Organization for Security and Co-operation in Europe

Mission to Croatia

Headquarters

BACKGROUND REPORT: DOMESTIC WAR CRIME TRIALS 2004
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EXECUTIVE SUMMARY

Discussion and developments in 2004 related to war crimes were largely propelled by Croatia's relations with the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the process of accession to the European Union as well as the inter-linkage between the two. The prospect of the transfer of cases to Croatia as part of the ICTY Completion Strategy[1] intensified the attention paid by Croatian authorities as well as the international community to how war crime proceedings were being conducted in the Croatian courts.[2] Outcomes of this heightened focus included new legislation, increased judicial training and material investments, primarily for courts seen as likely recipients of ICTY cases, and increased activities to enhance inter-state cooperation.

Croatia's failure to surrender Ante Gotovina or to convince the ICTY and the European Union that it was taking adequate measures to secure his arrest and transfer temporarily halted Croatia's path toward EU accession in March 2005.[3] It also re-opened questions about the extent to which segments of Croatian society, including some within official structures, are prepared to accept prosecution of members of the armed forces for war crimes against the Serb minority.

Several indicators in 2004 permit the conclusion that, in general, the chances of a Serb war crime defendant to receive a fair trial before the Croatian judiciary improved when contrasted to past years. Prosecutors eliminated large numbers of unsubstantiated proceedings against Serbs. Serbs were convicted at a lower rate than in prior years and some unsubstantiated charges were dropped at trial. Although arrests still occurred on the basis of unsubstantiated or already dismissed charges, an increased number of Serbs arrested in 2004 were released when the charges were abandoned. The number of fully *in absentia* trials diminished considerably, particularly toward the end of the year, due to intervention by prosecutors, the Supreme Court, and the Ministry of Justice. High-ranking officials affirmed the importance of fair trials. These factors suggest progress toward remedying the significant ethnic bias against Serbs that has heretofore characterized Croatia's prosecution of war crimes. However, further efforts to consolidate this progress are needed, including steps to avoid unwarranted arrests and detention, review of prior *in*

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[1] The ICTY Completion Strategy, first set forth in United Nations Security Council Resolution [UNSCR] 1503, contemplates the following schedule for the completion of proceedings before the ICTY: all investigations to be completed by the end of 2004; all trials to be completed by the end of 2008; and all proceedings completed by the end of 2010. See also UNSCR 1534.

[2] During 2004, several bodies issued documents that referred to war crime prosecutions in Croatia. See e.g., European Commission, *Opinion on Croatia's application for membership in the European Union*, April 2004; United States Department of State *Country Reports on Human Rights – Croatia 2004*, February 2005; Amnesty International, *A shadow on Croatia's future: Continuing impunity for war crimes and crimes against humanity*, December 2004; Human Rights Watch, *Justice at Risk: War crime trials in Croatia, Bosnia and Herzegovina, and Serbia and Montenegro*, October 2004; United Nations Committee Against Torture, May 2004; Council of Europe, *Second Opinion on the implementation of the Framework Convention for the Protection of National Minorities*, October 2004.

[3] The Mission has separately reported on the Government's cooperation with the ICTY during 2004 related to the voluntary surrender of 8 ICTY indictees. See Mission Spot Reports from 12 March *"New ICTY Indictments Against Two Former Croatian Generals"* and 6 April 2004 *"Six former Croatian army and Bosnian Croat officials surrender to the ICTY amid renewed debate over Croatia's role in the armed conflict in Bosnia and Herzegovina"*.

absentia convictions and measures to address the continuing high error rate in trial court verdicts that results in reversal by the Supreme Court.

Nonetheless, the national origin of defendants remained a critical factor in war crimes prosecution in Croatia in 2004, raising systemic concerns as well as concerns about some individual trials. As stated in the Mission's prior report, there is no imperative of numerical equivalence of defendants by national origin. But the extreme disproportion observed over the course of years including 2004 between thousands of war crime cases initiated against Serbs in contrast to tens of cases against Croats supports a conclusion that the numerical discrepancies cannot be attributed only to different levels of criminality of certain members of the warring parties. [4] In addition, the significant difference in the number of Serbs and Croats prosecuted corresponds to an observable difference in the type of conduct for which they are prosecuted, with Serbs being prosecuted for a wide range of conduct while Croats have been prosecuted almost exclusively for killings. The prosecution of Serbs for war crimes for "less serious offenses" is also reflected in the punishment meted out, whereby nearly 60 per cent the Serbs convicted of war crimes in 2004 received a sentence of less than the statutory minimum of five years. This supports the hypothesis that different standards of criminal accountability are applied on the basis of national origin. Service in the Croatian Army is routinely seen to mitigate punishment.

Witnesses, particularly those called to testify against members of the Croatian armed forces, still face intimidation. Security for witnesses as well as judicial personnel warrants further strengthening as well as action against those who threaten or intimidate witnesses. The Witness Protection Law came into force in early 2004 and preliminary measures have been taken to upgrade witness protection services, including training and efforts to improve co-operation between relevant authorities, including foreign police services. The continuing practice of trying virtually all war crime cases in local courts, particularly in those areas most directly affected by the conflict, deserves re-consideration, given considerably greater risks of witness intimidation and lack of judicial impartiality. Political leaders should heed the warnings of judges and prosecutors that services are insufficient for witnesses and victims, particularly in inter-state proceedings, and that there are still forces seeking to intimidate witnesses from testifying.

The Government acknowledges that the ICTY Completion Strategy, including the likely transfer of cases to Croatia, should not be seen as the end of state responsibility for seeking individual accountability for war crimes, limited to those cases indicted or investigated by the ICTY. Rather it should be seen as the beginning of state responsibility for ending impunity regardless of the national origin of the perpetrators or the victims.

A limited number of Croatian courts could likely deal adequately with one or a limited number of ICTY transferred cases. Government officials can significantly contribute to creating a climate conducive to trials consistent with international standards, whether they originated with the ICTY or domestic authorities, by

[4] In March 2005, a national newspaper on the occasion of the issuance of the last ICTY indictments, produced an ethnic "scorecard" that indicated the ICTY had indicted approximately three times as many Serbs as Croats both overall (93 to 31) and for crimes in Croatia (17 to 6). "Hague indicts three times more Serbs than Croats," 19.03.2005, Jutarnji List, p. 35.

indicating through their words and actions that fair and impartial war crime trials are not only required by law but are the policy of the Croatian state and current Government. Such a politically supportive environment could significantly ease public pressures on the prosecution, courts, and particularly witnesses. Indeed, in the absence of such an environment, prosecutors will continue to face obstacles to gathering sufficient evidence to prosecute certain crimes. Reforms implemented for purposes of trying ICTY cases in Croatia should be equally applicable to cases that originate with the domestic authorities so as to avoid the development of a two-tier system of justice for war crimes.

Croatian authorities have made progress in remedying ethnic bias that characterized the first chapter of its domestic prosecution of war crimes. However, the challenge remains to begin a new chapter of prosecution that applies a uniform standard of criminal accountability regardless of the national origin of defendants and victims.[5] This will also involve ending impunity for certain notorious crimes, including the effort to cover-up a war crime, such as the moving of the bodies of 19 mostly Serb civilians killed in the village of Paulin Dvor in Eastern Slavonia to Lika, 400 kilometers distant. Increased inter-state cooperation will be required to address both pending cases and new cases given that crimes were frequently committed or prosecuted in one state while accused now reside in another.

This report contains statistical data as well as substantive discussion related to war crime proceedings monitored by the Mission during 2004 at the trial and appellate court level. The report highlights legal developments as well as trends observed. Where possible, it compares and contrasts observations from 2004 to those reported in the Mission's prior war crime trial reports from 2003 and 2002. The report also includes a number of developments in the first months of 2005.

[5] The Council of Europe also noted the "increasing awareness by authorities in Croatia of the need to ensure that domestic war crime trials are carried out without ethnic bias". It stresses, however, that further initiatives are imperative to deal with the remaining shortcomings. The Council of Europe hopes that "concentration of war crime trials in selected courts of general jurisdiction will lead to improvements" in this respect. *Second Opinion on the implementation of the Framework Convention for the Protection of National Minorities*; Council of Europe, 1 October 2004.

A. DEVELOPMENTS DURING 2004

The heightened attention given to domestic war crimes prosecution in 2004 was evident in actions taken by a variety of state actors, including the Government, the Supreme Court, the Chief State Attorney, and the Parliament, as well as the international community. Proceedings at both the ICTY and the European Court on Human Rights also had implications for future war crime trials in Croatia.

I. Criminal Code Amendments – New Criminal Offenses and Command Responsibility – Applicability to 1991-1995 Crimes

The Parliament in July 2004 amended the Criminal Code to include the new offences of *crimes against humanity* and *subsequent assistance to a perpetrator of a criminal act against values protected under international law*. The Code also for the first time prescribes criminal liability on the basis of "*command responsibility*," creating three separate crimes with punishment depending upon the degree of the commander's subjective knowledge and whether the crime occurred due to "failure to prevent" or "failure to punish war crimes[6]. The 1993 Code applied in war crime trials to date does not explicitly contemplate holding superiors criminally liable for their failure to prevent subordinates from committing war crimes[7]. It remains an open question whether the newly adopted provisions can be applied retroactively[8]. Also, the amendments introduce a new offence of *revealing the identity of a protected witness* which has relevance for war crime procedures.

II. Law on International Legal Assistance, International and Bilateral Agreements

In December 2004 the Parliament adopted the *Law on International Legal Assistance in Criminal Matters* that will enter into force on 1 July 2005.[9] The law sets out

[6] Article 167a, Paragraph 1 prescribes liability under the existing substantive war crime provisions for commanders who knew that their subordinates had committed or were about to commit war crimes and failed to prevent them, punishable by a sentence of five to twenty years. Paragraph 2 creates a new offence committed when a commander "had reason to know" that subordinates had or were about to commit war crimes but failed to prevent it, punishable by a sentence of 1 to 8 years. Paragraph 3 prescribes a new offence for "failing to punish" once the commander has knowledge that subordinates committed war crimes, punishable by a sentence of 1 to 5 years.

[7] For discussion of trial court and Supreme Court decisions construing command responsibility, see Section B.VI.1.

[8] The Government has stated that "[t]he ban on the retroactive application of criminal laws (Article 31 of the Constitution; articles 2 and 3 of the Criminal Code) seems to mandate that this older legislation be used…. But … the issue of retroactivity is not definitely settled, and is subject to judicial interpretation." *Submission of the Republic of Croatia to the Court's order for further information on certain Jurisprudential Aspects of the Croatian Law in the Context of the Prosecutor's Request under Rule 11 bis* submitted to the ICTY in *Prosecutor v. Rahim Ademi and Mirko Norac* on 9 February 2005, at pages 2-3. The principle of *nulla crime sine lege* would arguably prevent holding commanders liable for conduct that was not explicitly prescribed as an offence in the Criminal Code at the time of commission. However, the prohibition against retroactive application of criminal law is not absolute as evidenced by the caveat in Article 7.2 of the European Convention on Human Rights "for any act or omission, which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations."

[9] Once in force, the law will replace provisions of the Criminal Procedure Code.

procedures for various forms of legal assistance between Croatian and foreign judicial bodies in criminal matters, including sharing information, extradition, inter-state transfer of prosecution of less serious offenses,[10] and execution of foreign court verdicts. The Law foresees that requests received or submitted, as a rule, shall go through the Ministry of Justice. Direct communication between judicial bodies is permitted only if the law specifically allows or if otherwise contemplated by bilateral agreement, which is not currently provided for in the relevant agreements with Serbia and Montenegro and Bosnia and Herzegovina.[11] Lack of direct inter-state co-operation between judicial bodies has been identified by judges and prosecutors as a key obstacle to efficient and speedy provision of international legal assistance.[12]

The Law may have a positive impact on procedures in which evidence needs to be obtained in other countries. According to the Ministry of Justice, although the new law on its face prohibits the transfer of proceedings for serious crimes such as war crimes,[13] transfer of proceedings should nevertheless be possible under the terms of the bilateral agreements with Bosnia and Herzegovina and Serbia and Montenegro. Hence, alternative means exist for prosecution of war crime perpetrators who are inaccessible to Croatian authorities and who reside in and are citizens of other states of the former Yugoslavia, all of which like Croatia currently bar extradition of their nationals.[14]

In early 2005 the Chief State Attorney of Croatia signed a protocol with his counterpart from Bosnia and Herzegovina and Serbia and Montenegro, respectively, which establishes a mechanism for direct cooperation on prosecutorial matters in the pre-trial stage. The protocol is intended to eliminate bureaucratic hurdles and thereby provide for more efficient investigation of serious offences that have inter-state aspects, including war crimes. These agreements were immediately used *inter alia* as

[10] The law prohibits i*n absentia* trials in the case of a prosecution transferred to Croatia (Article 64).

[11] Bilateral agreements related to international legal assistance in criminal matters currently in place with Bosnia and Herzegovina and Serbia and Montenegro require that requests are submitted through the respective Ministries of Justice. However, Croatian Ministry of Justice representatives have indicated that direct inter-state co-operation between judicial bodies in case of urgency might be possible in the future as Croatia intended to withdraw its reservation to Article 15 of the European Convention on Mutual Legal Assistance in Criminal Matters.

[12] See *Report on the OSCE-facilitated expert level meeting on inter-state co-operation in war crimes proceedings – "witness issues",* Palic, Serbia and Montenegro, 29-30 November 2004. SEC.GAL/279/04, 6 December 2004. (attended by prosecutors and judges from Bosnia and Herzegovina, Croatia, and Serbia and Montenegro).

[13] The law, similar to the previously applicable Article 509(3) of the Law on Criminal Procedure, prescribes in Article 65 Paragraph 2 that Croatia cannot cede prosecution for crimes punishable by imprisonment of more than 10 years. The maximum sentence for war crimes is 20 years. However, Article 1 provides that international agreements will control if they regulate topics contained in the law. The bilateral agreements on mutual legal assistance in civil and criminal matters with Serbia and Montenegro and Bosnia and Herzegovina contain no such limit on transfer of proceedings. Croatia has signed but not ratified the European Convention on the Transfer of Proceedings in Criminal Matters.

[14] The law codifies the prior statutory and constitutional prohibition against the extradition of Croatian citizens, Articles 32, 35. The European Convention on Extradition, ratified by Croatia and Serbia and Montenegro but not Bosnia and Herzegovina, allows states to refuse extradition of their nationals but provides in Article 6 Paragraph 2 that on request such a case should be taken over by the state refusing extradition. In at least one case (Dragoslav Lukic) a suspect wanted for war crimes by Croatia was, after his arrest in Bosnia and Herzegovina based on an international arrest warrant, released by the court in 2004, given that he was a citizen of BiH and could not be extradited. According to information available to the Mission, the BiH authorities did not initiate a prosecution nor did the Croatian authorities seek to transfer the proceeding.

the basis for requests for Croatian prosecutors to interview witnesses in Serbia and Montenegro and Bosnia and Herzegovina related to the "Lora" case.
Video-link equipment donated by the United States to the Zagreb County Court in late 2004 provides technical means for inter-state cooperation in obtaining testimony from witnesses in third countries, including Serbia and Montenegro and Bosnia and Herzegovina. It remains to be seen whether such technological means will be made available for war crime proceedings ongoing in the numerous local county courts. Also, the legal framework may require amendment to clearly permit the widespread use of video-link testimony, particularly by persons residing in third countries, since its use is currently precisely and narrowly circumscribed[15].

III. Accelerated Prosecution Review Leads to Abandonment of Many Charges, Primarily Against Serbs; List of Pending Cases provided to Serbia and Montenegro

According to the Chief State Attorney, during 2004 States Attorney as part of their review of pending war crime proceedings dismissed or re-qualified war crime charges against approximately 370 persons, overwhelmingly Serbs, for which there was insufficient evidence.[16] In about 25 per cent of the cases indictments had already been issued, requiring action not only by the prosecutor but also by the court in order to end the prosecution. Approximately 1800 to 1900 "substantiated" cases remain, also primarily against Serbs, many involving final *in absentia* convictions. The Chief State Attorney indicated that further reduction in the number of pending charges was likely. In November, the Minister of Justice provided a list of these cases to her counterpart in Serbia and Montenegro. This was done upon the recommendation of the Mission in order to increase transparency and to provide a common basis for further discussion between the governments.

IV. *In Absentia* Trials / Supreme Court Rejects Requests for *in absentia* Trials

In 2004, the judiciary turned a page in its use of *in absentia* trials in war crime cases. While trial courts and the Supreme Court still carry a significant number of *in absentia* cases on their dockets, the number has decreased from past years. This appears to be the cumulative result of both the prosecution's and Supreme Court's increasing unwillingness to pursue such proceedings.

In three decisions issued between May and September 2004 the Supreme Court reversed decisions by the Zadar and Vukovar County Courts to conduct trials *in*

[15] Article 248 Paragraph 6 of the Law on Criminal Procedure provides for the use of technical devices for video or audio taping only in case a witness cannot appear before the court due to his/her old age, illness or serious physical or mental disabilities.
[16] The Chief State Attorney mandated review of pending cases stating "… 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 Attorney to all County State Prosecutors.*

absentia against war crime defendants believed to be in Serbia and Montenegro.[17] The Supreme Court held that insufficient measures were taken in all three cases to ensure the defendants' presence, in particular the issuance of international arrest warrants, and that there were no *particularly important reasons* that justified an *in absentia* proceeding[18]. In March 2005, the Supreme Court confirmed the Split County Court's decision in the "Lora" case to proceed with the trial against all eight defendants, although only four were currently in custody.[19] The Supreme Court held that the right of the detained defendants to a trial within a reasonable time in tandem with the need to try all defendants together rather than in separate trials justified conducting the trial partially *in absentia*.[20]

Several cases from 2004 exemplify complications remaining as a result of the approximately 500 *in absentia* war crime convictions against Serbs stemming from the 1990s. For example, Petar Sailovic spent more than a month in detention following his arrest in November 2004 before the Osijek County Court could establish that he had been wrongly convicted *in absentia* in 2002, instead of another person with the same name[21].

A next logical step following the Chief State Attorney's review of pending cases would be the systematic review of all *in absentia* convictions. Under existing procedural rules, an *in absentia* conviction can be re-examined only pursuant to a request for a new trial after the defendant's arrest[22]. This issue has particularly arisen as regards persons residing in Bosnia and Herzegovina and Serbia and Montenegro and who are aware that they are subject to international arrest warrants, which are not being executed by the police authorities in those states. The Chief State Attorney's elimination of numerous questionable proceedings, in combination with the high rate of exoneration of persons previously convicted *in absentia,* supports the need for a systematic review. This large group of cases will likely remain unresolved absent some type of reform or specific initiative.[23]

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[17] RH v. Radivoje Ivkovic [Vukovar County Court] I Kz 588/04-3, 12.08.2004; RH v. Zoran Zoric [Zadar County Court] I Kz 475/04-3, 13.05.2004; RH v. Bogdan Milanko et. al. [Zadar County Court] I Kz 259/04-4, 13.05.2004.

[18] Article 322 Paragraph 5 of the Law on Criminal Procedure provides that *in absentia* proceedings should only be conducted when particularly important reasons exist.

[19] I Kz 213/05-3, 15.03.2005.

[20] Rejecting the prosecution's argument that the trial should be delayed until all defendants were accessible to the court, the Supreme Court stated that it was not permissible to hold the detained defendants as "hostages" until an unknown date when the others might become available.

[21] Sailovic was arrested on the basis of an arrest warrant issued after the 2002 *in absentia* conviction. In December 2004, the Osijek County Court determined that Sailovic had been incorrectly identified in the indictment and guilty verdict as a war crime perpetrator, mistaken for someone with the same name. The court released Sailovic after a month in detention. However, the appeal of the conviction submitted in July 2002 by the *ex officio* appointed counsel remains pending at the Supreme Court as does the defendants request for new trial.

[22] While some defendants have intentionally surrendered to Croatian authorities in order to request a new trial with the goal to be eventually exonerated, it is unlikely that all persons will agree to be arrested prior to review of the merits of the conviction.

[23] The Chief State Attorney has expressed willingness to review final verdicts upon the request of defendants who can provide new evidence, according to existing procedural rules. However, a systematic review by either the courts or the prosecutor without the necessity of a request from each *in absentia* defendant would apparently require legislative change.

Thorough review of all cases, including final *in absentia* convictions is important not only to avoid unwarranted detention, but also to prevent the state from incurring unnecessary costs due to courts ordering compensation for illegal detention.[24]

V. Croatia Sanctioned by ECHR for Delays in Criminal Proceedings, including Delays at Supreme Court on Criminal Appeals

Given delays observed in some war crime proceedings, including the Supreme Court's consideration of appeals, the decision by the European Court of Human Rights [ECHR] in *Camasso v. Croatia* in January 2005 finding a violation of the right to fair trial has relevance. This was the first decision by the ECHR finding unreasonable delays in criminal proceedings in Croatia. The ECHR found that the prosecution that lasted nearly 7 years, of which more than three years elapsed while the appeal was pending at the Supreme Court, amounted to an unreasonably lengthy proceeding. The ECHR rejected the Government's explanation that the Supreme Court prioritizes cases where defendants remain in detention pending the appeal. [See Section B.I.3.b. related to length of proceedings at Supreme Court].

VI. Training.

Against the backdrop of the ICTY's completion strategy and potential referrals of cases from the ICTY to the domestic judiciary, the Ministry of Justice together with the ICTY conducted training courses on war crime procedures for judges and prosecutors, primarily but not exclusively from the four "special" courts. The Mission has recommended that in order to avoid the creation of a two-tier system of justice, the training should be expanded to include judicial officials from the other county courts, where the bulk of war crime procedures, approximately 80 per cent of all cases, are pending. In early 2005, the United States sent judges and prosecutors from the four courts for week-long study tours to the ICTY.

In 2005, the United States plans to provide training to attorneys who have previously represented defendants in war crime cases.

VII. Referral of ICTY Cases to Croatian Judiciary.

Both the ICTY Chief Prosecutor and the ICTY President visited Croatia during 2004, the President in particular focusing on the capacity of the Croatian judiciary to take-over cases from the ICTY. In June and November, 2004, in response to Judge Meron's requests, the Head of Mission provided written assessments, based on the Mission's trial monitoring, of the readiness of the Croatian courts to conduct war

[24] The Mission is aware of at least one case in which the state was ordered to pay compensation for unfounded detention after the prosecution abandoned war crime charges during the re-trial following an *in absentia* conviction. Milenko Dabic was sentenced in 1993 *in absentia* by the Sisak County Court for crimes against humanity (Art 128 Criminal Code). K-20/93. In late November 2004, the Nova Gradiska Municipal Court awarded Dabic approximately 6,000 € in compensation for 193 days spent in prison in 2002 serving the *in absentia* sentence after he returned to Croatia from abroad.

crime trials in accordance with international standards for purposes of a possible transfer pursuant to Rule 11 *bis*. The Head of Mission observed "that one or a limited number of transferred cases could likely be dealt with adequately by a limited number of courts." He added that "the transfer of any significant number of cases from the ICTY to Croatia could overburden the Croatian judiciary given its present capacity."[25]

In September 2004, the ICTY Chief Prosecutor requested referral to Croatia under Rule 11 *bis* of the ICTY indictment against Mirko Norac and Rahim Ademi, former commanders in the Croatian Army, for crimes committed against Serbs in Croatia in 1993.[26] During a hearing in February 2005, the Trial Chamber sought answers to questions about Croatian law and practice from representatives of the ICTY Prosecutor, the Government of Croatia, an *amicus curiae*, as well as the defendants' attorneys. The Trial Chamber requested all parties to respond specifically to several observations in the Mission's June 2004 report.

In February 2005, the Prosecutor made a similar request for referral to either Croatia or Serbia and Montenegro of the indictment against Mile Mrksic, Miroslav Radic, and Veselin Sljivancanin, the so-called "Vukovar three" and former commanders in the Yugoslav People's Army, for crimes committed in Croatia in November 1991. In April 2005, the Trial Chamber requested written submissions from the Government of Croatia as well as the Government of Serbia and Montenegro regarding various legal questions.

VIII. Prisoner Transfer to Serbia and Montenegro.

In February 2005, four Serbs serving sentences for war crime convictions in Croatia's central prison Lepoglava were transferred at their request to Serbia and Montenegro to serve out the duration of their sentences. These transfers were the result of discussions between the Minister of Justice and her counterpart in Serbia and Montenegro. Further transfers are being sought by war crime prisoners and are anticipated in 2005.

B. FINDINGS FROM TRIAL MONITORING

I. SCOPE OF PROSECUTION IN 2004 /STATISTICS

During 2004, the Mission followed 76 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). Approximately 50 per cent of all persons against whom formal proceedings continued in 2004, including trials and appeals, were pursued *in absentia*. The monitored proceedings involved 211 individuals out of whom approximately 75 per cent (157) were Serbs, 17 percent (37) were Croats and a very small number of other minorities (7 Ruthenians, 3 Bosniaks, 2 Roma, 2 Hungarians, and 3 defendants

[25] Letters of 17 June 2004 and 12 November 2004 to Judge Theodor Meron from Peter Semneby.

[26] The Government indicated that the determination of which court would handle any ICTY referred case would depend upon the President of the Supreme Court acting in response to a request from the Chief State Attorney. *Submission of the Republic of Croatia to the Court's order for further information on certain Jurisprudential Aspects of the Croatian Law in the Context of the Prosecutor's Request under Rule 11 bis,* page 3.

of unknown ethnicity). Forty-six (46) cases involved single individuals (39 Serbs, 4 Croats, 1 Hungarian, 1 Roma, 1 Bosniak), while 30 cases involved groups totalling 160 individuals (116 Serbs, 30 Croats, 7 Ruthenians, 2 Bosniaks, 1 Roma, 1 Hungarian and 3 unknown ethnicity).[27]

Compared to prior years the scope of pending war crime procedures decreased slightly in 2004.

1. Pre-trial: Arrests, Releases, and Indictments

As in 2002 and 2003 the vast majority of individuals arrested during 2004 were Serbs. Three-quarters of Serbs arrested were returnees. More than 90 per cent of all individuals arrested during 2004 were released in the course of the year. Of those, more than half were released after the prosecution abandoned the war crime charges due to lack of evidence. The number of new indictments raised in 2004 decreased significantly over prior years, with only Serbs being indicted.

a. Arrests [See Appendix I]. In 2004 the Mission followed 30 arrests based on war crime charges, a slight decrease from the 2003 and 2002 totals of 37 and 35, respectively. Serbs accounted for approximately 83 per cent (25 persons) of all arrests and Croats approximately 17 per cent (5)[28] .

In an increase from 2003, 76 per cent of Serbs arrested (19 of 25) were returnees arrested either at border crossings or in their place of permanent residence, including in police stations when obtaining identity documents.[29] Fourteen of the 19 Serb returnees arrested (74 per cent) were released in 2004, after charges were abandoned or the charge was re-qualified and amnesty applied. Ten (5 Serbs and 5 Croats) were long term residents, including one Croat arrested on the basis of an international arrest warrant from Bosnia and Herzegovina. In addition, one Serb was arrested after extradition from a third country.

In addition, the Mission is aware of 8 Serbs wanted by Croatia for war crimes who were arrested in third countries on the basis of international arrest warrants[30]. In three cases extradition was denied, in at least one case due to fair trial concerns.[31] In at least one case, the individual was released after arrest and detention by the third country when Croatia indicated during the extradition process that it no longer intended to pursue the war crime charge.[32] Another was released after it was

[27] Because of the significant difference in the number of proceedings against Serbs and Croats, the conclusions regarding trends affecting Serbs are more reliable than trends concerning Croats.
[28] In 2003, of 37 persons arrested, 84 per cent (31) were Serbs, 14 per cent (5) were Croats, and 1 Hungarian while in 2002, of 35 persons arrested, 80 per cent (28) were Serbs, slightly less than 20 per cent (6) were Croats and 1 Macedonian.
[29] In 2003, 45 per cent of Serbs arrested were returnees.
[30] Three in Bosnia and Herzegovina, three in Austria, one in Norway. An additional extradition remained pending in the United Kingdom against a Serb arrested in 2002.
[31] Austria denied extradition of Vujnovic and Blanusa; Norway denied extradition of Gojkovic.
[32] Podkolnjak (Austria).

determined that as a national of the detaining third country, he could not be extradited under applicable law.[33] One Serb was extradited from Hungary[34].

b. Releases [See Appendix II]. During 2004 the Mission followed the release of 32 individuals (29 Serbs and 3 Croats) previously arrested on war crime charges.[35] Of those released, 23 persons had been arrested during 2004.

The reasons for release were threefold:

a.) 53 per cent (17 Serbs) were released after the prosecution abandoned charges due to lack of evidence.[36] This constituted an increase from 2002 and 2003[37]. Those released were detained for 1 day to 11 months with an average of approximately 4 months. Comparable to previous years, this included 3 cases of mistaken identity[38] and against two persons charges had already been dropped but the arrest warrant had not been revoked[39].

b. 25 per cent (8 Serbs) were released although proceedings would continue, either pending investigation, pending appeal of a conviction and sentence of less than 5 years where detention was deemed unnecessary, or the indictment was not issued within the 6-month legal deadline.

c. 25 per cent (3 Croats and 5 Serbs) were released after acquittal, including one Serb who had been extradited.[40]

Prior to their release, approximately 38 per cent (12 individuals) had spent less than one month in detention, 25 per cent (8) had been detained from 1 to 6 months, 25 per cent (8) were detained from 6 to 12 months, and approximately 13 per cent (4) were released after 1 year or more.

c. Indictments [See Appendix III]. The Mission is aware of one case in 2004 in which prosecutors raised a first-time war crime indictment against 2 individuals, both Serbs, a significant decrease from 2003 when 53 persons were indicted[41]. Two Serbs were indicted for having committed *war crimes against prisoners of war*.

[33] Lukic (BiH).
[34] RH v. Vlado Tepavac [Vukovar County Court].
[35] One person was arrested and released twice.
[36] This included one person, Sailovic, who although convicted *in absentia* for war crimes, was upon arrest determined to be wrongly charged and convicted instead of another person with the same name.
[37] In 2003 40 per cent (12 of 30) were released due to discontinuation of proceedings and in 2002 approximately 20 per cent (10 of 51).
[38]Nikola Potkonjak and Zdravko Novakovic [Sibenik County Court]; Petar Sailovic [Vukovar County Court].
[39] Radovan Pikula [Dubrovnik County Court]; Dragoslav Buncic [Bjelovar County Court].
[40] RH v. Vlado Tepavac [Vukovar County Court].
[41] RH v Stojan Vujic and Dobrivoje Pavkovic [Bjelovar County Court] art. 122. In 2004, other persons previously indicted as parts of groups were re-indicted individually. For this report, the Mission does not include these as new indictments.

2. Trials/Re-trials [Appendix IV and V]

During 2004, the Mission monitored a total of 34 trials[42] involving 108 individuals (83 Serbs, 13 Croats, 7 Ruthenians, 1 Hungarian, 1 Roma, and 3 of unknown ethnicity).[43] Included in this total were 14 re-trials following either Supreme Court decisions reversing the trial court verdict or a request by defendants for a new trial upon arrest after *in absentia* convictions. In a substantial decrease contrasted to 2003, three trials (involving 16 Serbs) were conducted fully *in absentia*.[44] Four trials were conducted partially *in absentia* with some defendants present, including a case in which one present defendant was tried with 17 others (all Serbs) *in absentia*.[45] While only slightly more than 20 per cent of trials were conducted *in absentia*, nearly half of all defendants were tried *in absentia*,[46] the vast majority in several large group trials conducted by the Vukovar County Court as well as smaller trials in the Zadar County Court. In addition, at least one case was tried for the second time fully *in absentia* by the Vukovar County Court after the Supreme Court's reversal of the earlier *in absentia* conviction.[47]

a. Verdicts – Convictions/Acquittals/Dismissals [See Appendices VI, VII, VIII]

During 2004, twenty-four trials involving 47 individuals (42 Serbs, 4 Croats and 1 Hungarian) were concluded[48]. This total includes 9 re-trials.

Trial outcomes were as follows: 30 persons (28 Serbs, 1 Croat, 1 Hungarian) were found guilty[49] and 12 (9 Serbs, 3 Croats) were acquitted.[50] Trials against an additional 5 Serbs ended when the prosecution abandoned the charges.

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[42] The highest number of trials was conducted in Vukovar (8 trials). The next greatest number was conducted in Osijek (6) and Zadar (5).

[43] In 2003, the Mission monitored 34 trials involving 101 persons (84 Serbs, 14 Croats, 1 Bosniak, and 1 Roma) and in 2002 a total of 34 trials involving 115 persons (90 Serbs, 22 Croats, 2 Bosniaks, and 1 Hungarian).

[44] RH v. Dragor and Milan Opacic [Zadar County Court]; RH v. Dusan Skoric, Bogdan Milanko, Sinisa Bogunovic, and Boro Milanko [Zadar County Court]; RH v. Zlatan Kulic and 9 others ("Bapska group") [Vukovar County Court]. In 2003, 9 trials against 29 persons, mostly Serbs, were conducted fully *in absentia*.

[45] RH v. Ilija Vorkapic ("Lovas" case) [Vukovar County Court]. Other examples include RH v Davor Tosic [Zadar County Court] (1 present defendant tried with 1 *in absentia*); RH v. Jovan Curcic and others ("Borovo group") [Vukovar County Court] (5 present defendants tried with 3 *in absentia*); RH v. Milan Stankovic and others ("Miklusevci group") [Vukovar County Court] (10 present defendants tried with 17 *in absentia*).

[46] Of 55 defendants tried *in absentia* in 2004, 47 were Serbs, 3 Croats, 1 Ruthenian, 1 Roma, and 3 unknown ethnicity.

[47] RH v. Zlatan Kulic and 9 others ("Bapska group").

[48] One trial was concluded by a decision pursuant to Article 308 paragraph 1 of the Law on Criminal Procedure after the prosecution desisted from prosecution before trial.

[49] All 30 persons convicted in 2004 were convicted for w*ar crimes against the civilian population*.

[50] Most completed trials resulted in convictions, acquittals or dismissals of all defendants. However, in 4 trials different verdicts were issued in the same case. RH v. Nikola Ivankovic and Enes Viteskic, ("Paulin Dvor") [Osijek County Court] (1 convicted, 1 acquitted); RH v. Stojan Pavlovic and others ("Popovac group") [Osijek County Court] (3 convicted, 1 charges dropped/amnestied); RH v. Jovan Curcic and others ("Borovo group") [Vukovar County Court] (6 convicted (3 *in absentia*), 2 acquitted); RH v. Zlatan Kulic and others ("Bapska group") [Vukovar County Court] (9 convicted *in absentia*, 1 charges dropped).

Based on 42 verdicts, the overall conviction rate was 71 per cent, a decrease from 2003.[51] Viewed from the perspective of defendants' national origin, 75 per cent of Serbs (28 of 37) were convicted, while 25 per cent of Croats (1 of 4) were found guilty.[52] In 2004 Serbs constituted 93 per cent (28 of 30) of those convicted, while they constituted 88 per cent (37 of 42) of persons who received verdicts of acquittal or conviction.[53] Croats constituted approximately 3 per cent (1 of 30) of all convicted while they represented 9 per cent (4 of 42) of individuals who received a verdict of acquittal or conviction.[54]

Half of Serbs (14 of 28) found guilty were convicted *in absentia* by two courts.[55] While still a substantial number, this constituted a significant decrease from 2003.[56] More than half of persons convicted (16 of 30, all Serbs) received sentences less than the prescribed minimum of five years,[57] a substantially increased percentage from prior years.[58] Sentences ranged from a low of one and a half to a high of fifteen years with a mean sentence of three years. The average sentence was approximately 5 and one-half years, a decrease from prior years.[59]

Nine re-trials involving 18 Serbs were completed. These were conducted following either Supreme Court decisions reversing the prior verdict and remanding the case to the trial court (5 cases involving 14 Serbs)[60] or the defendants' requests for a new trial after a previous *in absentia* conviction (4 cases involving 4 Serbs).[61] Re-trials in 2004 resulted in the exoneration either through acquittal or the dropping of charges against 66 per cent of previously convicted defendants, including one extradited from a third

[51] In 2003 and 2002, the overall conviction rate was 90 per cent (based on 41 verdicts) and 67 per cent (based on 77 verdicts), respectively.
[52] In addition, 1 Hungarian was convicted. In 2003, 94 per cent of Serbs (30 of 32) and 71 per cent of Croats (5 of 7) were convicted. In 2002, 83 per cent of Serbs (47 of 57) and 18 per cent of Croats (3 of 17) were found guilty.
[53] In 2003, Serbs constituted approximately 81 per cent of those convicted (30 of 37), while they constituted 78 per cent of persons (32 of 41) who received verdicts of conviction or acquittal.
[54] In 2003, Croats constituted approximately 13.5 per cent of all convicted (5 of 7), while they represented 17 per cent (7 of 41) of individuals who received a verdict of acquittal or conviction.
[55] RH v. Milan and Dragor Opacic [Zadar County Court.]; RH. v. Mladen Maksimovic, Dragan Savic, Jovica Vucenovic ("Borovo group") [Vukovar County Court] and RH.v. Zlatan Kulic and 8 others, ("Bapska group") [Vukovar County Court].
[56] In 2003 and 2002, 90 per cent and 60 per cent of Serbs were convicted *in absentia*, respectively.
[57] RH v. Tihomir Drajic (3 years) [Bjelovar County Court]; RH v. Rajko Jankovic (4 years) [Sibenik County Court]; RH v. Ivanka Savic (4 ½ years) [Vukovar County Court]; RH v. Stojan Pavlovic, Djuro Urukalo and Branko Berberovic ("Popovac group") (2 1/2 years, 2 years, 2 months, and 1 1/2 years) [Osijek County Court]; RH v. Zlatan Kulic 4 years, Nikola Teodorovic 3 years, Miodrag Simeunovic 3 years, Rajko Milosevic 3 years, Ranko Sljubura 3 years, Drago Vuckovic 4 years, Mihajlo Mijatovic 3 years, Goran Mijatovic 3 years, Radojko Radmilovic 3 years ("Bapska group") [Vukovar County Court] (all *in absentia*).
[58] In 2003 and 2002, approximately 5 per cent and 25 per cent, respectively, of those convicted received less than the minimum sentence.
[59] In 2003, the average sentence was approximately 9 years (based on 37 convictions).
[60] RH v. Savo Gagula [Bjelovar County Court]; RH v. Tihomir Drajic [Bjelovar County Court]; RH v. Nikola Cvjeticanin [Gospic County Court]; RH v. Zorana Banic [Zadar County Court]; RH v. Zlatan Kulic and others ("Bapska group") [Vukovar County Court].
[61] RH. v Dane Serdar Dane [Gospic County Court]; RH v. Momcilo Grbic [Gospic County Court]; RH v. Vlado Tepavac [Vukovar County Court]; RH v. Ivanka Savic [Vukovar County Court].

country.[62] The rate of exoneration upon re-trial increased significantly from 2003 and 2002, casting significant doubt on the validity of some prior convictions.[63]

b. Length of Proceedings

In 2004, of 24 concluded trials, approximately one-fifth were completed within less than 1 month. One-third were completed within one to six months, approximately one-third were completed within six to 12 months, 1 trial took more than a year and 2 trials lasted more than two and one-half years.

As in 2003, some trial courts failed to deliver written verdicts within the time period required by law, i.e., 2 months after the verdict had been pronounced orally. Delays ranged up to 14 months.[64] Such delays interfere with the defendants' right to timely lodge an appeal and are of particular concern when defendants remain in detention during the appellate process. The Mission has also observed delays in the commencement of re-trials by county courts after the Supreme Court has granted an appeal and remanded the case for further proceedings[65]. In addition, significant delays in scheduling hearings were observed in on-going trials[66].

3. Appeals [See Appendix IX]

a. Decision on Appeal

During 2004 the Mission followed 40 cases pending appeal at the Supreme Court from trial court verdicts involving 108 individuals (74 Serbs, 28 Croats, 3 Bosniaks, 1 Hungarian, 1 Roma).[67] In nine pending cases all defendants (41 Serbs, 1 Croat, and 1 Bosniak) were tried *in absentia*. These cases originated from the Zadar, Vukovar, and Osijek County Courts.

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[62] Four re-trials ended with acquittal of 4 Serbs previously convicted: RH v. Vlado Tepavac [Vukovar County Court] (extradited from Hungary); RH v. Savo Gagula [Bjelovar County Court]; RH v. Nikola Cvjeticanin [Gospic County Court] and RH v. Dane Serdar [Gospic County Court] while 2 re-trials ended with charges against 2 Serbs being dropped: RH v. Momcilo Grbic [Gospic County Court]; RH v. Dragoljub Savicin *in absentia* "Bapska group" [Vukovar County Court].

[63] In 2003 and 2002, the rate of exoneration on re-trial of previously convicted defendants was 33 per cent and 55 per cent, respectively.

[64] RH v. Dane Milovic [Sibenik County Court] (oral verdict January 2004, written verdict delivered in March 2005); RH v. Rajko Jankovic [Sibenik County Court] (oral verdict May 2004, written verdict delivered in March 2005); RH v. Miodrag Balint [Osijek County Court] (oral verdict March 2004, written verdict September 2004); RH v. Enes Viteskic and Nikola Ivankovic [Osijek County Court] (oral verdict April 2004, written verdict November 2004); RH v. Stojan Pavlovic and others ("Popovac group") [Osijek County Court] (oral verdict April 2004, written verdict September 2004).

[65] For example, in the "Virovitica group" case, the Supreme Court reversed and remanded for retrial in November 2003, however as of April 2005, the retrial has not commenced (pending reply to the county court from the Ministry of Defence on evidentiary questions). I Kz-238/02-8. Also, in the "Baranja II" case, the Supreme Court reversed and remanded for retrial in May 2003, but as of April 2005, the re-trial has not commenced. I Kz-589/02.

[66] For example, in RH v. Mihajlo Hrastov, the second retrial started at the Karlovac County Court in September 2004. After three days, the trial was suspended until March 2005, to obtain witness testimony through international legal assistance. In March, the hearing was suspended indefinitely on the grounds of the defendant's motion that he was mentally unfit for trial.

[67] In addition, the Mission also followed a limited number of appeals lodged by defendants against whom war crime charges were re-qualified and the amnesty law was applied.

In 2004, the Supreme Court decided appeals involving 28 individuals (9 Serbs, 17 Croats, 1 Bosniak and 1 Roma) in 13 cases, one of which was fully *in absentia*. The Supreme Court quashed trial court verdicts and remanded the case for re-trial in approximately 55 per cent of the appeals (15 appeals involving 2 Serbs and 13 Croats),[68] an increase from 2003.[69] As in previous years the primary reason for remand was that the trial court had incorrectly established the facts. [See Section B.VI.3.a. below] In February 2005, the Supreme Court invalidated convictions issued in late 2004 by the Osijek and Vukovar County Courts, granting the appeals of 7 Serb defendants.[70] The Supreme Court confirmed approximately 45 per cent of the verdicts (13 appeals involving 7 Serbs, 4 Croats, 1 Bosniak, 1 Roma).[71] In three appeals in which the verdict was confirmed, the Supreme Court lowered the sentence,[72] and in two appeals the Supreme Court increased the sentence.[73]

b. Length of Proceedings

In 2004, of 12 decided appeals, the Supreme Court issued its decision in one-quarter within 6 months, one quarter within a year, one quarter within 18 months, and one-quarter within 20 months to 27 months.

In 2004, the Supreme Court in some cases exceeded the three-month legal time limit[74] for deciding appeals when defendants remained in detention, with delays ranging up to 18 months.[75] In addition, delays of up to nearly four years have occurred at the Supreme Court in cases where defendants were not in detention, but were convicted and sentenced to less than five years[76], acquitted and the prosecution appealed,[77] or

[68] The Supreme Court granted two defendants' appeals reversing 2 convictions (2 Serbs) (Drajic and Karan) and granted three prosecutor appeals reversing 13 acquittals (13 Croats) (Hrastov, "Bjelovar group", "Lora").

[69] In 2003 and 2002, the reversal rate was 50 and 95 per cent, respectively.

[70] RH v. Milan Stoisavljevic, K-89/03 [Osijek County Court], Supreme Court quashed verdict and remanded case for re-trial on 01.02.2005; RH v. Jovan Curcic and 5 others ("Borovo group") K-44/03 [Vukovar County Court], Supreme Court quashed verdict and remanded case for retrial, Kz-1076/04-5, 23.02.2005.

[71] The Supreme Court thereby rejected 11 defendants' appeals of convictions in 7 cases (Abdic, Vuckovic, "Gospic group" (Norac, Oreskovic, Grandic), Banic, Savic, Jovanovic, and "Koprivna group" (Zivkovic, Stojcic, and Miljkovic).

[72] RH v. Zorana Banic [Zadar County Court] I Kz 901/04-7, 14.12.2004; RH v. Mirko Vuckovic [Sisak County Court] IKz 446/04-3, 05.10.2004; RH v. Fikret Abdic [Karlovac County Court] third instance appeal.

[73] RH v. Prica and Tomic, I Kz 629/03-3.

[74] Art. 409 of the 2003 Law on Criminal Procedure 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.

[75] RH v. Zeljko Prica et al., verdict of conviction delivered in April 2003, Supreme Court decision confirming conviction and increasing sentences dated 05.10.2004, although not received until March 2005. I Kz 629/03-3. In RH v. Stokan Sekanic, Osijek County Court verdict was pronounced on 22.7.2004. K-14/04, appeal to the Supreme Court is pending,

[76] In the case of Djordje Miljkovic of the "Tovarnik group", the defendant's appeal from the Vukovar County Court conviction submitted in April 2002 has been pending for 3 years. K-42/01.

[77] For example in RH v. Savo Grulovic, the prosecution's appeal of an acquittal has been pending since 27 February 2001, i.e., for 50 months. K 84/00. In RH v. Zeljko Bjedov the prosecution's appeal of July 2001 against an acquittal has been pending for 45 months. K-1/2001. In RH v. Bosko Macura, the prosecution's appeal against an acquittal has been pending since 13 January 2003, i.e., 27 months. K - 13/0. In the "Bjelovar group" case, the Supreme Court decided in April 2004 on a prosecution appeal

were convicted *in absentia* and remained at large[78]. Delays of such duration raise fair trial concerns such as those addressed by the ECHR in *Camasso v. Croatia*. [See Section A.V. above].

II. CONDUCT FOUND TO CONSTITUTE WAR CRIMES AND GENOCIDE

The Mission's trial monitoring suggests that there is a difference on the basis of national origin in the conduct charged as war crimes. The large number of Serbs are charged for a wide range of conduct, while the limited number of Croats are charged almost exclusively when killings are involved. The Croatian judiciary appears to apply a broader definition of genocide for which only Serbs have been convicted than that generally found in international humanitarian law or as applied by the ICTY.

1. War crimes against the civilian population

The vast majority of war crime trials that were concluded in 2003 and 2004 involved crimes that were qualified as war crimes against the civilian population. This offense can *inter alia* be committed by ordering or directly committing "attacks against civilians", "killings", "torture", "inhuman treatment", "applying measures of intimidation and terror", and "wanton destruction of property".[79] Most defendants were convicted for "inhuman treatment" or "using measures of intimidation and terror". Some crimes involved the "destruction of (mostly civilian) property" and in one case the crime of "pillage" was established. In a few cases the charges involved the "expulsion" of a limited number of persons from a limited geographical area. During 2003 and 2004, courts in only a few cases convicted defendants for conduct that included "killings".

Serbs were prosecuted and convicted for war crimes against the civilian population for the entire range of criminal conduct specified above, with the vast majority of convictions predicated upon physical or psychological abuse. In contrast, Croats were almost exclusively prosecuted for conduct that involved killings.[80]

a. Inhuman Treatment

Examples of the type of conduct that was found to be inhuman treatment and as such was held by the Supreme Court and trial courts to constitute war crimes against the civilian population include:

- beating one detained civilian with a wooden pin that resulted in fractures of five ribs, in combination with a threat made to another civilian.[81]

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filed in January 2002, i.e., after 27 months. I Kz 111/02-7. In the Jaglicic case, the prosecution appeal submitted in February 2003 remains pending as of April 2005, i.e. for 26 months. KT-56/92-94.

[78] For example in the "Batina" case, the defendants' appeal of June 2002 *in absentia* conviction has been pending at the Supreme Court for 34 months (as of April 2005). K-109/96

[79] Article 120, 1993 Criminal Code.

[80] According to the Mission's information, all of the 31 underlying charges against Croats indicted for war crimes committed against Serbs since 1991 involved the killing of Serbs (in one case the court did not follow the indictment and re-qualified the crime as physical abuse).

[81] The Supreme Court confirmed the Osijek County Court conviction of Stjepan Petresev, Hungarian, I Kz- 223/02-3, 17.12.2003.

- beating one civilian with a rubber stick[82]
- arrest and beating of two civilians with a rubber stick that resulted in a broken elbow of one victim, in combination with attempts to force them to confess to something they had not done[83]

b. Intimidation and terror

The Supreme Court in 2004 confirmed the guilty verdict of the Vukovar County Court finding *inter alia* that the demand by Ivanka Savic, Serb, directed towards a woman to "attend and cook for her while she was addressing her as her servant maid", to constitute a war crime against the civilian population[84].

c. Property destruction / pillage

Examples of conduct considered to constitute property destruction and pillage within the scope of war crimes against the civilian population include the following:

- arson of six houses and/or farmsteads was considered property destruction[85]
- taking bed sheets, cookware, an alarm clock and a trolley from the houses of two civilians was considered to be pillage[86]

d. Expulsion

In the "Popovac" case the Osijek County Court convicted the Serb defendants for expelling the non-Serb population of a village.[87] The court found that the defendants, in their capacity as members of the "Territorial Defense" and with an intention to render the stay of non-Serbs impossible and to expel non-Serbs in order to make it an ethnically clean Serb area, physically and mentally abused, interrogated, beat, and tortured the non-Serb population. As a result, most of the non-Serbs were forced to leave their homes and fled the village.

e. Killings

Examples of the type and extent of killings that were found by trial courts to constitute war crimes against the civilian population include:

- death of 19 civilians that resulted from defendant throwing hand grenades and shooting with automatic rifle into a house where civilians were sheltered[88]

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[82] The Supreme Court confirmed the Vukovar County Court conviction of Slobodan Gojkovic, Serb, I Kz- 303/03-5, 15.07.2003, increasing sentence from 2 to 3 years.
[83] The Osijek County Court convicted Milan Stoisavljevic, Serb, K-89/03-166, 16.07.2004; reversed by Supreme Court 01.02.2005 and remanded for re-trial.
[84] I KZ 429/04-3, 08.09.2004. Savic was also found guilty on two additional counts.
[85] The Sisak County Court convicted Mirko Vuckovic, Serb on 29.03.2004, K-32/03.
[86] RH v. Ivanka Savic, Vukovar County Court conviction on this and two other counts upheld by Supreme Court, I KZ 429/04-3, 08.09.2004.
[87] K-41/03-193, 08.04.2004.
[88] In the "Paulin Dvor" case the Osijek County Court convicted Nikola Ivankovic, Croat, K-18/03-418, 08.04.2004.

- defendant conveyed orders to his mortar unit to shell the town of Vukovar which caused the death and wounding of numerous civilians and the destruction of private, cultural and religious property[89]
- defendant conveyed orders to his mortar unit to shell the town of Osijek which caused the death and wounding of numerous civilians and the destruction of cultural and religious property[90]
- three defendants ordered several soldiers to transfer and murder at least 10 detained civilians; three defendants ordered the fourth defendant to murder at least 19 Serbs and Croats detained in military barracks, which the fourth defendant did, two defendants ordered a third defendant to kill three individuals which the third defendant did; one defendant killed one woman[91].

2. War crimes against prisoners of war

The following examples were found to constitute war crimes against prisoners of war[92]:

- threatening prisoners and beating 6 Croat prisoners with a baseball bat[93]
- arrest of 3 Croats and hitting and kicking those 3 prisoners, beating them with guns, putting guns and knifes in their mouths and at their throats, forcing them to state before television cameras from Serbia that they were sent to kill Serbian families[94]

3. Genocide

Croatian law largely re-iterates the definition of genocide contained in Article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.[95] However it expands the Convention's definition to include "forcible population displacement"[96].

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[89] The Vukovar County Court convicted Zarko Tkalcevic, Croat member of the JNA. K-38/99, 11.04.2001. Confirmed by the Supreme Court I Kz-533/01-5, 19.11.2003.

[90] The Osijek County Court convicted Milos Loncar, Serb in June 2002 K-18/02-110. Confirmed by the Supreme Court in August 2003.

[91] "Gospic group" case Rijeka County Court K 11/01, 24.03.2003 confirmed by the Supreme Court IKz 985/03-9, 02.06.2004.

[92] Article 122 of the 1993 Criminal Code prohibits *inter alia* the killing, torture, or inhuman treatment of prisoners of war.

[93] The Supreme Court confirmed the guilty verdict of the Bjelovar County Court against Rade Vrga, Serb and increased the sentence. I Kz-592/02-8, 08.01.2003.

[94] The Osijek County Court convicted Stokan Sekanic, Serb, K-14/04-149, 22.07.2004, pending appeal.

[95] Article 119, 1993 Criminal Code prohibits the killing, bodily injury, or forcible displacement of a population with the intent to destroy in whole or in part a national, ethnic, racial or religious group.

[96] Several domestic courts (see e.g., *Germany against Kusljic* BGH 21/2001) have ruled that forcible expulsion, or "ethnic cleansing" from an area does not *per se* constitute Genocide but could under particular circumstances indicate that Genocide was committed if used as a method for systematic destruction. In the *Prosecutor v. Karadzic and Mladic*, the ICTY Trial Chamber referred to "ethnic cleansing" as a potential form of Genocide. "… the Trial Chamber considers that it must focus more specifically on the analysis of the intention "to destroy in whole or in part a national, ethnical, racial or

In January 2004, the Supreme Court upheld the Osijek County Court conviction of 4 Serbs for Genocide ("Koprivna" case).[97] The trial court found that the defendants, together and in agreement with unknown members of Serb paramilitary groups, with the intention to render life of Croats and other non-Serbs impossible, participated in the arrest and transport of 23 Croats to the "free" territory of Croatia.

In total the Mission is aware of 4 cases all tried before the Osijek County Court in which 13 defendants were found guilty of Genocide. Three of the 4 cases were appealed and all were confirmed by the Supreme Court in 1994, 1997 and in 2004, respectively. The Supreme Court upheld the convictions that involved the expulsion of a limited number of Croats (1 Croat[98], 23 Croats[99], unspecified number of Croats[100]) from a single village or other limited area in combination with intimidation, threats and/or taking property of Croats, but did not involve killings. In one case the conduct that was found to be Genocide included the killing of 24 individuals[101].

In May 2004, the Vukovar County Court initiated a trial against 23 Serbs, 11 Ruthenians and 1 Roma, indicted in 1996 for having committed Genocide by killing, beating, and intimidating the non-Serb population in 1991 and 1992 ("Miklusevci" case). The indictment alleges that as a result of those actions approximately 100 non-Serbs, mostly Ruthenians, were expelled from the village[102].

Courts and prosecutors have followed different practices in how they qualify "expulsions" for purposes of war crime prosecutions. For example, the Osijek County Court in the "Popovac" case in April 2004 qualified the expulsion of a limited number of non-Serbs as constituting war crimes against the civilian population, while in the "Koprivna" case this court qualified the expulsion of a limited number of non-Serbs as constituting Genocide.

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religious group". Insofar as it is considering command responsibility, it must carry out its examination in order to discover whether the pattern of conduct of which it is seized, namely "ethnic cleansing", taken in its totality, reveals such a genocidal intent." *Trial Chamber Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence*, page 52, 11 July 1996.

[97] I Kz-865/01-3, 14.01.2004.

[98] "Kozlina" case, K 50/96-30. In April 1999, the Osijek County Court sentenced Mirko Kozlina to 10 years for Genocide for the following acts: In spring 1992, after he had moved into the house of Dragica Culjak… and seized all her property… he expelled Dragica Culjak from her house threatening her with weapons. On 3 October 1992, the defendant, who was armed ... threatened Dragica Culjak and the family of Daniel Toth to seize their tractor and a trailer. After that, …..went to the vineyard and threatened to throw a hand grenade against them. At an undetermined date in October 1993, …..the defendant threatened the mentioned family with the following words: "we will slaughter all you Croats and expel you from your houses". ….whilst Dragica Culjak moved out from Ilok and emigrated to Germany.

[99] "Koprivna" case, K 104/94-123. In July 2001 the Osijek County Court sentenced the 4 defendants to imprisonment between 5 and 12 years for Genocide for the following conduct: persons were put in a truck by unidentified members of Serb paramilitary units who threatened them with weapons and drove them … to the free territory of the Republic of Croatia The Supreme Court upheld the conviction in January 2004, I Kz 865/01-3.

[100] "Roklicer" case, K 156/92-38. The Supreme Court upheld the Osijek County Court conviction in March 1994. I Kz 381/1993-3.

[101] "Rebreca" case, K61/93. The Supreme Court upheld the Osijek County Court conviction in July 1997, I Kz 92/1996-3.

[102] The indictment KT-86/96 does not allege that the defendants acted with the special intent to "destroy a national or ethnic group in whole or in part". After an initial hearing, the trial was postponed.

The crimes prosecuted as Genocide before Croatian courts were not of the gravity usually associated with verdicts of international tribunals ascribing genocidal intent. A qualification of the "expulsion cases" as constituting war crimes appears more appropriate.

III. WITNESSES: NEED TO CREATE CONDITIONS CONDUCIVE TO RELIABLE TESTIMONY

As in prior years, the prosecution in most war crime trials during 2004 relied largely if not exclusively on eyewitness testimony. The extent to which conditions prevailing both inside and outside the courtroom are conducive to reliable and complete witness testimony, particularly in cases against members of the Croatian armed forces, is thus a critical factor. The Witness Protection Law came into force in early 2004 and preliminary measures have been taken to upgrade witness protection services.[103]

Yet, findings of the Supreme Court and trial courts as well as Mission trial monitoring revealed numerous examples of harassment and threats to witnesses that had the potential to compromise their testimony. These findings underline the pressing need to improve protection for witnesses in war crime trials. Despite extensive court findings of intimidation, few corrective measures have yet been taken. Not surprisingly, therefore, in numerous cases, witnesses change their testimony or indicate they no longer remember the events in question.

War crime trials in 2004 were primarily conducted in county courts in those areas of Croatia most directly affected by the conflict. The extent and intensity of witness intimidation observed by courts and the Mission, even when the trial was moved out of the community where the crimes occurred, support a presumption that fair and professional war crime proceedings may not be possible in communities heavily affected by the conflict. It appears *prima facie* unlikely that witnesses who live in such small communities testify in those same communities without exposing themselves to outside pressure. Similarly, it seems likely that prosecutors and judges living in the community might equally be exposed to pressure.

There also remains a gap in state provision of witness-victim support services, including a range of services such as transport, accommodation, psycho-social support, etc., particularly when witnesses testify in foreign courts. To date, this gap has been partially filled by NGOs and on an *ad hoc* basis by individual judicial officials. Institutionalization of such services was identified by prosecutors and judges in the OSCE-sponsored November 2004 trilateral meeting in Palic as a key reform needed to better facilitate witness testimony in war crime cases.

The extent to which Croatia addresses the issue of intimidation of witnesses as well as that of judges and prosecutors will in large part determine the extent to which it can pursue all perpetrators of war crimes regardless of national origin or position. Such

[103] For example, police officers in the Ministry of Interior's witness protection unit participated in training provided by representatives of the German police force. The United States announced completion of a needs assessment at the end of 2004 and pledged to provide additional training to the police on witness protection matters.

measures may include re-consideration of the current practice of trying virtually all war crime cases in the courts in whose jurisdiction the crime occurred as well as specific confidence-building efforts with regard to Serb witnesses vis-à-vis police forces responsible for witness security and protection.

1. Court atmosphere – insufficient order maintained by court

Particularly in some trials against Croats, the atmosphere inside and outside the courtroom remains of concern. Although the Mission observed an overall improvement during 2004 there were still war crime trials during which witnesses were repeatedly disturbed during their testimony by supporters of defendants or of victims. For example, in the September 2004 re-trial of Mihajlo Hrastov [Karlovac County Court, Croat], several questions posed to witnesses by the lawyer of an injured party (Serb) were followed by loud comments by supporters of the defendant. In the Dane Serdar case [Gospic County Court, Serb], a hearing was repeatedly interrupted by a supporter of the Croat victim and the witness was verbally attacked outside the courtroom by the supporter. During the re-trial of Zorana Banic, Serb, a spectator in the Zadar County courtroom shouted "shut up, I saw you there" at Banic during her testimony. In the same case, several journalists disturbed the final arguments of prosecution and defense by laughing or by letting their mobile phones ring. In all three cases the presiding judges failed to maintain order in the courtroom and warn the individuals who disturbed the procedure. In addition, the Karlovac County Court failed to warn the defense attorneys in the Hrastov case when they left the courtroom in protest and only returned after the Court President persuaded them after approximately 20 minutes absence.

In addition, in some cases witnesses who were yet to testify remained in the courtroom during the testimony of other witnesses, contrary to the Law on Criminal Procedure.[104]

2. Witness intimidation and/or witnesses without recollection

In several cases monitored by the Mission, witnesses claimed that they were threatened prior to the hearing[105]. In addition, even when not alleged by witnesses, in some cases there were indications that successful attempts to intimidate witnesses were made. For example, in the "Bjelovar group" case the Supreme Court in April 2004 in its decision overturning the acquittal of 4 Croats underlined that there were

[104] Article 248 of the Law on Criminal Procedure provides that witnesses should be heard without the presence of other witnesses. For example, in RH v. M. Hrastov, a prosecution witness, a police officer and colleague of the defendant, testified during a hearing in September 2004 after being present in the courtroom during the testimony of previous witnesses. In the "Bjelovar group" case (Luka Markesic and others) hearing of 11 January 2005, a prosecution witness was present in the courtroom during a part of another witness' testimony, before he was removed by the Presiding Judge (the incident was noted in the court minutes).

[105] In the case against Hubelic and Gavron (Sisak County Court, acquittal), a prosecution witness testified that he was contacted by several former and active service high ranking Croatian army officials prior to the hearing, inquiring as to the content of his testimony. According to the witness, one of the officials threatened his family and him. K-33/03, 23.07.2004.

strong indications that witnesses who testified in favor of the defendants gave such testimony because they received threats[106] .

Similarly in the "Gospic group" case in which the Supreme Court in 2004 confirmed the conviction of several high-ranking members of the Croatian Army including Mirko Norac, the Rijeka County Court determined that "[i]t is indisputable that the witnesses who testified during this criminal proceeding were under pressure and threatened that they should stop talking, or were told what they should say during the trial…"[107]

Witnesses in several trials testified that they could no longer remember what had occurred although they had previously testified based on their recollection before the investigating judge. Some witnesses claimed that the investigating judge erred when taking their statement and insisted that the different testimony given during the trial was accurate[108]. The trial court in the "Gospic group" case connected the phenomenon of witnesses not being able to recall or changing their testimony with witness intimidation, making extensive and detailed findings regarding the extent and type of threats to ten prosecution witnesses[109].

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[106] RH v. Luka Markesic and others ("Bjelovar group") I Kz 111/02-7, 22.04.2004. During a hearing at the re-trial in January 2005 several witnesses repeatedly claimed that they had previously received threats demanding to testify in favour or against the defendants. The defendants were acquitted for the second time in late February 2005. Other cases in which witnesses were found to have changed their testimony or have lied include: RH v. Milan Zdrnja [Vukovar County Court]; RH v. Vlado Tepavac [Vukovar County Court]; RH v. Stojan Vujic and Dobrivoje Pavkovic [Bjelovar County Court]; RH v. Tomislav Duic and others ("Lora") [Split County Court]; RH v. Mihajlo Hrastov [Karlovac County Court]; RH v. Savo Gagula [Bjelovar County Court].

[107] RH v. Tihomir Oreskovic and others ("Gospic group"), Rijeka County Court K-11/01, 24.03.2003.

[108] For example, in the case of Dane Serdar (Gospic County Court) a witness claimed during a May 2004 hearing that Serdar did not mistreat her and that the investigative judge, who found that the witness stated that Serdar was the perpetrator, must have misunderstood her. In the Vlado Tepavac case, the Vukovar County Court acquitted Tepavac, Serb, after a key prosecution witness changed his testimony from that given during the prior *in absentia* trial in 1996. Claims that a judge erred when taking witness testimony are difficult to verify as the Law on Criminal Procedure foresees no *verbatim* record. Instead, the investigating judge as well as the trial judge paraphrase the witness testimony for the court record.

[109] RH v. Tihomir Oreskovic and others ("Gospic group"); K-11/01, 24.03.2003. For example, the trial court found that "witness Liljana Mandic…was threatened that she should be careful what she was going to say because she could end up just like her father…there is also an indication that witness Dusko Knezevic, whose wife received a phone call from a person who introduced himself as "black"…who said that Dusko would end up like his mother….Branka Kranjnovic was threatened immediately after the first testimony she made during the trial on which occasion she was told that if she did not disappear before, she would now…Rosana Ivanicevic, who is threatened, witness Luka Matanic is not just receiving threatening phone calls but also he received a letter saying what he was going to say during the trial, the same as happened to witness Ivan Murgis. The case of witness Vlado Markovic indicates that 5 to 10 days before he was summoned for the first interview, the third accused Grandic told him that he should say nothing in Court and he should not mention any names. The case of witness Zdenko Bando indicates that, after an article was published in the weekly "Danas"…the fourth accused, Mirko Norac told him "what are you writing in the magazine? I will kill you". …The statement given by witness Nikica Pavic clearly indicates that there are stories in Gospic that some people, the witnesses are being threatened….witness Ante Karic was exposed to pressure coming from Gospic ever since he received the summons." The trial court concluded: "Of course these were not all the witnesses who were exposed to pressure or were threatened. Hereby we have mentioned only examples in order to elucidate why some of the witnesses answered even the most insignificant questions with 'I don't know' or 'I don't remember' during the trial, or why they made a deviation from their statement given during the investigation."

The Mission is not aware of any prosecutions of persons who threatened, intimidated or otherwise sought to have witnesses change their testimony. Nor is the Mission aware of any proceedings against witnesses found to have testified falsely.[110]

The Mission monitored only two trials during 2004 in which witnesses were granted protection by holding the hearing *in camera* [Banic case and Radak case, both Zadar County Court]. In only one case the Mission monitored [Cvijeticanin case, Gospic County Court] one witness was subject to protective measures preventing disclosure of his identity during the hearing and in the court minutes. The witness was brought in by the police and escorted to a separate room equipped with video-link devices that distorted his face, preventing recognition. Despite the provision of these protective measures the witness refused to testify.

3. Problematic Access to Witnesses Residing in other States of the Former Yugoslavia

Given the nature of the conflict and the significant minority population displacement that occurred as a result, many proceedings related to war crimes in Croatia involve victims and witnesses who now reside outside Croatia. Such witnesses are primarily either defense witnesses on behalf of Serb defendants or prosecution witnesses against Croat defendants. In several cases in which courts summoned Serb witnesses residing outside Croatia to appear to testify, these witnesses expressed fear and unwillingness to return to Croatia[111] In other cases, statements of witnesses outside Croatia were requested by means of international legal assistance through the Ministry of Justice to its counterpart in the country where the witness resided, primarily Serbia and Montenegro. While this procedure functioned satisfactorily in some cases, it did not in others[112]. However, even if the statement can be obtained by a foreign court, if it is not subject to cross-examination, it will likely be deemed of less use. Electronic means for taking testimony, currently available in some courts, could possibly eliminate some problems associated with obtaining such testimony, if made available for proceedings in all courts and if its use was allowed by the Law on Criminal Procedure [See Section A.II. above.]

Trials that commenced in late 2004 or are likely to commence in 2005 that include requests for international legal assistance in the form of obtaining witness testimony in Serbia and Montenegro or Bosnia and Herzegovina include the re-trial in the "Lora" case against 8 Croats at the Split County Court and the re-trial against Mihajlo Hrastov at the Karlovac County Court.

[110] Article 303 of the Criminal Code prohibits perjury.
[111] For example in RH v. M. Hrastov, Karlovac County Court hearing in September 2004
[112] For example in the case of Savo Gagula, the Bjelovar County Court requested a witness testimony from Serbia and Montenegro in March 2003. By March 2004 the request remained unanswered, which prompted the court to complete the trial without the requested testimony.

IV. PROSECUTION: FEW NEW PROSECUTIONS; CORRECTIVE MEASURES ELIMINATE UNSUBSTANTIATED CHARGES AGAINST SERBS, YET UNSUBSTANTIATED CASES CONTINUE

According to Mission information, only two completely new war crime indictments were raised in 2004, both against Serbs. Prosecutors discontinued proceedings against approximately 370 persons, overwhelmingly Serbs, for lack of sufficient evidence of war crimes. Despite the large number of charges dropped, some unsubstantiated charges continued to be processed, including cases in which Serbs were detained. In such cases, prosecutors routinely re-qualify the charges to the lesser crime of armed rebellion, which is subject to the Amnesty Law. Although amnestied persons avoid further prosecution on the amnestied charge, amnesty nevertheless can carry negative civil and criminal consequences. As in prior years, several cases tried in 2004 demonstrated that a significant number of earlier indictments were unsubstantiated or suffered from technical flaws.

1. Unsubstantiated indictments and overcharging participation in armed rebellion as war crimes demonstrated by abandoned charges and application of the Amnesty Law

The Mission monitored 4 trials during 2004 in which the prosecution abandoned war crime charges against 5 Serbs due to lack of evidence. Also during 2004, approximately 60 per cent of the Serbs arrested (17 of 29) were subsequently released when the prosecution dropped charges either due to lack of evidence or due to re-qualification of the crime and application of amnesty.

The case against Dragoslav Buncic is illustrative of large-scale indictments against Serbs that proved to be unsubstantiated but nevertheless resulted in arrests. Buncic was arrested in October 2004 on the basis of a 55-person indictment issued in 1994 by the Bjelovar State Attorney. The Mission followed the arrests in prior years of 5 other Serbs named in the indictment, all of whom like Buncic were released after the prosecution abandoned the charges due to lack of evidence. In the case of Buncic, charges against him were abandoned in July 2004 when the prosecutor re-qualified the indictment against 35 defendants into the lesser crime of armed rebellion. However, the arrest warrant was not revoked in the intervening period.

Buncic and other cases followed by the Mission suggest that local prosecutors routinely re-qualify unsubstantiated war crime charges into the lesser crime of armed rebellion. While such practice may be justified when conduct that constitutes armed rebellion can be substantiated, i.e., when there is reasonable doubt that the defendant participated in the armed rebellion, it is not justified to simply "close the case"[113].

[113] The Mission followed three cases in which Serbs appealed amnesty decisions issued by county courts after the prosecution abandoned a war crime charge and re-qualified into it into armed rebellion. Two of these appeals have been rejected by the Supreme Court, although on different grounds. In the case of Dragan Vojnovic, the Supreme Court rejected the appeal as *inadmissible* where the trial court had stopped the proceeding in relation to the re-qualified charge pursuant to Art. 201 section 1 sub-section 3 of the Law on Criminal Procedure. The Supreme Court stated such a decision can be appealed by the state attorney or injured party only. I Kz 225/04-03, 18.05.2004. In contrast, in the case of Alexander Stojkovic, the Supreme Court deciding on merits denied the appeal as *unfounded* where the trial court had stopped the proceeding in relation to the re-qualified charge on the basis of the

Although defendants are not subject to further prosecution on the amnestied charge, amnesty decisions nonetheless carry negative criminal and civil consequences. At least one court in 2004 considered amnesty as an aggravating factor for purposes of sentencing in a war crime trial, determining that although participation in the armed rebellion was "forgiven" it would not consider the criminal record of the defendant as "clean"[114]. Amnestied persons have also been barred from professional associations, such as the bar association, or public office[115]. Finally, amnestied persons are not eligible for compensation for illegal detention.[116] In order to prevent such consequences, once war crime charges cannot be substantiated, it would be preferable if charges would be dropped and not re-qualified to armed rebellion.

The Zadar County Court in October 2004 acquitted Milenko Radak of war crime charges and held *inter alia* that the indictment from 2003 was not well founded and lacked necessary information[117]. The court explained that several parts of the indictment, such as the allegation that Radak was a member of a Serbian political party before the war and his adherence to the idea of Greater Serbia, were not relevant to the offence alleged. The court questioned whether it was appropriate to initiate court proceedings in such situation[118].

2. Insufficiently defined indictments

In 2004, both the Supreme Court and one trial court noted deficiencies in war crime indictments.

In the "Lora" case, the Supreme Court in 2004, quashed the acquittal of 8 Croats by the Split County Court holding *inter alia* that the indictment from 2002 was not sufficiently defined.[119] The Zadar County Court in the Milenko Radak case also noted that the indictment was, among other flaws, too general and inadequately defined[120].

In May 2004 a trial against 35 persons (23 Serbs, 11 Ruthenians and 1 Roma) commenced before the Vukovar County Court ["Miklusevci" case] based on a 1996

Amnesty Law. The Supreme Court relied on Art. 341 section 1 of the Law on Criminal Procedure whereby the state attorney can amend or change the indictment at any time in the course of investigation. According to the Supreme Court, re-qualification into armed rebellion was a continuation of criminal proceedings, only for a different criminal offence, and hence Art. 201 cited in the prior decision was not applicable. I Kz 399/04-3, 01.09.2004.

[114] RH v. Jovan Curcic and others ("Borovo group"), K-44/03, 09.07.2004; reversed and remanded by the Supreme Court 23.02.2005.

[115] For example, the Bar Association denied membership to Jovan Ajdukovic four times during the period 1997-2003, finding him unfit to practice law because of his conduct during the conflict, including a conviction for a crime against Croatia in 1993, for which he was amnestied in 1997 and rehabilitated in 2003.

[116] Article 503 Law on Criminal Procedure.

[117] Zadar County Court K -70/03, 18.10.2004, prosecution appeal pending.

[118] It is worth noting, however, that an indictment is raised only after its approved by an investigating judge.

[119] The Supreme Court indicated that the indictment was not sufficiently defined with regard to the possible contributions and roles of the defendants in the events and recommended that the indictment be amended during the new trial. I Kz-259/03-6, 25.03.2004.

[120] Zadar County Court K -70/03, 18.10.2004.

indictment for Genocide. The indictment does not specify the individual conduct of some defendants and contains insufficient identifying information on other defendants.[121] The trial has been suspended since July 2004 upon the prosecutor's request who, given that 8 defendants have died, announced his intention to gather further evidence and amend the indictment accordingly.

V. DEFENSE COUNSEL: FAIR TRIAL CONCERNS - ADEQUATE REPRESENTATION AND EQUALITY OF ARMS

During 2004 the Mission again observed instances in which defense attorneys represented multiple *in absentia* defendants when appointed as *ex officio* lawyers by the trial court. For example, in the "Miklusevci" case (Vukovar County Court), 5 attorneys each represent 5 to 6 defendants, many of whom are *in absentia*. This practice is of concern as it appears unlikely that defense attorneys can adequately represent each individual client, particularly as they might have conflicting interests.

Also in relation to *in absentia* trials, the Mission has observed that defense attorneys, frequently do not adequately represent their clients. For example, in the "Bapska group" case (Vukovar County Court) during a hearing in September 2004, the court-appointed defense attorneys that represented several defendants at the same time, numerous times and for extended periods left the courtroom during trial. Such conduct is indicative of the quality of defense provided to *in absentia* defendants. Such practice raises serious concerns about the adequacy of representation afforded by the courts when appointing attorneys as well as the professionalism and ethics of some defense attorneys.

To date, none of the training specific to war crime prosecutions has included defense attorneys. However, the United States has indicated that this will be included in their programs in 2005 at least as related to the 4 special departments. The lack of such training, particularly for court-appointed counsel, raises the specter of an equality of arms problem for war crimes defendants.

[121] Rather than specifying individual conduct for some defendants, the indictment alleges that they committed the offence jointly without setting out the criteria for co-perpetration, namely as to "where", "when", and about "what" an agreement to commit the offence together and jointly was reached. The indictment only refers to some defendants by their first and last name without specifying further personal data such as date and place of birth, address, etc. Identifying defendants only by their first and family names is of particular concern as exemplified by Petar Sailovic who was arrested in November and remained in detention until late December 2004 at which time the Osijek County Court concluded that the arrest warrant, indictment and guilty verdict incorrectly referred to Sailovic, while the acts were alleged to have been committed by another person with a similar name.

VI. COURTS: COMMAND RESPONSIBILITY, TRIALS IN COURTS OF GENERAL JURISDICTION BY 3-JUDGE PANELS, SOURCE OF REVERSIBLE ERROR - PROBLEMS WITH FACT-FINDING AND APPLICATION OF LAW

1. Command/Superior Responsibility – Omission or Form of Co-perpetration

In the absence of legal provisions explicitly prescribing criminal liability for war crimes on the basis of command or superior responsibility [See Section A.I. above], courts have used different legal theories to explain why a commander was criminally liable for acts committed by his/her subordinates. The Supreme Court in October 2002 stated in *dicta* that a commander could be held criminally responsible for war crimes against the civilian population based on his "omission" to prevent illegal acts committed by his subordinates[122]. A key element for a superior to be found liable for failure to act was a "duty to act". In November 2003 the Supreme Court re-iterated that in order to hold superiors criminally liable for failing to prevent war crimes it was necessary to establish that they had a duty to act, explaining that commanders were legally obligated to protect civilians in times of conflict and hence to prevent illegal acts committed by their subordinates.[123]

In January 2004 the Supreme Court confirmed an *in absentia* conviction holding two commanders criminally liable as co-perpetrators for failing to prevent Genocide by their subordinates.[124] The Supreme Court held that the contribution to the realization of a joint plan required to find that a defendant participated in an offence as a co-perpetrator can be fulfilled by commission as well as by omission.[125] The commander's failure to act when aware of a plan by subordinates to commit crimes made him a participant in the realization of the plan. The Supreme Court confirmed the trial court's conclusion that by failing to prevent their subordinates from taking certain actions the commanders became co-perpetrators of Genocide, as without their contribution, the act could not have been committed[126].

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[122] RH v. Miljan Strunjas, Supreme Court I Kz-588/02-9, 17.10.2002. The Supreme Court relied on Article 28, para. 4 of the 1993 Criminal Code that states "(1) A criminal offense can be committed by an act or an omission to act. (2) A criminal offense is committed by omission when the perpetrator fails to perform an act which he was obliged to perform."

[123] RH v. Ivan Vrban, Andeljko Kasaj, Luka Perak, and Zeljko Iharos ("Virovitica"), Supreme Court I Kz-238/02-8, 06.11.2003.

[124] RH v. Stojan Zivkovic, Milan Miljkovic, Zoran Stojcic, and Srecko Radovanovic ("Koprivna") Supreme Court I Kz-865/01-3, Osijek County Court verdict K- 104/ 94 -123.

[125] Article 20 of the Criminal Code provides: "(1) If more persons, by participating in the execution of the action, or in some other way, jointly commit the criminal act, each of them shall be punished with the punishment prescribed for that criminal act."

[126] In contrast to its earlier decisions in RH v. Miljan Strunjas and "Virovitica" that relied solely on liability for omissions under Article 28 Paragraph 2, the Supreme Court in "Koprivna" found defendants liable as co-perpetrators pursuant to Article 20 in tandem with Article 28. The Supreme Court endorsed the *in absentia* conviction of the commanders although the trial court, when assessing the legal requirements of co-perpetration, failed to properly explain why the "omission" of the commanders was legally relevant conduct. Only if a "duty to act" existed could the "omission" be considered a "contribution" for purposes of deeming them co-perpetrators. The trial court simply determined that the "commanders *via facti*" who "according to the logic of things" were under an obligation to act, had the power to prevent the crimes and had the required intent in relation to their commanding position and their ability to prevent the crime.

In the "Popovac" case, the Osijek County Court in April 2004 convicted Stojan Pavlovic on the grounds that he was present during an interrogation, in the course of which the victim was beaten by a third person.[127] The court held that "the defendant did not do anything to stop the physical maltreatment of the victim although he could; he responded passively to the inhuman and cruel treatment by the other members of the territorial defense…". However, the court failed to explain on what basis it found Pavlovic criminally liable for failing to prevent or remaining "passive" in the face of the conduct of the unknown third person and made no reference to command responsibility. The indictment did not allege and the court did not establish that the defendant was a "commander" or that he had a "duty to act" to prevent crimes by those determined to be his subordinates.

2. Limited Implementation of ICC Law – Three-Judge Courts Implemented but All Cases Continue to be Tried in Courts of General Jurisdiction

Although in force for more than one year, sections of 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) applicable to war crime proceedings had only a limited impact in 2004. All new war crime trials initiated after the ICC Law's effective date were conducted by a panel of three professional judges.[128] Several county courts within whose territorial jurisdiction the alleged crimes occurred determined in 2004 that there were not three judges sufficiently experienced in criminal law. On this basis, courts requested and the Supreme Court granted changes of venue for trial, transferring the cases to other county courts of general jurisdiction.[129] Notably, no cases were transferred to the four "special" county courts in Osijek, Zagreb, Rijeka and Split to which the ICC Law extends extra-territorial jurisdiction over war crime cases and designates for the establishment of "investigation centres for war crimes". Of these four courts, only the Osijek County Court tried war crime cases in 2004, but in all cases the trials occurred in this court according to its territorial jurisdiction.

Similarly, the Supreme Court upheld the conviction even though there is little specific fact-finding in the verdict as to where, when, between whom and about what etc. the agreement to act together was reached, in support of its conclusion that there was a "common plan" to which the commander contributed. Under this standard it would appear that every commander who knows that the offence is about to be committed may be punished as a co-perpetrator.

Commonly, commanders are held liable *sui generis*, i.e., for their personal failure to act and not for "contributing" to the commission of the offence by -and together with- subordinates as co-perpetrators. While the contribution of the commander's "omission" might be viewed as comparable to affirmative acts by subordinates in the commission of crimes for purposes of classifying all under the general label as co-perpetrators, it seems more analytically appropriate to hold commanders liable for their omissions as a single (additional) perpetrator on a theory that is specifically related to their role as a commander.

[127] Osijek County Court K 41/03-193, 08.04.2004; pending appeal at the Supreme Court as of 20.09.2004.

[128] Under the previously applicable Law on Criminal Procedure, war crime trials were conducted by two professional and three lay judges.

[129] The Supreme Court transferred the case against Svetozar Karan from the Gospic County Court to the Karlovac County Court and the "Bjelovar group" case from the Bjelovar County Court to the Varazdin County Court that had never previously tried a war crimes case.

In 2004 the Chief State Attorney did not exercise his discretion provided in the ICC Law to request the President of the Supreme Court to transfer a case to another county court "when it is in accordance with the circumstances of the criminal act and the needs of conduct of the proceeding".[130] Hence, the ICC Law transfer option remained unutilized despite the re-trial of cases in local courts that raised concerns about whether the case could adequately be tried there, including the Hrastov case remanded for the second time to the Karlovac County Court where Hrastov remains on the local police force. As no domestic war crime case has been determined to warrant referral to the special courts, all trials continue to be tried before the courts of general jurisdiction. The four "special" courts are clearly being held in reserve to handle ICTY referred cases. While domestic and international efforts were deemed necessary to upgrade specialized courts, all local courts are deemed sufficient to handle domestic trials. The Mission continues to have concerns about the increasing development of a two-tier system of justice for war crime prosecution.

3. Trial court errors in finding facts, weighing facts and applying the law to the facts

In 2004, the Supreme Court reversed nearly 55 percent of trial court verdicts on war crime charges. As in previous years, the primary reason for reversal was the failure of the trial courts to find the facts correctly and sufficiently. In addition, although not errors *per se*, some verdicts were not sufficiently structured and did not clearly distinguish between legal and factual findings. Most verdicts neither set out the elements of the criminal offence nor indicated how the evidence proved during trial established those elements, thereby supporting the verdict.

a. Insufficiently established facts

As illustrated by the following examples, trial courts made a variety of errors in establishing facts. In a few cases, the error arose because relevant evidence was never considered by the court.

For example, in the "Lora" case, the Supreme Court found that the Split County Court failed to hear testimony important to establish facts relevant to the indictment, one factor in its decision to quash the acquittal of 8 Croats for crimes against Serb prisoners.[131] The Supreme Court determined that this resulted from the trial court's insufficient efforts to secure the presence of prosecution witnesses residing in Serbia and Montenegro and Bosnia and Herzegovina.[132]

In other cases, trial courts failed to adequately find facts necessary to establish key elements of the crime alleged and reached conclusory judgments without adequate

[130] Article 12(2), ICC Law.
[131] RH v. Duic et al. ("Lora"), Supreme Court, I Kz 259/03-6, 25.03.2004.
[132] In contrast, the Sisak County Court in March 2004 rejected the motion of Mirko Vuckovic to hear 5 witnesses from Serbia and Montenegro who purportedly would testify that another person committed the crime. The defense specified the names of the witnesses but could not provide the court with their addresses. The court indicated its belief, without providing a basis, that Vuckovic proposed the witnesses only to delay the trial. The Supreme upheld the conviction. I Kz 446/04-03, 05.10.2004.

factual support. This also included questionable use of taking judicial notice of facts that would appear to require more specific fact-finding.

For example, the Sisak County Court in March 2004 in the case against Mirko Vuckovic (Serb) did not clearly establish a connection between the offense and the armed conflict, an element of all war crimes under domestic law. An offense that simply happens at the time of the conflict does not necessarily rise to the level of a war crime. The court convicted Vuckovic of having committed war crimes against the civilian population for setting fire to several houses.[133] However, the court failed to establish and explain "that" and "why" it deemed the offence was committed "in connection" with an armed conflict[134].

Some courts failed to establish and explain why they found that a defendant had acted together and in agreement with others and hence could be held liable as a co-perpetrator.[135] For example, in the case of Tihomir Drajic, Serb, the Supreme Court in January 2004, when overturning the conviction held that the Bjelovar County Court had failed to explain why it found that Drajic acted as a co-perpetrator.[136] In particular, the trial court had failed to establish whether there was a prior agreement for joint action[137].

The Vukovar County Court in January 2004 *inter alia* established that Ivanka Savic, Serb, "identified" and "denounced" Croats and other non-Serbs and concluded that by doing this, she aided and abetted the "main act" of inhuman treatment of the civilian population that was committed by others.[138] The court did not establish or explain that Savic was aware that the identified persons would be treated in an inhuman manner or the purpose of the identification of Croats, a requirement for holding a defendant criminally liable as an aider or abettor[139].

Some courts failed to properly establish and/or explain why it deemed that the defendant acted with the required subjective intent when he/she committed the offence. For example, in the "Baranja II" case the Supreme Court in May 2003 when reversing the conviction held that the Osijek County Court failed to state the reasons

[133] Sisak County Court K-34/903, confirmed by Supreme Court, sentence lowered from 6 to 5 years, I Kž 446/04-03, 05.10.2004.

[134] In *Prosecutor v. Kordic and Cerkez*, the ICTY Trial Chamber held that "in order for a particular crime to qualify as a violation of international humanitarian law under Article 2 and 3 of the Statute, the prosecution must also establish a sufficient link between that crime and the armed conflict. …it is sufficient that the alleged crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties of the conflict…" IT-95-14/2, 26.2.2001 Paragraph 32, confirmed in part, reversed in part 17.12.2004.

[135] Article 20 of the 1993 Criminal Code provides for criminal responsibility of co-perpetrators.

[136] Supreme Court I Kz 466/02-6, January 2004. The Bjelovar County Court re-convicted Drajic and sentenced him to three years in late April 2004, appeal pending.

[137] Similarly, the Osijek County Court in July 2004 found Stokan Sekanic guilty of "participating in the surprise attack on the apartment of the Grujic family with an aim to kill the whole family…". Later the court held that "the accused, as co-perpetrator …spread intimidation and terror". The court failed to establish and explain "when", "where" and about "what" an agreement between the accused and the unknown perpetrators was reached, a condition necessary for the conclusion that the defendant acted as a co-perpetrator. Osijek County Court K 14/04-129, 22.07.2004; appeal pending at the Supreme Court as of 21.09.2004.

[138] RH vs. Ivanka Savic [Vukovar County Court] K-3/01, 21.01.2004; conviction confirmed I Kz 429/04, 08.09.2004.

[139] The 1993 Criminal Code prescribes aiding and abetting in Articles 21 and 22.

why it found and on the basis of which evidence it established that the defendant acted with premeditation.

Also, in several cases, courts inferred the intent to commit the offence from the fact that the defendant committed particular acts, rather than separately establishing the defendant's specific intent to commit the offense. For example, in 4 cases in which the Osijek County Court convicted defendants of Genocide [See Section B.II.3 above], the court did not properly establish that the defendants acted with the specific intent to "destroy a national or ethnic group in whole or in part". In three of the four verdicts, the court found that it ensued from the established facts that the defendants acted with genocidal intent. Similarly, the court did not establish evidence of each defendant's voluntary participation in an organized and systematic operation to commit Genocide, as required by international jurisprudence[140].

Several courts established facts or elements of the crime by taking judicial notice, referring to the fact as being "well known" or "common knowledge" and as such not requiring explanation or proof.[141] Courts used this device for facts such as the existence of an armed conflict of "non-international character" or that the "aggression from the JNA and paramilitary groups aimed at creating 'Greater Serbia'".[142] While the fact that an armed conflict occurred on the territory of Croatia is undisputed and as such can be determined as "well known", the question whether it was of a "non-international character" or whether the conflict was "an aggression by the JNA and paramilitary troops with the intention to create a greater Serbia" would need to be established and substantiated by facts.

b. Errors in Weighing Facts

In some cases, courts reached conclusions that were not supported by the facts presented at trial.

For example, in the "Bjelovar group" case the Supreme Court in April 2004 overturned the acquittal of 4 Croats on the grounds that the Bjelovar County Court

[140] The ICTY Trial Chamber observed that it is very difficult in practice to prove genocidal intent if the crimes committed are not widespread and if the crime charged is not backed by an organization or a system. *Prosecutor vs. Jelisic* December 1999, Paragraph 101.

[141] Croatia has indicated to the ICTY Trial Chamber that "[t]he doctrine of judicial notice is unknown to Croatian statutory law. In a standing practice, however, Croatian courts accept the existence or non-existence of certain facts without requiring proof by evidence, provided that they constitute 'common knowledge' (i.e., that they are 'notorious'). Most ICTY findings relating to the *chapeau* of crimes seem to fall into this category of facts." *Prosecutor v. Ademi and Norac*, Submission of the Republic of Croatia to the Court's Order for Further Information on Certain Jurisprudential Aspects of the Croatian Law in the Context of the Prosecutor's Request under Rule 11 *bis*, February 2005, pp. 3-4..

[142] The Osijek County Court in its verdict convicting Miodrag Balint stated that "the panel of judges has concluded on the grounds of well-known circumstances that did not require special proof that at the time relevant to the indictment an armed conflict of a non-international character occurred". Osijek County Court K 59/03-78, 02.03.2004. The Supreme Court in its decision affirming the conviction of Zorana Banic stated that "it is generally known that the military actions done by the JNA and armed paramilitary troops aimed at creating greater Serbia." Supreme Court I Kz 901/04-7, 17.12.2004. The Vukovar County Court in the "Borovo group" case stated that "the commander's authorities, as of every man on the top, are generally known" without further explanation." K 44/03, 13.07.2004, reversed and remanded February 2005.

had incorrectly rejected the testimony of a prosecution witness.[143] In addition, the Supreme Court noted that the trial court failed to consider relevant testimony of another witness in its explanation of the verdict.

In the "Virovitica" case, the Supreme Court in November 2003 found that the Bjelovar County Court unjustifiably concluded that the Croat defendants while responsible for physical abuse of a Serb victim could not be held responsible for his death.[144] The Supreme Court found that the trial court's conclusion that the victim's death could have resulted from something other than the defendant's conduct could only have been reached on the basis of medical expert testimony, which the trial court failed to obtain.

c. Applying the law to the facts

Although trial court decisions usually do not cite Supreme Court or international jurisprudence, it appears worth noting that county courts in war crime cases also made no reference to Supreme Court or ICTY jurisprudence, although this is a specialized area of law and one in which international jurisprudence is particularly developed. Some courts experienced problems applying certain legal principles, including international humanitarian law, to the established facts.

For example, several courts when explaining that a certain conduct violated international humanitarian law, an element of most domestic war crime offences[145], failed to explain why one or the other of the Protocols to the Geneva Conventions was applicable to the particular case.[146] In other words, why the court determined the conflict was of an internal or international character.[147] Several courts tied the resolution of this question to the date on which Croatia became a sovereign state. However, courts differed as to whether Croatia achieved this status prior to or only on 8 October 1991.[148]

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[143] The Supreme Court found, based on the trial court record, that the witness had testified similarly on three occasions and was as such a credible witness whose testimony should be considered. Supreme Court I Kz 111/02-7, 22.04.2004; acquitted on re-trial by the Varazdin County Court after remand 28.02.2005.

[144] The trial court determined that it could not rule out that death resulted from a pre-existing medical condition (ulcers) although there was undisputed testimony that one defendant "jumped on the victim's neck and chest after he fell, until he became silent" and that the body "was dragged by his feet in such a manner that his head was hitting the stairs." RH v. Iharos and others, I Kz-238/02-8 (trial court convicted 3 of 4 defendants of war crimes against the civilian population for physical abuse and sentenced to one year); Supreme Court reversed and remanded 06.12.2003. As of April 2005, re-trial is pending response from Ministry of Defense to trial court's January 2005 inquiry.

[145] E.g., Article 120 of the 1993 Criminal Code provides " Whoever, in violation of the rules of international law, at a time of war,…."

[146] Protocol I Additional to the Geneva Conventions (applicable to international conflicts); Protocol II Additional to the Geneva Conventions (applicable to internal conflicts).

[147] Several domestic laws, including the 1996 Amnesty Law and a 2003 law providing civil compensation for non-war damage caused by the military and police defines the conflict period, without qualifying its character, as 17 August 1990 to 23 August 1996.

[148] The Osijek County Court in both the "Popovac" case and the case against Miodrag Balint held that Croatia was not a sovereign country in August 1991 because the declaration to separate from the former Yugoslavia occurred only on 8 October 1991. "Popovac," K 41/03-193, 08.04.2002; Balint case, 59/03-78, 02.03.2004. Both cases pending appeal. In contrast, the Supreme Court in the "Baranja II" case found that Croatia was a sovereign state even prior to 8 October 1991, citing the 1990 Constitution and referendum. Supreme Court I Kz 589/02-9, 07.05.2003.

Some courts found a violation of international humanitarian law in conduct that did not appear to reach the substantive threshold required for finding such a breach.

For example, in the "Baranja II" case, the Supreme Court in May 2003 when overturning the guilty verdict held that the Osijek County Court failed to explain why it considered the act for which it found Milan Prusac guilty to be "inhuman treatment".[149] Similarly, the Vukovar County Court in January 2004 found Ivanka Savic guilty for having intimidated and terrorized a civilian by "requesting from Marija Blazinuic to cook and attend for her telling her she was her servant maid",[150] but did not explain why the conduct constituted a violation of international humanitarian law. In the "Borovo group" case, the Vukovar County Court in July 2004 concluded that the treatment of several victims was "inhuman" without defining what standard of conduct amounts to inhuman treatment[151].

Courts applied different standards as to the level of knowledge required on the part of the defendant to establish the same element of the crime. For example, in the case against Stokan Sekanic, the Osijek County Court held in its guilty verdict from July 2004 that "the criminal offence of war crimes against civilian population is a deliberate criminal act, which means that to commit such an act, the perpetrator must be aware that by doing so he violates the regulations of international law".[152] In contrast, the Supreme Court has stated that "the fact that this is a breach of the rules of the international law of war does not have to be covered by the perpetrator's intent, that is his awareness and knowledge that by his behavior he is in breach of the rules of international law, because in this case this criminal offence could only be committed

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The Supreme Court in 2004 affirmed the Rijeka County Court's opinion in the "Gospic group" case that killings took place "during an armed conflict between the Croatian Army and the so-called JNA and the paramilitary units and that this happened after 8 October 1991, the date when the Croatian National Assembly had reached a decision about breaking off relations with the Socialist Republic of Yugoslavia on which occasion the then JNA had been an enemy army of an alien country, consequently, it was clearly an international armed conflict, allowing the application of the provisions of the Geneva Convention as set out in the disposition of the refuted verdict and Additional Protocol I, which strictly prohibits such conduct." Supreme Court I Kz 985/03-9, 02.06.2004.

[149] The Supreme Court held that forcing Croats to walk on the Croatian flag could not be deemed "inhuman treatment" because the type of conduct enumerated in Article 4c of Protocol II to the Geneva Conventions such as rape, forced prostitution and other forms of attacks against civilians were of a different quality, which intensity and threshold the act in question did not reach. In its decision, the Supreme Court also held that illegal and groundless arrests of civilians *per se* are not outlawed by the Geneva Conventions or its Protocols. The Court held that illegal arrests could constitute acts of intimidation and terror if undertaken with intent to achieve such an aim. However, it held that the latter was not established by the trial court. I Kz 589/02-9, 07.05.2003. In contrast, the Supreme Court in April 2004 confirmed the Osijek County Court conviction of Zdravko Jovanovic, Roma, on two counts, including the illegal arrest and interrogation of a civilian. The trial court made no finding whether this was done with the intent to intimidate or terrorize.

[150] Vukovar County Court K 3/01, 21.01.2004 affirmed by Supreme Court I Kz 429/04-3, 08.09.2004.

[151] Vukovar County Court K 44/03, 13.07. 2004; Supreme Court reversed conviction and remanded for re-trial, 23.02.3005. For example, in the *Prosecutor v. Natelitic and Martinovic*, the ICTY Trial Chamber stated "[i]nhuman treatment is defined as a) an intentional act or omission, which causes serious mental harm or physical suffering or injury or constitutes a serious attack on human dignity, b) committed against a protected person" 31.3.2003 Paragraph 246.

[152] Osijek County Court K 14/04-129, 22.07.2004.

by those well acquainted with international law..."[153] Similarly, the Vukovar County Court in the "Borovo group" case in July 2004 found that "[t]he accused did not have to premeditate on the circumstances that it was a breach of international law, i.e., they did not have to be aware of it and know it, it would be sufficient that such a behavior constitutes a breach of international law"[154].

4. Sentencing practices: Range of Sentences, Majority of Sentences Below the Statutory Minimum, Use of Mitigating and Aggravating Circumstances

During 2004 the average sentence imposed by trial courts based on 30 guilty verdicts was approximately five and one-half years, a decrease compared to prior years. Sentences ranged from one and one-half to 15 years with a mean of 3 years. No defendant received the maximum sentence of 20 years. While the statutory punishment for most war crimes ranges from 5 to 20 years, more than half (16 of 30) of all convictions were punished by a sentence of less than 5 years. All those who received less than the statutory minimum were Serbs. Mitigating circumstances were frequently invoked to lower the sentence below the statutory minimum.[155] The low sentences also lend themselves to an interpretation that the gravity of conduct for which Serbs are charged with war crimes is relatively low and may amount to significant overcharging of war crimes. Such an interpretation would be consistent with the ethnic disparities in charging discussed above in Section B.IV.1.

a. Mitigating circumstances: used to reduce sentence below statutory minimum

Courts issuing sentences of less than 5 years made liberal use of circumstances deemed to mitigate punishment that appear to conflict with domestic criminal law as well as ICTY jurisprudence. Courts are obliged to consider all mitigating and aggravating circumstances when determining the sentence and to impose a sentence within the prescribed range of punishment, i.e., between 5 and 20 years. Only when particularly obvious mitigating circumstances exist may the court pronounce a sentence of less than the prescribed minimum[156].

As in previous years, courts cited a variety of circumstances for imposing sentences below the minimum including:

- "the defendant is married" [Baranja II, Osijek County Court]
- "the defendant is divorced" [Baranja II, Osijek County Court]
- "the defendant has children" [Stjepan Petresev, Osijek County Court],
- "the defendant has a clean criminal record" [various, e.g., Tihomir Drajic, Bjelovar County Court]

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[153] Kz 247/01, cited in Aide Memoire: *A Comparative Presentation of the Croatian Legislation and Case Law in the Context of the Take Over of Cases from the ICTY on the basis of Rule 11 bis of the Rules of Procedure and Evidence*, 5 July 2004. .

[154] Vukovar County Court K 44/03, 13.07.2004, Supreme Court reversed conviction and remanded for re-trial, 23.02.2005.

[155] Croatian legal commentators have observed a general problem with the use of mitigating circumstances: mr. sc. Marin Mrčela, County Court Zagreb judge, Dražen Tripalo, Supreme Court Judge*: Legislative and Judicial Sentencing Policy at County Court Zagreb from 1993 to 2003*.

[156] Article 38 1993 Criminal Code.

- "the defendant's health" [Popovac, Osijek County Court; Djorde Jaramaz, Sibenik County Court]
- "the defendant is unemployed" [Baranja II, Osijek County Court]
- "the defendant does not own property" [Baranja II, Osijek County Court]
- "the social status of the defendant" [Borovo Group, Vukovar County Court; Popovac, Osijek County Court]
- "the defendant is poor" [Zdravko Jovanovic, Osijek County Court].

Many of these circumstances, if properly considered mitigating, would not appear to be of such a particularly compelling quality as to justify reduction of sentences below the statutory minimum.

b. Mitigating and Aggravating circumstances considered

Trial courts applied different standards with regard to whether particular circumstances were considered mitigating or aggravating.

For example, the extent to which "following" or "conveying" orders was seen as a circumstance warranting mitigation varied. The Supreme Court affirmed the verdict of the Osijek County Court in which it found the fact that Milos Loncar did not issue the order to shell Osijek but rather conveyed an order from his superiors to be a mitigating circumstance.[157] In contrast, in the case against Zarko Tkalcevic, the Vukovar County Court did not consider the fact that the defendant was "only" conveying orders for the shelling of Vukovar as a mitigating circumstance.[158]

Some courts considered service in the Croatian Army as a mitigating factor while the participation in paramilitary formations or the JNA was deemed to be an aggravating factor. [159]

For example, in the "Gospic group" case, the Supreme Court stated that "…the defendants' contribution to the Croatian war of independence was assessed as a particularly mitigating circumstance….especially the fact that the act was committed in the course of the imposed, defensive and just Croatian war of independence, are the reason for….not pronouncing a more severe prison sentence…"[160]. Similarly the Vukovar County Court found the fact that Zarko Tkalcevic, a Croat who remained in the JNA and was found guilty for crimes committed against Croats, later left the JNA and joined the Croatian Army to be a mitigating circumstance.[161]

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[157] County Court Osijek, K-18/02-110, 12.06.2002; Supreme Court, I Kz-791/02-6, 06.05.2003. See also "Gospic group" (Rijeka County Court found the fact that one of the accused acted upon orders to be mitigating), K 11/01, 24.3.2002.

[158] Confirmed by the Supreme Court I Kz-532/01-5, 19.11.2003.

[159] Government officials have objected to the Mission's observation on this point, indicating that the Mission improperly equates service in the Croatian army with that in the "RSK" forces. To the contrary, the Mission's observation is based on the incongruity of considering military service at all as a sentencing factor in prosecutions related to conduct during war.

[160] Rijeka County Court, K 11/01, 24.03.2003, confirmed by the Supreme Court, I Kz 985/03-9, 02.06.2004. See also "Paulin Dvor" (fact that Nikola Ivankovic participated in the homeland war and won a military medal justified mitigating the punishment). Osijek County Court, K 18/03-418, 06.04.2004.

[161] Vukovar County Court, K 38/00, 11.04.2001, confirmed by Supreme Court, I Kz 532/01-5, 19.11.2003.

In contrast, in the "Koprivna" case, confirmed by the Supreme Court in January 2004, the Osijek County Court held that "the act had been committed during the time of temporary occupation of a part of the territory of …. Croatia was considered an aggravating circumstance for the defendants, which was the result of an armed attack conducted against Croatia … with the purpose of taking over a part of the territory and the annexation to the so-called greater Serbia".[162] The Osijek County Court in July 2004 found the motivation of Milan Stoisavljevic to divide Croatia in order to join part of it to the territory of Serbia as being an aggravating circumstance.[163]

At least one court considered an element of the offence also as an aggravating factor when determining the punishment. The Sisak County Court in March 2004 found Mirko Vuckovic guilty of having committed war crimes against the civilian population by setting fire to several houses and farmsteads in a village. The trial court's use of the same conduct as an aggravating factor constituted error cited by the Supreme Court as the basis for reducing the sentence.[164]

At least one court found the fact that a defendant was previously amnestied for the offence of *armed rebellion* to be an aggravating factor. The Vukovar County Court in July 2004 determined that although the defendant's participation in the armed rebellion was "forgiven" it would not consider the criminal record of the defendant as "clean".[165]

c. Inconsistent sentencing for similar conduct

Various courts applied different standards of sentencing in comparable cases. While courts have to take the circumstances of each case into consideration when determining the sentence, in particular the degree of individual guilt as well as the purpose of punishment, the punishment imposed for comparable conduct differed drastically.

In cases where defendants were convicted of having committed war crimes against the civilian population involving abuse of a very limited number of victims, county courts imposed sentences ranging from 1 to 7 years. The significant discrepancy in sentencing cannot reasonably be explained by the mitigating and aggravating circumstances applied by the courts.

For example, the Osijek County Court imposed a one-year sentence on Stjepan Petresev, Hungarian, for beating a civilian resulting in several fractured ribs, and for

[162] Osijek County Court, K 104/94-123, 06.07.2001, confirmed by the Supreme Court, I Kz 865/01-3, 14.01.2004.
[163] Osijek County Court, K -89/03 -166, 16.07.2004, Supreme Court reversed and remanded for re-trial 04.02.2005.
[164] The Supreme Court confirmed the guilty verdict but reduced the sentence from 6 to 5 years. I Kz-446/04-3, 05.10.2004.
[165] RH v. Jovan Curcic and others ("Borovo group"), K-44/03, 09.07.2004; reversed and remanded by the Supreme Court 23.02.2005. The Vukovar County Court found that the defendant's 1993 conviction and 13-year sentence for armed rebellion by the Osijek Military Court, although later subject of an amnesty decision, was a basis for considering the defendant as previously convicted since the rehabilitation period of 10 years had not expired.

threatening another civilian with execution.[166] The same court imposed a six-year sentence on Zdravko Jovanivic, Roma, for the illegal arrest and beating of a civilian in combination with threatening another civilian with execution.[167] .

In the "Virovitica" case, the Bjelovar County Court sentenced three Croats to one year each for having beaten two civilians, one of whom subsequently died.[168] In contrast, the Osijek County Court sentenced Branko Stankovic, Serb, to 6 years imprisonment for arresting and beating a civilian until he fainted.[169]

In two cases where defendants were found guilty for having committed war crimes against the civilian population for conveying the order to commence shelling of villages with the consequence of civilians killed and wounded and property destroyed, trial courts pronounced sentences of 3 and 10 years. Milos Loncar, Serb, was sentenced to 10 years by the Osijek County Court for conveying the order to shell the town of Osijek.[170] In contrast, Zarko Tkalcevic, Croat, was sentenced to 3 years by the Vukovar County Court for conveying the order to shell the town of Vukovar.[171]
Also, in cases where courts found defendants guilty for expelling non-Serbs from a limited geographical area, the punishment differed significantly. This may be related in part to the fact as explained above [See Section B.II.3] that some courts qualified conduct involving expulsion as constituting war crimes against the civilian population whereas other courts qualified the conduct as Genocide.

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[166] Confirmed by Supreme Court verdict, published in January 2004.

[167] I Kz-663/03-3 Supreme Court confirmed in April 2004. In the case of Petresev, the court found the following mitigating circumstances: no criminal record, his attitude during trial, his family and financial situation, father of two children, unemployed, poorly educated, weak physical constitution, unable to resist or disobey orders, and that he was "in a certain `way" forced to join the so-called territorial defense. No aggravating circumstances were found. Against Jovanovic, the same court found the low level of criminal responsibility and the financial situation of the defendant mitigating. That he committed the act for the "seceded territory where he was born", that he was motivated because the victim was a member of a Croatian national party and that he was threatening the victim brutally with the aim to humiliate him was found to be aggravating.

[168] RH v. Iharos and others, I Kz-238/02-8, Supreme Court reversed in November 2003. Re-trial is pending at the Bjelovar County Court as of March 2005.

[169] Osijek County Court K 50/02, 09.09.2002, confirmed by the Supreme Court I Kz 878/02-5, 04.02.2003. Also, when compared to conduct where the act was qualified as constituting war crimes against prisoners of war it appears that some courts applied different standards of sentencing. For example, in the case against Rade Vrga, the Supreme Court confirmed the conviction and increased the to 7 years, for threatening, assaulting and beating 6 Croat prisoners with a baseball bat. I Kz-592/02-8, 08.01.2003. In the "Virovitica" case the Bjelovar County Court found the fact that the crimes were committed in a defensive war against the aggressor, the defendant's clean criminal record, the defendant's poor health, his participation in and contribution in the homeland war as well as his family situation to be mitigating while no aggravating circumstances were found. In the case against Branko Stankovic, his clean criminal record as well as the fact that he was married were considered mitigating while his persistence in committing the act and the grave and groundless physical maltreatment was considered aggravating.

[170] K-18/02-110, conviction confirmed by the Supreme Court, I Kz 791/02-6, 06.05.2003. The Osijek County Court considered the fact that Loncar committed the act upon orders from a military headquarters, with a lesser form of criminal intent, that he is the father of two children and his clean criminal record to be mitigating. It was determined to be aggravating that he was motivated to create greater Serbia, the great number of victims and extent of damage.

[171] K 38/00, 11.04.2001; conviction confirmed by the Supreme Court, I Kz-532/01-5, 19.11.2003. The Vukovar County Court found mitigation in favour of Tkalcevic in the fact that he tried to destroy several mortars and helped JNA soldiers to leave the JNA and that he left the JNA and joined the Croatian Army.

For example, in the "Popovac" case the Osijek County Court imposed sentences ranging between one and one-half years and two and one-half years on the Serb defendants convicted of war crimes against the civilian population for engaging in a range of abusive conduct as a result of which most of the non-Serb population in a village was forced to leave their homes and fled.[172] In contrast, the Supreme Court in January 2004 confirmed an *in absentia* verdict finding several Serbs guilty of Genocide and sentencing them to imprisonment between 5 and 12 years for participating in the expulsion of 22 Croats from the village of Koprivna.[173]

VII. LACK OF IMPARTIALITY

There has been an observable decrease in ethnic bias in various aspects of Croatia's war crime proceedings. However, several indicators present in 2004 as discussed above, continue to suggest that parts of the Croatian judiciary lacks impartiality and continue to apply a double standard, particularly in terms of charging and sentencing.

During the year, high level representatives of the Government and the judiciary made repeated public statements about the need for impartiality and professionalism among judges trying war crime cases. At the same time, these officials insisted that all parts of the local judiciary are equally prepared to undertake war crime trials. By doing so the strengths of some parts of the judiciary are not adequately credited and the weaknesses in others, such as those highlighted in this report, are not acknowledged. Also, it fails to acknowledge the understandable difficulty some judges and prosecutors who suffered personal losses as the result of the conflict may face in trying to maintain impartiality in adjudicating war-related crimes. It also fails to adequately consider the differences between the localities in which war crime trials are currently being conducted and the challenges they present for witness security and protection as well as judicial impartiality. More recently, the Ministry of Justice has stated that ethnic differences are "readily understandable" given the "open wounds of the war."[174]

1. The fact that Serbs were prosecuted for a wide range of conduct involving abuse, expulsion, property destruction, and killings while Croats were almost exclusively prosecuted for killings suggests that police and prosecution applied a different threshold for charging defendants that is directly correlated with their national origin.

2. The continuing use of "participation in the homeland war" in the (few) convictions against Croats for crimes against Serbs as a mitigating circumstance as well as the routine consideration of the defendant's active engagement against Croatia as an aggravating circumstance in convictions against Serbs for crimes against Croats remains of concern. This pattern indicates that it is not the conduct itself or the damage to the victims that determines sentencing, but whether the defendant engaged in the conduct on behalf of or against the state. More plainly, mitigation or

[172] Osijek County Court K 41/03-193, 08.04.2004.
[173] I Kz-865/01-3, 14.01.2004. "Koprivna" case.
[174] "[C]onsidering the open wounds of the war, an initial greater emphasis on the prosecution of Serbs for war crimes is also readily understandable. For the same reasons, sentencing disparities observed can also be understood. *Prosecutor v. Ademi and Norac*, *Submission of the Republic of Croatia to the Court's Order for Further Information on Certain Jurisprudential Aspects of the Croatian Law in the Context of the Prosecutor's Request under Rule 11 bis*, February 2005, pp. 4-5.

aggravation was determined by whether the conduct was done on behalf of the winner or the loser in the conflict. In the Mission's view, military service is not an appropriate sentencing factor at all. Moreover, in at least one case monitored by the Mission, the mere affiliation of the defendant to the Serb ethnicity was found to be an aggravating circumstance by the trial court in determining the sentence, one of the grounds for error and reversal by the Supreme Court.[175]

3. The refusal by the Split County Court in September 2004 to either order detention or seize travel documents for 8 Croat defendants ordered by the Supreme Court to stand re-trial in the "Lora" case, even though several were fugitives from justice in the first trial, raises concern.[176] The Supreme Court in October 2004 ordered all defendants into detention, stating the Split County Court "carelessly accepted the defendant's promise…that the three defendants would attend the re-trial". By the end of April 2005 4 remained fugitives from justice and the trial will have to proceed partially *in absentia*.

4. War crime trials in 2004 were as in past years primarily conducted in county courts in those areas of Croatia most directly affected by the conflict. The extent and intensity of witness intimidation observed by courts and the Mission, even when the trial was moved out of the community where the crimes occurred, support a rebuttable presumption that fair and professional war crime proceedings may not be possible in communities heavily affected by the conflict, such as the Gospic County Court. It appears *prima facie* unlikely that witnesses who live in such small communities testify in those same communities without exposing themselves to outside pressure. Similarly, it seems also likely that prosecutors and judges living in the community might equally be exposed to pressure. This observation warrants consideration of whether some local courts are really capable of conducting credible war crime proceedings, including in several cases in which cases have been up and down to the Supreme Court multiple times.

The Mission would recommend that the Chief State Attorney in 2005 make use of his discretion under the ICC Law to request transfer of domestic cases from some local courts to those courts deemed to be more insulated from pressure, such as in Zagreb and Rijeka.

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[175] In RH v. Svetozar Karan, the Supreme Court reversed the Gospic County Court conviction and remanded for retrial before a different panel. I Kz 862/03-8, 29.01.2004. The Supreme Court held that "[t]he conclusion in the statement of reasons of the verdict that the defendant "in the last eighty years, together with his ancestor, was a burden" to the Croatian people and that the case involved return of criminals to the Republic of Croatia "who performed genocide against Croats, not only during the war… but for more than 500 years, since the arrival of Turks, when they came together with the Turks and destroyed Croats…", generalized the issue of responsibility, placing it on the ethnic group to which the defendant belongs. Such deliberation should not be contained in the statement of reasons of a verdict with which the court determines personal responsibility of an individual. The stand points expressed in this manner, when the court is "convinced" about the five-hundred-years long "destruction of Croats" and "genocide against Croats" by a collective to which the defendant belongs", leaves a space open for serious doubts about the court's impartiality in the procedures in which it is obliged to determine personal responsibility of an individual."

[176] Following the issuance of the Supreme Court's decision, the presiding judge at the first trial, Judge Lozina, was quoted in the media as stating that "the Supreme Court decision was influenced by the conduct of the Minister of Justice, the OSCE, the Foreign Office and the State Department." A similar statement was quoted in the media by the President of the Croatian Party of Rights (HSP).

5. Trial court findings that are contrary to the evidence, while procedural mistakes, can also indicate lack of impartiality. The trial court finding in the "Virovitice" case, reversed by the Supreme Court in 2004, that the death of a Serb could not be attributed to the Croat defendants despite undisputed evidence of physical abuse and no contradictory medical testimony is but one example.

6. Numerical parity in terms of the national origin of defendants is not required. However, the extreme disproportion between the numbers of Serbs and Croats charged with war crimes as well as observed differences in charging, including the mass prosecution of members of the armed forces for common crimes in the wake of the two military operations in 1995 support a conclusion that ethnicity plays a significant role in war crime proceedings.[177] The continuing lack of any significant number of war crime proceedings against Croats raises the concern as to whether the authorities intend to pursue all perpetrators regardless of national origin, particularly given a growing public acknowledgement that crimes were committed by the armed forces. One striking example is the continuing lack of accountability, criminal or otherwise, of those responsible for moving and attempting to conceal the bodies of 19 civilians killed in Paulin Dvor, for the killing of whom one person was convicted in 2004.[178] The Mission is aware of a total of 7 convictions of Croats for war crimes committed against Serbs since 1991[179]. Other organizations have also pointed to the lack of prosecutions against members of the armed forces for crimes against Serbs, particularly in the Sisak area[180]. Prosecutors continue to encounter difficulties in obtaining co-operation in obtaining sufficient evidence and witness testimony to prosecute certain crimes.

[177] According to the Chief State Attorney's 2001 Annual Report, crimes committed during to Operations "Storm" and "Flash" when Croatian authorities launched military offensives to re-gain Serb-controlled territory were not prosecuted as war crimes but as common crimes, including charges for murder, robbery and theft. The State Attorney reported that a total of 3970 charges for common crimes were filed pertaining to Operations Storm and Flash and that 1492 convictions were rendered.

[178] RH v. Nikola Ivankovic and Enes Viteskovic [Osijek County Court]. The transfer of the dead bodies several hundred kilometers from where they were initially buried has not been subject to prosecution or public disclosure of those responsible.

[179] The Mission is aware of war crime trials pertaining to the 1991 to 1995 conflict against a total of 39 Croats. Of these 39, 31 were tried for crimes against Serbs while the remaining 8 were prosecuted for crimes against Croats. Of the 31 that were indicted for crimes against Serbs, 7 Croats were found guilty by first instance courts while 24 were acquitted or had their charges dropped. Most of those 31 cases have not been finally concluded but are pending appeal or have been remanded to first instance courts. A total of 3 Croats have been finally convicted for war crimes against Serbs.

[180] During 2004, several organizations issued reports on war crime prosecutions in Croatia, noting concerns about whether authorities pursued a uniform standard of criminal responsibility regardless of national origin. Amnesty International concluded that Croatia has failed to address violations allegedly committed by members of the Croatian army and police forces, setting out *inter alia* examples of cases where Croatian Serbs in and around Sisak were allegedly killed by Croatian Army and police forces and refers to the cases as widespread pattern of violations committed against the civilian population. December 2004 *Croatia: a shadow on Croatia's future: Continuing impunity for war crimes and crimes against humanity*. Similarly the United Nations Committee against Torture on 14 May 2004 voiced concerns about the "reported failure of the State to carry out prompt, impartial and full investigations to prosecute the perpetrators". Similarly the reports *Justice at Risk War Crimes Trials in Croatia, Bosnia Herzegovina and Serbia and Montenegro* published by Human Rights Watch in October 2004, and the European Commission's *Opinion* from March 2004 issued in relation to Croatia's application for EU membership noted continuing problems related to the adjudication of domestic war crime trials.

APPENDICES

APPENDIX I

WAR CRIME ARRESTS IN 2004 BY JURISDICTION: 30

Court	Croats	Serbs	Others
Sisak County Court	0	4	0
Karlovac County Court	0	1	0
Bjelovar County Court	0	2	0
Virovitica County Court	0	1	0
Gospic County Court	0	3	0
Split County Court	4	0	0
Sibenik County Court	0	4	0
Zadar County Court	1	1	0
Dubrovnik County Court	0	1	0
Vukovar County Court	0	1	0
Osijek County Court	0	7	0
TOTAL	**5**	**25**	**0**

Suspects were arrested for the following crimes: total exceeds 30 as some suspects were arrested on more than one charge

- War crimes against civilian population: 26 persons (21 Serbs, 5 Croats)
- Genocide: 1 Serb
- War crimes against prisoners of war: 5 Serbs

Arrests in third Country 2004

COUNTRY	Serb	Croat	Others
Austria	3	0	0
BiH	3	0	0
Norway	1	0	0
Hungary	1	0	0
TOTAL	**8**	**0**	**0**

APPENDIX II

RELEASES IN 2004 BY JURISDICTION: 32

Court	Croats	Serbs	Other
Sisak County Court	2	5	0
Bjelovar County Court	0	2	0
Karlovac County Court	0	1	0
Virovitica County Court	0	1	0
Gospic County Court	0	4	0
Sibenik County Court	0	6	0
Zadar County Court	0	2	0
Split County Court	0	1	0
Dubrovnik County Court	0	1	0
Vukovar County Court	0	1	0
Osijek County Court	1	5	0
TOTAL	**3**	**29**	**0**

The 32 individuals spent the following amount of time in detention:

Less than 1 month: 12 individuals (12 Serbs)

1 to 3 months: 4 individuals (4 Serbs)

3 to 6 months: 4 individuals (4 Serbs)

6 to 12 months: 8 individuals (3 Serbs and 1 Croat)

More than 12 months: 4 individuals (3 Serbs and 1 Croat)

APPENDIX III

INDICTMENTS IN 2004 BY JURISDICTION: 2

Court	Croat	Serb	Others	Cases
Bjelovar County Court	0	2	0	1
TOTAL	**0**	**2**	0	**1**

War crimes against prisoners of war: 1 case involving 2 individuals (Bjelovar 2)

APPENDIX IV

TRIALS IN 2004 BY JURISDICTION

TRIALS ONGOING IN 2004: 34

Court	Croat	Serb	Other	Cases
Sisak County Court	2	2	0	3
Karlovac County Court	1	1	0	2
Bjelovar County Court	0	4	0	3
Virovitica County Court	0	1	0	1
Varazdin County Court	4	0	0	1
Gospic County Court	0	3	0	3
Sibenik County Court	0	2	0	2
Zadar County Court	1	(7 *in absentia*) 9	0	5
Vukovar County Court	3	(42 *in absentia*) 53	(4 *in absentia*) 11	8
Osijek County Court	2	8	1	6
TOTAL	**13**	**83**	**12**	**34**

TRIALS COMPLETED IN 2004: 24

Court	Croat	Serb	Other	Cases
Sisak County Court	2	1	0	2
Bjelovar County Court	0	4	0	3
Virovitica County Court	0	1	0	1
Gospic County Court	0	3	0	3
Sibenik County Court	0	2	0	2
Zadar County Court	0	(2 *in absentia*) 4	0	3
Vukovar County Court	0	(13 *in absentia*) 21	0	5
Osijek County Court	2	6	1	5
TOTAL	**4**	**42**	**1**	**24**

The 24 cases monitored in 2004 were completed within the following time periods:

Less than 1 month:	7 trials involving 9 individuals (Bjelovar 4; Gospic 1; Sibenik 1; Zadar 2; Vukovar 1)
1 to 3 months:	3 trials involving 3 individuals (Sisak 1; Osijek 2)
3 to 6 months:	6 trials involving 14 individuals (Sisak 2; Vukovar 8 Gospic 2; Zadar 1; Osijek 1)
6 to 12 months:	6 trials involving 10 individuals (Virovitica 1; Sibenik 1; Zadar 1; Vukovar 1; Osijek 6)
12 to 24 months:	0 trial involving 0 individual
24 to 36 months:	2 trials involving 11 individuals (Vukovar 11)

APPENDIX V

RE-TRIALS IN 2004 BY JURISDICTION

RE-TRIALS ONGOING IN 2004:14

Court	Croat	Serb	Other	Cases
Sisak County Court	0	1	0	1
Karlovac County Court	0	2	0	2
Bjelovar County Court	0	2	0	2
Varazdin County Court	4	0	0	1
Gospic County Court	0	3	0	3
Zadar County Court	0	1	0	1
Vukovar County Court	0	(10 *in absentia*) 13	0	4
TOTAL	**4**	**22**	**0**	**14**

RE-TRIALS COMPLETED IN 2004: 9

Court	Croat	Serb	Other	Cases
Bjelovar County Court	0	2	0	2
Gospic County Court	0	3	0	3
Zadar County Court	0	1	0	1
Vukovar County Court	0	(10 *in absentia*) 12	0	3
TOTAL	**0**	**18**	**0**	**9**

APPENDIX VI

CONVICTIONS AND SENTENCES 2004 BY JURISDICTION: 30

Court	Croat	Serb	Others
Sisak County Court	0	1	0
Bjelovar County Court	0	1	0
Sibenik County Court	0	1	0
Zadar County Court	0	(2 *in absentia*) 3	0
Vukovar County Court	0	(12 *in absentia*) 17	0
Osijek County Court	1	5	1
TOTAL	**1**	**28**	**1**

Sentence (years)	Croat	Serb	Others
1-4	0	(9 *in absentia*) 15	0
5-9	0	(5 *in absentia*) 10	1
10-14	1	2	0
15-20	0	1	0
TOTAL	**1**	**28**	**1**

Convictions were as follows:

- War crimes against civilians: 30 individuals (28 Serbs, 1 Croat, 1Hungarian)

APPENDIX VII

ACQUITTALS IN 2004 BY JURISDICTION: 12

Court	Croat	Serb	Others
Sisak County Court	2	0	0
Bjelovar County Court	0	3	0
Virovitica County Court	0	1	0
Gospic County Court	0	2	0
Sibenik County Court	0	1	0
Zadar County Court	0	1	0
Vukovar County Court	0	1	0
Osijek County Court	1	0	0
TOTAL	**3**	**9**	**0**

APPENDIX VIII
DISMISSALS IN 2004 BY JURISDICTION: 5

***Dismissals by verdict:* 4**

Court	Croat	Serb	Others
Gospic County Court	0	0	0
Osijek County Court	0	1	0
Vukovar County Court	0	3	0
TOTAL	**0**	**4**	**0**

Dismissals by decision: 1

Court	Croat	Serb	Others
Gospic County Court	0	1	0
TOTAL	**0**	**1**	**0**

APPENDIX IX

APPEALS PENDING IN 2004 BY JURISDICTION

ALL PENDING APPEALS: 40

Court	Croat	Serb	Other	Cases
Karlovac County Court	1	0	1	2
Bjelovar County Court	4	3	0	4
Sisak County Court	2	1	0	2
Slavonski Brod County Court	0	1	0	1
Gospic County Court	1	2	0	2
Rijeka County Court	3	0	0	1
Sibenik County Court	6	1	0	4
Zadar County Court	0	(13 *in absentia)*15	(*in abs.*)1	7
Split County Court	8	0	0	1
Vukovar County Court	(*in absentia*)1	(8 *in absentia*)22	1	7
Osijek County Court	2	(15 *in absentia*) 29	3	9
TOTAL	**28**	**74**	**6**	**40**

COMPLETED APPEALS IN 2004: 13

Court	Croat	Serb	Other	Cases
Karlovac County Court	(reversed)1	0	(conf'd.)1	2
Bjelovar County Court	(reversed)4	(reversed)1	0	2
Sisak County Court	0	(confirmed)1	0	1
Gospic County Court	(confirmed)1	1 rev'd. 1 conf'd)2	0	2
Rijeka County Court	(confirmed)3	0	0	1
Zadar County Court	0	(confirmed)1	0	1
Split County Court	(rev'd, several *in abs.*)8	0	0	1
Vukovar County Court	0	(confirmed)1	0	1
Osijek County Court	0	(conf'd) (all *in absentia*)3	(conf'd.)1	2
TOTAL	**17**	**9**	**2**	**13**

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

3 to 6 months:	3 cases involving 3 individuals (Gospic 1; Zadar 1; Karlovac 1)
6 to 12 months:	5 cases involving 7 individuals (Karlovac 1; Osijek 1; Vukovar 1; Rijeka 3; Sisak 1)
12 to 18 months:	3 cases involving 11 individuals (Karlovac 1; Split 8; Gospic 2)
18 to 24 months:	1 case involving 1 individual (Bjelovar 1)
24 or more months:	2 cases involving 7 individuals (Osijek 3; Bjelovar 4)