



**Monitoring war crimes trials – Guarantee of the process of dealing with the past  
and sustainability of judicial reforms in Croatia**

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## **Monitoring War Crime Trials Quarterly Report**

Reporting Period: 1 January – 30 April 2014

*May 2014*



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## I. INTRODUCTION

### A. Project background and mandate

Since 2005, three human rights organisations have been jointly monitoring war crimes cases before the courts in the Republic of Croatia (hereinafter: the RC). These organisations are: Documenta - Centre for Dealing with the Past, Centre for Peace, Non-violence and Human Rights Osijek and Civic Committee for Human Rights (hereinafter referred to collectively as the "Monitoring team").

The objectives of monitoring war crime trials include the following: increasing the effectiveness of war crimes prosecution, improving legal framework for their prosecution, improving the position of victims in criminal proceedings, intensifying regional cooperation, indemnifying all war victims and strengthening judicial independence.

The Monitoring team stresses the importance of an efficient and fair judicial system which would respect both the rights of suspects and defendants as well as the rights of victims and witnesses. In accordance with that, when monitoring trials our monitors apply the international fair trial standards as a framework for the assessment of court actions.

The Monitoring Team monitors all war crime trials conducted in the RC and a number of criminal proceedings conducted before the courts in neighbouring countries (especially criminal proceedings for the crimes committed in the territory of the RC). We also monitor indemnification proceedings as well as trials conducted before the International Criminal Tribunal for the Former Yugoslavia (ICTY).

This Report deals with war crimes trials and the associated social and political events that took place in the first four months of 2014.

### A. Summary

Hostility towards Serb minority in Croatia was expressed through destruction of bilingual plates, albeit less frequently than at the end of last year and in the first months of 2014. Necessary revitalization of the peace building process was lacking. Only in a society based on trust it is possible to successfully resolve the issue of missing persons, effectively investigate the majority of war crimes committed and prosecute their perpetrators.

The most attention in Croatian and Serbian public in mutual relations and processes of dealing with the past was sparked by a hearing conducted before the International Court of Justice regarding mutual genocide lawsuits. The hearing demonstrated that trust between the former warring sides has still not been built, the rhetoric of exclusion from the early 90s which led to the armed conflict is still present, there is bidding with the numbers of victims while both sides minimize and deny their own role in the crimes committed.

Unlike the past few years when, during the process of intensification of accession negotiations between the Republic of Croatia and the European Commission, investigations were conducted and indictments were issued for some of the most serious crimes committed by members of Croatian military formations, in 2013 and in the first four months of 2014 not a single investigation was initiated nor any member of the Croatian Army or the Ministry of the Interior of the RC was indicted!

It was only in March of this year, almost nineteen years after the commission of the crimes, that one member of Croatian formations was sentenced by a final judgment for war crimes committed during or after the military-police operation "Storm".

During the reporting period, several members of different Serb formations indicted for war crimes in Croatia were arrested in other countries or extradited to Croatia. But, the fact remains that, following the extradition of defendants to Croatia, proceedings frequently end up with a suspension or rejecting judgments or acquittals. As we already mentioned in our previous reports, this indicates that all previous unfounded indictments (or sentences rendered *in absentia*) have not been removed. However, on the other hand, it also indicates that Croatian judicial bodies are capable of conducting proceedings in a more professional and impartial manner than in the recent past.

*Projekt je financiran u sklopu EIDHR programa Europske unije za Republiku Hrvatsku.*

*Sadržaj izvještaja isključiva je odgovornost organizacija civilnog društva i ne može se ni pod kojim okolnostima smatrati da odražava stav Europske unije.*

*Projekt financijski podržavaju i veleposlanstva Švicarske Konfederacije, Ujedinjene Kraljevine Velike Britanije i Sjeverne Irske, Kraljevine Nizozemske te Kraljevine Norveške.*



Effective prosecution of perpetrators increasingly depends on cooperation between judicial authorities of countries in the region, but also on the willingness of witnesses to testify, i.e. their confidence that fair proceedings will be conducted in other countries in the region and that direct perpetrators and responsible persons in the chain of command will be indiscriminately prosecuted. Unfortunately, the quashing of the first-instance judgment for the crime committed in Lovas, inappropriately low sentences pronounced against abusers in the Morinj camp and non-prosecution of high-ranking military and political structures in Serbia and Montenegro certainly has demotivating effect on witnesses.

Claims for compensation of non-pecuniary damages filed by crime victims or their family members due to statute of limitations are rejected by both Croatian and Serbian courts, not taking into account the standpoints of injured parties' attorneys that it is a war crime against civilians and that the statute of limitations in civil proceedings corresponds to the statute of limitations for criminal prosecution.

During the reporting period, there was a new wave of cases in which the relatives of civilians killed during the Homeland War initiated proceedings before the European Court of Human Rights (ECHR), in which the ECHR initiated communication with the Government of the RC with the basic question whether in the aforementioned cases there was a violation of the right to life due to ineffective investigation of crimes. It is expected that in many cases the ECHR will determine that certain Convention rights of the complainants were violated by the Republic of Croatia. In order to terminate their further agony, Croatia should strike a deal with victims' family members and pay them a fair compensation, both in cases already before the ECHR and in cases that are still conducted before domestic courts .

It is commendable that the Ministry of Defenders in mid-March presented draft *Act on the Rights of Victims of Sexual Violence in the Homeland War*, pursuant to which victims should be entitled to psycho-social and medical assistance, free legal aid, rehabilitation and the right to compensation. Unfortunately, victims of sexual violence are only one part of the corps of civilian casualties. The adoption of the announced *Act* must necessarily be followed by the adoption of laws or a package of legislation which would regulate the status and enable indemnification for all categories of civilian war victims, including parents of murdered children, female and male camp detainees, victims of shelling, victims of land-mines, the persons injured or killed at their workplace during the working obligation.



## II. THE BROADER CONTEXT

In 2013, after a wave of nationalist unrest was launched across Croatia boosted by placing bilingual Latin-Cyrillic plates in Vukovar, during the first months of 2014 the situation has somewhat calmed. Destruction of bilingual plates, albeit less frequent than at the end of last year, continues to express hostility towards Serb minority. Necessary revitalization of the peacebuilding process is still lacking.

The most attention in Croatian and Serbian public in mutual relations and processes of dealing with the past was sparked by a hearing conducted before the International Court of Justice regarding mutual genocide lawsuits of Croatia and Serbia.

### A. Hearing before the International Court of Justice - trust between the former warring sides has still not been built

A hearing was conducted in March before the International Court of Justice regarding mutual genocide lawsuits of Croatia and Serbia. The hearing was completed on 1 April and it is expected that a judgment will be pronounced one year after the completion of the hearing.

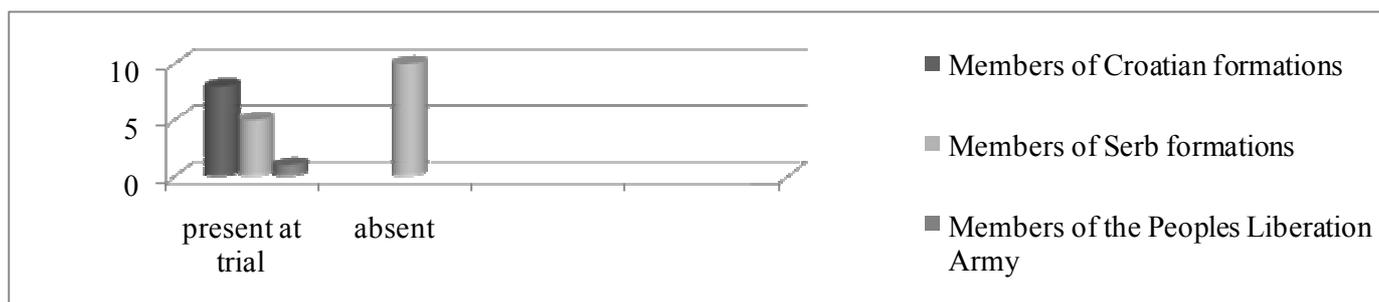
The hearing, which was followed by general public in both countries with a large interest and an even larger sensationalism in reporting, demonstrated that trust between the former warring sides has not yet been built, the rhetoric of exclusion from the early 90s which led to the armed conflict is still present, there is bidding with the number of victims, while both sides minimize and deny their own role in the crimes committed.

Legal standpoints of Croatia and Serbia expressed during the court proceedings indicated that, despite changes in the political leadership, social and political catharsis did not take place in either of the two countries which is necessary for both societies to face the dark side of their own past and recognize the victims of mass crimes committed in the name of their own country.

However, the expected judgment, determining the scale of the crimes committed by both sides, could use its authority to become an important step towards accepting one's own mistakes from the past and recognizing suffering of all, not just one's own victims.

## III. TRIALS MONITORED IN CROATIA

Out of 16 proceedings in which main hearings are actively taking place, 6 are conducted against 8 members of Croatian formations, 9 against 15 members of Serb formations and one against one member of the National Liberation Army of Yugoslavia for a crime committed shortly after the end of the World War II.<sup>1</sup> Trials are attended by all accused members of the Croatian formations, the accused member of the National Liberation Army of Yugoslavia and five members of Serb formations. Ten members of Serb formations are tried *in absentia*.<sup>2</sup>



<sup>1</sup> The number of proceedings during individual quarters of 2013 varied between 14 and 17.

<sup>2</sup> The table of monitored main hearings before county courts and appellate sessions of the Supreme Court is attached to this document.

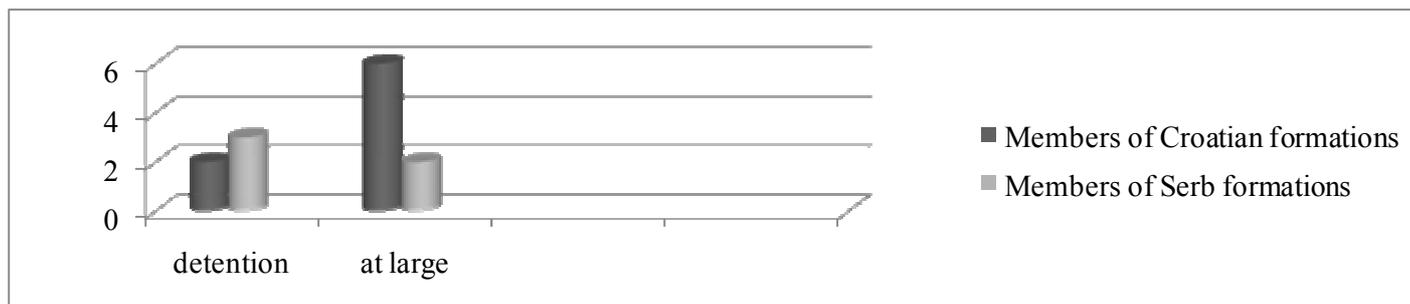
Projekt je financiran u sklopu EIDHR programa Europske unije za Republiku Hrvatsku.

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Of the eight members of Croatian formations, six currently attend the trials undetained, while two are detained. Three members of Serb formations are detained, while two attend the trials undetained.<sup>3</sup>



### A. First-instance court judgements

In the reporting period first-instance judgments were not pronounced in proceedings conducted against members of Croatian formations. They were rendered in two cases, against two members of Serb formations.

#### 1. Sentenced to 15 years in prison for killing a captured and wounded Croatian soldier

On 14 January 2014, the War Crime Council of the Rijeka County Court convicted defendant Dušan Kovačević *in absentia* and sentenced him to 15 years in prison because, on 29 June 1992, in the area of Bršljenovica hill near Plaški, members of different Serb formations had set an ambush and opened fire at two members of Croatian formations (brothers Slavko Bionda and Zdravko Bionda). Having captured the Bionda brothers, Kovačević approached the severely wounded Zdravko Bionda and opened fire from his rifle, shooting several rounds in Zdravko Bionda's head thus killing him.

Sentence deliberation in this particular case, as well as in several cases in 2013, indicates that trial courts still tend to deliberate significantly higher sentences to members of Serb formations as opposed to members of Croatian formations for comparable crimes, thus the Supreme Court still has to further harmonize judicial practice.<sup>4</sup>

#### 2. Acquitted of charges for the killing of a civilian immediately after the fall of Vukovar

Due to a lack of evidence, on 30 April 2014 the War Crimes Council of the Osijek County Court acquitted the former member of Serb paramilitary formations Milan Đekić of charges that on 19 November 1991 in a part of Vukovar called Olajnica, after Aleksandar Laba was singled out from a column of captured civilians, the defendant) fired a burst from an automatic rifle and killed him.

### B. Suspended proceedings against former director of the Memorial Park Petrova Gora charged with incitement to murder

After the prosecution changed legal qualification of the offence from the indictment into armed rebellion, by way of application of *the Amnesty Act*, the Karlovac County Court suspended criminal proceedings against Mile Dakić. Dakić, previously sentenced *in absentia* to 20 years in prison for inciting members of a Serb paramilitary formation to set an ambush and kill members of a police patrol in the area of Vojnić in early August 1991, when three Croatian

<sup>3</sup> Pero Đermanović and Ljubiša Čavić currently attend the trial undetained. The fourth (third repeated) first-instance proceedings against them are currently ongoing. The Supreme Court has so far quashed the first-instance convictions three times.

<sup>4</sup> By comparison, on 7 September 2012, following the conducted hearing, the council of the Supreme Court sentenced by a first-instance judgment member of the Croatian MUP Mihajlo Hrastov to 4 years in prison because on 21 September 1991 at the Korana bridge in Karlovac he fired shots from an automatic weapon, killing thirteen and seriously wounding two captured Yugoslav Army reservists.



police officers were killed and one police officer was wounded. Dakić was arrested in 2011 in Bosnia and was extradited to Croatia.<sup>5</sup>

### Extraditions and suspensions of proceedings against members of Serb formations

During the reporting period, several members of different Serb formations indicted for war crimes in Croatia were arrested in other countries or extradited to Croatia. We are aware that Leonardo Janković, indicted for the crimes in villages along the Una River, was arrested in Austria; Germany extradited to Croatia Ibrahim Kovačević, charged with the crimes in Baranja, while Gojko Eror, charged with the crimes in Berak, was arrested in Malta and extradited to Croatia. However, the most comments were sparked after the arrest of Milutin Graić in the Netherlands. Graić, whom the court in Amsterdam released pending possible decision on extradition to Croatia, is charged that, along with another defendant, committed a war crime by alienating a tractor.

Following the extradition of defendants to Croatia, proceedings frequently end up with a suspension or rejecting judgments or acquittals. As we stated in our previous reports, this indicates that all previous unfounded indictments (or sentences rendered *in absentia*) have not been removed. However, on the other hand, it also indicates that Croatian judicial bodies are capable of conducting proceedings in a more professional and impartial manner than in the recent past. It is to be expected that even in the future a part of the proceedings would be suspended or end up with acquittals, following the arrests and extraditions of defendants. Proceedings are mainly suspended after the change of legal qualification of the criminal offences from the indictment into armed rebellion, which is why defendants are not in a position to exercise financial compensation for the time they spent in custody. Apart from that, although some defendants claimed that they did not participate in the armed rebellion in any way, they did not have the possibility to prove it and thus, although their guilt was never established, they remained stigmatized for participation in the armed rebellion.

### C. Trials in which main hearings are ongoing

During the reporting period, main hearings in 7 **criminal proceedings** were ongoing, in which **13 former members of Serb military formations** are indicted, **out of whom only 4 persons were attending the trials:**

- *in the case against unavailable defendant Boban Arsić, charged with the killing of a married couple and abusing three civilians in the village of Drinovci near Drniš;*
- *in the case against the unavailable defendant Željko Žakula, charged that in the village of Čanak near Korenica he killed one civilian;*
- *in the case against unavailable defendants Mirko Korelija, Miroslav Peškirić and Ranko Šimulija, charged that they removed captured member of the Croatian Army Mladen Brleković from the prison in Banski Grabovac, took him into the woods close to the village of Miočinović near Petrinja and killed him by firing shots from automatic rifles;*
- *in the case against Ibrahim Kovačević, extradited from Germany, charged that as a member of the militia he detained civilian non-Serb residents of Baranja, beat them during the arrest, brought them to prison although he knew that they would be abused there, and that he beat them up in prison himself;*
- *in the case against defendants Pero Đermanović, unavailable Dubravko Čavić and Ljubiša Čavić, charged with abusing and killing one civilian and setting houses in the villages along the Una river near Hrvatska Kostajnica on fire;*
- *in the re-opened trial against former JNA officer Aleksandar Lazarević, extradited from Bosnia and Herzegovina, who was in 1997 sentenced in absentia to 14 years in prison for a war crime against civilians committed by shelling Zadar and its surroundings;*
- *in the case against unavailable defendants Miroslav Hašić and Zoran Dmitrović, charged with abuse of civilians and prisoners in the Correction Facility in Glina;*

<sup>5</sup> Although this was not an act legally qualified as a war crime, we monitored the proceedings because of the connection between the case subject and the beginning of war activities in the wider area of Vojnić.



as well as in **6 criminal proceedings** in which **8 members of Croatian military formations** are accused:

- *in the case against Frane Drljo and Božo Krajina, charged with the execution of six elderly civilians in the village of Grubori, near Knin, after the completion of the Operation "Storm";*
- *in the case against Tomislav Merčep, the war-time counsellor at the Croatian Ministry of the Interior, charged with issuing orders on unlawful arrests, abuse and executions of civilians from the area of Kutina, Pakrac and Zagreb. A total of 52 persons were unlawfully arrested, out of whom 43 persons were killed and other three persons are still registered as missing persons;*
- *in the case against Ante Babac and Mišo Jakovljević, charged with the execution of one prisoner of war at the Miljevci Plateau;*
- *in the case against Mirko Sivić, charged with the execution of two civilians in Osijek;*
- *in the case against Velibor Šolaja, charged with the execution of one female person in the Medak Pocket;*
- *in the case against Josip Krmpotić, charged with failure to prevent the firing-squad execution of four unidentified soldiers - members of the so-called Republika Srpska Krajina Army, as well as with ordering arson and destruction of houses belonging to the population of Serb ethnicity in the Medak Pocket.<sup>6</sup>*

The main hearing in the trial against Josip Boljkovac who is charged that, in his capacity as Head of the Commission of the People's Protection Department (OZNA) for the Town of Karlovac and the Karlovac District, he was responsible for the arrests and executions of 21 civilians from Duga Resa who had been suspected in 1945 of collaboration with Ustasha authorities.

#### **D. New investigations and indictments – a lack of investigations and indictments issued against members of Croatian formations**

According to the State Attorney's Office, during the reporting period only one indictment was issued against the unavailable member of Serb formations.

*The defendant was charged that, in the period from 8 March 1992 to 6 August 1995, in his capacity as Commander of the 1st Battalion of the 5th Kordun Brigade of the Vojnić Territorial Defence, he was aware but failed to act and prevent members of his subordinate formations to illegally take away and misappropriate the property of displaced Croats, destroy the abandoned houses and kill civilians.*

During the reporting period, investigation was initiated against one defendant, member of the formations of the self-proclaimed Autonomous Region of Western Bosnia.

*He was charged that, in the period from 11 June 1994 to 13 August 1994 in Velika Kladuša (in Bosnia and Herzegovina), during the time of the self-proclaimed Autonomous Region of Western Bosnia, in his capacity as the Head of the Collective Centre – Drmaljevo Camp, he was placing civilians (among whom there were children, women and men of all ages) into utterly inappropriate facilities, forcing them to reside in inhumane conditions and often subjecting them to mental and physical violence which resulted in physical injuries sustained by many civilians.*

In addition, the investigation was expanded against three unavailable members of Serb formations due to reasonable suspicion of committing a war crime against civilians in the District Prison in the old hospital in Knin. The investigation was initiated for the crimes committed to the detriment of a Croatian civilian who, shortly after his release from the abovementioned prison, died of the consequences of abuse.<sup>7</sup>

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<sup>6</sup> Of the aforementioned 13 trials in which main hearings are ongoing, main hearings in six proceedings were initiated during the reporting period, while in seven proceedings they had commenced earlier.

<sup>7</sup> A request to extend the investigation was filed against four persons - three unavailable and one arrested suspect. But, the request to extend the investigation against the arrested suspect was denied. Although the State Attorney's Office did not release the identity of the suspects, numerous media reported that Saša Počuča was arrested, who had been found guilty and sentenced by the Šibenik County Court in July 2008 to five years in prison due to abuse of civilians and prisoners of war in the abovementioned prison.

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Unlike the past years when, during the process of intensification of accession negotiations between the Republic of Croatia and the European Commission, the investigations were conducted and indictments were issued for some of the most serious crimes committed by members of Croatian military formations, during the entire 2013 and in the first four months of 2014 not a single investigation was initiated nor any member of the Croatian Army or of the Ministry of the Interior of the RC was indicted!

### Investigations and indictments during 2013

According to data provided by the State Attorney's Office of the RC, during 2013 investigations were initiated in respect of 39 persons – 36 members of Serb military formations, out of whom nine persons are available to the Croatian judicial bodies, and 3 available members of the Croatian Defence Council (HVO) who are charged with crimes committed against Bosniak civilians and captured members of the BiH Army in the territory of Herzegovina.

Indictments were laid against 24 persons – 23 members of Serb military formations, out of whom only one person is available to the Croatian judiciary, and one member of the People's Liberation Army of Yugoslavia, for a crime committed immediately after the end of the World War II.

### E. Sessions of the appeals chambers of the Supreme Court of the Republic of Croatia

During the reporting period, sessions of the appellate chambers of the Supreme Court of the RC were held in respect of six cases – four cases against accused members of Serb military formations and two cases against accused members of Croatian military formations.

The first-instance court judgements were quashed in respect of two cases in which members of Serb military formations had been convicted by first-instance judgments, while in one case the first-instance judgment of acquittal was upheld:

- *The Appeals Chamber of the Supreme Court quashed the first-instance judgment of the War Crimes Council of the Vukovar County Court in which defendant Milorad Momić was found guilty and sentenced to three years in prison because, together with several members of paramilitary units in Orolik, he abused previously captured villager of Berak Stanko Penavić;*
- *The Appeals Chamber of the Supreme Court quashed the first-instance judgment of the Split County Court, rendered at the reopened proceedings, in which defendant Nikša Beara was found guilty and sentenced to 3 years and 10 months in prison because he abused captured members of the Croatian Army in the Knin prison;*
- *The Appeals Chamber of the Supreme Court upheld the judgment of the War Crimes Council of the Sisak County Court in which Rade Miljević in the third (second repeated) first instance proceedings was acquitted of charges that, according to a previous agreement with members of the sabotage group of Joso Kovačević, he took four injured civilians out of the prison in Glina and handed them over to be executed<sup>8</sup>;*

In the case in which members of Croatian formations Božo Bačelić, Ante Mamić, Luka Vuko and Jurica Ravlić were tried for the killing of two civilians and one prisoner of war, after the completion of the military-police operation "Storm", the Appeals Chamber of the Supreme Court reversed the conviction against defendant Božo Bačelić in the sentencing section and thus, ultimately, instead of 5 years and 10 months, the Chamber sentenced him to 7 years in prison. The Chamber also upheld a part of the judgment in which Mamić and Ravlić were acquitted of charges for participation in the killing of captured Serbian soldier and quashed a part of the judgment dismissing the charges against Mamić, Ravlić and Vuko for committing crimes against civilians. In this part the case was reversed to the first-instance court for a retrial.

Bačelić is the only member of Croatian formations sentenced by a final judgment for war crimes committed during or after the end of the military-police operation "Storm"!

<sup>8</sup> The Supreme Court overturned twice the first-instance judgments of conviction, in which Miljevic was sentenced to 14 and 12 years in prison.



## Data on victims during and after the military-police operation "Storm"

The Croatian Helsinki Committee for Human Rights (CHC) recorded 677 civilian victims and approximately 20,000 destroyed facilities (burned down, destroyed or entirely damaged) in the area liberated by the military action.

Unlike CHC records, the DORH database contains data on 214 killed persons, out of whom 167 persons were killed as victims of war crime and 47 persons as victims of murder. When explaining these substantially different figures, the DORH stated that very often no distinction is made between murder victims/war crime victims and victims of war – in respect of whom there is no criminal liability for their killing by the warring sides.

A total of 27 war crimes (167 victims), committed during and after the „Storm“ operation, are registered in the DORH Database. The perpetrators of 24 crimes (155 victims) are still unknown.

Only three criminal proceedings for war crimes committed during or after the „Storm“ operation were held or are being held before Croatian courts - against a total of 10 persons.

In addition to the abovementioned proceedings, main hearing is ongoing in the case against members of the special police Frano Drljo and Božo Krajina for the killing of six senior Serb civilians in Grubori, as well as the investigation against Željko Sačić for the crime committed in Ramljani.

In the remaining two cases, the decisions of the Supreme Court are not known to us:

- On 14 April 2014, a session of the Appeals Chamber of the Supreme Court was held upon the appeals lodged against the first-instance judgement in which a member of the Serb formations Milan Marinković was sentenced to three years and six months in prison for abusing two captured and seriously wounded Croatian policemen;
- On 16 April 2014, a session of the Appeals Chamber of the Supreme Court was held upon the appeals lodged against the judgment in which the accused members of Croatian formations received the following sentences: Stjepan Klarić was sentenced to three years and six months in prison, Viktor Ivančin to two years and Dražen Pavlović, Željko Živec and Goran Štrukelj to one year in prison for physical, mental and sexual abuse of prisoners in the prisons in Gajeva Street in Zagreb and in Kerestinec.

## IV. JUDGMENTS RENDERED BY THE COURTS OF OTHER COUNTRIES IN THE REGION

### A. The convicting judgment rendered by the Serbian court against fourteen persons accused of the crimes in Lovas was quashed

The Appellate Court in Belgrade quashed the Belgrade Higher Court War Crimes Department's judgment dated 26 June 2012 in which fourteen persons - members of paramilitary formations and former Yugoslav National Army members – were convicted for a war crime committed in Lovas in October and November of 1991. The Appellate Court ordered the first-instance proceedings to be repeated.

The first-instance judgement convicted four domicile Serbs - members of the local civilian and military authorities, four former members of the Yugoslav National Army and six former members of the “Dušan Silni“ (“Dušan the Great“) paramilitary unit.

They were charged that, in October 1991 during the attack on Lovas and later in the improvised detention facilities/prisons, by forcing civilians to walk through a mine field as well as in other sporadic incidents, they killed 70 civilians of Croat ethnicity.

The indictment did not cover members of senior military and political structures. Forced eviction of Croatian civilians from the area of Lovas and the surrounding region, which was under the control of the JNA, remained outside the scope of the indictment.



## B. Upheld judgment for war crimes committed in the Montenegrin camp of Morinj

The Montenegrin Appellate Court upheld the judgment rendered by the High Court in Podgorica in which four members of the former JNA in the third (second repeated) trial were convicted of a war crime committed by abusing more than 160 Croat civilians and prisoners of war in the Montenegrin camp of Morinj.

The pronounced sentences are lower than the minimum sentences stipulated for the offences with which the defendants were charged. Thus, Ivo Menzalin was sentenced to 4 years in prison, Špiro Lučić and Boro Gligić to 3 and Ivo Gojnić to 2 years in prison. In the same case, Mladen Govedarica and Zlatko Tarle were previously acquitted of charges by a final judgment.<sup>9</sup>

### The Human Rights Action on prosecuting war crimes in Montenegro

Final judgment for war crimes in Morinj is only the third judgment by which someone in Montenegro was sentenced for war crimes. Previously, in 1994 the Montenegrin courts sentenced five members of the Army of the Republika Srpska for the murder of Klapuh family in Plužine, i.e. in 2002 they sentenced citizens of the Republic of Serbia for the crime committed in Štrpci in BiH.

The Human Rights Action, a Montenegrin civil society organizations that monitored the criminal proceedings for the crime committed in Morinj, assessed the level of the pronounced sentences as abnormally low. Superficially reasoned judgment (particularly aggravating and mitigating circumstances when deliberating a sentence), was assessed to be unworthy of a high court instance, but it was also an indication that the courts in Montenegro do not care about persuading, not only citizens of Montenegro, but also citizens of the countries with which the war was fought - Croatia and Bosnia and Herzegovina - that these decisions actually served justice.

## V. VICTIMS' INDEMNIFICATION

### A. Rejecting the plaintiffs' claims due to statute of limitations - the practice of Croatian and Serbian courts

The First Basic Court in Belgrade dismissed the compensation claims against the Republic of Serbia filed by the Humanitarian Law Centre (HLC) in 2007 on behalf of 12 Croat citizens, claiming that Serbia was responsible for the torture they endured in the ex-JNA (Yugoslav People's Army) prison camps in Sremska Mitrovica and Begejci in 1991, with the explanation that former camp prisoners missed the deadline for filing a lawsuit which had expired five years after the end of their captivity.

This first-instance judgement of the Serbian court corresponds, unfortunately, to numerous judgements rendered by Croatian courts wherein compensation claims for non-pecuniary damage filed by family members of killed civilians, mostly of Serb ethnicity, were dismissed on the grounds of statute of limitation.

In the Croatian court practice, the absence of a final judgment in which crime perpetrators were convicted most frequently resulted in failure of family members/plaintiffs in lawsuits for damage compensations for the killing of a close person. The plaintiffs mostly succeeded in the lawsuits which were preceded by criminal proceedings where criminal liability of perpetrators had been established.

The plaintiffs were successful even in several cases in which, during 2013, the courts concluded that there was an obligation of the RC to compensate the damage irrespective of the fact whether a crime perpetrator was identified, criminally prosecuted or found guilty, because they filed their claims within the generally stipulated (five-year) statute of limitations period.

<sup>9</sup> These are the only proceedings initiated by the Montenegrin judiciary for war crimes committed against Croat civilians and prisoners of war. The Montenegrin judiciary did not initiate single proceedings for the shelling of Dubrovnik and numerous surrounding villages, either.



## Reactions of the Humanitarian Law Centre during and after the proceedings

The HLC attorney insisted, both in the lawsuit and during the course of the proceedings, that longer limitation periods should apply to this case, because it involves a war crime against civilians and that statute of limitations in civil proceedings corresponds to the statute of limitations prescribed for criminal prosecution of the criminal offence in question. Nevertheless, the First Basic Court in Belgrade established that no judgement had been issued in criminal proceeding concerning the events in question and, therefore, no criminal offence had been committed.

The HLC pointed out that the court thus found “a convenient excuse to protect the Serbian state from responsibility for the systematic crimes committed during the 1990s”.

### **B. Proceedings at the European Court of Human Rights for the violation of rights from the Convention**

In April, the European Court of Human Rights (the ECHR) initiated communication with the Government of the RC in 17 cases in which relatives of civilians killed during the Homeland War initiated proceedings before the ECHR, with the basic question whether in those cases there was a violation of the right to life due to ineffective investigations of the crimes committed. In some of those cases, the matter of dispute was whether there was also a violation of the right to a fair trial, the right to an effective remedy, discrimination and erroneous application of the amnesty act.

In similar cases the ECHR already rendered two judgments and it is expected that the Court will follow its practice.<sup>10</sup>

For years, we have been advocating that the issues and problems of all civilian war victims are resolved within the Republic of Croatia on the principles of social solidarity and fair and quick indemnification, regardless of whether the perpetrators were identified, criminally prosecuted, found guilty or available to the Croatian judiciary.

In order to bring to an end further agony of family members of killed persons who initiated lawsuits for the compensation of non-pecuniary damage, the Croatian Government should strike a deal with victims' family members, pay them fair compensation and terminate their further victimization.

### **C. Reimbursement of sums paid on behalf of indemnification from convicted crime perpetrators**

In cases in which crime perpetrators were convicted and the RC paid indemnification to victims' family members, the state attorney's offices should continue with the practice initiated during 2013 to initiate proceedings for reimbursement of sums that were paid to victims of war crimes or their family members.

#### Reimbursements from Norac, Orešković and Grandić

We learned before that proceedings were initiated against convicted members of Croatian formations: Mirko Norac, Tomislav Duić, Tonči Vrkić and Ivica Petrić for reimbursement of sums paid to victims or their families.

During the reporting period, the Municipal Civil Court in Zagreb in the first-instance judgment ordered Mirko Norac, Tihomir Orešković and Stjepan Grandić, sentenced in 2003 for the crimes committed against civilians in Gospić and its surroundings, to jointly and severally pay the Republic of Croatia the amount of HRK 107,536.00 plus the costs of the proceedings and interest, the amount which the RC paid to Stojanka and Đorđe Borić on behalf of compensation of damage suffered due to forced removal and detention in the Perušić barracks in October 1991.

<sup>10</sup> Jularić vs. Croatia, Application no. 20106/06, Skendžić and Krznarić vs. Croatia, Application no. 1612/08, judgments of 20 January 2011.



#### **D. Bill of the Act on the Rights of Homeland War Victims of Sexual Abuse**

In mid March, the Ministry of Homeland War Veterans presented the Bill of *the Act on the Rights of Homeland War Victims of Sexual Abuse* pursuant to which victims should exercise the right to psycho-social and health care, free legal aid, rehabilitation and the right to pecuniary compensation.

Considering the fact that at this moment the state budget cannot provide sufficient funds for payment of compensations to the victims, the *Foundation for Victims of Sexual Abuse* should be established. The amount of the compensation, details on the establishment of the *Foundation*, its method of work, fund-raising and other tasks would be regulated by a special act.

Unfortunately, victims of sexual abuse constitute only a part of the corps of all civilian victims. Following the adoption of the *Act on the Rights of Homeland War Victims of Sexual Abuse* it would be necessary to adopt additional acts or a package of acts which would regulate the victims' status and facilitate indemnification of all categories of civilian war victims, including parents of murdered children, female and male camp detainees, victims of shelling, victims of land-mines, persons injured or killed at their workplace during the working obligation...

#### **VI. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA – disputes regarding the standard of "specific targeting"**

In the period between November 2012 and June 2013 a series of controversial judgments were rendered that brought into question the achievements of the ICTY in defining the principle of command responsibility and establishing legal standards and precedents that will leave a legacy in the international criminal justice. In January 2014 it seemed that the battle for the legacy of the Tribunal was not completed. Namely, at that time the Appeals Chamber in the case *Šainović et al.* concluded that the standard of "specific targeting" as a precondition for a conviction for aiding and abetting a crime has no grounds, neither in the ICTY's jurisprudence nor in customary international law. Referring to this conclusion, the ICTY's Office of the Prosecutor immediately filed a motion for reconsideration of the (final) judgment of acquittal rendered against the former Chief of General Staff of the Yugoslav Army, Momčilo Perišić.

However, the ICTY's Appeals Chamber, chaired by the President of the Tribunal Theodor Meron, rejected the prosecution's request for reconsideration of the judgment in which Perišić was acquitted of responsibility for aiding and abetting crimes in Sarajevo and Srebrenica.<sup>11</sup> Thus, as far as the ICTY is concerned, the Perišić case is closed.<sup>12</sup>

It is to be expected that disputes regarding the standard of "specific targeting" on the Tribunal will continue, as the decision of the Appeals Chamber on the prosecution's appeal against the judgment against the former heads of the Serbian secret service, Jovica Stanišić and Franko Simatović, is pending.

However, if the attitude of many Meron's opponents prevails, the (newly)established legal standards could encumber politicians and generals who decide on arming and equipping rebel forces in other countries although they are aware of the risk that weapons and equipment may be used for illegal activities, as well as restrict the freedom of operation of secret services which, as a rule, are the first to be engaged in crisis areas and which decide on organizing, arming and sending mercenaries and paramilitary formations, neglecting their inclination towards committing crimes. This would significantly contribute to crime prevention.

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<sup>11</sup> As a reminder, Perišić was sentenced in a the first instance judgment to 27 years in prison.

<sup>12</sup> It remains to be expected that, in the context of Serbia's accession to the EU, the case in which Croatia sentenced Perišić to 20 years in prison in his absence for the shelling of Zadar and surrounding villages will be again actualised. We can only hope there will be a possibility to reach justice after all.

