



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

BACKGROUND REPORT: DOMESTIC WAR CRIME TRIALS 2003

22 June 2004

I. EXECUTIVE SUMMARY

The OSCE Mission to Croatia observed continuing efforts by Croatian authorities toward the goal of even-handed prosecution of war crimes during 2003 and the first months of 2004. In 2004, the Government signalled renewed commitment to this goal in connection with its cooperation with the ICTY.¹ Most notable was the recognition by the Croatian authorities of the need to enhance the capacity of the judiciary to handle cases that may be transferred to Croatia from the ICTY. As a result, the Ministry of Justice and the ICTY started a series of trainings in May 2004. The Government also in 2004 proposed amendments to the Criminal Code. Similarly positive, a marked increase was noted in the dismissal of war crime proceedings against Serbs initiated in the early to mid-1990s that were characterized by various deficiencies, including allegations based on collective guilt. The Croatian public has also demonstrated an increasing acceptance of prosecuting war crime perpetrators regardless of national origin. Taken together, these indicators portend improving conditions for the conduct of domestic war crime trials.

Nevertheless, the national origin of defendants and possibly even more importantly that of victims continued to affect war crime proceedings in 2003. Significant conclusions can be made from a statistical comparison of the ethnic origin of defendants and victims at different stages of war crime proceedings. While there is no imperative that an equal number of Serbs and Croats should face prosecution for war crimes, it is noticeable that the discrepancy in the number of Serbs and Croats prosecuted for war crimes increased in 2003, with the number of Serbs facing prosecution increasing and the number of Croats decreasing from 2002. Perhaps more importantly, Serbs are more likely to be convicted than Croats. While the number of Croats who stand trial and are convicted is too low for a firm conclusion based on data for one year only, the observation of this discrepancy remains valid over time.

A significant number of unsubstantiated cases proceeded in 2003, resulting both in unwarranted detention as well as the expenditure of scarce judicial resources. In several cases, the prosecution had to abandon the charges during trial due to lack of evidence. Such proceedings involved almost exclusively Serbs. The number of *in absentia* proceedings—almost exclusively against Serbs—increased, particularly in Zadar.² Approximately 90 per

¹ The Mission has separately reported on the Government's cooperation in the first months of 2004 with the ICTY related to the surrender of 8 ICTY indictees, including the Chief Prosecutor's statement as echoed in the *Opinion* of the European Commission (EC) on Croatia's application for membership of the European Union (EU) that Croatia was in compliance with all ICTY obligations with exception of the arrest and transfer of Ante Gotovina. See Spot Reports from 12 March and 6 April and Background Report from 27 April.

² In the first five months of 2004, the Mission observed a significant decrease in *in absentia* proceedings. Of 11 individuals convicted during the first 5 months, only 2 were convicted *in absentia*. This development appears to

cent of all Serbs convicted were convicted *in absentia*. Approximately half of Serbs arrested were returning refugees with negative implications for the willingness of others to return.³ One third of the arrested returnees were later released with the charges abandoned. The Supreme Court reversed half of trial court verdicts against which appeals were lodged, the bulk of which involved convictions of Serbs.⁴ While the Supreme Court has acted as a significant corrective, the high reversal rate underlines the scope of problems in the trial courts. Delays continued at the trial courts as well as at the Supreme Court.

While the Government has recently taken initiatives to improve the capacity of the domestic judiciary to handle war crime trials, in particular cases transferred from the ICTY, the observations in this report suggest that further reform is necessary in order to achieve the stated Government objective of a uniform standard of criminal responsibility, regardless of national origin, as well as a single standard of justice for victims. The conditions for such reform are improving as a result of growing recognition among the public of the importance of even-handed prosecution of war crimes.

II. INTRODUCTION

1. This report contains statistical data related to domestic war crime proceedings monitored by the Mission during 2003 at the trial and appellate court level. It largely follows the format used in the 2002 annual war crime report and where relevant compares and contrasts to similar data from 2002. The report highlights developments and trends and provides analysis and conclusions at each stage of the procedure. The report also includes legal developments in the first months of 2004.

2. There was increased public discussion and public acceptance in 2003 and the first months of 2004 of the notion that within the context of the Homeland War, some members of the Croatian armed forces committed crimes against Serbs. There has also been public recognition that war crime prosecution has had a detrimental effect on the return of Serb refugees⁵.

3. A precedent was set in the Croatian judiciary in 2003 when the first trial of high-ranking Croatian military officers, the so-called "*Gospic Group*", for crimes against Serb civilians concluded with convictions and sentences of significant punishment.⁶ Although there were some protests against the verdict and some threats to court personnel during the trial, the verdict was generally received with relative calm by the public and government officials. The *Gospic Group* case both by its decision and its manner of conduct set an important milestone. However, this single case is an insufficient basis on which to declare the

be the result of the meetings between the Minister of Justice and the Presidents of County Courts in early 2004, asking them to refrain from conducting proceedings in the absence of the defendant.

³ 7 of 15 returnees arrested in 2003 were later released, charges were abandoned against 5 and proceedings continued against 2. In the first 6 months of 2004, of 13 returnees arrested, 6 were released. Charges were dropped against 4 and proceedings are pending against 2.

⁴ In the first 5 months, the Supreme Court reversed 7 of 10 (70 per cent) appeals.

⁵ For example, Professor Ivo Josipovic, Professor of Criminal Procedure Law at the University of Zagreb and Member of Parliament, was quoted in *Novi List* on 7 February 2004 as having stated that some trials against Serbs were used to discourage Serbs to return.

⁶ In March 2003, the Rijeka County Court convicted Tihomir Oreskovic, Mirko Norac, and Stjepan Grandic of war crimes against civilians, imposing sentences of 15, 12, and 10 years imprisonment, respectively. As of the issuance of this report, the defendants' appeal is pending at the Supreme Court.

Croatian judiciary fully prepared to process war crime cases, or to indicate that Croatia will vigorously pursue Croats for crimes against Serbs. For 2003 also saw the conviction in the *Karan* case in which the trial court held the Serb defendant guilty of 500 years of Serb oppression of Croats.⁷ [For further discussion of individual cases, see the Mission's Supplementary Report: War Crime Proceedings in Croatia and Findings from Trial Monitoring, 22 June 2004.]

4. The issue of war crimes was high on the political agenda during 2003 and was primarily discussed in the context of Croatia's co-operation with the ICTY and in relation to Croatia's application for EU membership.⁸ The UN Security Council in August 2003 explicitly acknowledged the nexus between Croatia's domestic prosecution of war crimes and its co-operation with the ICTY, observing that the success of the Tribunal's completion strategy depended on the capacity of domestic jurisdictions to prosecute cases transferred from the ICTY. In March 2004 the UN Security Council repeated its call for renewed efforts to ensure the timely implementation of the ICTY Completion Strategy.

5. Against this background, the Parliament in October 2003 adopted the *Law on the Implementation of the Statute of the International Criminal Court and Criminal Prosecution for Acts Against War and Humanitarian International Law* (ICC Law). The ICC Law primarily regulates Croatia's co-operation with the International Criminal Court, but also includes provisions relevant to proceedings transferred from the ICTY and provisions related to domestic war crime trials.⁹ In particular, the Law allows 4 County Courts, Osijek, Zagreb, Rijeka and Split, to assume jurisdiction over war crime proceedings and establishes a mechanism for moving cases to these courts.¹⁰

These 4 "special" courts appear to be primarily intended for proceedings in ICTY referred cases, although some cases that originate in Croatia may be referred to these courts, particularly from courts that do not have a sufficient number of judges to constitute a panel of 3 professional judges as required by the Law.¹¹ As of the date of this report, however, no cases had been referred to these special courts pursuant to the ICC Law. Hence, at the present time they exist primarily in the abstract.

6. Croatian authorities have recognized the need to enhance the capacity of the judiciary for purposes of dealing with cases that may be referred from the ICTY. The Ministry of Justice and the ICTY started a series of trainings in May and June 2004 and will continue in

⁷ In July 2003, the Gospić County Court convicted Svetozar Karan of having committed war crimes against prisoners of war, imposing a sentence of 13 years imprisonment. The Supreme Court granted Karan's appeal in January 2004 and ordered a new trial.

⁸ In response to the EC questionnaire, Croatia stated in October 2003 that it "is prepared to accept full and transparent international monitoring of war crime trials in accordance with the established constitutional and legal provisions according to which trials are public. Full and transparent international monitoring of war crimes trials exists already and representatives of international governmental and non-governmental organizations may be present at war crime trials." Government of Croatia response to EC Questionnaire, p. 450.

⁹ In addition, the ICC Law establishes a special "war crime prosecutor" to be appointed by the Chief State Prosecutor and establishes a police unit specialized for war crime investigation.

¹⁰ The ICC Law leaves intact the war crime jurisdiction of all county courts. It does not require that war crime cases be conducted in 1 of the 4 courts, but permits that possibility. Similarly, the ICC Law leaves intact the general provisions for seeking change of venue.

¹¹ The ICC Law prescribes that war crime trials, including re-trials, initiated after its effective date, be conducted before a panel of 3 professional judges. By late 2003, most county courts had appointed war crime panels and the Mission observed the implementation of this provision of the ICC Law in a number of newly initiated trials.

the autumn. The trainings addressed comparative aspects of the ICTY and Croatian law and practice related to war crime cases.

In addition, the United States State Department/Agency for International Development has recognized the need to upgrade various aspects of the judiciary in anticipation of the transfer of cases from the ICTY to Croatia and has thus pledged \$1.7 million in May 2004 for capacity-building activities.

The Mission supports additional training and other types of preparations by the judiciary and other authorities made in anticipation of ICTY referrals. Such training should include both substantive and practical aspects, with particular attention paid to the impartiality required of domestic war crime tribunals, witness protection, and international legal assistance. However, the number of cases that will be transferred from the ICTY is significantly smaller than the ongoing domestic caseload. Hence, while the ICTY completion strategy is an important and welcome catalyst for reform, reform measures should apply to all war crime cases in Croatia, not only those originating from the ICTY. To do otherwise could result in a two-tier system of justice as related to war crimes.

7. In 2003, the Mission observed a significant increase in the number of old charges against Serbs dropped by the prosecution for lack of evidence. This appears to be the result of the implementation of the case review ordered by the Chief State Prosecutor.¹² In his 2003 annual report, the Chief State Prosecutor highlights that as a result of those instructions several indictments have been reviewed with the result that the prosecution abandoned the charges in some cases. While this is a positive and welcome development in general, it appears that the review process is primarily triggered by the arrest or initiation of trial of the accused, with the result that persons for whom charges cannot be substantiated are detained or undergo substantial criminal proceedings only to have them abandoned at a later stage. It would be preferable if the review process could be triggered at an earlier stage to completely avoid such unnecessary arrests and trials.

8. In 2003, the Mission observed the increasing need for international legal assistance, primarily with Serbia and Montenegro. The need for co-operation between courts, prosecutors, and police will increase in the coming years with the referral of cases from the ICTY. The co-operation will routinely involve issues of witnesses and documents located in one state and needed for prosecution in another. As evidenced by the *Ovcara* case,¹³ even greater degrees of co-operation will be required when one state prosecutes its citizens for crimes committed on the territory of another.¹⁴ It is likely that other ICTY referred cases for crimes in Croatia, like the *Ovcara* case, will not be tried in Croatia, but in Serbia and

¹² The Chief State Prosecutor mandated that local prosecutors review old cases stating: ... *[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 to all County State Prosecutors. Furthermore, the Chief State Prosecutor reiterated that some charges brought in the early to mid-1990s mainly against Serbs were of poor quality but nevertheless resulted in indictments. The Chief State Prosecutor also acknowledged that those indictments most frequently resulted in *in absentia* convictions of Serbs.

¹³ The Belgrade State Attorney in Serbia and Montenegro issued an indictment in December 2003 against 8 Serbs for having committed war crimes against prisoners of war for killing more than 190 individuals in Ovcara near Vukovar in 1991.

¹⁴ Similarly, Croatia prosecuted Fikret Abdic for crimes committed in Bosnia and Herzegovina.

Montenegro or Bosnia and Herzegovina because the perpetrators are found there and the countries do not extradite their nationals.

Croatian courts submitted several requests for international legal assistance to courts in Serbia and Montenegro in 2003. Those requests frequently resulted in substantial delay in the ongoing procedure.¹⁵ Hence the co-operation and co-ordination between the courts and the respective Ministries conveying requests needs to be improved.

9. In July 2003 the Parliament adopted amendments to the *Criminal Code* including, *inter alia*, the new criminal offences of *crimes against humanity*, *subsequent assistance to a perpetrator of war crimes* and a provision explicitly basing criminal liability for war crimes on command responsibility. The amendments were subsequently invalidated by the Constitutional Court on the basis of a technical flaw in their adoption.¹⁶ As a result, the Government again proposed to Parliament amendments to the *Criminal Code* in April 2004, including *crimes against humanity*, *command responsibility*, and *preparation of criminal acts against values protected by international law*. These amendments passed first reading in Parliament in early June. Most Croatian legal commentators indicate however that any newly adopted provisions would not apply to ongoing proceedings stemming from the 1991 to 1995 conflict.¹⁷ Nonetheless, they served as another basis for public and parliamentary debate about the larger issue of war crime adjudication.

10. In October 2003 the Parliament adopted a Witness Protection Law which came into force on 1 January 2004. The Law *inter alia* applies in criminal proceedings conducted for acts against international law. Hence according to the Law's terms, witnesses who testify in war crime procedures can be subject to various protection measures. Swift implementation of an effective witness protection programme is necessary in order to ensure that witnesses will freely testify in war crime procedures.¹⁸

11. The European Commission (EC) in its *Opinion* of 20 April 2004 on the application of Croatia for membership of the European Union observed that statistical data suggests that "a single standard of criminal responsibility is not yet applied equally to all those who face war crime charges before Croatian courts." Noting several other problems, including *in absentia* proceedings, the EC observed that "further reform is necessary in order to reach the even-handed administration of criminal justice in war crime cases." However, the Commission found that the authorities appear determined to improve conditions for prosecution of war criminals in domestic courts.

¹⁵ The delays can partially be explained by the fact that courts do not communicate directly with each other but instead submit requests for taking witness statements or other procedural actions through diplomatic channels, i.e. through the respective Ministries of Justice.

¹⁶ The Constitutional Court determined that Parliament adopted the amendments without the requisite number of votes for the quorum required for laws effecting human rights. The amendments did not receive the support of the then political opposition HDZ.

¹⁷ Acts committed during the 1991 to 1995 conflict can only be prosecuted under the substantive law in force at the time. Even if new war crime provisions are adopted by Parliament, they cannot be applied to conduct during the Homeland War to the extent that they are more severe than the pre-existing law. But see Article 7.2 of the European Convention on Human Rights that provides as an exception to the general prohibition against the retroactive application of criminal law "the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

¹⁸ The Mission has observed that a significant number of witnesses changed their testimony during trial as contrasted with that previously given to the investigative judge. The Mission has monitored several cases where witnesses have reported that they were threatened in the course of the proceedings.

III. CASES MONITORED AND GENERAL TRENDS

During 2003, the Mission followed 104 war crime cases at different stages of the proceedings in 12 county courts (trial courts) as well as in the Supreme Court (court of appeal).¹⁹ As in the prior year a substantial proportion of the proceedings (approximately 35 per cent) were conducted fully or partially *in absentia* and the vast majority (approximately 70 per cent) of individuals subject to war crime proceedings were pursued *in absentia*.²⁰ Approximately 60 per cent of proceedings were conducted against individual defendants while 40 per cent were against individuals investigated, indicted or tried in groups. The monitored proceedings involved more than 370 individuals out of whom approximately nine-tenths were Serbs and approximately one-tenth Croats and a very small number of other minorities, 3 Bosniaks, 1 Hungarian and 1 Roma. As in 2002 1 Serb was extradited from Switzerland based on an international arrest warrant.

The proceedings monitored by the Mission account for nearly all war crime proceedings reported by the Chief State Prosecutor in his 2003 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 even-handedness based on national origin

1. Continuing the pattern observed in 2002, the vast majority of war crime proceedings monitored in 2003 involved Serbs charged for having committed war crimes against Croats. At all stages of the proceedings, Serbs constituted the vast majority of defendants, e.g., 31 of 37 arrests; 25 of 30 releases; 186 of 198 persons under judicial investigation; 48 of 53 indicted; 84 of 101 on trial; 30 of 37 persons convicted and 53 of 83 persons that lodged appeals to the Supreme Court. Two of the 4 acquitted individuals were Serbs.

2. While the number of Serbs prosecuted in 2003 exceeded that in 2002, the number of Croats decreased. For example, while 17 Croats faced a judicial investigation in 2002 only 9 were subject to such an investigation in 2003. The number of Croats arrested on war crime charges decreased from 6 in 2002 to 5 in 2003. The number of Croats indicted decreased from 13 in 2002 to 4 in 2003. Furthermore, while 22 Croats stood trial in 2002, during 2003 14 were put on trial.²¹

¹⁹ The stages of the procedure include arrests, releases, judicial investigations, indictments, trials, and appeals.

²⁰ The Chief State Prosecutor instructed local prosecutors in 2002 that “county state prosecutors' offices will not be proposing trials *in absentia* without the approval of the State Prosecutor of the Republic of Croatia. Namely, *in absentia* trials actually proved to be a loss of time and dissipation of funds, because the trials were repeated in the presence of defendants when they had become accessible.” 11 July 2002 Instructions from the Chief State Prosecutor to all County State Prosecutors.

²¹ From the cases monitored over time, the Mission is aware of an overall total of 38 Croats that have been prosecuted for war crimes by the Croatian judiciary. In the 30 cases that have been completed as of the end of 2003, 20 were acquitted, 9 were convicted, and charges were dropped against 1. Of the 9 convicted, 2 were convicted with Serbs for crimes committed against Croats. Three of the 9 convicted were sentenced to one-year imprisonment for war crimes committed against Serb civilians. Proceedings against 8 Croats were pending at the end of 2003. In contrast, the Chief State Prosecutor in his 2003 Annual Report observes that the more than 4700 war crime charges initiated since 1991 were pursued almost exclusively against Serbs. This same observation appears in the Prosecutor's 2001 and 2002 Annual Reports. In addition, the Prosecutor notes in his 2003 Annual Report that as in prior years, “there were no criminal charges in connection with war crimes committed in the Croatian military and police operations after *Storm* and *Flash*. . . . However, 3,970 persons

Of note, several Croats, a Bosniak, a Roma, and a Hungarian were tried for crimes against Croats, while all Serbs put on trial were accused of crimes against Croats.²²

3. Also in contrast to the previous year, during 2003 charges against a significant number of Serbs were dropped by the prosecution due to lack of evidence. These charges, although eventually interrupted, nevertheless resulted in significant periods of incarceration in some cases of up to 5 months. For example, nearly half of the Serbs (12 of 25) arrested were released in 2003 due to lack of evidence and faced no further proceedings. Indictments against 6 Serbs stemming from 1993 and 1994 were withdrawn by prosecutors before the trial started due to lack of evidence. Furthermore, prosecutors withdrew charges during trial against 12 defendants (11 Serbs and 1 Croat) due to lack of evidence.²³ The abandoning of charges due to lack of evidence was almost exclusively observed in relation to Serbs.

Taken together these figures suggest that a significant proportion of war crime charges against Serbs were not substantiated. It also indicates that the evidentiary threshold for pursuing criminal charges against Serbs remained significantly lower than that applied to Croats.

4. Excluding cases where the prosecutor dropped charges during trial, the conviction rate of Serbs in 2003 was 94 per cent (30 of 32) while the conviction rate of Croats was 71 per cent (5 of 7; small number of cases).²⁴ The number of acquittals was too small to permit specific conclusions.

5. The number of fully *in absentia* trials increased significantly during 2003 (9 trials in 2003 as opposed to 3 in 2002). As in 2002, such proceedings were almost exclusively conducted against Serbs. There were also several large group trials in which only 1 Serb present in court was tried together with 10 to 17 *in absentia* defendants. The percentage of Serbs convicted *in absentia* also increased in 2003. Of 30 Serbs convicted, 90 per cent (27) were convicted *in absentia* whereas in 2002, 60 per cent of all Serbs convicted were convicted *in absentia*.²⁵

6. In 2003 one-third of previously convicted defendants (2 Serbs, 1 Croat) were exonerated after re-trial through dismissal of charges or acquittal. One additional defendant

were reported in the earlier years and 1,492 persons were convicted for committing criminal acts from the domain of classic crimes (murders, robberies, thefts, and others) after the completion of the military and police operations *Flash and Storm*.”

²² In a handful of cases, Croats have been prosecuted for crimes against Croats. Ivica Jelusic, a Croat, was prosecuted for having committed war crimes against Croats as an officer in the Yugoslav People’s Army (JNA) [Sibenik County Court]. Darko Fot, a Croat, was tried together with 5 Serbs for crimes against Croats in the “Vukovar I” case [Vukovar County Court]; Stipe Tomic, a Croat, was tried together with a Serb for war crimes committed against Croats [Gospic County Court]. Zdravko Jovanovic, a Roma, was tried separately for war crimes against Croats [Vukovar County Court], Miodrag Balint, a Hungarian, was tried separately for war crimes against Croats [Osijek County Court], and Saud Hasovic, a Bosniak, was tried together with 3 Serbs [Zadar County Court].

²³ Of those 12, 5 charges were rejected by verdict and 7 charges were rejected by decision due to gaps in the trial. In 2 cases the war crime charges were dropped, however the alleged act was further pursued as a common crime and 2 defendants were subsequently amnestied. In 1 additional case, the charge was dropped due to the expiration of the statute of limitations.

²⁴ This includes 2 Croats convicted of crimes against Croats.

²⁵ The 2003 *in absentia* total includes one Serb [RH v. Radovan Arsenic, Pozega County Court] who was re-tried following his successful appeal to the Supreme Court of a conviction. Detention was deemed unnecessary and the re-trial started in his presence. Arsenic failed to appear at the second hearing at which time the court decided to conduct the trial in his absence. Arsenic was convicted *in absentia* in March 2003.

whose conviction was upheld had his sentence reduced. Slightly more than half of re-trials confirmed the original convictions.

7. In contrast to the previous year only 5 per cent of convicted persons (2 of 37, both Serbs) received sentences less than the prescribed minimum in 2003.

8. Of 28 individual appeals decided in 2003, the Supreme Court ordered re-trials in 14 individual cases (reversal rate of 50 per cent)²⁶ confirmed 10 trial court decisions²⁷ and increased the punishment in 4 cases. This constituted a decrease in the Supreme Court's reversal rate in war crime procedures followed by the Mission as contrasted to 2002.

9. During 2003 a significantly greater number of appeals involving Croats were pending at the Supreme Court than in 2002, the increase primarily resulting from prosecutor appeals of acquittals. While 15 appeals involving Croats were pending in 2002, 26 such appeals were pending in 2003. Approximately three quarters of these appeals were initiated by prosecutors in response to trial court acquittals of Croats in previous years (in 2002, 14 of 17 Croats who received a verdict were acquitted).

B. Length of Proceedings

1. As in the previous year the Mission observed significant delays at different stages of the proceedings. Delays occurred at the trial courts in regard to issuing the verdict in written form, in relation to commencing a new trial after a case was remanded by the Supreme Court for re-trial and in relation to granting a new trial upon apprehension of a defendant previously convicted *in absentia*.

2. In 2003 the Supreme Court again failed to decide in a timely manner appeals of several defendants who remained in detention after their conviction by trial courts.

3. During 2003 the Supreme Court quashed a trial court verdict of acquittal and remanded a case against 2 Serbs for re-trial where these defendants had been tried 3 and 4 times respectively for the same offence since 1995. The overall length of proceedings (9 years in total)²⁸ raises concerns under the fair trial guarantees of the Croatian Constitution and the European Convention on Human Rights.

C. Distribution of Proceedings

1. As in the previous year war crime trials during 2003 were also ongoing in more than half of the county courts in Croatia. The highest number of trials was conducted in Osijek. The next greatest number of trials was conducted in Zadar and Sibenik followed by Vukovar.²⁹

²⁶ The reversed trial court verdicts involved 12 convictions (8 Serbs, 4 Croats) and 2 acquittals (2 Serbs).

²⁷ The confirmed trial court verdicts involved 7 convictions (5 Serbs, 1 Croat and 1 Hungarian) and 3 acquittals (3 Serbs).

²⁸ Proceedings in the "Sodolovci" case have been ongoing for more than 7 years since November 1997 when Croatia became subject to the individual complaint jurisdiction of the European Court of Human Rights.

²⁹ Osijek County Court 7 trials; Zadar County Court 6 trials; Sibenik County Court 5 trials; Vukovar County Court 4 trials.

2. In contrast to the previous year the majority of fully *in absentia* proceedings (5 out of 9) were conducted by the Zadar County Court while the Vukovar County Court conducted 1 fully and 2 partially *in absentia* proceedings, the latter 2 proceedings involving up to 17 defendants of which only 1 was present.

3. As in 2002 most of the proceedings alleged conduct that constituted crimes against the civilian population, the next most commonly charged crimes were genocide and war crimes against prisoners of war (only Serbs are charged with genocide).

IV. STAGE-SPECIFIC FINDINGS: PRE-TRIAL

As in the previous year the Mission followed war crime procedures through all procedural stages. The following sections provide stage specific data and statistics. As in 2002 most of the individuals arrested during 2003 were Serbs; nearly half of those were arrested when returning to Croatia and half were long-term residents. More than 60 per cent of all individuals arrested during 2003 were released in the course of the year. Approximately half of the returnees (7 of 15) arrested during 2003 were subsequently released, charges were abandoned against 5 while proceedings continued against 2. Of the judicial investigations that were completed during 2003 half resulted in the issuance of indictments while the other half resulted in charges being dropped.

A. Arrests [See Appendix I]

1. In 2003 the Mission followed 37 arrests based on war crime charges, similar to the 2002 total of 35 arrests. Serbs accounted for 84 per cent of all arrests (31), Croats for approximately 14 per cent (5) and 1 arrested individual was Hungarian.³⁰ Approximately 40 per cent (12 Serbs, 2 Croats and 1 Hungarian) remained in detention at the end of 2003.

2. As in the previous year, a majority (21 of 37) of those arrested were long-term residents (16 Serbs, 5 Croats). Approximately half of all Serbs arrested were long-term residents.³¹

3. Also similar to 2002, returnees accounted for approximately half of the Serbs (14) and 1 Hungarian arrested on war crime charges. During 2002 and 2003 together, a total of 59 Serbs were arrested of which 29 (15 – 2002, 14 – 2003) were returnees. The majority of Serb returnees were arrested at border crossings between Serbia and Montenegro and Croatia while some were arrested at their place of permanent residence or at police stations when obtaining documents. One Serb was extradited from Switzerland on the basis of an international arrest warrant issued by Croatian authorities.³²

³⁰ By comparison in 2002, of 35 persons arrested, 80 per cent (28) were Serbs and slightly less than 20 per cent (6) were Croats, and 1 Macedonian.

³¹ This total included a Serb for whom the police issued an arrest warrant in 1994 but who was not arrested until after the start of a fully *in absentia* trial in the Vukovar County Court during which a witness testified that the defendant was living in the community. The arrest occurred only after this testimony although he lived and was registered in the territory of the issuing police administration for the last 9 years; RH v. Ilija Vorkapic “Lovas Case” [Vukovar County Court].

³² RH v. Branko Mumlek [Osijek County Court].

4. As in the previous year all Croats (5) were arrested based on newly initiated proceedings. The majority of Serbs (22 of 31) were arrested based on recent arrest warrants and the remaining 9 Serbs were arrested on the basis of old proceedings.

5. More than one-quarter of all arrests in 2003 were in 1 jurisdiction, Vukovar County Court, while more than 40 per cent of all arrests occurred in 2 jurisdictions, Vukovar and Osijek County Courts. This is at least due in part to their location near the border with Serbia and Montenegro.

6. Combining the cases followed by the Mission in 2002 and 2003, a cumulative total of 40 persons (28 Serbs, 9 Croats, 1 Roma, 1 Hungarian and 1 Bosniak) were held in detention as of the end of 2003.³³ Of these:

- 15 individuals (37,5 per cent) were detained while the trial was ongoing (12 Serbs, 2 Croats, 1 Hungarian)
- 2 individuals (5 per cent) were detained and indictments had been raised but the trial had not yet commenced (2 Croats)
- 9 individuals (22,5 per cent) were incarcerated pursuant to final convictions and were serving their prison sentences (9 Serbs)
- 7 individuals (17,5 per cent) were in detention on the basis of trial court convictions while their appeals were pending at the Supreme Court (3 Croats, 2 Serbs, 1 Roma, 1 Bosniak)
- 4 individuals (10 per cent) were incarcerated waiting for re-trial; 2 after successful appeal of a conviction to the Supreme Court and 1 on the basis of a prior *in absentia* conviction (4 Serbs)
- 3 persons (7,5 per cent) were detained while under judicial investigation (2 Croats, 1 Serb)

B. Releases [See Appendix II]

1. During 2003 the Mission followed the release of 30 individuals (25 Serbs and 5 Croats) previously arrested on war crime charges. Of those released, 23 persons had been arrested during 2003 (62 per cent of all arrested in 2003). This mirrored almost precisely the percentage of those arrested in 2002 that were subsequently released in the same year.

2. The reasons for release were threefold:

a) In 2003, 40 per cent (12) of persons released faced no further proceedings. All those released on this ground were Serbs. This constituted an increased percentage from 2002 in releases that resulted from the prosecution abandoning further proceedings due to lack of evidence.³⁴ Those released were detained for periods ranging from 2 days to 5 months with an average of approximately 2 months. One Serb against whom charges were dropped by judgment from the Osijek County Court due to lack of evidence had been extradited from Switzerland.³⁵

³³ The Mission is aware of additional cases from previous years where defendants remain in detention based on war crime convictions. Those are not reflected in the above-mentioned total.

³⁴ In contrast, in 2002 approximately 20 per cent (10 of 51) were released due to discontinuation of proceedings, including arrests due to mistaken identity.

³⁵ RH v. Branko Mumlek [Osijek County Court].

b) Proceedings continued against 50 per cent of those released (12 Serbs and 3 Croats) but continued detention was either deemed unnecessary (10 Serbs and 3 Croats) or the maximum period of pre-trial detention had expired (2 Serbs). In most cases where continued detention was deemed unnecessary the individuals were released following the implementation of precautionary measures by the courts, including confiscation of passports or orders to report to the local police on a regular basis.

c) Approximately 10 per cent of the released individuals (2 Croats and 1 Serb) were released after having been acquitted by trial courts or after having served their sentence.

3. Prior to their release approximately 57 per cent (17 individuals) had spent 3 months or less in detention, 23 per cent (7 individuals) had been detained for 3 to 12 months and approximately 20 per cent (6 individuals) were released after 1 year or more. The 30 individuals spent the following amount of time in detention:

- Less than 1 month: 9 individuals (6 Serbs and 3 Croats)
- 1 to 3 months: 8 individuals (8 Serbs)
- 3 to 6 months: 3 individuals (3 Serbs)
- 6 to 12 months: 4 individuals (4 Serbs)
- More than 12 months: 6 individuals (4 Serbs and 2 Croats)

C. Judicial Investigations [See Appendix III]

1. During 2003 the Mission followed 42 cases of judicial investigation [“investigations”] involving 198 individuals (186 Serbs, 9 Croats, 2 Ruthenians and 1 Hungarian), slightly more than the total in 2002.

2. According to information available to the Mission, 21 investigations were completed during 2003 resulting in the issuance of 11 indictments against 23 persons (18 Serbs, 4 Croats and 1 Hungarian). In 10 cases involving 36 Serbs, charges were dropped. In one group investigation involving Serb defendants, several suspects were indicted while further proceedings were abandoned against others.³⁶

D. Indictments [See Appendix IV]

1. The Mission followed 16 cases in which indictments were raised in 2003 involving 53 individuals (48 Serbs, 4 Croats and 1 Hungarian).³⁷ Eleven indictments followed the completion of judicial investigations during 2003 and 5 indictments were the result of judicial investigations completed prior to January 2003.

2. The majority of indictments in 2003 were brought against individuals (9) while 7 indictments were raised against a group. As in 2002 the majority of indictments against Serbs were brought against individuals whereas the indictments against Croats were all raised against groups.

3. Two indictments against Croats were raised, each involving 2 individuals. A total of 13 indictments were brought against Serbs. This included individual indictments against 8

³⁶ RH vs. Jovan Curcic and others “Borovo case” [Vukovar County Court].

³⁷ The Chief State Prosecutor reports that 55 persons were indicted in 2003.

Serbs and 5 group indictments involving a total of 40 Serbs. One indictment against 1 Hungarian was raised.

4. Seven of the 48 Serbs were indicted for ordering and planning the commission of war crimes while 41 Serbs were indicted for executing the war crime. The 4 Croats were indicted for executing the war crime. No indictments were based on command responsibility.³⁸ Of the 53 individuals indicted, 51 were indicted for having committed *war crimes against the civilian population* (46 Serbs, 4 Croats and 1 Hungarian) and 2 individuals (2 Serbs) were indicted for having committed *war crimes against prisoners of war*.

5. During 2003 the Mission observed that 2 indictments against 6 Serbs dating from 1994 were withdrawn by the prosecutors prior to the commencement of trial due to insufficient evidence.³⁹ The cases were not set for trial prior to 2003 because the accused were not accessible to justice. While the Chief State Prosecutor has recognized the need to review indictments stemming from the conflict period, it appears that the actual review in most cases seems to be triggered by the arrest itself of an accused. A prior review by the prosecutor would have led to a revocation of the arrest warrant which in turn would have prevented that the accused was taken into detention for 18 days.⁴⁰

V. STAGE-SPECIFIC FINDINGS: TRIALS/RE-TRIALS

During 2003 the Mission monitored a total of 34 trials that were conducted by county courts involving 101 individuals (84 Serbs, 14 Croats, 1 Hungarian, 1 Bosniak and 1 Roma).⁴¹ Amongst the proceedings were 11 re-trials (involving 23 Serbs and 1 Croat) that were conducted following Supreme Court decisions remanding the case for re-trial or following a request of defendants for a new trial after *in absentia* convictions. During 2003 9 trials were conducted fully *in absentia* (involving 27 Serbs, 1 Croat and 1 Bosniak), 5 of which were conducted in the Zadar County Court alone, constituting a substantial increase in *in absentia* trials from 2002. Four trials were conducted partially *in absentia*, i.e., some defendants were present. In 2 trials conducted partially *in absentia* proceedings were conducted against 18 and 10 individuals respectively although only one person was present during trial.⁴²

The majority of trials completed in 2003 were concluded within 6 months while approximately 20 per cent had been pending between 6 and 12 months. Another 20 per cent had been pending for more than 1 year.

³⁸ The theory of criminal liability commonly referred to as “Command Responsibility” is prescribed in Articles 86 and 87 of Protocol 1 to the Geneva Conventions. In addition, Article 7, Paragraph 3 of the Statute of the ICTY outlines two ways in which military superiors can be held criminally liable for war crimes committed by their subordinates: 1. to the extent they knew or had reason to know that the subordinate was about to commit war crimes and failed to take the necessary and reasonable measures to prevent such acts; or 2. once aware such acts have been committed failed to punish the subordinates.

³⁹ RH vs. Branko Damjanovic and others [Pozega County Court]; RH vs. Marko Vukadinovic [Virovitica County Court].

⁴⁰ RH v. Marko Vukadinovic [Virovitica County Court].

⁴¹ In 2002, the Mission also monitored a total of 34 trials involving 115 persons (90 Serbs, 22 Croats, 2 Bosniaks, and 1 Hungarian).

⁴² RH v. Ilija Vorkarpic “Lovas case” [Vukovar County Court]; RH v Dragan Marijanovic “Luc group” [Osijek County Court]. In the latter case the Mission observed that the person present at trial was amnestied after the war crime was re-classified to a common crime while 8 of the 9 *in absentia* defendants were found guilty. Charges against the remaining *in absentia* defendant were dropped after the war crime was re-qualified to a common crime on which the statute of limitations had expired.

A. Verdicts – Convictions/Acquittals/Dismissals [See Appendices VII and VIII]

1. During 2003, trials involving 53 individuals were concluded. Seventeen trials, involving 46 individuals (36 Serbs, 8 Croats, 1 Bosniak and 1 Roma) were concluded by verdict while 2 additional trials (against 7 Serbs) were concluded by decision without any determination of guilt or innocence. Most completed trials resulted in convictions, acquittals or dismissals of all defendants. However, in 3 trials different verdicts were issued in the same case. In 1 trial the court issued a verdict in relation to 3 defendants and a decision in relation to 5 defendants.⁴³

2. Trial outcomes were as follows: 37 persons (30 Serbs, 5 Croats, 1 Bosniak and 1 Roma) were found guilty in 13 trials and 4 (2 Serbs, 2 Croats) were acquitted in 4 trials.⁴⁴ In addition, 12 persons (11 Serbs and 1 Croat) in 5 trials received neither a conviction nor an acquittal, but instead received either a verdict⁴⁵ or a decision⁴⁶ of dismissal as a result of charges being dropped during trial.⁴⁷ Thus 23 per cent of all persons who received a verdict or a decision (12 of 53) and 37 per cent of all concluded trials (7 of 19) ended with charges being dropped against some or all of the defendants, including *in absentia* defendants. That charges were abandoned in such a substantial proportion of cases at the late stage of trial raises concerns as to the quality of indictment and judicial investigation prior to the commencement of the trial.

3. Looking at the 41 individuals who received verdicts of conviction or acquittal, the overall conviction rate was 90 per cent while the overall acquittal rate was 10 per cent. While 94 per cent of Serbs (30 of 32) were convicted, 71 per cent of Croats (5 of 7) were found guilty (conviction rate based on small number of cases). Of the 5 Croats convicted, 3 were tried with a group of Croats for crimes against Serbs⁴⁸ while 2 defendants were tried with Serbs for crimes against Croats.

4. Serbs constituted approximately 81 per cent of all those convicted (30 of 37), while they constituted 78 per cent of all persons (32 of 41) who received verdicts of acquittal or conviction. Croats constituted approximately 13.5 per cent of all convicted (5 of 37) while they represented 17 per cent (7 of 41) of all individuals who received a verdict of acquittal or conviction.

5. Of the 37 individuals convicted, 26 (20 Serbs, 4 Croats, 1 Bosniak and 1 Roma) were convicted for *war crimes against the civilian population*, 8 (all Serbs) for *genocide* and 3 (2 Serbs, 1 Croat) for *war crimes against prisoners of war*.

⁴³ RH vs. Pupovac and others Zadar County Court.

⁴⁴ The Chief State Prosecutor reports that in 2003 a total of 26 persons were convicted (21 Serbs and 5 Croats), 11 were acquitted or had their charges dropped.

⁴⁵ Based on Article 370 Paragraph 3 of the Law on Criminal Procedure (LCrP) the court issues a verdict rejecting the charge if the prosecutor withdraws the charge *during* the trial.

⁴⁶ Based on Article 308 Paragraph 1 Nr. 1 of the LCrP, the court issues a decision when the prosecutor desists from prosecution *before* the trial has commenced (in the cases above the trial had commenced and the main hearing took place). However, as the trial had to re-commence due to gaps in the procedure, the procedure was treated by the court as if the trial had never commenced; in those cases the prosecutor withdrew charges against 5 Serbs in RH vs. Pupovac and others [Zagreb County Court], against Dusan Novakovic and Veljko Macura both Serbs [Sibenik County Court] all due to lack of evidence.

⁴⁷ Three persons against whom war crime charges were dropped had the war crime re-qualified as a common crime that was disposed of either through application of the amnesty law or dropped due to expiration of the statute of limitations.

⁴⁸ Tihomir Oreskovic and others “Gospic Group” [Rijeka County Court].

6. Twenty-nine of the 37 individuals convicted (27 Serbs, 1 Croat and 1 Bosniak)⁴⁹ were convicted *in absentia*. Approximately 90 per cent of all Serbs (27 of 30) convicted were convicted *in absentia*. All *in absentia* verdicts were issued by 4 trial courts, with more than half (against 15 persons) issued by the Zadar County Court in 5 trials. Nearly 30 per cent (against 8 persons) were issued in one case by the Osijek County Court and 20 per cent (against 5 persons) were issued in 1 case by the Vukovar County Court.

7. Six re-trials involving a total of 9 persons were completed. The re-trials were conducted following either Supreme Court decisions remanding the case to the trial court (4 cases involving 6 Serbs and 1 Croat) or as a result of the defendants' requests for a new trial after a previous *in absentia* conviction (2 cases involving 2 Serbs).

8. Re-trials in 2003 resulted in the exoneration either through acquittal or the dropping of charges against 33 per cent⁵⁰ of previously convicted defendants.^{51, 52} Notably all three of these re-trials were conducted in the Sibenik County Court. In an additional case, while the defendant was re-convicted, the sentence was more lenient than in the original trial. Convictions were upheld on re-trial against 5 Serbs, including re-conviction fully *in absentia* of 4 defendants by the Zadar County Court that followed the successful appeal to the Supreme Court after the original *in absentia* conviction.⁵³

9. In contrast to 2002, only 2 individuals (2 Serbs) out of the 37 convicted (5 per cent) received sentences less than the prescribed minimum punishment due to the finding of mitigating circumstances in 2003.⁵⁴ Three *in absentia* Serb defendants in 2 cases tried at the Zadar County Court received the maximum punishment of 20 years imprisonment.⁵⁵ The average punishment in the 37 convictions was approximately 9 years imprisonment.

B. Length of Proceedings

1. In 2003 approximately 16 per cent of all war crime trials were completed within 1 month. Nearly 58 per cent were completed within 6 months or less while approximately 21 per cent were completed only after they had been pending for 12 months or more. As in the previous year the 3 trials that lasted less than 1 month were completed after only 1 or 2 hearings and all involved Serbs. In contrast to the previous year those very short trials all resulted in acquittals.

⁴⁹ The Croat and Bosniak were convicted with groups of Serbs for crimes against Croats.

⁵⁰ 2 Serbs and 1 Croat accused of crimes against Croats.

⁵¹ Prior to his acquittal in 2003, one defendant was twice convicted, once in *in absentia* in 1993, again in a re-trial in 2000 granted after his arrest in 1999. After successful appeal to the Supreme Court he was acquitted of the charges during the third trial. RH v. Ivica Jelusic [Sibenik County Court].

⁵² In contrast, in 2002 re-trials resulted in the exoneration of 55 per cent (5 of 9) of previously convicted defendants.

⁵³ RH v. Macakanja Stevo and others [Zadar County Court] convictions and sentences of 15 and 20 years confirmed; RH vs. Milan Strunjas [Karlovac County Court] conviction and 12 year sentence confirmed.

⁵⁴ RH v. Marko Crevar [3 years for war crimes against the civilian population Vukovar County Court]; RH v. Radovan Arsenic [4 years, 9 months for war crimes against the civilian population Pozega County Court]. In addition, in 2003 the Supreme Court confirmed or increased trial court sentences of less than 5 years: RH v. Djordje Jaramaz (Serb) sentenced of 3 years imprisonment confirmed; RH v. Slobodan Gojkovic (Serb) sentence increased from 2 years, 6 months to 3 years; RH v. Stjepan Petresev (Hungarian) confirmed trial court sentence of one year imprisonment.

⁵⁵ RH v. Stevo Macakanja and Zeljko Lezaja and RH v. Branko Bota [Zadar County Court].

2. The 19 cases that the Mission monitored in 2003 were completed within the following time periods:

- Less than 1 month: 3 trials involving 3 individuals (Bjelovar 1; Pozega 1; Osijek 1)
- 1 to 3 months: 5 trials involving 17 individuals (Rijeka 1; Gospic 2; Zadar 1; Osijek 1)
- 3 to 6 months: 3 trials involving 4 individuals (Karlovac 1; Pozega 1; Zadar 1)
- 6 to 12 months: 4 trials involving 18 individuals (Sibenik 2; Vukovar 1; Osijek 1)
- 12 to 24 months: 1 trial involving 1 individual (Sibenik 1)
- 24 to 36 months: 3 trials involving 10 individuals (Zadar 3)

3. As in 2002 the Mission monitored some cases in which the trial courts failed to deliver the verdict in written form within the time period required by law, i.e., 2 months after the verdict had been pronounced orally. Delays ranged up to 7 months.⁵⁶ Such delays interfere with the defendants' right to timely lodge an appeal. Such delays are of particular concern when defendants remain in detention during the appellate process.

4. At the end of 2003 the Gospic County Court had not yet commenced a new trial against a Serb who remained in detention although the Supreme Court reversed the conviction, remanded the case and ordered a new trial in June 2003.⁵⁷

5. The Karlovac County Court has not re-commenced proceedings against 5 Serbs whose *in absentia* conviction was quashed by the Supreme Court in November 2002 and for whom a re-trial was ordered.⁵⁸ It is reasonable that proceedings are not continued as none of the accused is accessible to Croatian justice. However, the case illustrates the questionable value of *in absentia* convictions. First, defendants convicted *in absentia* always exercise their right to request a new trial once accessible to justice, hence the trial will have to be repeated if there is an arrest. Second, the *in absentia* proceedings burden already overtaxed judicial resources at multiple levels, i.e., investigative judges, trial courts, and Supreme Court.

6. During 2003 the Mission followed 1 case in which a previously convicted *in absentia* defendant requested a new trial after having been arrested in October 2003. Although trial courts routinely grant such requests within a few weeks to a month after the arrest of a defendant previously convicted *in absentia*, the Gospic County Court in contrast had not granted a new trial by the end of 2003, more than 2 months after the arrest.⁵⁹

⁵⁶ RH v. Tihomir Oreskovic, Mirko Norac, Stjepan Grandic and Ivica Rozic "Gospic group" [Rijeka County Court verdict orally pronounced 24 March 2003, written verdict issued on 6 November 2003]; RH v. Fikret Abdic [Karlovac County Court, verdict orally pronounced 31 July 2002, written verdict issued 26 February 2003].

⁵⁷ RH v. Nikola Cvjeticanin [Gospic County Court].

⁵⁸ RH v. Milos Jovetic, Djoko Jaksic, Milos Momcilovic, Miroslav Milakovic and Ranko Supica [Karlovac County Court].

⁵⁹ RH v. Dane Serdar [Gospic County Court]. The Gospic County Court granted re-trial in mid-February 2004 after approximately 4 months. The delay was rationalized at least in part by the Court as resulting from its duties in supervising the conduct of Parliamentary elections in November 2003. According to an article published in *Vecernji list* on 18 March 2004 the President of the Supreme Court, Ivica Crnic, requested the initiation of disciplinary proceedings conducted by the State Judicial Council against the President of the Gospic County Court for not deciding upon the defendants request for a re-trial in a timely manner.

VI. STAGE-SPECIFIC FINDINGS: APPEALS [See Appendix IX]

A. Decision on Appeal

1. During 2003 the Mission followed 35 cases pending at the Supreme Court involving 83 individuals (53 Serbs, 26 Croats, 2 Bosniaks, 1 Hungarian and 1 Roma) on appeal from the trial courts. A total of 39 appeals were filed by defendants and 53 appeals by the prosecution.⁶⁰ In 2003 2 cases were pending at the Supreme Court in which all defendants (14 Serbs) were *in absentia* and 3 cases in which some of the defendants (6 Serbs and 1 Croat) were *in absentia*.

2. In 2003, the Supreme Court decided appeals involving 28 individuals (22 Serbs, 5 Croats and 1 Hungarian). The Supreme Court quashed trial court verdicts and remanded the case for re-trial in 50 per cent of the appeals (14 appeals involving 10 Serbs and 4 Croats).⁶¹ The reason for remand was in all cases *inter alia* that the trial court had incorrectly established the facts. In addition, the Supreme Court confirmed 10 trial verdicts (36 per cent) (8 Serbs, 1 Croat and 1 Hungarian⁶²) and increased the punishment in 4 cases (4 Serbs).⁶³

B. Length of Proceedings

1. The verdicts issued by the Supreme Court were issued within the following time periods following the submission of an appeal:

- 3 to 6 months: 4 individuals; (trials: Karlovac 1; Gospic 2; Osijek 1)
- 6 to 12 months: 2 individuals; (trials: Sisak 1; Vukovar 1)
- 12 to 18 months: 4 individuals; (trials: Karlovac 1; Osijek 1; Zadar 1; Sibenik 1)
- 18 to 24 months: 11 individuals; (trials: Bjelovar 1; Osijek 2)
- 24 or more months: 6 individuals; (trials: Osijek 1)

2. As in the previous year the Supreme Court decided several appeals after significant delays. In at least 3 cases pending at the Supreme Court as of the end of 2003 the court failed to pronounce verdicts although the defendants remained in detention (for 6, 9 and 15 months, respectively)⁶⁴ during the appeal as a result of convictions. Such delays are in contradiction to the Law on Criminal Procedure which prescribes that the Supreme Court is bound to deliver its decision within 3 months after having received the file from the trial court when defendants remain in detention.

⁶⁰ In several cases both parties appealed the trial court verdict.

⁶¹ The Supreme Court granted appeals for defendants reversing 12 convictions (8 Serbs, 4 Croats) and granted two prosecutor appeals reversing 2 acquittals (2 Serbs).

⁶² The Supreme Court denied 7 appeals for defendants, thereby confirming 7 convictions (5 Serbs, 1 Croat and 1 Hungarian) and denied 3 prosecutor appeals, thereby confirming 3 acquittals (3 Serbs).

⁶³ RH v. Rade Vrga [Sisak County Court sentence increased from 5 to 7 years], Milan Milosevic [Gospic County Court, sentence increased from 9 to 13 years], Slobodan Gojkovic [Vukovar County Court, sentence increased from 2,5 years to 3 years]; Branko Stankovic [Osijek County Court, sentence increased from 5 to 6 years].

⁶⁴ RH v. Zdravko Jovanovic [Osijek County Court]; RH v. Fikret Abdic [Karlovac County Court 9 months at the end of 2003]; and RH v. Nenad Bizic [Bjelovar County Court 15 months at the end of 2003].

3. Furthermore the Supreme Court quashed a verdict of acquittal of the Osijek County Court⁶⁵ and remanded a case against 2 defendants for re-trial. The defendants had previously been tried 3 and 4 times respectively since 1995 without having received a final decision. Although the defendants have not been in detention since 1999 the overall length of the proceedings (9 years) and in particular the period of 3 years inaction before the Supreme Court rendered its decision in December 2003 raises fair trial concerns under both the Croatian Constitution and the European Convention on Human Rights.

⁶⁵ RH v. Goran Vusurovic and Marinko Stankovic “Sodolovci Group” [Osijek County Court].

APPENDIX I

WAR CRIME ARRESTS IN 2003 BY JURISDICTION: 37

Court	Croats	Serbs	Others
Sisak County Court	5	3	0
Bjelovar County Court	0	4	0
Virovitica County Court	0	2	0
Gospic County Court	0	1	0
Split County Court	0	2	0
Sibenik County Court	0	2	0
Zadar County Court	0	2	0
Vukovar County Court	0	10	0
Osijek County Court	0	5	1

Suspects were arrested for the following crimes: total exceeds 37 as some suspects were arrested on more than one charge

- War crimes against civilian population: 32 persons (26 Serbs, 5 Croats, 1 Hungarian)
- War crimes against wounded and sick: 1 Serb
- Genocide: 3 Serbs
- War crimes against prisoners of war: 6 Serbs

APPENDIX II

RELEASES IN 2003 BY JURISDICTION: 30

Court	Croats	Serbs	Other
Sisak County Court	3	3	0
Bjelovar County Court	0	5	0
Virovitica County Court	0	1	0
Rijeka County Court	1	0	0
Sibenik County Court	1	0	0
Zadar County Court	0	1	0
Split County Court	0	1	0
Vukovar County Court	0	7	0
Osijek County Court	0	7	0

APPENDIX III

JUDICIAL INVESTIGATIONS IN 2003 BY JURISDICTION: 42

Court	Croat	Serb	Others	Cases
Sisak County Court	5	48	0	13
Bjelovar County Court	0	2	0	2
Virovitica County Court	0	1	0	1
Karlovac County Court	0	5	0	2
Gospic County Court	0	15	0	3
Sibenik County Court	2	9	0	5
Split County Court	0	3	0	3
Zadar County Court	0	2	0	2
Vukovar County Court	0	85	2	5
Osijek County Court	2	16	1	6

COMPLETED INVESTIGATIONS: 21

Court	Croat	Serb	Others	Cases
Sisak County Court	2	8	0	7
Virovitica County Court	0	1	0	1
Gospic County Court	0	1	0	1
Sibenik County Court	0	2	0	2
Split County Court	0	1	0	1
Zadar County Court	0	2	0	2
Vukovar County Court	0	24	0	2
Osijek County Court	2	15	1	5

- War crimes against civilian population: 34 cases (Sisak 10, Virovitica 1, Karlovac 2, Gospic 2, Sibenik 4, Split 3, Zadar 2, Vukovar 4, Osijek 6)
- War crimes against prisoners of war: 5 cases (Bjelovar 2, Gospic 2, Sibenik 1)
- Genocide: 2 cases (Sisak 1, Vukovar 1)
- War crimes against wounded and sick: 1 case (Sisak 1)

APPENDIX IV

INDICTMENTS IN 2003 BY JURISDICTION: 16

Court	Croat	Serb	Others	Cases
Sisak County Court	2	1	0	2
Pozega County Court	0	1	0	1
Virovitica County Court	0	1	0	1
Gospic County Court	0	1	0	1
Sibenik County Court	0	2	0	2
Zadar County Court	0	24	0	2
Vukovar County Court	0	12	0	3
Osijek County Court	2	4	1	3
Zagreb County Court	0	2	0	1

- War crimes against civilian population: 14 cases (Sibenik 1, Zadar 2, Sisak 2, Pozega 1, Virovitica 1, Vukovar 3, Osijek 3, Zagreb 1)
- War crimes against prisoners of war: 2 cases (Gospic 1, Sibenik 1)

APPENDIX V

TRIALS IN 2003 BY JURISDICTION

TRIALS ONGOING IN 2003: 34

Court	Croat	Serb	Other	Cases
Sisak County Court	0	2	0	2
Karlovac County Court	0	1	0	1
Bjelovar County Court	0	2	0	2
Virovitica County Court	0	1	0	1
Pozega County Court	0	3	0	3
Rijeka County Court	5	0	0	1
Gospic County Court	1	2	0	2
Sibenik County Court	1	4	0	5
Zadar County Court	1	20	1	6
Vukovar County Court	4	32	0	4
Osijek County Court	2	17	2	7

TRIALS COMPLETED IN 2003: 19

Court	Croat	Serb	Other	Cases
Karlovac County Court	0	1	0	1
Bjelovar County Court	0	1	0	1
Pozega County Court	0	2	0	2
Rijeka County Court	5	0	0	1
Gospic County Court	1	2	0	2
Sibenik County Court	1	2	0	3
Zadar County Court	0	19	1	5
Vukovar County Court	1	5	0	1
Osijek County Court	0	11	1	3

APPENDIX VI

RE-TRIALS IN 2003 BY JURISDICTION

RE-TRIALS ONGOING IN 2003: 11

Court	Croat	Serb	Other	Cases
Karlovac County Court	0	1	0	1
Sisak County Court	0	1	0	1
Bjelovar County Court	0	1	0	1
Pozega County Court	0	2	0	2
Sibenik County Court	1	2	0	3
Zadar County Court	0	4	0	1
Vukovar County Court	0	12	0	2

RE-TRIALS COMPLETED IN 2003: 6

Court	Croat	Serb	Other	Cases
Karlovac County Court	0	1	0	1
Pozega County Court	0	1	0	1
Sibenik County Court	1	2	0	3
Zadar County Court	0	4	0	1

APPENDIX VII

CONVICTIONS AND SENTENCES 2003 BY JURISDICTION: 37

Court	Croat	Serb	Others
Karlovac County Court	0	1	0
Pozega County Court	0	(in absentia) 1	0
Gospic County Court	1	2	0
Rijeka County Court	3	0	0
Zadar County Court	0	(all in absentia) 14	(In absentia) 1
Vukovar County Court	(in absentia) 1	(all in absentia) 4	0
Osijek County Court	0	(all in absentia) 8	1

Sentence (Years)	Croat	Serb	Others
1 - 4		(all in absentia) 2	0
5 - 9	(1 in absentia) 2	(18 in absentia) 20	(in absentia) 1
10 - 14	1	(2 in absentia) 4	0
15 - 20	2	(all in absentia) 5	0

Convictions were issued as follows:

- War crimes against civilians: 26 individuals (20 Serbs, 4 Croats, 1 Roma, 1 Bosniak)
- War crimes against prisoners of war: 3 individuals (2 Serbs, 1 Croat)
- Genocide: 8 individuals (8 Serbs)

APPENDIX VIII

ACQUITTALS IN 2003 BY JURISDICTION: 4

Court	Croat	Serb	Others
Rijeka County Court	1	0	0
Sibenik County Court	1	0	0
Vukovar County Court	0	1	0
Pozega County Court	0	1	0

APPENDIX IX

DISMISSALS IN 2003 BY JURISDICTION: 12

Dismissals by verdict: 5

Court	Croat	Serb	Others
Bjelovar County Court	0	1	0
Rijeka County Court	1	0	0
Osijek County Court	0	3	0

Dismissals by decision: 7

Court	Croat	Serb	Others
Zadar County Court	0	5	0
Sibenik County Court	0	2	0
Pozega County Court	0	0	0
Virovitica County Court	0	0	0

APPENDIX X

APPEALS PENDING IN 2003 BY JURISDICTION

ALL PENDING APPEALS: 35

Court	Croat	Serb	Other	Cases
Karlovac County Court	1	2	1	4
Bjelovar County Court	8	3	0	5
Sisak County Court	0	1	0	1
Slavonski Brod County Court	0	1	0	1
Gospic County Court	1	4	0	3
Rijeka County Court	3	0	0	1
Sibenik County Court	4	3	0	4
Zadar County Court	0	4	0	3
Split County Court	8	0	0	1
Vukovar County Court	1	10	1	5
Osijek County Court	0	25	2	7

COMPLETED APPEALS IN 2003: 15

Court	Croat	Serb	Other	Cases
Karlovac County Court	0	2	0	2
Bjelovar County Court	4	1	0	2
Sisak County Court	0	1	0	1
Gospic County Court	0	2	0	1
Sibenik County Court	0	1	0	1
Zadar County Court	0	1	0	1
Vukovar County Court	1	1	0	2
Osijek County Court	0	13	1	5