absentia*.<sup>8</sup>

4. Re-trials in 2002 resulted in the exoneration of more than half of previously convicted Serb defendants, either through acquittal or the prosecution abandoning the charge.

5. More than one-quarter of all persons convicted of war crimes in 2002 received sentences less than the legally prescribed minimum. However, all convicted Croats (small sample) received less than the minimum while slightly less than one-quarter of Serbs received less than the minimum. Sentencing is appropriately subject to the individual circumstances of the defendant. However, the reduction of sentences to between 1 to 3 years through the application of mitigating circumstances,

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<sup>8</sup> *In absentia* proceedings may only be conducted under exceptional circumstances, i.e., when there are particularly important reasons to try an accused although he/she is absent. Upon the State Attorney's request for initiation of proceedings a panel of judges must decide whether such circumstances exist in the individual case. (Article 305, Paragraph 4, Law on Criminal Procedure.) Recognizing that many old investigations were not conducted properly, the Chief State Prosecutor in 2001 ordered local prosecutors to refrain from requesting the commencement of proceedings where the accused was absent and to not pursue cases if such a request had already been made earlier. See also 11 July 2002 Instructions from Chief State Prosecutor (*n absentia* proceedings to be pursued by local prosecutors only upon explicit consent of Chief State Prosecutor).

such as military service during the Homeland War or parenthood, appear inconsistent with the severity of the crimes for which the accused have been convicted. This suggests either a lack of certainty about the justification for the conviction or a reluctance to punish the defendants.

6. The Supreme Court in 2002 granted 18 of 19 defendants' appeals, a reversal rate of 95 per cent. Nearly 70 per cent of the decided appeals involved Serbs convicted in *in absentia* trials and 90 per cent of all granted appeals involved Serbs.

## **B. Length of Proceedings**

1. The time required for a war crime prosecution depends on the evidence and complexity of the case. Given that caveat, some proceedings monitored by the Mission in 2002 raised concerns about length of proceedings on both ends of the spectrum, very fast proceedings as well as delays in proceedings.

2. Delays were observed at key stages of proceedings in some cases. This included delays in the issuance of written verdicts of conviction by trial courts, delays in the scheduling of re-trials by trial courts after successful appeals, and delays by the Supreme Court in the resolution of appeals when a defendant remained in detention. Significant delays in the overall length of proceedings were also observed in some cases.

3. In several cases, Serb defendants were convicted in trials lasting one or two days with one or two witnesses, the speed of the proceedings raising concerns about the sufficiency of the evidence to support the conviction.

## **C. Distribution of Proceedings**

1. The Vukovar and Osijek County Courts continued in 2002 as in past years to conduct the largest number of war crime proceedings, the next most active courts being the Gospić and Sibenik County Courts. In contrast to past years, more courts, 12 out of the 21 county courts, became involved in prosecuting war crimes.

2. A majority of the 7 fully *in absentia* and half of the 8 partially *in absentia* proceedings continued as in past years to be conducted by courts in the Danube Region. However, in 2002 other courts, notably the Gospić and Zadar County Courts have also initiated such proceedings.

3. The distribution of cases among county courts to some extent reflects the geographic location of major war activities. The early tendency was to focus on crimes by Serbs against Croats in the areas where a significantly large Serb population remained after the conflict. The engagement of an increasing number of courts in these procedures reflects an increased number of proceedings against Serbs in return areas as well as proceedings against Croats for crimes related to Croatian military and police actions against Serbs. At least one court outside the areas of direct conflict, e.g., Rijeka County Court, has become involved as a result of a change of venue sought by the prosecution.

4. The crime on which most proceedings were based was war crimes against civilian population; the second most common being war crimes against prisoners of war. Although based on only a small number of cases, only Serbs were prosecuted for genocide.

#### **IV. STAGE-SPECIFIC FINDINGS: PRE-TRIAL**

The Mission monitored war crime proceedings through all procedural stages. The following sections set forth statistical information and findings for each procedural step. Serbs accounted for the vast majority of all persons arrested, while Serb returnees and long-term residents were nearly evenly represented among those arrested. Nearly two-thirds of all those arrested in 2002 were released from detention during the year, some as a result of the prosecution abandoning further proceedings while others continued to face criminal proceedings while at liberty. More than one-third of cases pursued to judicial investigation were dropped in 2002, while indictments, against both individuals and groups, were issued in the remaining two-thirds of cases.

##### **A. Arrests/Re-arrests [See Appendix I]**

1. The Mission followed 35 arrests (28 Serbs, 6 Croats, 1 Macedonian) in 2002. Serbs accounted for 80 percent of all those arrested, while Croats accounted for slightly less than 20 percent. The Mission estimates that this represents the vast majority of all war crime arrests in 2002 given its close cooperation with local police administration. At the end of 2002, approximately one-third (12 persons – 8 Serbs, 4 Croats) of the 35 persons arrested in 2002 remained in detention. In addition, the Mission followed the re-arrest of 6 Croats who had been released from detention during trial, but were ordered back into detention by the Supreme Court after an appeal by the prosecution.

2. Both long-term residents and recent returnees were among those arrested. Long-term residents constituted a slight majority of all persons arrested (19 persons – 13 Serbs, 6 Croats). Three active service police officers from the Danube Region were among the Serb long-term residents arrested.

3. Recent returnees account for more than half of all Serbs (15 of 28) arrested in 2002. In earlier years, a greater percentage of Serb arrests were returnees.

4. Croats were arrested on the basis of recently initiated proceedings whereas Serbs were arrested both on the basis of proceedings that had been pending for some years as well as new proceedings. The “re-activation” of old proceedings against Serbs could be a result of the ongoing review of pending proceedings by the local prosecutors.

##### **B. Releases [See Appendix II]**

1. The Mission in 2002 followed the release of 51 persons (29 Serbs, 20 Croats, 1 Bosniak, and 1 Macedonian) from detention that had been previously arrested for war crimes.
2. Twenty-three of those released (20 Serbs, 2 Croats, 1 Macedonian) had been arrested in 2002, accounting for 65 per cent of all 2002 arrests, while 28 (9 Serbs, 18 Croats, 1 Bosniak) had been arrested prior to 2002.
3. Those released fell into three broad categories to which the length of detention also corresponds.
  - a. Further proceedings were abandoned against approximately 20 per cent (10 of 51) of persons released in 2002 because their arrest had resulted from mistaken identity or the prosecution abandoned further charges due to lack of evidence. These types of arrests and releases occurred in multiple jurisdictions and primarily affected Serbs as indicated:
    - 8 persons (5 Serbs, 2 Croats, and 1 Macedonian) were released when the prosecution dropped charges due to lack of evidence
    - 2 Serbs were released on the grounds of mistaken identity
  - b. More than 40 per cent (22 of 51) of those released faced continuing criminal proceedings but were released because the maximum pre-trial detention period had expired or detention was deemed unnecessary:
    - 1 Serb was released because the 6-month maximum period of detention during the investigative phase expired without an indictment being raised<sup>9</sup>
    - 2 Croats were released because maximum pre-trial detention period expired without a verdict (later remanded into custody)
    - 19 persons (18 Serbs, 1 Croat) were released to face further proceedings from liberty as further detention was deemed unnecessary, four of which were released within 48 hours
  - c. Approximately 40 per cent of those released were acquitted or had completed their sentence after conviction as indicated:
    - 14 persons (12 Croats, 1 Serb, 1 Bosniak) were released after acquittal by the trial court and remained at liberty pending the outcome of the prosecutor's appeal to the Supreme Court
    - 5 persons (3 Croats, 2 Serbs) were released after having served or nearly served their full sentence after conviction
4. The 51 persons released spent from less than one month to more than one year in detention prior to their release, 50 per cent spent 6 months or less in detention while the other half were detained 6 months or longer.

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<sup>9</sup> The maximum period of investigative detention from the date of arrest until the issuance of an indictment is 6 months. (Article 106, Paragraph 4, Law on Criminal Procedure.) Based on the cases monitored by the Mission, it appears that courts respect the six-month deadline and continue a suspect's detention beyond 6 months only if an indictment has been issued within the six month period.

- Less than 1 month 16 persons (13 Serbs, 2 Croats, 1 Macedonian)<sup>10</sup>
- 1 to 3 months 2 persons (2 Serbs)<sup>11</sup>
- 3 to 6 months 8 persons (4 Serbs and 4 Croats)<sup>12</sup>
- 6 to 12 months 10 persons (2 Serbs and 8 Croats)<sup>13</sup>
- more than 12 months 15 persons (8 Serbs, 6 Croats, 1 Bosniak)<sup>14</sup>

### **C. Judicial Investigations [See Appendix III]**

1. The Mission monitored 28 cases in which judicial investigations [“investigations”] were ongoing in 2002,<sup>15</sup> involving a total of 17 Croats and 114 Serbs.
2. According to Mission information, 14 investigations were completed in 2002, resulting in the issuance of 10 indictments against 22 persons (9 Serbs, 13 Croats). In 4 cases involving 5 Serbs, the prosecution abandoned further proceedings.
3. In 2002, the Mission followed one case involving 26 Serbs in which the war crime charge was re-classified during the investigation to the offense of Armed Rebellion that is subject to the 1996 Amnesty Law. The court amnestied the defendants.<sup>16</sup>

### **D. Indictments [See Appendix IV]**

1. In 2002, the Mission followed 11 indictments, involving 32 persons (19 Serbs, 13 Croats), accounting for nearly 80 per cent of all indictments officially reported to have been issued in 2002.<sup>17</sup> Ten indictments were issued in 2002, while one was issued prior to 2002.
2. Most (6 of 9) of the indictments against Serbs were individual indictments, whereas in prior years most involved groups of Serbs, many of them with a large number of indictees. Indictments against Croats, while limited in number, were all against groups of two or more.
3. In 2002, two indictments were based on responsibility for ordering or planning the alleged crimes,<sup>18</sup> all others were based on responsibility for committing the crimes alleged.

### **V. STAGE SPECIFIC FINDINGS: TRIALS/RE-TRIALS [See Appendices V and VI]**

<sup>10</sup> Releases by county court and number of cases: Gospic 1, Sibenik 3, Split 1, Vukovar 4, Osijek 4.

<sup>11</sup> Releases by county court and number of cases: Gospic 1, Vukovar 1.

<sup>12</sup> Releases by county court and number of cases: Bjelovar 4, Sibenik 2, Vukovar 2.

<sup>13</sup> Releases by county court and number of cases: Rijeka 2, Sibenik 4, Vukovar 1, Split 1.

<sup>14</sup> Releases by county court and number of cases: Rijeka 1, Osijek 4, Vukovar 4, Split 5, Sisak 1.

<sup>15</sup> As the judicial investigation phase is not open to the public, the Mission was unable to do in-court monitoring during this phase.

<sup>16</sup> RH v. Durkovic Aleksa et al. [“Branijn Vrh”] (Osijek County Court)

<sup>17</sup> In contrast, the 2002 Annual Report of the State Prosecutor reported that 41 persons were indicted in 2002.

<sup>18</sup> RH v. Milos Loncar (Osijek County Court); RH v. Kadjevic et al. (Vukovar County Court).



1. In 2002, war crime trials were ongoing in more than half of Croatia's county courts, with the Vukovar and Osijek County Courts conducting the largest number of trials. Trial outcomes remained significantly correlated to the national origin of the defendants. While the time required to conduct a war crime trial is case-specific, some cases nonetheless raised concern about length of proceedings both in terms of very fast as well as delayed proceedings, both at key stages as well as in the overall proceeding.

2. In 2002, the Mission followed 34 war crime trials involving 115 persons (22 Croats, 90 Serbs, 2 Bosniaks, and 1 Hungarian). This included 12 re-trials, 6 after successful appeal to the Supreme Court and 6 after defendants previously convicted *in absentia* were arrested and requested re-trial. The trials monitored included 3 fully and 6 partially *in absentia* trials/re-trials after appeal. More than 70 per cent of the trials ongoing in 2002 were completed in 2002. Most trials were completed within 6 months or less; 25 per cent were completed in less than 1 month while 10 per cent lasted longer than one year.

#### **A. Verdicts – Convictions, Acquittals, Dismissals [See Appendices VII and VIII]**

1. In the 25 completed trials, including 8 re-trials, monitored during 2002, courts issued verdicts in relation to 77 individuals (57 Serbs, 17 Croats, 2 Bosniaks, and 1 Hungarian). Most trials resulted in either the conviction or acquittal of all defendants; however, in 2 cases some defendants were acquitted while others were convicted. In three cases involving Serbs, the court issued a verdict rejecting the charges after the prosecutor had withdrawn them.

2. Of the 77 persons put on trial for war crimes in 2002, the overall conviction rate was 67 per cent while the overall acquittal rate (or charges dismissed) was 33 per cent. However, the cases monitored by the Mission demonstrated a significantly different rate of conviction and acquittal depending upon the national origin of the defendants. While 83 per cent of all Serbs (47 of 57) were found guilty, only 18 per cent of Croats (3 of 17) (sample based on a limited number of cases) were convicted.

3. Focussing more narrowly on 2002, verdicts were issued in 2002 against a total of 18 persons (6 Serbs, 12 Croats) who were indicted in 2002; the 6 Serbs were all convicted, while the 12 Croats were all acquitted.

4. A total of 52 persons<sup>19</sup> (47 Serbs, 3 Croats, 1 Bosniak, and 1 Hungarian) were convicted in 19 cases. Serbs constituted 90 per cent of all those convicted, while they constituted 74 per cent of persons against whom verdicts were issued. A total of 22 persons<sup>20</sup> (14 Croats, 7 Serbs, 1 Bosniak) were acquitted in 9 cases, with Croats constituting nearly two-thirds of those acquitted, while they constituted slightly more than one-fifth of persons against whom verdicts were issued.

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<sup>19</sup> The Mission's data corresponds to the 2002 Annual Report of the State Prosecutor that indicates 52 persons were convicted in 2002.

<sup>20</sup> In contrast, the 2002 Annual Report of the State Prosecutor states that 16 persons were acquitted in 2002.

5. Nearly 60 per cent of all Serb convictions (28) as well as 1 Hungarian were convictions *in absentia*.

6. As a general rule, verdicts issued in 2002 after re-trial were more lenient than the verdicts issued in the original trial, both in cases following successful appeals to the Supreme Court and upon grant of a new trial where the previous conviction had been *in absentia*.

Re-trials in 2002 resulted in the exoneration of more than half (5 of 9 persons or 55%) of previously convicted defendants. Three persons (2 Serbs, 1 Bosniak) convicted in the first trial were acquitted on re-trial.<sup>21</sup> Charges against 2 Serbs who were convicted during the first trial were dropped after substantial completion of the re-trial.

Four Serbs were re-convicted during the re-trial, however the sentences imposed were significantly lower than in the first trial.<sup>22</sup> One Croat acquitted in the first trial was re-acquitted after re-trial.<sup>23</sup>

7. The punishment prescribed by law for the war crimes for which convictions were issued in 2002 ranges from a minimum of 5 to a maximum of 20 years imprisonment.<sup>24</sup> More than one-quarter of all the persons convicted received sentences less than the prescribed minimum due to the application of mitigating circumstances. All Croats convicted (3) received a sentence of one year, while slightly less than one-quarter of Serbs convicted (11) received sentences ranging between 2 and 3 years. The maximum sentence of 20 years was imposed on only one defendant present for trial, namely a Bosniak convicted of war crimes committed on the territory of Bosnia and Herzegovina and two *in absentia* defendants in a group conviction.<sup>25</sup> The vast majority of severe sentences (13 to 20 years) issued in 2002 were imposed against *in absentia* defendants (21 Serbs, 1 Hungarian).<sup>26</sup>

## **B. Length of Proceedings**

1. Approximately 25 per cent of trials were completed in less than one month and resulted in the conviction of 18 Serbs and 3 Croats and acquittal of one Croat. In several cases, Serb defendants were convicted in trials lasting only one or two days with only one or two witnesses. More than half of all proceedings were completed within 3 months and resulted in the conviction of 25 persons (22 Serbs, 3 Croats) and acquittal of 12 persons (7 Serbs and 5 Croats).

2. 24 of the 25 trials were completed within the following amount of time at the listed courts:

- Less than 1 month 6 trials involving 22 persons (Osijek 2; Gospic 1; Bjelovar 2;

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<sup>21</sup> RH v. Kasim Hekic and Mihail Husnik [“Vukovar II” group]; RH v. Cedomir Jaglicic.

<sup>22</sup> RH v. Bizic (1<sup>st</sup> sentence *in absentia* 5 years; re-trial sentence 3 years); RH v. Djukic (1<sup>st</sup> sentence 5 years; re-trial sentence 2 years); RH v. Macura (1<sup>st</sup> sentence 10 years; re-trial sentence 3 years); RH v. Banic (1<sup>st</sup> sentence *in absentia* 20 years, re-trial sentence 13 years).

<sup>23</sup> RH v. Hrastov

<sup>24</sup> The substantive criminal law applicable to war crimes committed during the 1991-1995 conflict is the 1993 Criminal Law that sets 20 years as the maximum period of imprisonment.

<sup>25</sup> RH v. Fikret Abdic; 2 defendants in RH v. Budac et al.

<sup>26</sup> RH v. Budac et al.; RH v. Horvat et al.



in detention,<sup>33</sup> one appeal was lodged by a Croat convicted as a JNA member who was in detention,<sup>34</sup> and 13 appeals were lodged by 13 Serbs convicted *in absentia*.<sup>35</sup>

2. Eighteen of nineteen defendant's appeals decided by the Supreme Court in 2002 were granted, with the guilty verdict quashed, and a new trial ordered, representing a reversal rate of 95 per cent. The primary basis for the Supreme Court's positive decision on the defendants' appeals was that the trial court had incorrectly established the facts. In one case, the guilty verdict and sentence was confirmed. Nearly 70 per cent of the decided appeals involved Serbs convicted in *in absentia* trials. Delays by the Supreme Court in deciding on appeals were of concern in some cases, particularly where defendants remained in detention.

3. In 2002, the Mission followed 33 cases involving 15 Croats, 64 Serbs, and 1 Bosniak in which appeals were pending at the Supreme Court, 22 filed by defendants, 16 filed by prosecutors. (In some cases both parties filed appeals.) In 4 cases, all defendants were *in absentia*.<sup>36</sup>

## **B. Length of Proceedings**

1. Judgements by the Supreme Court on the 19 appeals decided in 2002 were issued within a minimum period of three months and a maximum of more than two years as follows:

- 3 to 6 months                      5 Serbs (Vukovar 2 cases)
- 6 to 12 months                    2 Serbs (Karlovac 1 case; Vukovar 1 case)
- 12 to 18 months                  2 Serbs (Bjelovar 1 case; Vukovar 1 case)
- 18 to 24 months                  5 Serbs, 1 Croat (Karlovac 1 case; Sibenik 1 case)
- 24 or more months                4 Serbs (Zadar 1 case)

2. As of the end of 2002, in two appeals that have been pending for more than one year, defendants remained in detention.<sup>37</sup>

When defendants are in detention, the Supreme Court must issue and deliver its decision on appeal to the trial court within three months from the date of receipt of the file from the trial court (Article 392, Paragraph 2, Law on Criminal Procedure). In some cases, it appears that, even accounting for delays in the trial court's delivery of the file, the Supreme Court has not decided the appeals of detained defendants within the three-month statutory period.

3. A number of appeals, particularly prosecutors' appeals of acquittals, have been pending at the Supreme Court for one to two years or longer. While no defendants are detained in such cases, delays leave acquitted defendants under the cloud of possible new trials or incarceration. In at least

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<sup>33</sup> RH v. Milan Strunjas (Karlovac County Court); RH v. Savo Gagula (Bjelovar County Court); RH v. Petar Djukic ["Tompojevci" group], RH v. Dusan. Cuckovic, RH v. Milenko Macura, (all Vukovar County Court.).

<sup>34</sup> RH v. Ivica Jelusic (Sibenik County Court)

<sup>35</sup> RH v. Savicin et al. ["Bapska" group – 4 defendants] (Vukovar County Court); RH v. Macakanja et al. – 4 defendants (Zadar County Court); RH v. Jovetic et al. – 5 defendants (Karlovac County Court).

<sup>36</sup> "Bapska" group; "Branjina" group; RH v. Jovetic et al.; RH v. Macakanja et al.

<sup>37</sup> 1 year 9 months (Bjelovar County Court – State v. Vlado Savic) and 14 months (Karlovac County Court – State v. Milan Grubjesic).

one case, a lengthy delay has served as the basis for a third country granting protected status to an individual claiming asylum.

## **APPENDIX I**

### **WAR CRIME ARRESTS IN 2002 BY JURISDICTION: 35**

| <b>Court</b>          | <b>Croats</b> | <b>Serbs</b> | <b>Others</b> |
|-----------------------|---------------|--------------|---------------|
| Sisak County Court    | 0             | 4            | 0             |
| Bjelovar County Court | 0             | 1            | 0             |
| Pozega County Court   | 0             | 1            | 0             |
| Gospic County Court   | 1             | 4            | 0             |
| Split County Court    | 0             | 1            | 0             |
| Sibenik County Court  | 3             | 5            | 0             |
| Vukovar County Court  | 0             | 7            | 0             |
| Osijek County Court   | 2             | 5            | 1             |

Suspects were arrested for the following crimes (total exceeds 35 as some suspects were arrested on more than one charge):

- War crimes against civilian population: 19 persons (16 Serbs, 2 Croats, 1 Macedonian)
- War crimes against prisoners of war: 13 persons (9 Serbs, 4 Croats)
- Genocide: 5 Serbs
- Brutal treatment of the wounded, sick or prisoners of war: 1 Serb

**APPENDIX II**

**RELEASES IN 2002 BY JURISDICTION: 51**

| <b>Court</b>          | <b>Croats</b> | <b>Serbs</b> | <b>Others</b> |
|-----------------------|---------------|--------------|---------------|
| Sisak County Court    | 0             | 2            | 0             |
| Bjelovar County Court | 4             | 1            | 0             |
| Pozega County Court   | 0             | 1            | 0             |
| Gospic County Court   | 1             | 1            | 0             |
| Sibenik County Court  | 5             | 5            | 0             |
| Split County Court    | 7             | 1            | 0             |
| Vukovar County Court  | 0             | 11           | 1             |
| Rijeka County Court   | 3             | 0            | 0             |
| Osijek County Court   | 0             | 7            | 1             |

### APPENDIX III

#### *JUDICIAL INVESTIGATIONS IN 2002 BY JURISDICTION: 28*

| <b>Court</b>         | <b>Croats</b> | <b>Serbs</b> | <b>Cases</b> |
|----------------------|---------------|--------------|--------------|
| Sisak County Court   | 0             | 2            | 2            |
| Gospic County Court  | 1             | 13           | 4            |
| Sibenik County Court | 6             | 5            | 6            |
| Osijek County Court  | 2             | 17           | 7            |
| Split County Court   | 8             | 0            | 1            |
| Pozega County Court  | 0             | 2            | 2            |
| Vukovar County Court | 0             | 75           | 6            |

#### **COMPLETED INVESTIGATIONS: 14**

| <b>Court</b>         | <b>Croats</b> | <b>Serbs</b> | <b>Cases</b> |
|----------------------|---------------|--------------|--------------|
| Sisak County Court   | 0             | 1            | 1            |
| Gospic County Court  | 1             | 3            | 2            |
| Sibenik County Court | 4             | 4            | 4            |
| Vukovar County Court | 0             | 2            | 2            |
| Split County Court   | 8             | 0            | 1            |
| Pozega County Court  | 0             | 1            | 1            |
| Osijek County Court  | 0             | 3            | 3            |

- War crimes against civilian population: 19 cases (Osijek 5; Vukovar 4; Sibenik 5; Gospic 2; Sisak 1; Pozega 1; Split 1)
- War crimes against prisoners of war: 7 cases (Sisak 1; Sibenik 1; Gospic 3; Pozega 1; Vukovar 1)
- Genocide: 3 cases (Osijek 2; Vukovar 1)



## ***APPENDIX IV***

### ***INDICTMENTS IN 2002 BY JURISDICTION: 11***

| <b>Court</b>         | <b>Croats</b> | <b>Serbs</b> | <b>Cases</b> |
|----------------------|---------------|--------------|--------------|
| Sibenik county court | 4             | 1            | 2            |
| Gospic county court  | 1             | 3            | 2            |
| Split county court   | 8             | 0            | 1            |
| Vukovar county court | 0             | 12           | 3            |
| Osijek county court  | 0             | 3            | 3            |

- War crimes against civilian population: 9 cases (Sibenik 2; Gospic 1; Split 1; Vukovar 2; Osijek 3)
- War crimes against prisoners of war: 2 cases (Gospic1; Vukovar 1)

**APPENDIX V**  
**TRIALS IN 2002 BY JURISDICTION**

**TRIALS ONGOING IN 2002: 34**

| <b>Court</b>                | <b>Croats</b> | <b>Serbs</b> | <b>Cases</b> | <b>Others</b> |
|-----------------------------|---------------|--------------|--------------|---------------|
| Sisak County Court          | 0             | 2            | 2            | 0             |
| Karlovac County Court       | 1             | 1            | 3            | 1             |
| Slavonski Brod County Court | 0             | 1            | 1            | 0             |
| Bjelovar County Court       | 4             | 2            | 3            | 0             |
| Gospic County Court         | 1             | 3            | 2            | 0             |
| Split County Court          | 8             | 0            | 1            | 0             |
| Zadar County Court          | 0             | 9            | 3            | 0             |
| Sibenik County Court        | 4             | 2            | 3            | 0             |
| Vukovar County Court        | 0             | 37           | 8            | 2             |
| Pozega County Court         | 0             | 1            | 1            | 0             |
| Rijeka County Court         | 4             | 0            | 1            | 0             |
| Osijek County Court         | 0             | 32           | 6            | 0             |

**TRIALS COMPLETED IN 2002: 25**

| <b>Court</b>                | <b>Croats</b> | <b>Serbs</b> | <b>Cases</b> | <b>Others</b> |
|-----------------------------|---------------|--------------|--------------|---------------|
| Sisak County Court          | 0             | 2            | 2            | 0             |
| Karlovac County Court       | 1             | 1            | 3            | 1             |
| Slavonski Brod County Court | 0             | 1            | 1            | 0             |
| Bjelovar County Court       | 4             | 2            | 3            | 0             |
| Gospic County Court         | 0             | 2            | 1            | 0             |
| Split County Court          | 8             | 0            | 1            | 0             |
| Zadar County Court          | 0             | 8            | 2            | 0             |
| Sibenik County Court        | 4             | 1            | 2            | 0             |
| Vukovar County Court        | 0             | 20           | 6            | 2             |
| Osijek County Court         | 0             | 20           | 4            | 0             |

**APPENDIX VI**  
**RE-TRIALS IN 2002 BY JURISDICTION**

**RE-TRIALS ONGOING IN 2002: 12**

| <b>Court</b>                | <b>Croats</b> | <b>Serbs</b> | <b>Cases</b> | <b>Others</b> |
|-----------------------------|---------------|--------------|--------------|---------------|
| Sisak County Court          | 0             | 1            | 1            | 0             |
| Karlovac County Court       | 1             | 0            | 1            | 0             |
| Slavonski Brod County Court | 0             | 1            | 1            | 0             |
| Bjelovar County Court       | 0             | 1            | 1            | 0             |
| Zadar County Court          | 0             | 1            | 1            | 0             |
| Sibenik County Court        | 0             | 1            | 1            | 0             |
| Vukovar County Court        | 0             | 21           | 5            | 1             |
| Pozega County Court         | 0             | 1            | 1            | 0             |

**RE-TRIALS COMPLETED IN 2002: 8**

| <b>Court</b>                | <b>Croats</b> | <b>Serbs</b> | <b>Cases</b> | <b>Others</b> |
|-----------------------------|---------------|--------------|--------------|---------------|
| Sisak County Court          | 0             | 1            | 1            | 0             |
| Karlovac County Court       | 1             | 0            | 1            | 0             |
| Slavonski Brod County Court | 0             | 1            | 1            | 0             |
| Bjelovar County Court       | 0             | 1            | 1            | 0             |
| Zadar County Court          | 0             | 1            | 1            | 0             |
| Sibenik County Court        | 0             | 0            | 0            | 0             |
| Vukovar County Court        | 0             | 4            | 3            | 1             |
| Pozega County Court         | 0             | 0            | 0            | 0             |

## APPENDIX VII

### CONVICTIONS AND SENTENCES IN 2002 BY JURISDICTION: 52

| Court                 | Croats | Serbs | Others |
|-----------------------|--------|-------|--------|
| Sisak County Court    | 0      | 1     | 0      |
| Karlovac County Court | 0      | 1     | 1      |
| Bjelovar County Court | 3      | 2     | 0      |
| Gospic County Court   | 0      | 2     | 0      |
| Sibenik County Court  | 0      | 1     | 0      |
| Zadar County Court    | 0      | 7     | 0      |
| Vukovar County Court  | 0      | 13    | 1      |
| Osijek County Court   | 0      | 20    | 0      |

| Sentence (Years) | Croats | Serbs                                | Others                             |
|------------------|--------|--------------------------------------|------------------------------------|
| 1 - 4            | 3      | 11                                   | 0                                  |
| 5 - 9            | 0      | 11<br>(incl. 6 <i>in absentia</i> )  | 0                                  |
| 10 - 14          | 0      | 14<br>(incl. 11 <i>in absentia</i> ) | 0                                  |
| 15 - 20          | 0      | 11 (all <i>in absentia</i> )         | 2<br>(incl. 1 <i>in absentia</i> ) |

Convictions were issued as follows (in 1 case, defendant convicted for more than one crime):

- war crimes against civilians: 18 cases
- war crimes against prisoners of war: 2 cases

## APPENDIX VIII

### ACQUITTALS IN 2002 BY JURISDICTION: 22

| <b>Court</b>                | <b>Croats</b> | <b>Serbs</b> | <b>Others</b> |
|-----------------------------|---------------|--------------|---------------|
| Karlovac County Court       | 1             | 0            | 0             |
| Bjelovar County Court       | 1             | 0            | 0             |
| Slavonski Brod County Court | 0             | 1            | 0             |
| Sibenik County Court        | 4             | 0            | 0             |
| Vukovar County Court        | 0             | 5            | 1             |
| Zadar County Court          | 0             | 1            | 0             |
| Split County Court          | 8             | 0            | 0             |

**APPENDIX IX**  
**APPEALS PENDING IN 2002 BY JURISDICTION**

**ALL PENDING APPEALS: 33**

| <b>Court</b>          | <b>Croats</b> | <b>Serbs</b> | <b>Cases</b> | <b>Others</b> |
|-----------------------|---------------|--------------|--------------|---------------|
| Karlovac County Court | 1             | 7            | 4            | 0             |
| Bjelovar County Court | 8             | 4            | 6            | 0             |
| Sisak County Court    | 0             | 1            | 1            | 0             |
| Gospic County Court   | 0             | 2            | 1            | 0             |
| Sibenik County Court  | 5             | 2            | 4            | 0             |
| Zadar County Court    | 0             | 6            | 3            | 0             |
| Vukovar County Court  | 1             | 17           | 8            | 1             |
| Osijek County Court   | 0             | 26           | 6            | 0             |

**COMPLETED APPEALS IN 2002: 9**

| <b>Court</b>          | <b>Croats</b> | <b>Serbs</b> | <b>Cases</b> | <b>Others</b> |
|-----------------------|---------------|--------------|--------------|---------------|
| Karlovac County Court | 0             | 6            | 2            | 0             |
| Bjelovar County Court | 1             | 1            | 1            | 0             |
| Sisak County Court    | 0             | 0            | 0            | 0             |
| Gospic County Court   | 0             | 0            | 0            | 0             |
| Sibenik County Court  | 1             | 0            | 1            | 0             |
| Zadar County Court    | 0             | 4            | 1            | 0             |
| Vukovar County Court  | 0             | 7            | 4            | 1             |
| Osijek County Court   | 0             | 0            | 0            | 0             |

## APPENDIX X

### Government Statistics on Domestic War Crime Proceedings

|  | October 2003 GoC Response<br>EU Questionnaire <sup>1</sup>  | 2001 Annual<br>Report<br>State Attorney | 2002 Annual<br>Report<br>State Attorney | Summer 2003<br>ICC Draft Law |
|--|---|---|---|------------------------------|
| <b>Total Proceedings</b>                   | 3181  | 4530                                    | 4625                                    | -                            |
| <b>Indictments</b>                         | 1373  | 1634                                    | 1675                                    | 1648                         |
| <b>Convictions</b>                         | 548 (final)   | 726                                     | 778                                     | 872 verdicts total           |
| <b>Acquittals</b>                          | 230 (final)   | 77                                      | 93                                      | -                            |
| <b>Indictments w/out<br/>final verdict</b> | 595   | -                                       | -                                       | 543                          |
| <b>Investigations</b>                      | 427 (investigations ongoing)<br>457 (investigations suspended<br>b/c defendant in absentia<br>893 (investigations closed/no<br>further proceedings) | -                                       | -                                       | 849                          |

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<sup>1</sup> Government of Croatia response to EU questionnaire, p. 449.