



international center for  
**TRANSITIONAL  
JUSTICE**

OCCASIONAL  
PAPER  
SERIES

## **CROATIA: SELECTED DEVELOPMENTS IN TRANSITIONAL JUSTICE**

Written by Thierry  
Cruvellier and Marta  
Valiñas for the *International  
Center for Transitional  
Justice*

**December 2006**



international center for  
**TRANSITIONAL  
JUSTICE**

5 Hanover Square  
24th floor  
New York, NY 10004  
TEL 917-637-3800  
FAX 917-637-3900

[www.ictj.org](http://www.ictj.org) | [info@ictj.org](mailto:info@ictj.org)

## CROATIA:

### SELECTED DEVELOPMENTS IN TRANSITIONAL JUSTICE

*December 2006\**

#### *Executive Summary*

|      |   |    |
|------|---|----|
| I.   | INTRODUCTION.....   | 3  |
| II.  | TRIALS .....  | 5  |
|      | A. The ICTY.....  | 5  |
|      | i. Changing attitudes? .....  | 9  |
|      | ii. ICTY contempt cases.....  | 11 |
|      | iii. The scope of transfer of ICTY cases .....                        | 13 |
|      | B. Domestic Trials .....  | 14 |
|      | i. Confronting crimes against Serbs.....                              | 17 |
|      | ii. Witness protection and legal representation of victims .....      | 21 |
|      | iii. Cooperation among authorities and investigative efficiency ..... | 23 |
| III. | TRUTH-SEEKING .....   | 25 |
| IV.  | REPARATIONS .....   | 27 |
|      | A. Material reparation .....  | 27 |
|      | B. Public apologies.....  | 30 |
| V.   | MEMORIALS.....  | 31 |
| VI.  | VETTING AND OTHER INSTITUTIONAL REFORMS .....                         | 32 |
| VII. | CONCLUSION.....   | 33 |

---

\* This report was researched and written by Thierry Cruvellier and Marta Valiñas. It was edited and reviewed by Caitlin Reiger of the ICTJ. Thanks are also due for the assistance provided by Suzana Grego, Vesna Teršelić, Nataša Kandić, Refik Hodžić, Matthew Steinberg, Bogdan Ivanišević and Tiasha Paliković. This report is the third case study on transitional justice in the former Yugoslavia. Further background about the conflicts in the region and comparative developments in Serbia and Montenegro and Bosnia and Herzegovina can be found in earlier reports published in October 2004, both available at [www.ictj.org](http://www.ictj.org). The limited purpose of each case study is to provide an overview of the topic, not a comprehensive account.

## *Executive Summary*

Since the end of the conflict in the former Yugoslavia, Croatia has undergone a period of political change and economic progress, and made significant strides toward accession to the European Union (“EU”). However, the legacy of the wars that took place during the 1990s is palpable, and while efforts to address and resolve issues arising from wartime violations are evident, the country still faces significant hurdles in its efforts to engage with the past.

This case study offers an overview of some of the major issues and recent developments in transitional justice in Croatia. It forms part of a series that aims to provide information and analysis on issues facing countries in transition. Similar case studies have been published on other countries in the region, notably Bosnia and Herzegovina and Serbia and Montenegro.

The report’s conclusions are summarized as follows:

- *International Prosecutions.* The relationship between the International Criminal Tribunal for the former Yugoslavia (“ICTY”) and Croatia has been a tense one, marred principally by Croatia’s opposition to the prosecution of some of its senior army officers. More recently, increased cooperation and the long-awaited arrest of General Ante Gotovina have ameliorated Croatia’s relations with the Tribunal and the international community at large. However, public reactions to the Tribunal within Croatia remain negative due to a perception that the Tribunal is anti-Croat. This is despite the fact that most of the cases brought before the ICTY concerning crimes committed in the territory of Croatia have been against Serbs. Although it is unlikely that there will be further Rule *11bis* transfers of ICTY indictments to Croatia, the role of the ICTY in Croatia’s domestic prosecution of war crimes suspects may nonetheless increase if the ICTY decides to transfer partially completed investigations to Croatian courts as part of its completion strategy.
- *Domestic Trials.* Croatia’s judicial system has made significant advances in its ability and willingness to deal with crimes committed during the war. Most notably, specialized chambers have been created to handle war crimes cases. A transfer provision was instituted allowing for cases to be transferred to regional centers where bias in the local courts was feared. Additionally, in 2004, the Croatian Criminal Code was amended to incorporate the doctrine of command responsibility as a basis of liability, further strengthening the judiciary’s power in prosecuting war crimes. Finally, increased interstate judicial cooperation has positively affected investigative efficiency. Nevertheless, significant sources of concern remain: persistent claims of ethnic bias in the proceedings, the conducting of trials *in absentia*, lack of adequate witness protection, and insufficient legal representation of victims.
- *Truth Seeking Efforts.* Independent media and NGOs have played a major role in truth-seeking initiatives in Croatia, raising public debate on the issue of crimes

committed in the past. For its part, the Croatian government has made only very limited efforts to expose officially and raise awareness of facts surrounding the crimes committed against non-Croats. Furthermore, there is ongoing systemic denial of any wrongdoing on the part of the Croatian army and of its role in the ethnic cleansing of Serb civilians. The official narrative focuses instead on the claim that the war in Croatia was defensive and legitimate, as stated in the “Declaration on the Patriotic War”, which was passed by the parliament in October 2000.

- *Reparations.* The issue of reparations in Croatia has consisted mainly of addressing violations of property rights as they relate to refugee return. It has included measures such as the restitution and reconstruction of property, and the establishment of housing care programs directed at former occupancy/tenancy rights (OTR) holders. The government’s policy toward OTR holders has been heavily criticized by human rights organizations and has been the subject of litigation before the European Court of Human Rights. The government has also offered symbolic gestures in the form of official acknowledgment of and apologies for the wrongs of the past, including a September 2003 exchange of apologies between the President of Croatia, Stjepan Mesic, and the President of the State Union of Serbia and Montenegro, Svetozar Marovic.
- *Memorials.* A number of memorials have been built in Croatia, all but one honoring Croat victims. With rare exceptions, memorials serve more as celebratory tributes to victory in the “Homeland War” than contributions to a shared acknowledgment of the past.
- *Vetting and Other Institutional Reforms.* While Croatia has undertaken efforts at institutional reform, no formal vetting procedures have been put in place to deal with individuals allegedly implicated in past abuses. Moreover, the independence of the judiciary continues to be questioned. National minorities are significantly under-represented in the judiciary, the police and the armed forces which, combined with the systemic unwillingness to fully acknowledge the crimes committed in Croatia’s name, contributes to an absence of civic trust in state institutions, particularly amongst Croatia’s minority communities.

The ICTY’s investigative and prosecutorial work is facilitated by Croatia’s increasingly cooperative attitude toward it, and the Croatian courts’ growing willingness and ability to take on prosecutions of crimes committed during wartime. This has contributed significantly to accountability for crimes committed in Croatia’s wars. Further, the continuing engagement of civil society and independent media outlets has ensured that past and current mistreatment of Croatia’s Serb minority remains in the public eye. Nevertheless, significant challenges remain and are indicative of a deep-rooted failure to acknowledge properly Croatia’s role in wartime abuses. Government policies regarding refugee return, numerous shortcomings in domestic prosecutions, the lack of comprehensive institutional reform, and the absence of state-sponsored truth seeking and vetting initiatives impede a truly comprehensive and meaningful reckoning with the past.

## I. INTRODUCTION

Croatia's declaration of independence from the former Yugoslavia in 1991 followed the first free elections in the country in 1990. It prompted a violent reaction from Belgrade-backed Serb military or paramilitary groups, mainly present in the Krajina and Slavonia regions. The war waged between Croatian and Serb forces in 1991-92 and in 1995 resulted in an estimated 20,000 dead or missing persons and hundreds of thousands of refugees and displaced persons. Although a ceasefire was signed in 1992 and Croatia's independence was recognized by the European Union (EU) in the same year, it was not until 1995 that Croatia regained control of most of its territory held by Serbs during the war – approximately one third of the country. This land reclamation was accomplished along with the massive exodus, in many cases forced, of more than 300,000 Croatian Serbs.

The conflicts in which Croatia was embroiled ended in 1995 with the signing of two key peace agreements. First, the Dayton agreement officially ended the war in Bosnia-Herzegovina, in which Croatia had also been involved. Second, the Erdut agreement resulted in the creation of a UN transitional administration in the region of Eastern Slavonia. This lasted until 1998, when Croatia regained full sovereignty over its entire territory.<sup>1</sup>

After the death in 1999 of Croatian President Franjo Tuđman, who had been in power since the country's declaration of independence, government passed from Tuđman's Croatian Democratic Union (HDZ) into the hands of the Social Democratic Party in the 2000 elections. However, in 2003, the HDZ returned to power under Prime Minister Ivo Sanader. Stipe Mesić, who had been a key figure in the HDZ in 1990 but had later left the party due to disagreements with Tuđman, was elected president in 2000 and re-elected in 2005.

Through economic growth and political pragmatism, Croatia has outpaced progress in neighboring Bosnia and Herzegovina and Serbia and Montenegro, while showing an increasing readiness to cooperate with them.<sup>2</sup> Since 2000, Croatia has experienced relatively steady and significant economic growth, accompanied by a gradually increasing openness to the West, both of which have been stimulated by the prospects of EU accession. In October 2005, the Chief Prosecutor of the International Criminal

---

<sup>1</sup> United Nations Security Council Resolution 1037, adopted on Jan. 15, 1996.

<sup>2</sup> In June 2005, the presidents of Croatia, Serbia and Montenegro, and Bosnia and Herzegovina signed a joint declaration calling for the normalization and strengthening of relations between the three countries (in view of their common goal of EU membership). Its provisions included cooperating in the prosecution of war crimes, establishing the truth about the past, promoting refugee returns, and ensuring the rights of national minorities. See *Southeast European Times*, "Presidents of BiH, Croatia, Serbia-Montenegro call for boosting ties, facing legacy of past conflicts", June 28, 2005, available at [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/document/setimes/features/2005/06/28/feature-01](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/document/setimes/features/2005/06/28/feature-01). This was followed by a visit by Croatia's president Mesić to Serbia and Montenegro in July 2005, during which he and his counterpart Svetozar Marović agreed to cooperate to resolve remaining issues such as refugee returns, missing persons and property issues. See "Croatian, Serbia-Montenegrin Presidents say remaining problems must be resolved", *Southeast European Times*, July 7, 2005, available at [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2005/07/07/feature-01](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2005/07/07/feature-01).

Tribunal for the former Yugoslavia (ICTY) stated that Croatia was “cooperating fully” with the Tribunal, which immediately triggered the start of accession negotiations between Croatia and the EU.<sup>3</sup> Two months later, the arrest of long-time ICTY indictee General Ante Gotovina in the Spanish Canary Islands removed one of the main barriers to the perception of the Croatian government’s full cooperation with the West. In so doing, it paved the way for improved relations.

Notwithstanding these successful developments, significant concerns remain about Croatia’s transitional process of dealing with its past. Prosecution of war crimes suspects, particularly in relation to crimes committed against Croatian Serbs, is fraught with deficiencies, and has met strong resistance from leading political parties and the population at large. Public perceptions of the ICTY are less than flattering and public debate about wartime abuses committed by Croats has been limited. Ethnic bias remains a concern pertaining to the judiciary.

This paper provides an overview of some of the major issues and recent developments in transitional justice in Croatia. While the main focus is on war crimes prosecutions before the ICTY and Croatian courts, the paper also examines truth-telling efforts (or the lack thereof), reparations, and the relevant institutional reforms by the Croatian State.

## **II. TRIALS**

### **A. The ICTY**

Although there have been significant developments in domestic trials for crimes committed during the war (which are discussed below), the ongoing existence of the ICTY in The Hague has continued to provide the backdrop against which developments within Croatia have taken place. The relationship between Croatia and the Tribunal over the last five years has been a tense one, at the heart of which has been the prosecution of a few Croat senior officers, including General Ante Gotovina. Threatened with a refusal from the EU to enter accession talks until Croatia fully cooperates with the ICTY, Croatian authorities have gradually adopted a more pragmatic, if ambivalent, approach.

While the prosecution of Croats has dominated Croatian reactions to the court in The Hague, most cases brought before the ICTY concerning crimes committed in the territory of Croatia involved Serb defendants. Of a total of 23 cases involving crimes committed in Croatia after all indictments were issued by the ICTY, 14 have been against Serbs (including those from Bosnia and Serbia) compared with five against Croats.<sup>4</sup>

---

<sup>3</sup> While, by October 2005, it had become clear to the ICTY Prosecutor that Croatia had located Gotovina in the Canary Islands and was working with Spanish authorities toward his arrest, the EU’s decision to commence accession talks also coincided with a political deal in which Austria, Croatia’s champion within the EU, agreed to drop objections to accession talks with Turkey: see BBC “EU opens Turkey membership talks”, Oct. 4, 2005, available at: <http://news.bbc.co.uk/2/hi/europe/4305500.stm>.

<sup>4</sup> According to information available on the ICTY website ([www.un.org/icty](http://www.un.org/icty)), the remaining four cases have involved a Croatian Albanian and three Montenegrin members of the Yugoslav National Army.

Some of the more significant results in cases against Serbs for crimes committed during the war in Croatia include: the convictions of General Pavle Strugar<sup>5</sup> and Vice-Admiral Miodrag Jokić,<sup>6</sup> both former officers of the Yugoslav Army, for having failed to prevent and stop the attack on Dubrovnik in late 1991. Also noteworthy is the controversial 13-year sentence awarded to Milan Babić (and upheld by the Appeals Chamber in 2005) for his participation in a joint criminal enterprise in 1991 and 1992 aimed at the permanent forcible removal of the majority of the non-Serb population from approximately one-third of Croatia.<sup>7</sup> Babić was the first president of the self-proclaimed Republic of Serbian Krajina.<sup>8</sup> He pleaded guilty to crimes against humanity for persecution. He also cooperated with the Office of the Prosecutor, amongst other things by testifying against former Yugoslav President Slobodan Milošević. Despite this cooperation and public apologies for his actions, the sentence he received was heavier than the 11 years requested by the prosecutor. On 5 March 2006, Babić committed suicide in his prison cell in The Hague. At the time of his death, he was testifying against another accused, Milan Martić – who had replaced Babić as president of Serb Krajina – whose trial had commenced in late 2005.<sup>9</sup> This was considered a serious blow to the prosecution as Babić was also expected to testify in a number of forthcoming proceedings against indicted Serbs, including former head of the Serbian State Security Service, Jovica Stanišić.<sup>10</sup>

Together with the Martić case, the most notorious and perhaps most publicized ongoing Croatia-related ICTY trial is the case against the “Vukovar Three”: Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin, all former officers of the Yugoslav People’s Army (JNA). These men were indicted for the execution in 1991 of more than 260 Croatian Croats and other non-Serbs at the Ovčara farm near Vukovar in Eastern Slavonia.<sup>11</sup> The ICTY prosecutor initially requested that the case be referred to Croatia or Serbia and Montenegro, but decided in June 2005 to withdraw the request and have the case tried in The Hague. The judges agreed, concluding that it was “not an obvious case for referral”.<sup>12</sup> The trial of the three accused finally started in October 2005 – 10 years after they had been indicted.<sup>13</sup> The decision not to transfer the case to the region has,

---

<sup>5</sup> *Prosecutor v. Pavle Strugar*, Case no. IT-01-42, Trial Chamber Judgment, January 31, 2005. Strugar was sentenced to 8 years imprisonment.

<sup>6</sup> *Prosecutor v. Miodrag Jokić*, Case no. IT-01-42/1, Appeals Chamber Judgment, August 30, 2005. The accused pleaded guilty and was sentenced to seven years imprisonment. A third person, Vladimir Kovačević, is charged with the attack on Dubrovnik. His case is still at the pre-trial stage. *Prosecutor v. Vladimir Kovačević*, case no. IT-01-42/2.

<sup>7</sup> *Prosecutor v. Milan Babić*, Case no. IT-03-72, Appeals Chamber Judgment, July 18, 2005.

<sup>8</sup> The Krajina region is an area in southern Croatia.

<sup>9</sup> *Prosecutor v. Milan Martić*, Case no. IT-95-11.

<sup>10</sup> Only one week after Babić’s suicide, Slobodan Milošević died of natural causes while also in detention at the ICTY, adding to the ICTY’s embarrassment. See OSCE, “Spot Report: Reactions in Croatia to the deaths of Slobodan Milošević and Milan Babić”, March 12, 2006, p. 1.

<sup>11</sup> *Prosecutor v. Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin*, Case no. IT-95-13/1-PT.

<sup>12</sup> *Prosecutor v. Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin*, Case no. IT-95-13/1-PT, Decision on Prosecutor’s motion to withdraw motion and request for referral of indictment under Rule 11bis, June 30, 2005.

<sup>13</sup> Mrkšić surrendered in May 2002 and the two others were arrested a year later. In the most significant judgment yet made by a court in Serbia, the War Crimes Chamber of the Belgrade District Court on



however, been seen as a missed opportunity for several reasons. The Belgrade-based NGO, the Humanitarian Law Center (HLC), advocated for the transfer on the basis that the War Crimes Chamber in Serbia was already proceeding against lower level direct perpetrators involved in the same incidents at Ovčara. HLC's Nataša Kandić has argued that the Vukovar Three trial would have addressed the question of higher level command responsibility of the JNA for the crimes against Croatian victims, which has been otherwise absent from Serbian local trials. The case could also have offered a chance for Serbia and Croatia to break with the past by means of genuine cooperation in seeking to respond to past human rights violations. Furthermore, for the victims' families and the broader Croatian public, the Vukovar Three case in The Hague has received less media coverage than had it been conducted locally.<sup>14</sup> While this could perhaps have been mitigated through more extensive ICTY outreach, it cannot replace the impact of a trial conducted in Croatia – the jurisdiction in which the crimes were committed.

In addition to the ICTY cases concerning crimes committed in Croatian territory, there are a number of cases that involve Bosnian Croat defendants. Most of these are related to crimes committed in the territory of Bosnia and Herzegovina. These include the ongoing case against the “Jokers”, a special unit of the military police force of the Croatian Defense Council, and the case against Ivica Rajić.<sup>15</sup> Completed cases against Bosnian Croats include the convictions of Tihomir Blaškić,<sup>16</sup> Zlatko Aleksovski,<sup>17</sup> Dario Kordić, Mario Čerkez<sup>18</sup> and two of the six indictees in the *Kupreškić et al* case.<sup>19</sup>

But it was the indictment of a few senior officers of the Croatian Army – particularly the 2001 indictment of General Gotovina – that inspired the strongest public reactions in

---

December 12, 2005 convicted 14 Serb militia members for the massacre at the Ovčara farm. Eight of the accused received the maximum sentence of 20 years imprisonment, and three were sentenced to 15 years. Two of the 16 accused were acquitted. See Reuters, “Serbia Jails 14 for 1991 Vukovar Massacre”, Dec. 12, 2005.

<sup>14</sup> ICTJ Interview with Nataša Kandić, July 2006.

<sup>15</sup> *Prosecutor v. Ivica Rajić*, Case no. IT-95-12. After his case was proposed for a referral to the War Crimes Chamber in Bosnia and Herzegovina, Rajić entered into a plea agreement with the Office of the Prosecutor in October 2005. On May 8, 2006, he was sentenced to 12 years imprisonment by the ICTY.

<sup>16</sup> *Prosecutor v. Tihomir Blaškić*, Case no. IT-95-14, Appeals Chamber Judgment, July 29, 2004. The defendant surrendered to the Tribunal in 1996. His sentence was reduced from 45 years imprisonment to nine years by the Appeals Chamber.

<sup>17</sup> *Prosecutor v. Zlatko Aleksovski*, Case no. IT-95-14/1, Appeals Chamber Judgment, March 24, 2000. The initial conviction of Aleksovski to two years and six months imprisonment was changed to seven years by the Appeals Chamber.

<sup>18</sup> *Prosecutor v. Dario Kordić and Mario Čerkez*, Case no. IT-95-14/2, Appeals Chamber Judgment, December 17, 2004. Both defendants voluntarily surrendered to the Tribunal in October 1997 and were convicted, respectively, to 25 and six years imprisonment for war crimes and crimes against humanity. They were initially indicted together with Tihomir Blaškić and Zlatko Aleksovski for crimes committed in the Lašva Valley.

<sup>19</sup> *Prosecutor v. Kupreškić et. al*, Case no. IT-95-16, Appeals Chamber Judgment, October 23, 2001. The Appeals Chamber reversed the conviction against three of the accused and reduced the sentence against two others, mainly on the basis that the Trial Chamber relied upon identification evidence given by a single witness who placed the accused at the location of the crimes. One of the initial accused had been found not guilty by the Trial Chamber.

Croatia and the most serious tensions with the ICTY.<sup>20</sup> In February 2001, some 150,000 people demonstrated in Split in support of General Norac, opposing the extradition to the ICTY of the Croatian general for crimes committed in the area near Gospić in 1993.<sup>21</sup> Like Gotovina, Norac had been lauded as a war hero. The protests ended when assurances were given that he was not the subject of an ICTY indictment, although he was in fact indicted by domestic authorities.<sup>22</sup> However, a few months later, in July 2001, the ICTY unveiled an indictment against General Ante Gotovina for crimes committed against Croatian Serbs in “Operation Storm”. Following the announcement, sizeable demonstrations in support of Gotovina took place all over the country, most notably in Zagreb, Zadar and Split. Gotovina remained at large for four years, during which time he became known as the Tribunal’s “third most wanted man” after Radovan Karadžić and Ratko Mladić. The failure to apprehend Gotovina attracted wide international condemnation and slowed the progress of Croatia’s move to EU accession.<sup>23</sup> The UN Security Council repeatedly asked for the cooperation of the Croatian authorities in arresting the fugitive.<sup>24</sup> In another instance of Croatian resistance to the ICTY, government authorities refused to extradite indicted general, Janko Bobetko, who eventually died in Zagreb in 2003. In June 2005, Carla Del Ponte, Chief Prosecutor of the ICTY, expressed frustration with Croatia’s lack of cooperation in bringing fugitives to justice.<sup>25</sup>

---

<sup>20</sup> *Prosecutor v. Ante Gotovina*, Case no. IT-01-45-I. See also *Prosecutor v. Rahim Ademi*, Case no. IT-01-46-I.

<sup>21</sup> See BBC, “Mass Rally for War Crimes Suspect”, Feb. 11, 2001, available at <http://news.bbc.co.uk/1/hi/world/europe/1165540.stm> and BBC, “Croatian Protesters Lift Blockade”, Feb. 12, 2001, available at <http://news.bbc.co.uk/1/hi/world/europe/1182987.stm>. The pro-Norac protests were countered by demonstrations of 15,000 supporting prosecutions of war crimes and human rights abuses. BBC, “Thousands Defend Croatia’s Rule of Law”, Feb. 19, 2001, available at <http://news.bbc.co.uk/2/low/europe/1179124.stm>

<sup>22</sup> Norac voluntarily surrendered after assurances were given that he would not be handed over to the ICTY. He was tried and convicted by the Rijeka County Court. Shortly afterwards, he was indicted by the ICTY and extradited for his initial appearance. His case has now been transferred back to the domestic courts. See discussion at page 15 *infra*.

<sup>23</sup> See for example, BBC news “US Reward for Croatian Fugitive”, Oct. 9, 2003: <http://news.bbc.co.uk/2/hi/europe/3178836.stm>.

<sup>24</sup> See, e.g., UNSC Resolution 1534 (2004) in which the SC “Reaffirms the necessity of trial of persons indicted by the ICTY and reiterates its call on all States, especially Serbia and Montenegro, Croatia and Bosnia and Herzegovina, and on the Republika Srpska within Bosnia and Herzegovina, to intensify cooperation with and render all necessary assistance to the ICTY, particularly to bring Radovan Karadžić and Ratko Mladić, as well as Ante Gotovina and all other indictees to the ICTY and calls on all at-large indictees of the ICTY to surrender to the ICTY”.

<sup>25</sup> In June 2005, while addressing the Security Council, Del Ponte stated that, “Unfortunately, these positive developments [at the ICTY] are overshadowed by the continuing failure of the relevant authorities to arrest and transfer ten fugitives, including those mentioned several times by the Security Council in resolutions taken under Chapter VII of the Charter. As long as Radovan Karadžić, Ratko Mladić and Ante Gotovina manage to escape justice and defy the international community, the work of this Tribunal will remain unfinished”. See ICTY Press Release, “Address by Carla Del Ponte, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia to the Security Council”, June 13, 2005.

### i. Changing attitudes?

In February 2004, Generals Ivan Čermak and Mladen Markač were also indicted for crimes against humanity and violations of the laws or customs of war committed in 1995 against the Serb population during “Operation Storm”.<sup>26</sup> However, both indictees immediately surrendered to the Tribunal. Taking place three months after the nationalist party HDZ came back into office, their surrender was cited as evidence of the willingness of the Croatian authorities to cooperate more with the ICTY, a year before the start of entry talks with the EU.<sup>27</sup> The government’s role in the case consisted mainly of providing documentary evidence and persuading the Croat indictees to surrender to the Tribunal whilst assisting with their defense.<sup>28</sup> Even more significantly, on October 3, 2005, ICTY Chief Prosecutor Carla Del Ponte stated that Croatia was now “cooperating fully” with the tribunal.<sup>29</sup> This statement was an early indication that the most sensitive point of contention between the Tribunal and Croatia was about to be resolved. Indeed, two months later, on December 7, 2005, Ante Gotovina was arrested in the Spanish Canary Islands.<sup>30</sup>

While these events seem to indicate an official change of position towards the ICTY, several factors suggest a lingering ambivalence on the part of the HDZ with respect to Croatia’s relationship with the Tribunal. Increased cooperation with the Tribunal ensured improved relations with the international community, but it also put the HDZ government at odds with some of its supporters, including war veterans. The path charted by the HDZ following Gotovina’s arrest reflected this predicament. As an ICTY staff member observed, “Croatia hides from The Hague, but there was a backlash on Gotovina”. Thus, in the week following Gotovina’s arrest, a popular TV program that had broadcast sharp criticisms of the late President Tudman was banned after provoking heated debate in the parliament for two full days. “My impression is that [the debate at parliament] was meant to deflect attention from Gotovina and take off the pressure. The HDZ tolerates [Prime Minister] Sanader but it easily slides back to [its] former ideology”, observed a political leader from the opposition.<sup>31</sup> The incident is suggestive of an attempt by the HDZ to realign itself with Tudman’s legacy, and thereby appease the constituents most likely to have been alienated by Gotovina’s arrest. In a similar move, on January 10, 2006, Prime Minister Ivo Sanader met with the defense lawyers of all indicted Croatian generals in

---

<sup>26</sup> *Prosecutor v. Ivan Čermak and Mladen Markač*, Case no. IT-03-73. Currently at pre-trial stage.

<sup>27</sup> Human Rights Watch, “World Report 2005”, Jan. 2005, pp. 364-368.

<sup>28</sup> “The Croatian government is convinced of their innocence and will provide all the legal, technical and other means for their defense”, declared Croatian Justice Minister Vesna Škare-Ožbolt. BBC World, “Croatian Generals to Surrender”, March 8, 2004, available at <http://news.bbc.co.uk/2/hi/europe/3542757>.

<sup>29</sup> See, for example, BBC, “EU launches Croatia discussions”, Oct. 4, 2005, available at, <http://news.bbc.co.uk/1/hi/world/europe/4305682>. The ICTY Chief Prosecutor had made a similar statement earlier in 2004, which had been revised in November of that year in a report to the UN Security Council in which it was stated that Croatia would be fully cooperating only when General Gotovina was handed over to the ICTY.

<sup>30</sup> ICTY Press Release, “Address by Carla Del Ponte, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia to the Security Council”, Dec. 15, 2005.

<sup>31</sup> Interview with ICTJ, Zagreb, Dec. 20, 2005.

order to agree on “a joint strategy” for their defense before the ICTY.<sup>32</sup> Coverage of the Gotovina case on Croatian television in December 2005 further illustrated the ambiguity of the relationship of Croatian authorities with the Tribunal. In stark contrast with Bosnia and Serbia, ICTY hearings, including the Milošević trial, had generally not been broadcast in full on Croatian TV. As television remains the primary source of information for many people, there has been a greater ignorance of the Tribunal in Croatia than elsewhere in the region.<sup>33</sup> This has made it easier for politicians to manipulate popular perceptions of the process.<sup>34</sup> “It suits them not to show the Court”, noted the editor of a local newspaper.<sup>35</sup> Nevertheless, unusually, and for reasons that were not explicitly stated, Gotovina’s initial appearance in The Hague on December 12 was broadcast live and in full on Croatian TV.

Similarly, although there are some indications of a change in general public opinion, the Croatian population remains at best ambivalent about its relationship with the Tribunal and war crimes prosecutions in general. A sign of progress may be discerned in the fact that public outpourings of support for war crimes indictees are dwindling. Although demonstrations in support of General Gotovina took place in the days following his arrest – in particular in his home region of Zada and in the town of Split, where he is considered by many to be a war hero – many independent national and international observers agreed that the more limited scale and duration of the Croatian protests in December 2005 (some 40,000 people gathered in the streets of Split, probably three times fewer than in 2001) were suggestive of an evolution of the political landscape in recent years.<sup>36</sup> As noted by a senior official at the Office of the State Attorney, “in 2000, there were 150,000 people demonstrating in support of Norac. Today, there are only 50,000 for Gotovina. In 2002, there were demonstrations every day in front of the Court in the *Lora* case. Today, there is nothing. Things are absolutely changing.”<sup>37</sup> However, lower numbers of demonstrators are not sufficient proof of profound and lasting changes, and a

---

<sup>32</sup> See Transitions Online, “Gotovina’s Last Battle”, Jan. 16, 2006. The outlet wrote that “the agreement between the government and the defense attorneys notably includes access to all necessary official documents outlining orders and plans surrounding the 1995 operation”, and that “several legal experts and historians...had been retained by the government in its efforts to refute the tribunal's contention that Operation Storm constituted ethnic cleansing of the Serb population from Croatia”. It further notes that “Gotovina's defense team will include two U.S. lawyers, Greg Kehoe and Luka Mišetić. Kehoe had advised the tribunal trying former Iraqi dictator Saddam Hussein in Baghdad. He also served as The Hague tribunal's prosecutor in the trial of Bosnian Croat general Tihomir Blaškić”.

<sup>33</sup> For example, in a 2005 European Commission poll on how Croatians perceived the EU, 80% said they obtained their information from TV, compared with 44% from dailies and 31% from radio. European Commission Eurobarometer, “EuroBarometer 63.4: National Report: Executive Summary – Croatia”, Spring 2005, available at [http://ec.europa.eu/public\\_opinion/archives/eb/eb63/eb63\\_exec\\_hr.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb63/eb63_exec_hr.pdf).

<sup>34</sup> Also notable in this regard is the sensationalist manner in which the press has covered the Tribunal – most major Croatian newspapers use an openly derisive or dismissive tone when writing about the ICTY, and frequently lampoon the Chief Prosecutor, judges, and staff.

<sup>35</sup> Interview with ICTJ, Dec. 21, 2005.

<sup>36</sup> “It was difficult to deal with Gotovina. In 2001, [leaders of the HDZ] were calling for the government to be toppled. In four years, they moved from this to dignifying the ICTY. In 2005, those organizing demonstrations went out of their way to make it big, but the turn out was low. The main reason was that the HDZ was not organizing it. But nevertheless, it shows that the country has moved on”, noted a leader of an opposition party. Interview with ICTJ, Zagreb, Dec. 20, 2005.

<sup>37</sup> ICTJ interview with Office of the Attorney General, Zagreb, Dec. 23, 2005.

broader public commitment to accountability for past crimes remains elusive. In February, a foundation for the defense of Croats charged by the UN tribunal was set up.<sup>38</sup> The foundation, with the support of a local football club, was reported to have raised 140,000 Euros for the defense fund in May 2006.<sup>39</sup> Gotovina's family also set up a fund for people to contribute to the General's defense.<sup>40</sup>

The end of the Tribunal's work is now on the horizon. The "completion strategy", submitted to the Security Council in 2003, set out a plan under which the Tribunal would complete all trials by 2008 and appeals by 2010. Despite its imminent conclusion, the Tribunal's impact within Croatia is emphasized by civil society, the media, the judiciary, and political parties, who have been advocating for years that past abuses be acknowledged and prosecuted.<sup>41</sup> On the one hand, the ICTY seems to have been perceived by many as an illegitimate challenge to the near-sacred way the "Homeland War" has been depicted within Croatia, as well as an unjustified obstacle to EU accession.<sup>42</sup> On the other, it provided those opposing the nationalistic perspective with a much-needed tool to keep questioning the official discourse until the society, or the authorities, showed more readiness to think critically. A leader of an opposition party summed this up as follows: "Even if people say there was too much pressure on Croatia, this constant presence of prosecutions has helped a lot in limiting the myth of the hero. The ICTY has kept the debate open [which] would have probably not happened without [its presence]. Institutionally, we were not strong enough. It was helpful to have [prosecutions take place] outside [Croatia]".<sup>43</sup>

## ii. ICTY contempt cases

Nevertheless, in 2005, another more unusual ICTY case caused controversy both inside and outside Croatia, when the ICTY indicted five Croatian journalists and the former head of the Croatian Secret Service for contempt of court.<sup>44</sup> The indictees had allegedly revealed the identity and testimony of two ICTY protected witnesses in the Blaškić case by publishing their names and statements in Croatian newspapers. Both witnesses were the subject of protective measures orders and had testified in closed session. Although

---

<sup>38</sup> Agence France Presse, "Dinamo Zagreb collects 140,000 euros for war crimes suspect", May 14, 2006.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> ICTJ interviews with NGO representatives, political party leaders, members of the judiciary and local journalists, Dec. 19-23, 2005.

<sup>42</sup> A poll in *Jutarnji List*, one of Croatia's dailies, published just after the opening of EU accession talks was announced (October 2005), showed a sharp increase of support for EU, from 40 percent to 63.5 percent. According to a Reuters report, "this poll reflect[ed] the belief that low support for the EU accession was merely a reaction to problems with The Hague war crimes tribunal and to an earlier rebuff by the EU". (Reuters, "Croat Support for EU Rebounds After Talks Start". Oct. 6, 2005). According to another poll organized by Standard Barometer, conducted in May-June 2005 and published in early September 2005, Croatian citizens' confidence in the EU had dropped to 28 percent, as opposed to 42 percent in the previous poll. The poll indicated that Croats' attitudes towards the EU remain inconstant and influenced by daily politics, said the EU delegation (HINA News Agency, "Croatian Citizens' Confidence in EU Marks Significant Drop – International Poll", Sept. 10, 2005).

<sup>43</sup> Interview with ICTJ, Zagreb, Dec. 20, 2005.

<sup>44</sup> *Prosecutor v. Jović, Križić, Šešelj and Margetić*, Case no. IT-95-14-R77.4 Consolidated Indictment, available at [http://www.un.org/icty/indictment/english/bla-con\\_3ai051014.pdf](http://www.un.org/icty/indictment/english/bla-con_3ai051014.pdf)

there were few people to praise the release of the protected witnesses' names, nor the openly political motivations of the indicted reporters, there was a shared embarrassment among well-respected freedom of expression organizations when it was disclosed that the two witnesses were not victim witnesses but the current president of Croatia and a former Dutch army officer.<sup>45</sup> "It compromises the whole concept of witness protection. Now, I have to defend these journalists," said a prominent Croatian Human Rights activist.<sup>46</sup>

On March 10, 2006, the first two accused, Ivica Marijačić and Markica Rebić, were found guilty and fined 15,000 euros each. The Tribunal's unanimous decision found that the deliberate violation of a court order risked undermining confidence in the ICTY's ability to guarantee witness safety, and was therefore tantamount to interference with the administration of justice.<sup>47</sup> However, during the two-day trial of the accused journalists in January 2006, one of the ICTY judges expressed concerns about "inappropriate use of court resources".<sup>48</sup> While the trial of the other four journalists was scheduled for July, on June 15 the Tribunal granted the Prosecutor's request to withdraw the indictments against three of them, citing "the interests of justice and judicial economy".<sup>49</sup> Whatever the outcome of the remaining case, this episode is unlikely to promote a favorable perception of proceedings at the Tribunal in Croatia, as the indicted journalists have used the proceedings to gain greater public exposure and portray themselves as human rights champions. Nevertheless, some commentators have noted that the issue of the indictments and the conviction of Marijačić and Rebić sent a strong message to current and future witnesses – whether high profile officials or average citizens – that their identities would be adamantly safeguarded.<sup>50</sup>

---

<sup>45</sup>See Committee to Protect Journalists, "Press Release", Oct. 7, 2005, available at <http://www.cpj.org/news/2005/Croatia07oct05na.html>; Reporters without Borders, "Press Release", Oct. 7, 2005, available at [http://www.rsf.org/article.php3?id\\_article=15230](http://www.rsf.org/article.php3?id_article=15230); "UN Court Seeks Arrest of Croatian Journalist", *The New York Times*, Oct. 2, 2005; and OSCE Media Freedom Representative, "Press Release", Oct. 11, 2005, available at <http://www.osce.org/item/16565.html>.

<sup>46</sup> Interview with ICTJ, Zagreb, Dec. 23, 2005.

<sup>47</sup>*Prosecutor v. Marijačić and Rebić*, Case no. IT-95-14-R77.2., available at [http://www.un.org/icty/blaskic/rebic\\_contempt/reb-tcj050310e.pdf](http://www.un.org/icty/blaskic/rebic_contempt/reb-tcj050310e.pdf)

<sup>48</sup> SENSE agency, "Contempt of Court Trial Begins", Jan. 18, 2006. Judge Bonomy, despite his stated concerns, did not dissent from his colleagues on the conviction. For further comment, see OSCE Mission to Croatia, "Spot Report: ICTY Convicts Two Croatians for contempt of the Tribunal", March 18, 2006.

<sup>49</sup> The case against Marijačić and Rebić is before the Appeals Chamber. See also the decision of June 20, 2006 to grant the Prosecutor's request for withdrawal against Šešelj, Margetić and Križić, and the separate opinion of Judge Bonomy, available at <http://www.un.org/icty/Blaškić/trialc1/decisions-e/060620.pdf>.

<sup>50</sup> Coalition for International Justice, "Croatian Contempt Cases: Issues and Analysis", Oct. 18, 2005, available at: <http://www.cij.org/index.cfm?fuseaction=viewReport&reportID=703&tribunalID=1>

### iii. The scope of transfer of ICTY cases

Only one case to date has been transferred from the ICTY to Croatia under Rule 11*bis* of the ICTY Rules of Procedure and Evidence, which allows cases to be transferred to national courts subject to certain conditions.<sup>51</sup> According to the Office of the Prosecutor at the ICTY and the Office of the Attorney General in Zagreb, the case against Mirko Norac and Rahim Ademi<sup>52</sup> – accused of crimes against humanity and war crimes against the non-Croat population in the Medak Pocket in 1993 – is likely to be the only 11*bis* referral to Croatia.<sup>53</sup> Nevertheless, the ICTY's completion strategy may increasingly influence Croatian domestic prosecution efforts through the possible transfer from the Tribunal of partially completed investigations.

The Croatian State Attorney and the ICTY Prosecutor have been working together to prepare for the transfer of other cases where there has not yet been an indictment (referred to as Category 'B' or '2' cases). The Croatian parliament's adoption in 2003 of legislation that allows the use of evidence collected by the ICTY in domestic proceedings should contribute to a swifter implementation of this aspect of ICTY's completion strategy, as well as providing important assistance to domestic efforts.<sup>54</sup> The number of cases and individuals involved is unknown and officials have been reluctant to make precise predictions. According to ICTY sources, there could be between 10 and 25 Category 2 cases and the Office of the Prosecutor could be in a position to provide its Croatian counterpart with trial-ready cases against an additional 40 to 50 individuals.<sup>55</sup>

A main obstacle – as is the case for similar referrals to Bosnia and Herzegovina, although on a much larger scale – seems to be the ICTY's lack of preparedness for such transfers of evidence and information. “The ICTY was not designed to help other institutions”, said a former ICTY prosecutor.<sup>56</sup> With the end of the ICTY's mandate approaching, others have acknowledged that there is little attention paid to the issue: “Should it be a priority? The administration says that we are out of mandate and there is no money for that [sort of transfer]. It is absolutely right, but what are we going to do with these cases?” asked another member of the prosecution at the ICTY.<sup>57</sup> After the ICTY and the international community have spent so many resources on investigating the crimes

---

<sup>51</sup> Rules of Procedure and Evidence, IT/32/Rev. 36, International Criminal Tribunal for the former Yugoslavia. The receiving state must have jurisdiction and the ICTY must be satisfied of the non-application of the death penalty and that the accused will receive a fair trial.

<sup>52</sup> *Prosecutor v. Mirko Norac and Rahim Ademi*, Case no. IT-04-78. Decision for referral to the authorities of the Republic of Croatia pursuant to *Rule 11 bis*, 14 September 2005, available at <http://www.un.org/icty/ademi/trialc/decision-e/050914.htm>. Mirko Norac had been convicted in 2003 by the Rijeka County Court for war crimes against the non-Croat population and was, at the time of the referral, already serving a prison sentence in Croatia.

<sup>53</sup> ICTJ interviews with ICTY Prosecution staff and Croatian Attorney-General's Office, Zagreb, Dec. 19 and 23 2005.

<sup>54</sup> Law on Implementation of the Statute of the International Criminal Court and Criminal Prosecution for Acts against International Humanitarian Law, *Narodne novine* [Official Gazette], No. 175/2003, Nov. 4, 2003.

<sup>55</sup> ICTJ interview with ICTY Prosecution staff, Dec. 19, 2005.

<sup>56</sup> ICTJ interview with former ICTY Prosecution staff, Sarajevo, Oct. 28, 2005.

<sup>57</sup> ICTJ interview with ICTJ Prosecution staff, Zagreb, Dec. 19, 2005.

committed in the former Yugoslavia, it is cause for concern that they may not reap the full benefit of the potential for investment in national judicial systems while simultaneously reducing the ICTY's caseload.

## B. Domestic Trials

The extent of Croatia's ability and willingness to deal, through its own judicial system, with crimes committed during the war has been attracting the attention of international and local organizations concerned with the issue of accountability and the establishment of the rule of law. This attention has amplified now that the ICTY is approaching its final phase, as the feasibility of ICTY transfers depends on an assessment of both compatibility with the law and the chances of a fair trial in the receiving state. The assessment of Croatia's performance in domestic prosecutions has evolved from highly critical to cautiously optimistic. Certain improvements have been welcomed, the most important being the creation of specialized chambers to handle war crimes cases.<sup>58</sup> Although Croatia has made significant progress in recent years in this regard, a set of issues continue to worry local and international human rights and monitoring organizations. Apart from a persistent ethnic bias in the proceedings, the main concerns relate to trials *in absentia*, witness protection, legal representation of victims, efficiency in the investigations, and cooperation among national and regional authorities.

In October 1996, the year after the official end of the war, Croatia adopted a *Law on General Amnesty* in order to ensure the peaceful re-integration of Eastern Slavonia. As a result, only those cases excluded from the amnesty would fall under the jurisdiction of the domestic courts. This law grants "amnesty from criminal prosecution and proceedings for perpetrators of criminal offences committed during the aggression, armed rebellion or armed conflicts and in connection with the aggression, armed rebellion or armed conflicts in the Republic of Croatia" in the period from August 17, 1990 to August 23, 1996.<sup>59</sup> However, the law does not grant a complete amnesty, as it excludes "perpetrators of the greatest violations of humanitarian law which have the character of war crimes",<sup>60</sup>

---

<sup>58</sup> See for example OSCE Mission to Croatia, "Background Report: Domestic War Crime Trials 2005", 13 September 2006, available at [http://www.osce.org/documents/mc/2006/09/20668\\_en.pdf](http://www.osce.org/documents/mc/2006/09/20668_en.pdf).

<sup>59</sup> *Narodne Novine* [Official Gazette], No. 80/96 of September 27, 1996 ("Law on General Amnesty"). Article 1. An unofficial English translation of the text of the Law on General Amnesty is available at <http://www.helpicrc.org/ihl-nat.nsf/0/FB701EC56DF58C9B412565FB005755AC>.

<sup>60</sup> These include the following acts as laid down in the Basic Penal Code of the Republic of Croatia (*Narodne Novine* Nr. 31/93 - revised version, nr. 35/93, 108/95 and 16/96): criminal acts of genocide (Article 119), war crime against civilian population (Article 120), war crime against the wounded and the sick (Article 121), war crime against the prisoners of war (Article 122), organization of the groups and encouraging of genocide and war crimes (Article 123), illegal killing and wounding of the enemy (Article 124), illegal confiscation of belongings from the killed and the wounded on the battlefield (Article 125), usage of forbidden means of fighting (Article 126), parliamentary offences (Article 127), inhuman treatment of the wounded, the sick and the prisoners of war (128), unjustified postponing of the repatriation of the prisoners of war (Article 129), destruction of the cultural and historical monuments (Article 130), encouraging of the aggressive war (Article 131), abuse of the international emblems (Article 132), racial and other discrimination (Article 133), constitution of the slavery and the transportation of the persons involved in slavery (Article 134), international terrorism (Article 135), endangering of the persons under the international protection (Article 136), and taking hostages (Article 137).



perpetrators of criminal acts of terrorism (albeit with the caveat that it must be a terrorist act as defined in international law) and “other criminal acts stated in the Basic Penal Code of the Republic of Croatia (...) which were not conducted during the aggression, armed rebellion or armed conflicts and [which] are not in connection with the aggression, armed rebellion or armed conflicts in the Republic of Croatia”.<sup>61</sup> While some victims’ associations have called for the repeal of the amnesty and further discussion on the law, there appears to be no political will to revisit the issue for fear of destabilizing the peace.<sup>62</sup>

Within Croatia, the County Courts have jurisdiction over war crimes cases, and their judgments can be appealed to the Supreme Court.<sup>63</sup> In October 2003, a law was passed that provided for the creation of a War Crimes Council in each existing County Court.<sup>64</sup> Although the 2003 law was enacted primarily to implement the Statute of the International Criminal Court, it also created entirely domestic specialized chambers, composed of three judges with experience in complex criminal cases.<sup>65</sup> The law also allows for the transfer of certain war crimes cases from the County Courts, with territorial jurisdiction to the County Courts of the four biggest cities in Croatia (Zagreb, Osijek, Rijeka, and Split). This is permissible whenever the State Prosecutor has demonstrated that the “circumstances under which the crime was committed, and the exigencies of the proceedings” justify it, and subject to the consent of the president of the Supreme Court.<sup>66</sup> In June 2005, the Supreme Court President granted the first such request for a case to be transferred from Vukovar to Zagreb.<sup>67</sup> Similarly, the case against Branimir Glavaš (discussed below) was transferred to Zagreb to avoid possible bias from a court sitting in Osijek.<sup>68</sup>

This transfer provision has resulted in considerable debate among local trial monitors and within the judiciary. Overall, there seems to be widespread, if not unanimous, support (both within the judiciary and from NGOs) for all war crimes cases to be brought before the four main County Courts. This attempts to address concerns that the other four courts may not be able to conduct fair trials or resist pressure in the more sensitive cases.<sup>69</sup> Cases have already been moved from one County Court to another in several instances in the

---

<sup>61</sup> Law on General Amnesty, *supra* note 60, Article 3.

<sup>62</sup> ICTJ Interview with Croatian NGO, July 2006.

<sup>63</sup> There are County Courts in each of Croatia’s 21 counties that deal with serious criminal cases under the Criminal Code of 1993.

<sup>64</sup> Law on the Application of the Statute of the International Criminal Court and on the Prosecution of Criminal Acts against the International Law on War and Humanitarian Law, *Narodne novine* [Official Gazette], No. 175/2003, Nov. 4, 2003 (“Law on ICC Application”).

<sup>65</sup> *Id.*, Article 13 (2).

<sup>66</sup> See Article 12 of the Law on ICC Application, and also Human Rights Watch, “Justice at Risk: War Crimes Trials in Croatia, Bosnia and Herzegovina, and Serbia and Montenegro”, Oct. 2004, Vol. 16, No. 7 (D), p. 7.

<sup>67</sup> The case against Slobodan Davidović, suspected of war crimes in Bosnia and Herzegovina. See OSCE Mission to Croatia, “Background Report on Domestic War Crimes Prosecutions, Transfer of ICTY Proceedings and Missing Persons”, Aug. 12, 2005, p. 4.

<sup>68</sup> Balkan Insight “Croatia may try Wartime Leader for Serb Deaths”, June 8, 2006.

<sup>69</sup> ICTJ interviews with members of NGOs and the judiciary in Osijek, Dec. 20, 2005, and in Zagreb, Dec. 22 and 23, 2005.

past.<sup>70</sup> In addition to the appropriate forum for the trials, there appears to be support for moving all war crimes investigations to specialized units within the four main County Courts and, when necessary, to Zagreb in particular. Indeed, especially in respect of crimes committed against Serbs, police investigations in Osijek and Split have sometimes been considered ineffective or clearly obstructed due to local pressure from powerful figures who may feel threatened. “Local police and local judiciary are too close to the population”, said the head of a leading human rights group in Zagreb<sup>71</sup>. In such circumstances, transferring the investigations to the capital city proved the best way to get around the obstacle.<sup>72</sup>

In July 2004, a significant amendment was made to the Croatian Criminal Code in order to include the principles of command responsibility for failure to prevent, or failure to punish, crimes under international law.<sup>73</sup> Whether these provisions will be applied retroactively in future proceedings for war crimes committed during the 1991-95 war is a matter for debate, but it is generally considered unlikely. This is partly due to the fact that there is ongoing debate about whether applying the principles of command responsibility would breach the general legal prohibition on the retroactive applicability of law. But other factors may explain it as well.<sup>74</sup> A judge in Zagreb acknowledged that “there is general reluctance because it is new”, which may suggest an ambivalence about changing established practices aside from questions of legality.<sup>75</sup> Furthermore, Croatian judges and prosecutors may be reluctant to pursue cases involving command responsibility for fear of confronting the state itself.<sup>76</sup> It should be noted, though, that in 2002, the Croatian Supreme Court suggested that criminal charges based on command responsibility principles might be inferred from “general domestic theories of criminal liability for failure to act in

---

<sup>70</sup> For example, the controversial 2001 case against Norac, Orešković, Grandić, and Gredelj (Case Kz 985/03-9) was transferred from Gospić to Rijeka.

<sup>71</sup> ICTJ interview with NGO representative, Zagreb, Dec. 22, 2005.

<sup>72</sup> See discussion below on the Glavaš case. Nevertheless, according to an April 2005 OSCE report, 80 percent of outstanding war crimes cases remain the other county courts. OSCE Mission to Croatia, “Background Report: Domestic War Crimes Trials 2004”, Apr. 26, 2005, p. 10.

<sup>73</sup> Basic Penal Code of the Republic of Croatia (*Narodne Novine* Nr. 31/93 - revised version, nr. 35/93, 108/95 and 16/96), Article 167a.

<sup>74</sup> The Socialist Federal Republic of Yugoslavia ratified the First Additional Protocol of 1977 to the Geneva Conventions on 11 March 1977 and the Second Additional Protocol on 11 June 1977. Article 87 of the First Additional Protocol sets out the duty of commanders. Command responsibility was established in Art 21 of the Instructions on the Application of Rules of International Laws and Customs of War in the Armed Forces of the SFRY, adopted in 1988. For a comparable analysis in relation to Serbia, see Humanitarian Law Center, “Command Responsibility: the Contemporary Law”, Feb. 23, 2004, available at [http://www.hlc.org.yu/english/War\\_Crimes\\_Trials\\_Before\\_National\\_Courts/Serbia/index.php?file=729](http://www.hlc.org.yu/english/War_Crimes_Trials_Before_National_Courts/Serbia/index.php?file=729). Croatia indicated its intent to be bound to the First Additional Protocol by virtue of its instrument of succession, deposited on 14 July 1993.

<sup>75</sup> ICTJ interview with Croatian judge, Zagreb, Dec. 22, 2005. See also Amnesty International, “AI’s concerns on the implementation of the ‘completion strategy’ of the International Tribunal for the former Yugoslavia”, June 6, 2005, AI Index: EUR 05/001/2005.

<sup>76</sup> In neighboring Serbia this has been cited as an ongoing problem: “It is not certain that the legal profession has emancipated itself from the political leaders’ decision on command responsibility. It hasn’t dared formulate its own position”. ICTJ interview with a judge in Belgrade, Nov. 25, 2005.

conjunction with Articles 86 and 87 of Additional Protocol 1 to the 1949 Geneva Conventions”.<sup>77</sup>

Monitoring organizations still consider the number and type of war crimes cases brought before Croatian courts to be unsatisfactory.<sup>78</sup> In accordance with the instructions of the Croatian State Attorney’s Office, all investigations were reviewed in 2004, leading to the discontinuation of proceedings in cases against 485 persons. By 2005, records showed that 603 persons had been convicted of war crimes – although many of these were convictions *in absentia* – while 245 persons had been acquitted.<sup>79</sup> In December 2005, the State Attorney’s Office said it had around 1200 suspects, half of whom were under investigation and half of whom had proceeded to the indictment phase. The State Attorney’s Office has indicated that it does not expect the number of investigations to increase.

### **i. Confronting crimes against Serbs**

A further significant development in Croatian trials relates to attempts to address the perceptions of ethnic bias in the courts. In 2005, trial proceedings were conducted in relation to sixteen cases of war crimes, genocide, or unlawful killing and wounding of the enemy.<sup>80</sup> A majority of these proceedings were brought about as a result of Supreme Court decisions in which re-trials of earlier proceedings were ordered. The Supreme Court has shown willingness to overrule prior acquittals of members of the Croatian army and the police force accused of war crimes and crimes against humanity. This has been instrumental as a first step in redressing bias in the courts.

To date, war crimes investigations and prosecutions in Croatia have been persistently criticized as “ethnically biased”.<sup>81</sup> In 2004, human rights organizations observed that: prosecutors had initiated cases against Croats and against Serbs in a proportion of 1 to 5;

---

<sup>77</sup> OSCE Mission to Croatia, “Supplementary Report: War Crime Proceedings in Croatia and Findings from Trial Monitoring”, 22 June 2006. See also *RH v. Milan Strunjaš* [Karlovac County Court]. Supreme Court I-Kz 588/02-9 from Oct. 17, 2002.

<sup>78</sup> In the words of Human Rights Watch, “The absence [in 2005], for the second consecutive year, of any new indictment against accused Croats raises serious concerns about the sincerity of the Croatian government’s accountability efforts”. Human Rights Watch, “World Report 2005”, Jan. 2005, pp. 347-351. The decreasing number of proceedings in such cases was also noted by OSCE in 2005. OSCE Mission to Croatia, “Status Report No.17 on Croatia’s Progress in Meeting International Commitments since July 2005”, 10 November 2005, p. 15 and OSCE Mission to Croatia, “Background Report on Domestic War Crime Prosecutions, Transfer of ICTY Proceedings and Missing Persons”, Aug. 12, 2005, p. 2.

<sup>79</sup> Kruhonja, K. (Ed.), “Monitoring of War Crimes Trials. Annual Report 2005”, Osijek, Centre for Peace, Nonviolence and Human Rights, 2005.

<sup>80</sup> *Id.*

<sup>81</sup> EU, “Key findings of the 2005 Progress Reports on Croatia”, Nov. 9, 2005. According to Human Rights Watch, in 2004 “Croatian courts tried only two cases involving war crimes perpetrated against ethnic Serbs”. Human Rights Watch, “World Report 2005”, Jan. 2005, pp. 364-368. Similarly, the OSCE has pointed out that in 2002, 83 percent of Serbs were found guilty in war crimes trials and only 18 percent of Croats were convicted. OSCE Mission to Croatia, “Background Report: Domestic War Crimes Trials in 2002”, Mar. 1, 2004, p. 3. According to the OSCE, of the five new war crimes indictments that were issued in 2005, all involved Serb accused: OSCE Mission to Croatia, “Background Report: Domestic War Crimes Trials in 2005”, 13 September 2006, p. 39.

Croats were normally charged with minor acts;<sup>82</sup> and that defense lawyers were allowed to display a more threatening attitude toward witnesses in cases against Croats.<sup>83</sup> While this ratio does not in and of itself prove ethnic bias, it can at least be noted that the total number of suspected Croat perpetrators of crimes against Serbs is not proportionate to the total number of Croats being investigated and prosecuted. One case in particular has been cited in order to illustrate the alleged ethnic bias. In the *Savić* case, in January 2004, Vukovar County Court sentenced a 78-year old Croatian Serb woman to four-and-a-half years' imprisonment on war crimes counts. She was accused of having "denounced" three Croats who were then transferred from Vukovar to a detention camp in Serbia and subjected to inhumane treatment; and of having intimidated and subjected to ill-treatment a Croat woman whom she allegedly forced to cook for her. This ruling has been highly criticized: the evidence that supported it was allegedly insufficient, the sentence was considered particularly harsh in relation to the alleged crime; and also because no records exist of war crimes cases against Croats based on allegations of similar severity.<sup>84</sup>

By 2001, a gradual change occurred when the Office of the State Attorney started to charge members of the Croatian army and police forces.<sup>85</sup> The *Paulin Dvor* case and the *Gospić* case were illustrations of this new trend. In the April 2004 *Paulin Dvor* case, Nikola Ivanković, a former member of the Croatian Army, was sentenced by the Osijek County Court to 12 years of imprisonment for the December 1991 killing of 19 Croatian Serb and Hungarian civilians in Paulin Dvor.<sup>86</sup> In the March 2003 *Gospić* case, Croatian Army generals Mirko Norac, Stjepan Orešković and Stjepan Grandić were found guilty of war crimes and sentenced by the Rijeka County Court to 12, 15, and 10 years of imprisonment, respectively, for the killing of 50 civilians, the majority of whom were Serbs, in 1991 in Gospić.<sup>87</sup>

---

<sup>82</sup> Human Rights Watch, "Justice at Risk: War Crimes Trials in Croatia, Bosnia and Herzegovina, and Serbia and Montenegro", Oct. 2004, Vol. 16, No. 7 (D), pp. 12 and 13.

<sup>83</sup> Kruhonja, K. (Ed.), "Monitoring of War Crimes Trials. Annual Report 2005", Osijek, Centre for Peace, Nonviolence and Human Rights, 2005, p. 29.

<sup>84</sup> See Human Rights Watch, "Justice at Risk: war crimes trials in Croatia, Bosnia and Herzegovina, and Serbia and Montenegro", Oct. 2004, Vol. 16, No. 7 (D), p. 9 and Human Rights Watch, "The Case of Ivanka Savić, Briefing Paper", July 19, 2004. The OSCE has also noted that in the prosecution of war crimes "there are still some disparities on the basis of national origin. Most noticeable is the difference in the type of conduct for which Serbs and Croats are charged, with Serbs being accused for a wide range of conduct while Croats are almost exclusively charged for killings". OSCE Mission to Croatia, "Background Report on Domestic War Crimes Prosecutions, Transfer of ICTY Proceedings and Missing Persons", Aug. 12, 2005, p. 3.

<sup>85</sup> Kruhonja, K. (Ed.), "Monitoring of War Crimes Trials. Annual Report 2005", Osijek, Centre for Peace, Nonviolence and Human Rights, 2005, p. 16.

<sup>86</sup> Osijek County Court Judgment K-18/03, Apr. 8, 2004. It should be noted though that some who attended the trial heavily criticized the fact that the court did not want to investigate who gave the orders for the killing and for the removal of the bodies. They also described grave pressure on witnesses. See Transitions Online, "Impunity Prevails", Dec. 8, 2005.

<sup>87</sup> "Former General, Aides Convicted in Croatian War Crimes Trial", *Southeast European Times*, Mar. 25, 2003, available at [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2003/03/030325-SVETLA-001](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2003/03/030325-SVETLA-001). See discussion above at page 5.

Two other noteworthy cases in this regard are the *Korana Bridge* case<sup>88</sup> and the *Lora* case.<sup>89</sup> In the *Korana Bridge* case, the Supreme Court ordered its third re-trial since 1992. It concerned Mihajlo Hrastov, a member of the Croatian police force accused of killing more than a dozen Serb prisoners. In the *Lora* case, eight members of the Croatian military police were accused of the torture and killing of Serb civilians in the Lora military prison in Split in 1992. After an acquittal of all of the accused in August 2004, the Supreme Court ordered a re-trial, which began before the County Court of Split in September 2005.<sup>90</sup> On March 2, 2006, all eight accused – including four tried *in absentia* – were convicted and sentenced to six to eight years in prison.<sup>91</sup>

Human rights organizations and leaders of the Croatian Serb minority have welcomed the increased support of the Croatian government for domestic prosecutions of war crimes committed by members of the Croat majority.<sup>92</sup> “There are slow but visible changes. Today, 1000 Serbs are subject to investigation. There were 4000 two years ago. Out of these 1000 people, 500 to 600 are in police files, without judicial oversight. This is what we are working on now: clearing up police files. The State Attorney has agreed to work on it”, stated a leader of a Croatian Serb political party.<sup>93</sup> Among human rights activists and journalists interviewed by ICTJ, there is a shared feeling that public acknowledgement of and debate about crimes committed against Croatian Serbs have increased over the last few years. The OSCE has highlighted its concern that “participation in the Homeland War” continues to be used by Croatian courts as a mitigating factor in reducing sentences against Croatian accused<sup>94</sup>. This may explain the statement of a renowned Croatian editor: “It can therefore be said that today it is no more a secret for anyone that Croats also committed war crimes, but that little is being done to punish them”.<sup>95</sup>

However, in December 2005, two incidents demonstrated that there is still pressure from those seeking accountability for Croat crimes. First, on December 6, the leading investigative journalist of the independent newspaper *Feral Tribune*, Drago Hedl, received death threats in his mail – which were directed at him as well as a witness quoted in one of his articles. Since the late 1990s, Hedl has been publishing unrivalled stories on crimes committed by the Croatian Army against Croatian Serbs. In a report published in July 2005, he printed a witness’ allegations regarding the possible involvement of Branimir Glavaš, a powerful political leader, former commander of the defense force in Osijek, and current President of the City Council and opposition Member

---

<sup>88</sup> Indictment by the County Prosecutor’s Office from Karlovac, No. KT-48/91.

<sup>89</sup> Indictment by the County Prosecutor’s Office in Split, No. KTO 131/02 of Mar. 25, 2002.

<sup>90</sup> See Southeast European Times, “War Crimes Trial of Eight Former Military Policemen Reopens in Croatia”, Sept. 13, 2005, available at [www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2005/09/13/feature-01](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2005/09/13/feature-01).

<sup>91</sup> See Humanitarian Law Center, “Successful Retrial for Case Lora”, Mar. 3, 2006, available at [http://www.hlc.org.yu/english/Facing\\_The\\_Past/index.php?file=1312.html](http://www.hlc.org.yu/english/Facing_The_Past/index.php?file=1312.html)

<sup>92</sup> Human Rights Watch, “Justice at Risk: War Crimes Trials in Croatia, Bosnia and Herzegovina, and Serbia and Montenegro”, Oct. 2004, Vol. 16, No. 7 (D), p. 5.

<sup>93</sup> ICTJ interview with Croatian Serb politician, Zagreb, Dec. 19, 2005.

<sup>94</sup> OSCE Mission to Croatia, “Background Report: Domestic War Crime Trials 2005”, 13 September 2006, p. 28.

<sup>95</sup> Transitions Online, “Impunity prevails”, Dec. 8, 2005.

of Parliament.<sup>96</sup> On the night of December 18, 2006 the president of the Civic Committee for Human Rights, a Zagreb-based organization, was assaulted in front of his home. “We know who you are, we are veterans from Vukovar, we know how to handle you and what to do with you”, the attackers are reported to have said.<sup>97</sup>

In this context, the biggest challenge to the Croatian judiciary in respect of crimes against Serbs is undoubtedly the ongoing investigation of allegations against Branimir Glavaš. Glavaš, a founding member of the Croatian Democratic Union is considered one of the most powerful politicians in the country over the past 15 years. In June 2005, investigations in the case against him were removed from the Osijek police and put under the authority of the police in Zagreb. In late 2005, while the investigation against Glavaš was said to be progressing quickly, two incidents raised serious concern for civil society. First, the mayor of Osijek, a close political ally of Glavaš, revealed the names of 19 prosecution witnesses during a press conference.<sup>98</sup> The conference was then broadcast on Osijek Television four times in two days. Four witnesses were said to have called the police to say that they were no longer willing to testify. This incident led the Croatian Helsinki Committee for Human Rights to proclaim that the situation surrounding the investigation was tantamount to a “lynching atmosphere”.<sup>99</sup> Second, as already mentioned, less than a week after the conference, leading investigative journalist Drago Hedl received death threats which were said to be directly related to his reporting on the Glavaš investigation. The Croatian parliament lifted immunity from Glavaš at the request of the Office of the State Prosecutor, which was upheld by the Court of Appeal.<sup>100</sup> The case has since been turned over to an investigative judge who has opened an official war crimes investigation against Glavaš at the request of state prosecutors who alleged that he ordered the killing of two Serbs and the torture of three others.<sup>101</sup> After initially denying the judge’s motion for Glavaš’s pre-trial detention, the Privileges and Credential Committee of the Croatian parliament ultimately granted the motion on October 26, 2006, partly out of concern that Glavaš could influence witnesses.<sup>102</sup> Glavaš turned himself in on the same day, after the police issued an order for his arrest.<sup>103</sup> After a 37-day hunger strike in protest at what he claims is a politically-motivated case, as of January 2007 the investigative judge has decided to temporarily suspend the investigation

---

<sup>96</sup> The death threat reportedly stated that “We will kill both you and your witness”. Agence France Press, “Death Threat after Croatian Journalist Reports on War”, Dec. 7, 2005. On May 11, the day after the parliament lifted immunity for Glavas, Hedl was verbally abused, including with death threats, in the streets of Osijek. See HINA Croatian News Agency, “HND Slams Death Threats Against Osijek Reporter”, May 10, 2006.

<sup>97</sup> Zoran Pusić, who was assaulted, also said that he didn’t think the attack had been organized. ICTJ interview with Zoran Pusić, Zagreb, Dec. 18, 2005.

<sup>98</sup> Anto Đapic, mayor of Osijek, is also the president of the Croatian Party of Rights.

<sup>99</sup> HINA News Agency, “Human Rights Watchdog Urges Croatia to Stop Violence Against Journalists”, Dec. 8, 2005.

<sup>100</sup> HINA News Agency, “Croatian Court Gives Go-ahead for War Crimes Probe against Senior Official”, July 5, 2006.

<sup>101</sup> VOA News, “Croatian Court Starts War Crimes Investigation of Law Maker”, June 13, 2006.

<sup>102</sup> IWPR, “Glavaš Finally Behind Bars”, October 27, 2006, available at [http://iwpr.net/?p=tri&s=f&o=324905&apc\\_state=henptri](http://iwpr.net/?p=tri&s=f&o=324905&apc_state=henptri).

<sup>103</sup> Id.

and release Glavaš on the basis that he is not fit to stand trial, although prosecutors have appealed the decision.<sup>104</sup>

Apart from the aforementioned retrials, there were no new indictments against members of the Croatian army and the police force on war crimes counts in 2005.<sup>105</sup> However, many earlier cases against former members of the army and the police force have tended to be pursued as conventional crimes rather than war crimes, even though they may be closely related to the war.<sup>106</sup>

## ii. Witness protection and legal representation of victims

Witness protection is a recurring matter of concern in Croatian war crimes trials. There have recently been important legislative and institutional developments in this area: the adoption of the *Witness Protection Law*<sup>107</sup> in October 2003, the establishment of a witness protection program at the Ministry for Internal Affairs, as well as the creation of a special witness support unit within the Ministry of Justice in 2005. Fears have been expressed by witnesses in cases against members of the Croatian army and police forces, especially in cases that have received intense public attention such as the *Norac*, *Lora*, and *Paulin Dvor* trials. Serious acts of intimidation and oral threats during these trials<sup>108</sup> and in the investigation in the Glavaš case<sup>109</sup> are evidence of the relevance and timeliness of the legislative and institutional developments. Accordingly, the greatest challenge now facing Croatian authorities is the implementation of these new measures.

---

<sup>104</sup> BBC News, “Jailed Croat MP in Hunger Strike”, October 27, 2006; HINA News Agency “Prosecutors Appeal Decision to Suspend Investigation against Glavas in Garage Case”, 4 January 2007.

<sup>105</sup> OSCE Mission to Croatia, “Status Report No.17 on Croatia’s Progress in Meeting International Commitments since July 2005”, Nov. 10, 2005, p. 16.

<sup>106</sup> Kruhonja, K. (Ed.), “Monitoring of War Crimes Trials. Annual Report 2005”, Osijek, Centre for Peace, Nonviolence and Human Rights, 2005, p. 16.

<sup>107</sup> Law on Witness Protection, *Narodne novine* [Official Gazette], No. 163/2003, Oct. 16, 2003.

<sup>108</sup> In the 2002 first trial in the Lora case, which was annulled by the Supreme Court in 2005, several witnesses stated in court that they were being subject to threats and several others refused to come from Serbia or Bosnia-Herzegovina to testify in the proceedings. (In a re-trial that took place in late 2005 and early 2006, ten witnesses came from Serbia and BiH.) See Human Rights Watch, “Justice at Risk: War Crimes Trials in Croatia, Bosnia and Herzegovina, and Serbia and Montenegro”, Oct. 2004, Vol. 16, No. 7 (D), p. 23. See also Kruhonja, K. (Ed.), “Monitoring of war crimes trials, Annual Report 2005”, Osijek, Centre for Peace, Nonviolence and Human Rights, 2005. It is also worth noting that Milan Levar, a potential witness in the Gospić case, was killed in 2000 after he gave a statement to the Office of the Prosecutor of the ICTY and after publicly denouncing the accused in that case in Croatia. See Institute for War and Peace Reporting, “Potential witness dies in Croatia – Explosive device kills Milan Levar outside his home”, *Tribunal Update* 188 (28 August – 2 September 2000) available at [www.iwpr.net/?p=tri&s=f&o=164533&apc\\_state=hsritri2000](http://www.iwpr.net/?p=tri&s=f&o=164533&apc_state=hsritri2000).

<sup>109</sup> After the mayor of Osijek publicly named witnesses in the Glavaš investigation, the ICTY expressed concern over the functioning of the witness protection program in Croatia. See HINA News Agency, “Hague Tribunal alarmed by Croatia's failure to protect witnesses”, Dec. 17, 2005. More recently, Glavaš published the names of protected witnesses on his website: The Associated Press, “Judge rejects calls to detain Croatian ex-ruling party member accused of wartime atrocities”, July 21, 2006.

Despite the establishment of witness protection mechanisms in 2005, it has been difficult to ensure that witnesses themselves comply with the protective measures<sup>110</sup>, particularly given the small size of the country, which makes relocated witnesses easier to trace. The issue is much less salient in big cities such as Zagreb, but it was stressed that the level of fear and intimidation is still particularly acute in villages.

The Ovčara trial in Serbia has also given new arguments to those advocating that victims should be part of the proceedings as civil plaintiffs rather than just witnesses.<sup>111</sup> Croatian law states that victims can have their own legal representation in trials. However, in practice, they have not had such representation. Furthermore, in contrast to Serbia, where *parties civiles* can be represented by non-lawyers, representation in Croatia has to be by an attorney called to the Croatian bar and is often simply too expensive for victims to afford.<sup>112</sup> According to a senior trial monitor in Croatia, in the 13 war crimes trials monitored, only two of the 235 victims implicated had legal representation.<sup>113</sup> Arguments supporting the legal representation of victims in trials include better access to information and better defense of their specific interests, as well as better recognition of the harm they have suffered. Arguments opposing it are the risk of further delays of the proceedings, potential conflict with the state attorney, and the need for victims' representation to be limited to sentencing hearings.

The current draft law on legal aid provides for free legal aid to anyone with a monthly income of less than 1,800 kuna (around 250 euros). However, it is unclear how many people would qualify for this. Still others think that the judicial system, and indeed the society as a whole, has not yet "matured" sufficiently to include victims in the trial process. They stress that, in the sensitive context of Croatia, dispassionate judgments would be even harder to reach with the full and direct participation of victims. One prominent human rights activist summarized the situation as follows:

In the long term, justice doesn't exist if victims are not represented. We are like in a sandwich, [we are] between the justice we can have today and the one we could have

---

<sup>110</sup> In the only documented case of a witness who was admitted into the special witness protection program and relocated out of his hometown, the relocated witness repeatedly contacted the media from his new location. ICTJ interviews with the Office of the Attorney General and local human rights organizations, Zagreb, Dec. 22 and 23, 2005.

<sup>111</sup> In this benchmark case before the War Crimes Chamber of the District Court of Belgrade, 14 Serbs were convicted on December 12, 2005 for war crimes against prisoners of war. The defendants were charged with the ill-treatment and killing of 192 individuals in the Ovčara farm near Vukovar in 1991. They were sentenced to 5 to 20 years imprisonment. Two other indictees were acquitted. Indictment KV No. 01-2003. The trial began in March 2004 and was the first war crimes trial to take place before the Special Court in Serbia. See Southeast European Times, "Serbia's First War Crimes Trial to Open in March", Jan. 20, 2004, available at [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2004/01/040120-SVETLA-001](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2004/01/040120-SVETLA-001).

<sup>112</sup> An attorney will often charge 2000 kuna (around 270 euros) for a single day's appearance in court. According to a Croat lawyer defending Croatian Serbs in civil suits, attorneys in Croatia are bound by their code of ethics and cannot work *pro bono* or apply lower fees. Moreover, if a lawyer is a salaried employee of a company or NGO, he or she can no longer appear as a court attorney in criminal cases. ICTJ interview with a Croat lawyer defending Croatian Serbs in civil suits, Zagreb, Dec. 22, 2005.

<sup>113</sup> ICTJ interview with Center for Peace, Zagreb, Dec. 22, 2005.



ideally. It is not a question of principle but of being realistic. Today, it is reasonable for justice in Croatia that victims are not represented. The situation in Serbia is different. There was no war there and people don't have the same experience of the war.<sup>114</sup>

However, the Humanitarian Law Center sees its role in representing victims during trials in Serbia as that of a human rights defender, which can more fully expose the responsibility of the accused – and the connections with state institutions such as the police and military – than a state prosecutor, by producing additional documentation of crimes.<sup>115</sup>

### iii. Cooperation among authorities and investigative efficiency

Cooperation among authorities is essential if investigations are to be properly pursued, at both the national and regional level. Inter-state judicial cooperation has recently shown promising signs of improvement. Previously, such cooperation had been related mainly to pre-trial work through the exchange of information and evidence during investigations. But more recently it has reached the trial stage, with the advent of cross-border witness testimony. Such improvement, which was impossible to imagine only two years ago, was noted in particular in the *Lovas* case<sup>116</sup> before the Vukovar County Court and the *Ovčara* case<sup>117</sup> before the War Crimes Chamber of the Belgrade District Court. It was made possible by a framework of agreements on judicial cooperation to which Croatia is a signatory. This framework includes the agreement between Croatia and Bosnia and Herzegovina on judicial cooperation in criminal matters signed in 1996;<sup>118</sup> the agreement between Croatia and Serbia and Montenegro on mutual legal assistance in civil and criminal matters signed in 1998;<sup>119</sup> the European Convention on Extradition, and the European Convention on Mutual Assistance in Criminal matters to which Croatia is a party.<sup>120</sup> More recently, the Croatian Attorney General's Office signed an agreement with the Office of the Prosecutor of the State Court of Bosnia and Herzegovina to improve

---

<sup>114</sup> ICTJ interview with Croatian human rights activist, Zagreb, Dec. 23, 2005.

<sup>115</sup> Interview with Nataša Kandić, HLC, July 2006.

<sup>116</sup> In October 2005 the State Prosecutor for War Crimes in Serbia stated that it would conduct investigations on persons wanted in the *Lovas* case known to be in its territory. See OSCE Mission to Croatia, "Status Report No.17 on Croatia's Progress in Meeting International Commitments since July 2005", Nov. 10, 2005, p. 17.

<sup>117</sup> In this case, in which the defendants were accused of war crimes against the ethnic Croat population in Vukovar in 1991, the Serbian prosecutor and investigating judge met with the Croatian war crimes prosecutor in Zagreb and collected important information and testimony for the case. See Human Rights Watch, "Justice at Risk: War Crimes Trials in Croatia, Bosnia and Herzegovina, and Serbia and Montenegro", Oct. 2004, Vol. 16, No. 7 (D), p. 19.

<sup>118</sup> Agreement Between the Government of Bosnia and Herzegovina, the Government of the Federation Bosnia and Herzegovina, and the Government of the Republic of Croatia, on Legal Assistance in Civil and Criminal Matters, *Službeni list Republike BiH* (Official Gazette of the Republic of Bosnia and Herzegovina) – Special Edition, International Agreements, May 27, 1996.

<sup>119</sup> Agreement between the Republic of Croatia and the Federal Republic of Yugoslavia on Legal Assistance in Criminal and Civil Matters, *Narodne Novine* (Official Gazette of the Republic of Croatia) – Special Edition, International Agreements, No. 6/1998, Apr. 10, 1998.

<sup>120</sup> Human Rights Watch, "Justice at Risk: War Crimes Trials in Croatia, Bosnia and Herzegovina, and Serbia and Montenegro", Oct. 2004, Vol. 16, No. 7 (D), p. 18.

cooperation at the prosecutorial level in cases of war crimes and organized crime.<sup>121</sup> A similar agreement has been signed with the Chief State Prosecutor of Montenegro.<sup>122</sup>

Judicial cooperation improvements were also facilitated by local NGOs, notably the Humanitarian Law Centre (HLC) of Belgrade. In the *Ovčara* trial that took place in Belgrade, the HLC, which took up the legal representation of the victims, organized for some 20 members of victims' families from the Vukovar area to attend hearings there over a period of a year and a half. "The HLC contacted us. At the beginning, families didn't want to go and thought it was a farce. But trust in the HLC was decisive. We agreed and convinced witnesses to go to Serbia", said one of the Croat victims' representatives.<sup>123</sup> The initiative has been praised as a great achievement for the victims, as well as for communities on both sides of the border. "It is one of the best examples of how war crimes should be dealt with", said a representative of the Serb community in Vukovar.<sup>124</sup> A leading local NGO monitoring the trials stressed that, after this experience, "victim associations have completely changed their rhetoric: they now say that it is all right if [the accused] are tried in Belgrade. Today, with some assistance, it is possible to imagine witnesses going to Serbia and *vice versa*. Fear still exists, but it can be dealt with".<sup>125</sup>

Two witnesses also testified by videolink from Croatia in the *Ovčara* trial. Ten witnesses from Republika Srpska, in Bosnia and Herzegovina, testified before the County Court in Split in November 2005 and January 2006. The *Lora* case was the first instance of Serbian witnesses wanting to travel to Croatia, encouraged both by the Serbian Prosecutor's office and the HLC. Witness protection was provided by both Serbian and Croatian police.<sup>126</sup> Forthcoming trials against members of the "Scorpions", the Serbian Ministry of the Interior special unit, will present another major test to the growing cooperation between judicial authorities from Croatia, Serbia and Montenegro.<sup>127</sup>

Inter-state cooperation is also fundamental to decreasing the number of trials held *in absentia*. The Supreme Court and State Attorney of Croatia have issued instructions to separate or sever proceedings against defendants whose whereabouts are known from those that are on the run. Despite this, in 2005 approximately 60 percent of all defendants

---

<sup>121</sup> Protocol on the Agreement in Realizing the Mutual Cooperation in Fighting All Forms of Capital Crimes signed between the General Attorney's Office of the Republic of Croatia and the State Prosecutor's Office of the Republic of Bosnia and Herzegovina. Human Rights Watch, "Looking for Justice: The War Crimes Chamber in Bosnia and Herzegovina", Feb. 2006, available at <http://hrw.org/reports/2006/ij0206/ij0206web.pdf>.

<sup>122</sup> HINA Croatian News Agency, "Montenegro and Croatia to cooperate in prosecution of war crimes suspects", July 27, 2006.

<sup>123</sup> ICTJ interview with Croat victim representative, Zagreb, Dec. 23, 2005.

<sup>124</sup> ICTJ interview with Serb victim representative, Vukovar, Dec. 21, 2005.

<sup>125</sup> ICTJ interview with Croatian NGO, Zagreb, Dec. 22, 2005.

<sup>126</sup> Interview with Nataša Kandić, July 2006.

<sup>127</sup> Although the Scorpions have no connection with Croatia, the Croatian court authorities shared documentation with the Serbian War Crimes Chamber for the case.

and nearly 75 percent of all Serb defendants were being tried *in absentia*.<sup>128</sup> The high number of trials *in absentia* is partially the result of large group indictments proceeding to trial even where some of the accused are still at large. The basis for these joint indictments is often the accused's membership a particular unit of the police or the army and, at times, the simple fact that the multiple defendants were present at the site of the same crime.

### III. TRUTH-SEEKING

Independent media and NGOs have played a significant role in the truth-seeking initiatives in Croatia. In contrast, only limited efforts have been made by the Croatian authorities to officially expose and publicize the facts surrounding the events that took place during the war on Croatian territory in the 1990s. In March 2005, an official Croatian Memorial and Documentation Centre on the Homeland Defense War was established to collect and process documentation pertaining to the war. The Centre, envisioned as a "public scientific institute", also plans to conduct research into various war-related topics.<sup>129</sup> It is worth noting, though, that historian Ante Nazor, director of the Centre, has made it clear he believes the "Homeland War" to be one of Croatia's most important periods, and that Operation Flash and Storm were legal and legitimate actions by the Croatian army to liberate occupied territory.<sup>130</sup>

The outcome of the war has been perceived in the country primarily as a victory of the defenders in the "Homeland War" over the Serbian aggressors. This, combined with the particular post-war political context marked by economic growth and relatively close ties with the West, has allowed the state to avoid a serious and unbiased confrontation with its past. The "Declaration on the Patriotic War", passed by the Parliament in October 2000, is an example of this. The Declaration states that, "the Republic of Croatia led a just and legitimate, defensive and liberating, and not aggressive and occupational war against anyone, in which she defended its territory from the great Serbian aggressor within its internationally recognized borders". While it does not explicitly deny that any war crimes were committed by Croatian forces, as an official statement it affirms an incomplete picture of the conflict, as there is no equivalent official acknowledgement of ethnic cleansing against Serb civilians. Particularly egregious in this regard is the fact that all ICTY indictments against Croatians accused of crimes during the "Homeland War" – namely those against Norać and Ademi, Markač Čermak, Gotovina, and Bobetko – allege not just the commission of crimes by the Croatian army, but the existence of a Joint Criminal Enterprise, members of which extended to the highest ranks of the Croatian state. Nevertheless, according to a recent UNDP study, the "Declaration on the Patriotic War", in addition to the fact that it is still legally valid, also reflects an overall consensus

---

<sup>128</sup> Kruhonja, K. (Ed.), "Monitoring of War Crimes Trials. Annual Report 2005", Osijek, Centre for Peace, Nonviolence and Human Rights, 2005, p. 10 and OSCE Mission to Croatia, "Status Report No.17 on Croatia's Progress in Meeting International Commitments since July 2005", Nov. 10, 2005, p. 16.

<sup>129</sup> "Na tragu istine o Domovinskom ratu", *Hrvatski Vojnik*, Feb. 7, 2006, available at <http://www.hrvatski-vojn timer.hr/hrvatski-vojn timer/0722006/nazor.asp>

<sup>130</sup> "Istraživanje Domovinskog rata bez monopola", *Nedjeljni Vjesnik*, , Apr. 24, 2006

of public opinion in the country.<sup>131</sup> To this extent, it seems that there is little public or official willingness to acknowledge and take responsibility for a more nuanced and complex historical record of Croatia's own role.

Besides the important but limited contributions of the trials at the ICTY and domestic courts to the establishment of certain facts that relate to the war, the most visible truth-seeking efforts have been pursued by local and international NGOs. These NGOs have played a crucial role in compiling documents and gathering victims' testimonies, and they have helped create the space for a public debate on past human rights abuses in the country. However, with respect to the prospect of establishing a more formal mechanism such as a truth commission, NGOs have long recognized, as one of their main representatives puts it, that "there is absolutely no chance that the Parliament supports it, and we have no public support".<sup>132</sup> One of the explanations given for this situation is the fact that, unlike Bosnia and Serbia, Croatia won its war. A war veteran involved in peace-building efforts said, "We are the winners of the war. The story of this epic is [one of] glorification. So what else can be said about it? Anyone who expresses criticism is questioned about his motives."<sup>133</sup> Consequently, local NGOs such as *Documenta* have been directing their efforts to information gathering and the promotion of fact-finding initiatives. In so doing, they have focused strongly on a regional approach to truth-seeking – both because of the lack of progress at the national level and also because of the regional dynamics that played a role in the conflict.<sup>134</sup>

Media reports published by key independent media outlets, including the *Feral Tribune*, have been courageous in raising public debate around the issue of past crimes, especially those crimes committed against Serbs. These media outlets have played an instrumental role in raising awareness and in pushing for the accountability of those responsible.

For many years, the official Croatian lists of the missing reflected only Croat victims. In cooperation with the International Committee of the Red Cross, the government undertook a project to draw up a single list of missing persons, thus replacing the two existing, mainly mono-ethnic, lists – one from 1991/92 and the other from 1995.<sup>135</sup> In March 2006, the government reached an agreement with Bosnia-Herzegovina and Serbia and Montenegro on a series of lists naming approximately 2500 missing people.<sup>136</sup> The ICRC has indicated that it will consolidate these lists into a single publication entitled, "The Book of the Missing", with an expected release date in late 2006.<sup>137</sup> Along the same

---

<sup>131</sup> UNDP, "Transitional Justice: Assessment Survey of Conditions in the Former-Yugoslavia", Belgrade, 2006, p. 154.

<sup>132</sup> ICTJ interview with NGO representative, Dec. 23, 2005.

<sup>133</sup> ICTJ interview with war veteran, Dec. 23, 2005.

<sup>134</sup> *Documenta* – Centre for Dealing with the Past signed a "Protocol on regional cooperation for the purpose of investigation and documentation of the crimes of war in the post-Yugoslav countries" in partnership with the Research and Documentation Centre from Sarajevo and the Belgrade-based Humanitarian Law Centre.

<sup>135</sup> OSCE Mission to Croatia, "2006 Review Report on Croatia's Progress in Meeting International Commitments since 2001", 9 June 2006 p. 19

<sup>136</sup> Government Commission on Detained and Missing Persons, "Report on Missing and Detained Persons (January 2004 – March 2006)", available at: <http://www.vlada.hr/download/2006/03/09/147-3.pdf>.

<sup>137</sup> OSCE Mission to Croatia, "2006 Review", June 9, 2006, p. 26.

lines, in July 2005 the government adopted a decree establishing a committee for detained and missing persons to serve as an advisory body to the government.<sup>138</sup> Disagreements and lack of cooperation between Serb and Croat associations for missing persons, resulting from different understandings of the past and indicative of strong divisions in society, are still profound and pose serious obstacles to the truth-seeking process.<sup>139</sup>

## IV. REPARATIONS

### A. Material reparations

The issue of reparations in Croatia has consisted mainly of addressing violations of property rights, a matter closely related to the issue of refugee return. Reparations for damaged or lost property have been tackled to a great extent by measures adopted by the state and, on some occasions, through reparations claims brought before national and international courts. The absence of a consistent government policy has meant that the European Court of Human Rights continues to be an important forum where these lengthy judicial disputes are determined.<sup>140</sup>

Between 300,000 and 350,000 Croatian Serbs are estimated to have left their homes in Croatia during the war.<sup>141</sup> According to the Organization for Security and Cooperation in Europe (OSCE), as of April 2006, over 120,000 out of 300,000 Croatian Serbs and 218,000 out of 221,000 Croats involuntarily displaced during the war had returned to Croatia.<sup>142</sup> The policies of the Croatian government concerning refugee return and

---

<sup>138</sup> Inter-state cooperation in the area of missing persons may improve given the recent pledge of Croatia and Serbia to join efforts to accelerate the process. See “Croatia, Serbia-Montenegro to intensify efforts to clarify fate of missing persons” *Southeast European Times*, Feb. 3, 2006, available at [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/newsbriefs/setimes/newsbriefs/2006/02/03/nb-05](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/newsbriefs/setimes/newsbriefs/2006/02/03/nb-05).

<sup>139</sup> Figures provided by Croat and Serb associations for missing persons are constantly changing and are often confusing. The total number of missing Croatian Serbs claimed by the Belgrade-based organization Veritas is 2805. See Veritas, “Listings”, available at <http://www.veritas.org.yu/engleski/listings.htm>. This figure has been repeated by Veritas’ sister organization, the Vukovar-based Association of Serb Missing Persons, which is the only one of its kind in Croatia. The Zagreb-based Alliance for Missing Soldiers and Persons in Croatia 1991-96, claims that 1043 persons are missing from 1991 (including 200 Serbs and 400 Croat combatants), and puts the number of missing persons after 1995 at 2023 (Croats and Serbs). The ICRC estimates the number of Serb missing persons from the Storm Operation in 1995 at between 850 and 900 persons. According to the most recent report of a Governmental Commission covering the period from January 1 2004 to March 3 2006, 1140 Croats are still missing and 915 Serbs: <http://www.vlada.hr/Download/2006/03/09/147-3.pdf>.

<sup>140</sup> An important step towards regional cooperation in addressing the issue of refugee return was taken through the adoption of a Ministerial Declaration on Refugee Return by the governments of Bosnia and Herzegovina, Croatia and Serbia and Montenegro in Sarajevo on January 31, 2005, known as the “Sarajevo Process on Regional Refugee Return”, with the objective of “resolving the remaining refugee issues through a concerted regional approach.” See, for example, BBC, “Balkan refugee crisis eases”, Mar. 18, 2005, available at <http://news.bbc.co.uk/1/hi/world/europe/4360555.stm>.

<sup>141</sup> Human Rights Watch, “World Report 2005”, Jan. 2005, pp. 364-368.

<sup>142</sup> Data from UNHCR and the Office for Displaced Persons and Refugee published in OSCE Mission to Croatia, “2006 Review Report on Croatia’s Progress in Meeting International Commitments since 2001”, 9 June 2006 p. 13. However, it is widely believed that these numbers do not reflect the *de facto* number of

reparation of property rights violations have encompassed the restitution of property, reconstruction of damaged or destroyed property,<sup>143</sup> and the establishment of housing care programs directed at former occupancy/tenancy rights (OTR) holders. The process of restitution of property is expected to conclude in 2006. Between 1995 and 1998, approximately 19,500 private houses belonging to Croatian Serbs were temporarily allocated by the Croatian state for use by other persons, primarily Bosnian Croat refugees. According to the OSCE, as of April 2006, and as a result of restitution efforts, only 219 of these houses remain occupied by temporary users.<sup>144</sup>

Concerning the reconstruction of damaged or destroyed private houses, it was reported that by the end of 2003 the Croatian government had reconstructed 123,000 housing units,<sup>145</sup> of which the main beneficiaries had been Croat applicants.<sup>146</sup> Only since that time did Croatian Serbs become significant beneficiaries, although after an extension of the deadline for submission of reconstruction claims, there were still 6,500 requests pending and 12,000 appeals in late 2005.<sup>147</sup>

Perhaps the biggest current challenge faced by the Croatian government in this area is the issue of former OTR holders, *i.e.*, people who lived in state owned flats and who fled during or after the war.<sup>148</sup> This is the case for most of the remaining refugees and internally displaced people who still do not have access to housing.<sup>149</sup> According to the 1985 Croatian Housing Act and a series of subsequent statutes, the state is allowed to terminate the occupancy/tenancy rights of those who left their houses and did not return within six months.<sup>150</sup> Paradoxically, while there are still ongoing judicial proceedings in

---

returnees living in Croatia, as many of them return to Serbia and Montenegro or Bosnia-Herzegovina once they have officially registered in Croatia.

<sup>143</sup> Reconstruction assistance was regulated by the 1996 Law on Reconstruction (*Narodne novine*, no. 24/1996, Mar. 26, 1996). In order to address complaints that this law was “discriminatory” against Croatian Serbs, it was amended in 2000 (*Narodne novine*, no. 57/2000, June 9, 2000). According to its amended version, this law “regulates reconstruction of destroyed or damaged material goods in the Republic of Croatia which were exposed to destructive activities and effects from the beginning of the Greater Serbian aggression until the completion of the peaceful reintegration [January 1998]”. See Human Rights Watch, “Broken Promises: Impediments to Refugee Return to Croatia”, Sept. 2003, Vol. 15, No. 6 (D), p. 45.

<sup>144</sup> As part of this process, the government has been ensuring alternative housing for temporary users and it has committed itself to compensate the owners of damaged properties that are being restituted through State-organized repair assistance or cash grants. See OSCE Mission to Croatia, “2006 Review Report on Croatia’s Progress in Meeting International Commitments since 2001”, 9 June 2006 p. 15.

<sup>145</sup> The Economist Intelligence Unit, “Country Profile 2004: Croatia”, London, 2004, p. 19.

<sup>146</sup> In 2003 three fourths of reconstructed houses belonged to Serb returnees. *Ibid.*

<sup>147</sup> OSCE Mission to Croatia, “Status Report No.17 on Croatia’s Progress in Meeting International Commitments since July 2005”, Nov. 10, 2005, p. 7.

<sup>148</sup> The EU has highlighted that “there have been positive developments on refugee return but progress has been particularly weak in implementing housing care programs for former tenancy rights holders”. See EU, “Key findings of the 2005 Progress Reports on Croatia”, Nov. 9, 2005.

<sup>149</sup> OSCE Mission to Croatia, “Status Report No.17 on Croatia’s Progress in Meeting International Commitments since July 2005”, Nov. 10, 2005, p. 6.

<sup>150</sup> Housing Act of 1985 (*Zakon o stambenim odnosima*, Official Gazette nos. 51/1985, 42/1986, 22/1992, 70/1993). See also: “Law on the Temporary Takeover and Administration of Specified Property” (*Zakon o privremenom preuzimanju i upravljanju određenom imovinom*, Official Gazette 73/1995, 7/1996, 100/97) and “Law on the Lease of Flats in the Liberated Territories” (*Zakon o najmu stanova na oslobođenim područjima*, Official Gazette nos. 73/1995, repealed 101/1998).

domestic courts to terminate these rights, the government has adopted housing care programs,<sup>151</sup> which have slowly started to be implemented.<sup>152</sup>

One case brought before the European Court of Human Rights concerning this issue, *Blečić v. Croatia*, has become particularly famous due to the protests from human rights organizations against the Court's decision of July 2004. The applicant, a Croatian Serb refugee, had her tenancy rights terminated on the grounds that she had been absent from the apartment for longer than six months without a justifiable reason. The initial Chamber of the European Court upheld the Croatian court's decision that the termination of tenancy rights was justified, and while this was subsequently challenged upon appeal, it was ultimately rejected on procedural grounds. While the case is sometimes seen as upholding the legitimacy of the relevant housing legislation (including the Housing Act of 1985) it should be noted that the decision was limited to the particular case and not the legislative scheme as a whole. Nevertheless, the decision was criticized for having a negative impact on the process of refugee return.<sup>153</sup>

In 2003, the Croatian government adopted two laws addressing non-property related wartime damages: the *Law on responsibility for damage caused by terrorist acts and public demonstrations*<sup>154</sup> ("Terrorist Damages Law") and the *Law on responsibility of the Republic of Croatia for damage caused by members of the Croatian Armed Forces and police during the Homeland War* ("Armed Forces Damages Law").<sup>155</sup> The provisions of these two laws and their relation to the laws on property damage have prompted criticism from individuals and human rights organizations and have cast doubt on their potential to provide effective reparations to victims and their relatives. The reason for the controversy lies in the fact that the Terrorist Damages Law applies only to cases of personal injury and states that all material damages should be repaired in accordance with the *Law on Reconstruction*. Since the latter excludes from its scope cases in which the property was destroyed or damaged by "terrorist acts" (i.e., acts not committed by one of the warring parties), many individuals whose property was damaged are left with no legal remedy.<sup>156</sup> These concerns have been partially addressed by the judgment of the European Court of Human Rights in the case *Zadro v. Croatia*,<sup>157</sup> which concluded that the proceedings under the *Law on Reconstruction* and those under the *Terrorist Damages Law* are to be

---

<sup>151</sup> These programs foresee the possibility of former OTR holders in certain big cities "to rent or purchase government-built apartments at below-market rates". See Human Rights Watch, "World Report 2005", Jan. 2006, pp. 364-368 and OSCE Mission to Croatia, "Status Report No.17 on Croatia's Progress in Meeting International Commitments since July 2005", Nov. 10, 2005, p. 6..

<sup>152</sup> Only about a dozen former OTR holders had benefited from these programs by November 2005. Human Rights Watch, "World Report 2006", Jan. 2006, pp. 347-351.

<sup>153</sup> *Blečić v. Croatia*, Appl. No. 59532/00. The European Court of Human Rights ("ECtHR") upheld a decision by a Croatian court to terminate the tenancy rights of the applicant, who had left her home in Zadar in 1991 and did not return within the six-month period prescribed by Croatian law. At an Appeal hearing on March 8, 2006, the ECtHR ruled that the case was inadmissible for reasons that it was outside the ECHR's temporal jurisdiction, and did not proceed to determine the merits of the claim that the applicant's occupancy rights had been violated .

<sup>154</sup> *Narodne novine* [Official Gazette], No. 117/2003.

<sup>155</sup> *Narodne novine* [Official Gazette], No. 117/2003.

<sup>156</sup> See OSCE Mission to Croatia, "Guidance for returnees to Croatia", Dec. 2004.

<sup>157</sup> *Zadro v. Croatia*, Appl. No. 25410/02, Judgment of May 26, 2005.

considered separately, given that the former are of an administrative and the latter of a judicial nature. This means that property-related compensation can be sought in parallel to compensation for personal injury. Another criticism was levied against the *Armed Forces Damages Law*, which seems to provide a narrower definition of ‘damage’ – thus limiting the state’s responsibility in comparison to the formulation of the 1996 *Law on Obligatory Relations*.<sup>158</sup>

Individuals have pursued compensation claims in civil proceedings before the domestic courts. In some cases, compensation has been awarded to Serb survivors for intentional killing in proceedings against members of the Croatian army and police forces.<sup>159</sup>

At the inter-state level, in 1999, Croatia filed compensation claims at the International Court of Justice against the Federal Republic of Yugoslavia for violations of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, alleged to have been committed between 1991 and 1995.<sup>160</sup> A similar suit filed by Bosnia and Herzegovina against Serbia and Montenegro will provide a crucial test for Croatia’s application.<sup>161</sup> The judgment of the Court is expected by early 2007. In an interesting recent development, Croatia and Montenegro signed a bilateral agreement on July 27, 2005, according to which Montenegro committed itself to paying a compensation of 400,000 Euros to Croatia for the destruction of farms in regions close to the border during the war.<sup>162</sup>

## B. Public apologies

In addition to remunerative compensation, there is increasing recognition that reparation measures may include, among other things, official acknowledgment of and apologies for the wrongs of the past.<sup>163</sup>

Concerning the war in Croatia, there have been two instances of public apologies. On June 25, 2000, the President of Montenegro, Milo Đukanovic, apologized to Croatia for

---

<sup>158</sup> See OSCE Mission to Croatia, “Guidance for returnees to Croatia”, Dec. 2004.

<sup>159</sup> The following are examples of such cases: *Skendžić v. Republic of Croatia* and *Karleuša v. Republic of Croatia*, both at the Otočac Municipal Court, and *Ljubičić v. Republic of Croatia* at the Glina Municipal Court.

<sup>160</sup> General List of the ICJ No. 118. See ICJ, Press release 99/38, July 2, 1999. The text of the application is available at [http://www.icj-cij.org/icjwww/idocket/icry/icry\\_orders/icry\\_application\\_19990702.PDF](http://www.icj-cij.org/icjwww/idocket/icry/icry_orders/icry_application_19990702.PDF).

<sup>161</sup> *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, International Court of Justice. General List of the ICJ No. 91. For more information see <http://www.icj-cij.org/icjwww/idocket/ibhy/ibhyframe.htm>.

<sup>162</sup> Southeast European Times, “Croatia, Montenegro expected to seal accords on payment of wartime compensation”, July 27, 2005, available at [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/document/setimes/newsbriefs/2005/07/27/nb-06](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/document/setimes/newsbriefs/2005/07/27/nb-06).

<sup>163</sup> See the recently adopted “Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law”, Human Rights Resolution, 2005/35, available at [http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN\\_4-RES-2005-35.doc](http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2005-35.doc).



the involvement of his countrymen in the shelling of Dubrovnik in 1991.<sup>164</sup> On September 10, 2003, the President of Croatia, Stjepan Mesić, during his first post-war visit to Belgrade, exchanged apologies with the President of the State Union of Serbia and Montenegro, Svetozar Marović, for the actions of their citizens during the 1991-95 conflict.<sup>165</sup> Both apologies attracted considerable public debate. Some welcomed the comments as important historical gestures; others noted that apologies are meaningless unless perpetrators are held accountable and the truth acknowledged officially. Even if merely a matter of protocol, the apologies appear to have contributed to the normalization of relations between the countries.<sup>166</sup>

## V. MEMORIALS

In order to pay respect to the memory and suffering of war victims, a number of memorials have been built in Croatia, most of them honoring Croat victims. According to the Croat-led Alliance of Missing Soldiers and Persons in Croatia, 47 such monuments have already been built. They include those in honor of combatants, such as the Memorial Cemetery of the Homeland War Victims in Vukovar, dedicated to those who resisted and died during the three-month Serb siege of the city.<sup>167</sup> Some of the memorials have been specifically erected on sites where war crimes were committed. Probably the most well-known among these is the memorial at the Ovčara farm, near Vukovar, where over 200 Croats, mainly hospital patients, were killed by Serb soldiers in 1991.

Another memorial in Zagreb was the subject of some controversy in 2005. During the war, families of victims had started placing bricks, each with a victim's name on it, on the pavement in front of the UN building in the capital city. It became known as "the wall of pain" and has since remained as an *ad hoc* memorial. In June 2005, during ongoing talks between local authorities and victims' organizations over the construction of a more formal memorial, the "wall of pain" was suddenly removed by the authorities. Some denounced the insensitivity of the authorities and expressed outrage as several bricks were broken in the process and no list of the names of the victims was compiled. Others claimed that the media manipulated its coverage of the incident and that the bricks were in fact to be a part of the new memorial, which will be a representation of massive open doors on which "there is sufficient space for some 14,000 names".<sup>168</sup>

---

<sup>164</sup> Transitions Online, "Apologies All Around", Sept. 18, 2003, available at <http://www.tol.cz/look/BRR/article.tpl?IdLanguage=1&IdPublication=9&NrIssue=1&NrSection=6&NrArticle=10672>.

<sup>165</sup> President Marović stated, "In the name of the past that we cannot change, I, as the President of Serbia and Montenegro, apologise for all the harm that citizens of my country did to anyone in the Republic of Croatia". The Croatian President accepted the apology and offered his own: "I apologise to all of those on whom citizens of Croatia inflicted pain thereby violating the law and abusing their position at any time or period", BBC, "Presidents apologize over Croatian war", Sept. 10, 2003, available at <http://news.bbc.co.uk/2/hi/europe/3095774.stm>.

<sup>166</sup> Interview with ICTJ, July 2006.

<sup>167</sup> Vukovar eventually fell to the Serb forces on November 18, 1991. See HRT, "14<sup>th</sup> Anniversary of Vukovar hardship in Homeland War", Nov. 18, 2005, available at <http://vijesti.hrt.hr/ShowArticles.aspx?ArticleId=2672>.

<sup>168</sup> ICTJ interviews with the (Croat) Alliance for missing persons,, Zagreb, Dec. 22 and 23, 2005.

Only one memorial for the killing of Serb civilians is known to exist in Croatia. It is located in the village of Kistanje, near Varivode in Dalmatia, where about 10 Croatian Serb civilians were killed in August 1995.<sup>169</sup> The deficit of memorials for Serb civilians belies what appears to be a larger trend in Croatia, namely resistance to the notion that Croats committed any war crimes.<sup>170</sup> In this sense, many of the existing memorials serve more as celebratory tributes to the victory in the “Homeland War” than as contributions to a shared acknowledgement of the past. In a similar vein, a Victory and Homeland Thanksgiving Day is celebrated as a national public holiday on August 5, marking the date in 1995 when the town of Knin was reclaimed during Operation Storm. Despite evidence of the extensive destruction by the Croatian forces of the houses of Serbs who had left—and the killing of hundreds of elderly civilians who stayed behind—state leaders continue to perpetuate the official heroic version of the war, maintaining that only rogue individuals were responsible for crimes against non-Croats.<sup>171</sup>

## VI. VETTING AND OTHER INSTITUTIONAL REFORMS

There have been no systematic public vetting efforts in the Croatian security forces or in the judicial or political spheres. Instead, a more informal approach was chosen to deal with individuals allegedly implicated in past abuses and holding positions in the armed forces, the police, or the judiciary. This informal vetting process took the form of retirements, replacements, or simply re-assignments.<sup>172</sup> At the political level, however, there has been no similar effort to remove individuals who may have been involved in abuses in the past. Furthermore, the ethnic bias within the judiciary (detailed above) is a legacy of the early 1990s, when non-nationalists and non-Croats were not reappointed to judicial posts. That legacy left a dearth of national minorities in the judiciary. In 2004, national minorities represented only 5.4 percent of judges in Croatia’s courts.<sup>173</sup> Even at the end of 2005, Croatian Serbs made up only 2.4 percent of Croatia’s judicial staff, whereas, according to a 2001 census, they make up 4.5 percent of the overall population.<sup>174</sup>

---

<sup>169</sup> ICTJ interview with Serb political leader, Zagreb, Dec. 19, 2005.

<sup>170</sup> UNDP, “Transitional Justice: Assessment Survey of Conditions in the Former-Yugoslavia”, Belgrade, 2006, p. 154.

<sup>171</sup> HINA News agency, Aug. 5, 2006, “Croatian President says Operation Storm Crimes Committed by Individuals”.

<sup>172</sup> An oft-quoted example of this in interviews with ICTJ is the former president of the Supreme Court, Milan Vuković who stated that it was impossible to commit a war crime in a defensive war. He was later moved to the Constitutional Court which, while not removal from office, was seen as a means of quietly reassigning him to a less prominent position in which he would no longer be required to decide on war crimes cases.

<sup>173</sup> “Comments of the Government of Croatia on the Second Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in Croatia”, Apr. 13, 2005, available at <http://www.minorityrights.org/admin/Download/pdf/CroatiaMicro2005.pdf>

<sup>174</sup> US Department of State – Bureau on Democracy, Human Rights and Labor, “2005 Report on Human Rights in Croatia”, March 2006, available at <http://www.state.gov/g/drl/rls/hrrpt/2005/61642.htm>; CIA Factbook: <https://www.cia.gov/cia/publications/factbook/geos/hr.html#People>

Nevertheless, these problems must be seen against the broader context of institutional reform that has taken place in Croatia, and has been a significant factor in Croatia's progress towards meeting the international standards required for EU membership. For example, the police forces and the judiciary have gone through a gradual process of reform. Although the independence of the Croatian judiciary has often been questioned,<sup>175</sup> a judicial reform strategy was adopted in September 2005,<sup>176</sup> and amendments to both the *Law on the State Judicial Council* (the body in charge of appointing and disciplining judges) and the draft law on the provision of legal aid are under discussion.<sup>177</sup> In parallel, the government has elaborated a "Road Map" to reform the police forces, for which it counts on the assistance of the OSCE to give both training and advice.<sup>178</sup> However, failure to review critically the composition of the judiciary, armed forces and police is further evidence of an unwillingness to acknowledge fully the crimes committed in Croatia's name. This remains an obstacle to broader accountability and the development of civic trust in state institutions, particularly for Croatia's minority communities.

## VII. CONCLUSION

The ICTY has closed its investigations and will issue no further indictments against individuals suspected of having committed war crimes or crimes against humanity in the Balkans during the early 1990s. However, there has been significant change over the last few years as countries in the former Yugoslavia take responsibility for bringing to account hundreds of war-time suspects who had previously escaped justice. As the new War Crimes Chamber in Bosnia and Herzegovina commences its first big trials in Sarajevo—and with the War Crimes Chamber of the Belgrade District Court showing a new will to dispense justice—Croatia has also been offering consistent signals of engaging in this regional effort. The increased commitment of Croatian political leaders to ending impunity in the region has, in large part, been due to the uncompromising pressure from the international community and its clear message that cooperation with the ICTY and the prosecution of war crimes at the national level is unconditionally required for admittance in the European Union. In this respect at least, it may be said that Croatian authorities have been driven primarily by political pragmatism.

Nevertheless, clear progress, however slow, has been made within Croatia's judiciary to provide for fair trials and efficient investigations in the most sensitive cases. The increasing co-operation between prosecutors from Croatia, Serbia and Montenegro and Bosnia and Herzegovina, often at an informal level and on their own initiative rather than pursuant to official policy, is a promising development in both the prosecution of past

---

<sup>175</sup> The Economist Intelligence Unit, "Country Profile 2004: Croatia", London, 2004, p. 14.

<sup>176</sup> This reform includes measures concerning the Administrative Court and other aimed at reducing the persistent case backlog which has been at the basis of many judgments of the ECtHR on Croatia's violation of the right to a fair trial within a reasonable time. See EU, "Key findings of the 2005 Progress Reports on Croatia", November 9, 2005 and OSCE Mission to Croatia, "Status Report No.17 on Croatia's Progress in Meeting International Commitments since July 2005", Nov. 10, 2005, p. 11.

<sup>177</sup> OSCE Mission to Croatia, "Status Report No.17 on Croatia's Progress in Meeting International Commitments since July 2005", Nov. 10, 2005, p. 11.

<sup>178</sup> *Ibid.*, p. 19.

crimes and the development of an independent judiciary in the region. Nevertheless, domestic prosecutions of war crimes need further strengthening. In particular, witness protection needs to become more effective; instances of ethnic bias need to be addressed, and the challenges posed by trials *in absentia* need to be met.

In spite of the progress made in the area of criminal justice, parts of the country, in particular the most war-torn regions such as Vukovar, remain heavily divided along ethnic lines and are ill-prepared, ten years after the end of the war, to fully face its legacy. Croatia has yet to confront its history through open dialogue and debate, including revising the politicized history of the conflict that is still presented in Croatian schools. Pressure, threats, and ostracism are still the lot of courageous human rights activists and journalists who investigate and inform on crimes committed during the war (especially if alleged against the Croatian army) and on discriminations against the ethnic Serb minority. A serious and official effort to investigate and publicly acknowledge the crimes of the past is still missing in Croatia. Such an effort could benefit from being integrated into a joint, regional truth-seeking undertaking.

The issue of reparations has been the object of recent legislation and programs of the Croatian Government. However, concerns remain over many unresolved cases of occupied property to which, gradually, less attention is being drawn. Any serious commitment to ensuring effective refugee return must ensure that reparations continue to be granted in accordance with international standards. Institutional reform, mostly overlooked so far, would also contribute to ensuring broader accountability for the abuses committed as well as to overcoming persisting biases in the functioning of the institutions.

In contrast to most other countries of the former Yugoslavia, Croatia has benefited from a relatively easy pathway toward EU membership. With Gotovina now awaiting trial in The Hague and EU accession talks formally launched in October 2005, the international pressure on Croatia has already eased. At the same time, many of the improvements detailed in this report have been due in large part either to political expediency on the part of the Croatian government or to concerted efforts by NGOs and individuals. The serious systemic impediments to dealing with the politicized aspects of Croatia's past remain intact. Croatia's failure fully to face its past abuses could threaten the stability of its peace and the legitimacy of its institutions. It is therefore essential that Croatia's successful path toward EU accession does not overshadow the shortcomings and obstacles the country still faces in its dealing with past abuses. For Croatia, whether within or outside the EU, a comprehensive reckoning with the past thus remains both a challenge and an imperative.