



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

**Background Report  
Developments in war crimes proceedings January – October 2007**

**12 November 2007**

<b>I.</b>	<b>INTRODUCTION</b> .....	<b>2</b>
<b>II.</b>	<b>PRE-TRIAL: ARRESTS, RELEASES, EXTRADITIONS, INVESTIGATIONS, AND INDICTMENTS</b> .....	<b>3</b>
A.	ARRESTS, RELEASES AND EXTRADITIONS .....	3
B.	INVESTIGATIONS AND INDICTMENTS .....	4
<b>III.</b>	<b>TRIAL COURT ACTIVITY</b> .....	<b>5</b>
A.	CONDUCT OF THE TRIAL, MANNER OF TAKING AND RECORDING EVIDENCE .....	6
B.	PARTICIPATION OF VICTIMS AND WITNESSES .....	6
C.	VERDICTS AND SENTENCING.....	8
D.	LENGTH OF PROCEEDINGS–GAPS DURING TRIAL AND DELAYS IN SERVICE OF COURT DOCUMENTS .	9
<b>IV.</b>	<b>SUPREME COURT SUPERVISION OF TRIAL COURTS</b> .....	<b>10</b>
<b>V.</b>	<b>DEFENSE COUNSEL – ADEQUATE REPRESENTATION/EQUALITY OF ARMS .</b>	<b>11</b>
<b>VI.</b>	<b>DEVELOPMENTS IN INTER-STATE CO-OPERATION</b> .....	<b>11</b>

## I. Introduction

Activity in relation to the prosecution of war crimes remained high in the first ten months of 2007. The Mission is following over 100 cases involving more than 300 individuals in investigations, 15 trial courts plus the Supreme Court as well as extradition proceedings in third countries. As in previous years, approximately half of all individuals against whom proceedings are pending are *in absentia*. Of these, nearly 90 per cent involve proceedings against Serbs. While most trials continue to be conducted in the locations where the crimes occurred, several high-profile trials are currently ongoing in the Zagreb County Court, in its capacity as a court of special war crimes jurisdiction. These include the Ademi-Norac trial transferred from the ICTY under Rule 11 *bis* and the ‘Sellotape’ and ‘Garage’ cases against a parliamentarian and six other accused.

The importance of interstate co-operation to war crimes prosecutions has been underscored by developments in the Ademi-Norac trial, in which a significant number of witnesses, including protected witnesses who reside abroad, failed to appear to testify. Additional efforts to obtain the testimony of these witnesses are currently underway. Questions about the use of technological means to obtain testimony from witnesses who reside abroad as well as protected witnesses continue to affect some proceedings in local courts.

The Chief State Attorney and his counterparts in Bosnia and Herzegovina, Serbia, and Montenegro continued developing new strategies for their co-operation, agreeing in July to create parallel ‘inventories’ of war crimes cases in co-ordination with the ICTY Office of the Prosecutor. Their co-operation in individual cases also continued.

Official criticism of the ICTY’s verdict in the ‘Vukovar Three’ case continued through October.<sup>1</sup> On 12 October, the Parliament condemned both the indictment and the verdict.<sup>2</sup> On 15 October, during the UN General Assembly’s deliberations on the annual report of the ICTY President, the Prime Minister expressed Croatia’s “consternation” and “dismay” to the “injustice done to the Croatian people in Vukovar” by the verdict.<sup>3</sup> Further negative reaction followed the announcement that the ICTY Office of the Prosecutor would appeal the Trial Chamber’s sentences of two of the ‘Vukovar Three’ but not its acquittal of the third accused, Miroslav Radić, who returned to Serbia.<sup>4</sup>

Reaction to the ‘Vukovar Three’ verdict also highlighted the linkage between developments at the ICTY and national war crimes prosecutions. The Prime Minister called for the State Attorney to prosecute Miroslav Radić *in absentia* and noted that senior Yugoslav People’s Army officials had never been indicted by the ICTY for crimes in Croatia.<sup>5</sup> The verdict also

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<sup>1</sup> For background information, please see SEC.FR/373/07, Spot Report: Reactions in Croatia to the ICTY verdict on the ‘Vukovar Three’; Fortnightly Report No. 18/2007.

<sup>2</sup> Declaration on the Judgment of the International Criminal Tribunal for war crimes committed in Ovčara and the cooperation of the Republic of Croatia with the International Criminal Tribunal for the former Yugoslavia (NN 108/2007), 22 October 2007.

<sup>3</sup> Address by H.E. Dr. Ivo Sanader, Prime Minister of the Republic of Croatia at the UN General Assembly Session (New York, 15 October 2007).

<sup>4</sup> Notably, if an appeal of Radić’s acquittal was lodged and granted, it would run afoul of the Completion Strategy schedule imposed by the UN Security Council that all trials end by 2008.

<sup>5</sup> The Prime Minister named Veljko Kadijević and Blagoje Adžić, against whom several indictments are pending in the Osijek County Court.

fueled calls, including by President Stjepan Mesić and the Prime Minister to transfer from the ICTY to Croatia the indictment against Ante Gotovina, Mladen Markač, and Ivan Čermak, which trial is not yet scheduled. This position has also been advocated by the defense attorneys for Gotovina, Markač, and Čermak.

In the short-term, this reaction has complicated the prosecution of war crimes in Croatia in several respects. It has created pressure for a return to *in absentia* prosecutions of Serb accused, which have been significantly decreased by the State Attorney and Supreme Court. It has generated more negative response to national prosecution of members of the Croatian armed forces. It has led to criticism of the Chief State Attorney for failing to do enough to prosecute in Croatia those seen as responsible for crimes in Vukovar, while providing little or no support for inter-state co-operation activities, with Serbia in particular. The extent to which this reaction has a longer-term impact on national prosecutions remains to be seen.

This report includes developments since the last Mission report on war crimes proceedings in 2007 issued in June 2007 as well as cumulative statistics since January 2007. [For further information see SEC.FR/238/07 Background Report: Developments in war crimes proceedings January – May 2007].

## **II. Pre-trial: Arrests, Releases, Extraditions, Investigations, and Indictments**

### **A. Arrests, releases and extraditions**

Eight persons (4 Serbs, 2 Croats, 2 Bosniaks) have been arrested in Croatia since June 2007,<sup>6</sup> with a total of seventeen arrested since the beginning of the year; 4 at border crossings. In addition, the Mission is aware of five persons (4 Serbs, 1 Montenegrin) arrested in third countries since June on suspicion of war crimes in Croatia, two of which the Vukovar County Court has been pushing to try *in absentia*.<sup>7</sup> [See Section IV].

There have been no extraditions related to war crimes charges since June, with only one individual extradited since January.<sup>8</sup> However, in a related but non-war crimes case, in July, Australia extradited Antun Gudelj.<sup>9</sup> In July, a United Kingdom appeals court invalidated the first instance court's denial of Croatia's extradition request for Milan Španović based on a 1993 *in absentia* conviction in Sisak.<sup>10</sup> Also in July, the Norwegian appeals court granted

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<sup>6</sup> Luka Vuko and Jurica Ravlić were arrested in Šibenik after the Supreme Court reversed their September 2002 acquittal; Đuro Lalić, Miloško Jeremić, and Žarko Pavić were arrested in Vukovar for purposes of investigation; Zlatko and Ibrahim Jusić were arrested in Rijeka for purposes of investigation of crimes committed in Bosnia and Herzegovina; and Branko Preradović was arrested in Hrvatska Kostajnica for purposes of investigation.

<sup>7</sup> Željko Vrljanović was arrested in Germany in September based on an investigation from the Sisak County Court; Milan Mandić was arrested in Russia in October based on an *in absentia* conviction from the Vukovar County Court; Radivoj Ivković was arrested in Slovenia based on an indictment from the Vukovar County Court; Ilija Bačić was arrested in Italy where he was to observe a NATO military exercise in early November based on an *in absentia* conviction from the Split County Court; and Goran Pavić was arrested in the United States in early November based on an indictment from the Vukovar County Court.

<sup>8</sup> Nenad Tepavac was extradited from Serbia in April on the basis of an investigation before the Karlovac County Court; Tepavac has been subsequently indicted, tried and convicted. [See Section III].

<sup>9</sup> Gudelj was extradited for purposes of re-trial on charges of the 1991 murders of Osijek Police Chief Josip Riehl-Kir and two local Serb officials as well as attempted murder of another local Serb official. Gudelj consented to the extradition. The re-trial began in mid-October. [See Section III].

<sup>10</sup> UK High Court of Justice, Queen's Bench, Administrative Court, Government of Croatia vs. Milan Španović, Case No. CO/2540/2007, 27 July 2007.

requests by both Croatia and Serbia to extradite Damir Sireta based on a 2000 *in absentia* conviction from Vukovar.<sup>11</sup>

As of 31 October, four persons were in investigative or pre-indictment detention in Osijek, Rijeka and Sisak,<sup>12</sup> while 22 were in pre-trial or trial detention in Osijek, Rijeka, Šibenik, Split, Vukovar, and Zagreb, with detention periods ranging from less than one month to 21 months. Of those in investigative detention, two were detained for multiple reasons – risk of flight, risk of witness tampering, and gravity of the crime. Of those in pre-trial or trial detention, - nine were detained for dual reasons - danger of flight and gravity of the charged crimes, while thirteen were detained solely on the gravity of the crime.<sup>13</sup>

Questions about supervision of war crimes detainees were raised as a result of the distribution of video-tapes of parliamentarian Branimir Glavaš, which were purportedly filmed while he was accommodated as a pre-trial detainee in the Osijek hospital.<sup>14</sup> The Ministry of Justice reportedly fired the chief of security at the Osijek prison for lapses in prison rules and procedures that facilitated the production of the video-tapes.

Since June, the Mission has followed the release from detention of eight persons charged with war crimes (all Serbs). One was released in June after a month in detention when the war crimes charges were re-qualified to armed rebellion and the proceeding ended by application of the amnesty law.<sup>15</sup> Two Serbs were released in July after more than one year in detention upon an acquittal issued by the Vukovar County Court.<sup>16</sup> Of three Serbs arrested in Vukovar in June, two were released a month after the investigation confirmed their alibi, while the third was released after two months upon application of precautionary measures.<sup>17</sup> The investigation against all three suspects is ongoing. Two Serbs were released after approximately four months when the Sisak County State Attorney cancelled the request for investigative detention.<sup>18</sup> Finally, one Serb was released from prison after completing a six-year sentence for war crimes in Skabrnja.<sup>19</sup>

## **B. Investigations and indictments**

Since mid-May, the Mission is aware of four new war crimes investigations initiated against twelve individuals (10 Serbs, 2 Bosniaks),<sup>20</sup> with a total of seven new investigations against 23 individuals (21 Serbs, 2 Bosniaks) initiated since the beginning of the year. One ongoing

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<sup>11</sup> District Court, 07-097441 KST – BORG/04, 19 July 2007.

<sup>12</sup> Investigative detention: Boško Surla (Osijek); Branko Preradović (Sisak); Zlatko and Ibrahim Jusić (Rijeka).

<sup>13</sup> In September, the European Court of Human Rights accepted a friendly settlement in *Karan v. Croatia*, which challenged Croatia's use of 'gravity of the crime' as the sole basis for extended detention as incompatible with Article 5.3 of the European Convention on Human Rights. Application no. 21139/05, 27 September 2007.

<sup>14</sup> Several videotapes were aired as part of the campaign for a regional political party, the slate for which Glavaš will head in the late November 2007 Parliamentary elections.

<sup>15</sup> Tihomir Golić; charges re-qualified by the Slavonski Brod County State Attorney.

<sup>16</sup> Živko Opačić and Milan Bjedov.

<sup>17</sup> Miloško Jeremić, Žarko Pavić, and Đuro Lalić.

<sup>18</sup> Milan Pekić and Slobodan Kljajić.

<sup>19</sup> Zorana Banić.

<sup>20</sup> The Vukovar County Court initiated an investigation against Đuro Lalić and four other Serbs ('Luzac' group) as well as a separate investigation of Miroslav Radić initiated after his acquittal by the ICTY in the 'Vukovar Three' case. The Rijeka County Court initiated an investigation against Zlatko and Ibrahim Jusić on suspicion of crimes in the Velika Kladuša area of Bosnia and Herzegovina. The Sisak County Court initiated an investigation against Branko Preradović and three others Serbs.

investigation appears to overlap in significant part with crimes that were the basis of a prior conviction, raising double jeopardy implications.<sup>21</sup>

Between late May and late October, five new indictments have been issued against eleven individuals (8 Serbs, 3 Croats),<sup>22</sup> making a total of eleven indictments against 24 individuals (14 Serbs, 10 Croats) since January. Branimir Glavaš is the subject of two indictments. Several indictments appeared to provide only vague descriptions of the alleged crimes or did not distinctly individualise the personal responsibility of the accused. In at least one case, the crimes charged in the indictment have been changed multiple times, alternating between war crimes against civilians and genocide.<sup>23</sup>

### III. Trial Court Activity

As of 31 October, fourteen war crimes trials, involving 61 accused (34 Serbs, 17 Croats, 8 Ruthenians, 1 Roma, and 1 Albanian) were ongoing in Gospić, Osijek, Rijeka, Split, Varaždin, Vukovar, and Zagreb. Nearly forty per cent of all defendants currently on trial (23) are *in absentia*, while over 55 per cent of Serbs on trial (19 of 34) are *in absentia*. The ‘Lovinac group’ trial against five accused in Rijeka is fully *in absentia* and while nearly three-quarters of the 25 accused in the ‘Miklusevci’ trial in Vukovar are *in absentia*.<sup>24</sup>

More than two-thirds of the trials (9 of 14) are being conducted by courts where the crimes occurred, while five are being conducted in other courts either due to a change of venue or referral by the Supreme Court to a special war crimes court.<sup>25</sup> Four are repeat trials, of which one is the third trial in the same case.<sup>26</sup>

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<sup>21</sup> In May 2007 the Osijek County Court initiated an investigation against Jovan Rebrace, Božo Vidaković and Milan Macakanja for killing 18 Croat and non-Serb civilians as well as a POW in 1991. Rebrace and Vidaković were convicted *in absentia* of genocide, together with 6 others, for the murders of 15 of these 18 civilians in addition to other crimes and sentenced to 15 and 14 years of imprisonment, respectively. Double jeopardy is prohibited by Article 11 of the CPC and Article 31, para. 2 of the Constitution.

<sup>22</sup> In June, two indictments were issued by the Osijek County State Attorney: Marko Crevar, Marko Kraguljac, and Ljuban Miljanović were indicted for war crimes against prisoners of war committed in 1992 in a concentration camp in Serbia where following the occupation of Vukovar members of the Croatian armed forces were held. Novak Simić, Miodrag Kikanović and Radovan Krstinić were indicted for arresting, interrogating and torturing Croats and Hungarians as the result of which one Croat died in 1995, all with the aim to expel non-Serbs from the village of Dalj. In July, the Karlovac County State Attorney indicted Nenad Tepavac for killing a Croat civilian and abusing several others. In May, the Šibenik County State Attorney indicted Božo Bacelić, Ante Mamić and Jurica Ravlić for murdering a captured Serb paramilitary in August 1995, which indictment has been merged with another indictment against these accused related to war crimes against civilians. In October, the Šibenik County State Attorney indicted Sasa Pocuca for crimes against civilians and prisoners of war in the Knin prison in 1991-92.

<sup>23</sup> RH v. Jugoslav Misljenović et al (‘Mikluševci’) Vukovar County Court.

<sup>24</sup> RH v. Radoslav Čubrilo et al. (‘Lovinac’) Rijeka County Court; RH v. Jugoslav Misljenović et al. (‘Mikluševci’) Vukovar County Court.

<sup>25</sup> Two cases - Ademi-Norac and the joined ‘Sellotape’ and ‘Garage’ cases – have been referred to the Zagreb County Court pursuant to its extra-territorial war crimes jurisdiction. Two cases have been referred to the Rijeka County Court from the Gospić County Court on change of venue due to an insufficient number of judges to form a panel and one case was transferred to the Varaždin County Court from the Bjelovar County Court on change of venue.

<sup>26</sup> RH v. Mitar Arambasić (re-trial in person after extradition on *in absentia* conviction) Split County Court; RH v. Radoslav Čubrilo et al. (‘Lovinac’) (3<sup>rd</sup> trial *in absentia* after Supreme Court reversal of convictions by Gospić County Court) Rijeka County Court; RH v. Luka Markesić (‘Bjelovar’ group) (re-trial after Supreme Court reversal) Varaždin County Court; RH v. Nikola Cvjetičanin (re-trial after Supreme Court reversal of acquittal) Gospić County Court.

While the Mission monitors all trials, several trials garnered particular public attention. In mid-June, the trial of Rahim Ademi and Mirko Norac for war crimes against Serb civilians during the 1993 ‘Medak Pocket’ Operation, transferred from the ICTY under Rule 11 *bis*, started in the Zagreb County Court. The trial in the ‘Sellotape’ and ‘Garage’ cases against parliamentarian Branimir Glavaš and six co-accused for the 1991 murders of Serb civilians in Osijek, began in mid-October, also in the Zagreb County Court. In addition to Glavaš’s release of election-related video-tapes as described above, during the first days of the trial, members of the public distributed election-related materials outside the courtroom, which was eventually disrupted by bailiffs.

Finally, while not a war-crimes case, the re-trial of Antun Gudelj for the 1991 war-related murders of the Osijek police chief and two local Serb officials commenced in mid-October in the Osijek County Court.<sup>27</sup>

#### **A. Conduct of the trial, manner of taking and recording evidence**

The official record of each trial is contained in the minutes dictated by the Presiding Judge. In some trials, the minutes do not fully reflect what happened, including things which did not happen and omitting some things, which might be relevant to include. For example, some judges dictated into the minutes that documents, including witness statements, were read orally during the trial, when in fact the documents were neither read nor summarized orally.<sup>28</sup> On the other hand, the absence of defense attorneys from the courtroom was frequently not noted in the minutes.<sup>29</sup>

During several trials, rather than having a witness provide a complete statement, the Presiding Judge asked if the witness confirmed testimony previously given during the judicial investigation, which is not public.<sup>30</sup> In some instances, the witness would clarify part of his/her prior testimony, while the remainder of the testimony was not presented in court. In at least one trial, the written summary of an absent witness’ testimony to judicial authorities of a third country was entered as evidence, without the statement being read in court.<sup>31</sup> Given this manner of taking evidence, the full content of the witness’ testimony was neither heard in court nor reflected in the minutes in apparent contradiction to the principle of a public trial.

#### **B. Participation of Victims and Witnesses**

Video-link technology available in a number of courts was intended to facilitate obtaining the testimony of witnesses who reside abroad as well as those who testify subject to

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<sup>27</sup> In 1994, Gudelj was convicted *in absentia* by the Osijek County Court, on the basis of which he was extradited from Germany in 1996. In 1997, during the original re-trial, the Supreme Court ended the proceeding by granting amnesty, which upon a complaint lodged by Riehl-Kir’s widow was deemed improper by the Constitutional Court in 2001 after which the Supreme Court rescinded the amnesty.

<sup>28</sup> E.g., RH v. Milan Atljija and Đorđe Jaramaz, Šibenik County Court (the court entered into the minutes that two witness statements given before the courts in Bosnia and Herzegovina and Serbia were read out during the trial, when in fact they were not read.); RH v. Slobodan Vučetić et al. (‘Berak’) Vukovar County Court.

<sup>29</sup> E.g., RH v. Nenad Tepavac, Karlovac County Court (minutes fail to reflect that defense attorney absent while the Presiding Judge summarized the defense’s closing statement).

<sup>30</sup> RH v. Nenad Tepavac, Karlovac County Court; RH v. Slobodan Raić, Vukovar County Court.

<sup>31</sup> RH v. Milan Atljija and Đorđe Jaramaz, Šibenik County Court.

protective measures. In late October, an ‘endangered’ witness in the Ademi-Norac trial testified via video-link, with both face and voice distortion to conceal the witness’ identity. On the other hand, also in October, technical problems required the postponement of such testimony during the re-trial of Nikola Cvjetičanin in the Gospić County Court. While the Criminal Procedure Code was amended in 2006 to permit the use of video-link,<sup>32</sup> some local courts continue to question the permissibility of using video-link to take testimony in trial, instead using video-link to take testimony outside the normal trial procedures.

The failure of witnesses to appear to testify continues to delay a number of trials, requiring repeated efforts to locate and bring the witnesses before the court. This issue affects witnesses inside Croatia, but also particularly relates to witnesses who reside outside Croatia. For example, in September and October, twenty-six prosecution witnesses, including ten ‘endangered’ witnesses failed to appear to testify in the Ademi-Norac trial. The vast majority of these ‘no show’ witnesses reside or are believed to reside in Serbia, while others are in Bosnia and Herzegovina (BiH) and other third countries. Obtaining their testimony, both in-person and via video-link, will require significant co-operation through mutual legal assistance with third countries.

A novelty to be anticipated in the trial of Branimir Glavaš in the ‘Garage’ case will be the testimony for the prosecution of a ‘crown witness,’ namely an individual who has admitted participation in crimes, but who has been immunized from prosecution given the perceived value of his/her testimony. While in this instance the identity and prior testimony of the crown witness is already widely known, the Zagreb County Court ordered that in accordance with applicable law, his trial testimony will be closed to the public.<sup>33</sup>

In multiple trials, numerous witnesses who testified either lacked direct knowledge about the crimes or could not link the defendants to the crimes with which they were charged.<sup>34</sup> Witnesses routinely waited in the court corridor to testify, allowing communication between witnesses and others.<sup>35</sup> The stress of testifying for some witnesses was particularly evident in one trial when two witnesses collapsed upon seeing the accused.<sup>36</sup>

During the reporting period, victims participated in a number of trials as private parties to the prosecution.<sup>37</sup> On several occasions, courts omitted to summon for trial victims participating in the prosecution or neglected to inform victims of their rights related to the prosecution, such as the right to compensation.<sup>38</sup>

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<sup>32</sup> Article 162b, Criminal Procedure Code.

<sup>33</sup> RH v. Branimir Glavaš et al., Order, 5 November 2007 relying on Article 35, Law on the Office for Prevention of Corruption and Organized Crime. (NN 88/01, 12/02, 33/05, 48/05, 76/07). made applicable to war crimes by Article 16 of the Law on the Application of the statute of the International Criminal Court and on the prosecution of criminal acts against international law of war and humanitarian law (ICC Law) (NN 175/03).

<sup>34</sup> E.g., RH v. Vlastimir Denčić and Zoran Kecman (‘Dalj’ group) Osijek County Court; RH v. Slobodan Vučetić et al. (‘Berak’) Vukovar County Court; RH v. Rahim Ademi and Mirko Norac, Zagreb County Court; RH v. Radoslav Čubrilo et al. (‘Lovinac’) Rijeka County Court.

<sup>35</sup> E.g., RH v. Milan Atlija and Đorđe Jaramaz, Šibenik County Court. According to a UNDP Survey, 94.6% of witnesses wait in the hallway until they are called to testify. Press release “Results of the first research on support to crime victims and witnesses in courts presented,” 20 July 2007, UNDP Croatia.

<sup>36</sup> RH v. Zoran Obradović and Janko Banović (Sisak County Court).

<sup>37</sup> E.g., RH v. Rahim Ademi and Mirko Norac; RH v. Branimir Glavaš et al. (‘Sellotape’ and ‘Garage’ cases).

<sup>38</sup> E.g., RH v. Rahim Ademi and Mirko Norac, Zagreb County Court; RH v. Tomislav Madi et al. (‘Cerna’), Vukovar County Court. A UNDP survey highlights gaps in the information and support services available for witnesses and victims. For example, nearly 85 per cent of respondents indicated that they lacked information

### C. Verdicts and sentencing

As of early November eight trials involving thirteen Serbs have been completed since June 2007, two of which were re-trials. In total, fifteen trials have been completed since January 2007, with an additional trial terminated due to the death of the accused.

In the reporting period three persons were acquitted, with six acquitted since the beginning of 2007, while charges against a seventh were dropped and amnesty applied. In July, Živko Opačić and Milan Bjedov (both Serbs) were acquitted by the Vukovar County Court of physically and mentally abusing Croats in the village of Sotin with the intention of expelling them, of whom some remain missing.<sup>39</sup> In early October, the Vukovar County Court acquitted Dušan Ivković of rape, while his absent co-defendant was convicted [see below].

Nine defendants have been convicted since June, while fourteen have been convicted since January. In June, Milan Atlija and Đorđe Jaramaz (both Serbs) were convicted and sentenced to 12 and ten years imprisonment, respectively, by the Šibenik County Court. Atlija was convicted for ordering the murder of a civilian in BiH in 1991 and for mistreating PoWs in Knin prison in May 1991. Jaramaz was found guilty of murdering a civilian in BiH in 1991. Also in June, Rade Miljević (Serb) was convicted and sentenced to 14 years imprisonment by the Sisak County Court for having, as a paramilitary, handed over four Croat prisoners from a Glina prison camp to unidentified armed persons, after which the prisoners were killed. While the same court in an earlier verdict indicated that one of these killings was committed under different circumstances, the Sisak County Court determined that this did not preclude convicting Miljević for the same crime and any possible contradiction between the verdicts should be addressed by the Supreme Court on appeal.

In August, the Sisak County Court convicted Zoran Obradović and Janko Banović (*in absentia*) of killing two Croat civilians, sentencing both to seven years imprisonment. In September, the Sisak County Court re-convicted Dragan Đokić for his participation in a group that abducted and killed a Croat civilian, sentencing him to twelve years imprisonment.<sup>40</sup> The Sisak County Court entered its verdict and sentence, which was almost identical to that issued in 2006, following a three-hour trial during which it reviewed the prior trial record but heard no witnesses. In October, the Vukovar County Court convicted Rade Ivković *in absentia* for rape and sentenced him to 3 and a half years imprisonment. Also in October, the Karlovac County Court convicted Nenad Tepavac, following a one-day trial, of killing a Croat civilian and abusing several others, sentencing him to ten years imprisonment. In early November, the Bjelovar County Court convicted Dobrivoje Pavković

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about their rights and the proceedings in which they were called to testify. More than 20 per cent did not receive information about the date and time of the court proceeding while less than 20 per cent were informed about their right to reimbursement for expenses associated with testifying. Most witnesses/victims (94.5%) were not given contact details of any organisation that could provide them with practical and/or psychological support. More than two-thirds of the respondents indicated they needed legal counselling, while 60 per cent indicated a need for psychological and emotional support. "Support to Victims and Witnesses of crime in the Republic of Croatia," UNDP, 20 July 2007.

<sup>39</sup> This trial was conducted after the Supreme Court in April disallowed an *in absentia* trial of 14 Serbs on these charges and suggested that Opačić and Bjedov be tried separately.

<sup>40</sup> Re-trial held after the Supreme Court in early 2007 reversed the Sisak County Court's prior conviction and twelve-year sentence. I Kz 897/06-6, 8 March 2007.



of abusing and murder of prisoners of war, sentencing him to fifteen years imprisonment.<sup>41</sup> While Pavković was present for the re-trial, he failed to appear for the reading of the verdict after a recess in the trial, apparently having fled.

Although not a war crime, in June the Osijek County Court convicted Đuro Uznik (Croat) and sentenced him to 12 years imprisonment for killing a Serb at a check point set up by the Croatian Army near the village of Vladislavci in 1991.

In sentencing Rade Miljević, the Sisak County Court found that its inability to determine his role in the killing for which he was convicted, weighed as a mitigating factor in the sentencing. It remains unclear whether this is an appropriate use of mitigation for the purposes of sentencing or whether this factor would be more aptly applied to determining guilt in the first instance. In the *in absentia* sentencing of Rade Ivković, the Vukovar County Court found that the accused assisted several Croats, on which basis it set the sentence at 3 and a half years, less than the statutory minimum. In sentencing Nenad Tepavac for murder and abuse, the Karlovac County Court considered the passage of time since the crime as a factor mitigating against imposition of the highest possible sentence. However, the brutality of the crime discouraged the court from imposing the statutory minimum.

#### **D. Length of proceedings – gaps during trial and delays in service of court documents**

Two trials in the Vukovar County Court involving crimes by Serb paramilitaries against civilians in Lovaš and Mikluševci have been ongoing for four and three years, respectively. While there have been several hearings in 2007 in the ‘Mikluševci’ trial against 25 mostly *in absentia* accused, the ‘Lovaš’ trial against 16 mostly *in absentia* accused has been suspended since mid-2006. The suspension corresponds with a parallel investigation by the Belgrade special war crimes court of citizens of Serbia suspected of the crimes at Lovaš. [See Section VI]. In the meantime, one ‘Lovaš’ defendant who had been tried *in absentia* for several years was arrested in Croatia in Spring 2007 and remains in detention. Similarly, the re-trial of Mitar Arambasić by the Split County Court has been pending since his extradition from the United States in early 2006, with one to two hearings held in 2007.

In addition, several trials had to begin multiple times due to the expiration of the maximum period allowed between hearings<sup>42</sup> or substitution of a judge.<sup>43</sup> However, in at least one case, although the Presiding Judge stated that the trial started anew due to a gap, the evidence procedure was not repeated.<sup>44</sup>

Delays in the delivery of court documents have been observed in some cases.

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<sup>41</sup> Re-trial held after the Supreme Court in late 2006 reversed the Bjelovar County Court’s prior acquittal. Kz 790/04-5, 12 October 2006.

<sup>42</sup> RH v. Dušan and Rade Ivković, Vukovar County Court. In September, the trial had to re-start for the fourth time given a gap between hearings of six months, in excess of the maximum of two months allowed by Article 327.3 of the CPC. See also RH v. Dragan Đokić, Sisak County Court.

<sup>43</sup> RH v. Branimir Glavaš et al. (‘Sellotape’ and ‘Garage’ cases), Zagreb County Court. In early November, the trial re-started due to the replacement of the alternate judge.

<sup>44</sup> RH v. Željko Čizmić, Osijek County Court, K-38/04.

For instance, although Milan Atlija and Đorđe Jaramaz were convicted in early June, the written judgement was delivered more than three months later, exceeding the two-month deadline.<sup>45</sup>

#### IV. Supreme Court Supervision of Trial Courts

Between June and late October, the Supreme Court decided two appeals from verdicts, while since January the Supreme Court decided eight appeals involving 29 individuals (18 Croats, 11 Serbs). In August, the Supreme Court confirmed the *in absentia* convictions by the Sisak County Court of Milan Stanojević and Miroslav Jović (both Serbs), bringing the total number of convictions upheld since the beginning of the year to 11 (8 Croats, 3 Serbs). Also in August, the Supreme Court reversed the 2003 *in absentia* convictions of 8 persons (2 Croats, 6 Serbs) on the grounds that the Osijek County Court did not sufficiently explain its verdict.<sup>46</sup> Since January 2007, a total of ten convictions (8 Serbs, 2 Croats) as well as eight acquittals (all Croats) were quashed and sent back for re-trial.

Supreme Court delays in deciding some appeals continue. As of the end of October 2007, seven war crimes appeals have been pending for over three years, delays which arguably constitute fair trial violations and run contrary to Supreme Court guidelines to eliminate its backlog of criminal appeals over three years old.<sup>47</sup> The longest pending cases tend to be prosecution appeals of acquittals and defense appeals of *in absentia* convictions.

In May, the Supreme Court reversed the decision of the Vukovar County Court to try Radivoj Ivković *in absentia*.<sup>48</sup> The Supreme Court considered that the trial court had failed to take all steps to ensure the defendant's presence at trial.<sup>49</sup> Further, the Supreme Court noted that the indictment was issued only four years ago and that war crimes were not subject to the statute of limitations. Finally, the Supreme Court maintained that it was in the interests of justice and the defendant's right to a fair trial to ensure his presence at trial. As noted above, Ivković was subsequently arrested in Slovenia, pending extradition.

In contrast, in September the Supreme Court delivered its judgment in which it upheld the decision of the Pozega County Court to try Predrag Gužvić for the third time *in absentia*.<sup>50</sup> In support of its judgment, the Supreme Court noted that the crime occurred fourteen years ago, the victim was over seventy years old, and in any event the accused upon apprehension could request a fourth trial in person.

Also in September, the Supreme Court considered the impact of the prior application of the amnesty law on the Osijek County Court's conviction of Fred Marguš.<sup>51</sup> In contrast to the Riehl-Kir case discussed above, the Osijek County Court's 1997 decision amnestying Marguš remains in force and the recent conviction and amnesty decision concern several of the same crimes, i.e., the murders of several civilians.

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<sup>45</sup> Article 375, CPC.

<sup>46</sup> RH v. Milan Canadić et al., I Kž 700/04-3, 28 August 2007.

<sup>47</sup> *Camasso v. Croatia* Application no. 15733/02, 13.01.2005 (criminal prosecution that lasted nearly 7 years including Supreme Court appeal lasting more than 3 years violated right to fair trial)

<sup>48</sup> RH v. Radivoj Ivković, Vukovar County Court, Kz-420/07, 22 May 2007.

<sup>49</sup> The Supreme Court found that although an international arrest warrant was issued in 2006 and the accused allegedly resided in Serbia, the trial court should have tried to determine find his residence and then request his extradition.

<sup>50</sup> RH v. Predrag Gužvić, Kz 300-07-3, 17 April 2007.

<sup>51</sup> RH v. Fred Marguš and Tomislav Dilber, Osijek County Court, K-33/06-412, 21 March 2007.

## V. Defense Counsel – adequate representation/equality of arms

More than half of defendants currently on trial (33 of 61) have court-appointed defense counsel, with 25 defendants in one trial in Vukovar sharing five attorneys. The adequacy of defense provided to persons accused of war crimes continued to be of concern in some cases, in particular where the representation was provided by court-appointed attorneys. These concerns extend to the attorney's performance in the courtroom as well as the quality of the written documents submitted, during pre-trial, trial, and on appeal. While judges have the authority and responsibility to ensure an adequate defense, particularly where the court appointed the counsel, courts rarely took action against defense counsels who were demonstrably under-performing.

At least one court continued to permit a court-appointed defence attorney to represent multiple defendants in the same primarily in *in absentia* trial, although this is contrary to the law.<sup>52</sup> In some cases, lawyers leave the courtroom during trial or fail to appear for trial proceedings or Supreme Court hearings, leaving the defendant without representation or with a trainee.<sup>53</sup> In one case, when the court experienced technical difficulties with taking testimony of an endangered witness via video-link, the court-appointed defense attorney offered to leave the courtroom while the judge interrogated the witness.<sup>54</sup> However the court rejected this proposal. In one case, privately retained attorneys for the accused quit on the second day of trial, leaving the accused without counsel, contending that they could not effectively represent their clients and that their withdrawal was the result of the court failing to grant any of their motions.<sup>55</sup> A subsequent hearing in this same trial was postponed when the new court-appointed attorney failed to appear. This attorney withdrew after reportedly receiving threats to herself and her family related to her representation of these accused. In some cases, court-appointed attorneys remained passive to the extent of providing virtually no defense for their clients, appeared unprepared for trial, or were unfamiliar with the relevant law.<sup>56</sup> In some cases, a noticeable lack of rapport between the judge and a defense attorney affected the defense and conduct of the trial.<sup>57</sup>

## VI. Developments in Inter-state Co-operation

In the second half of 2007, practical co-operation between the Chief State Attorney and his counterparts in Bosnia and Herzegovina, Montenegro, and Serbia continued, including an

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<sup>52</sup> RH v. Jugoslav Misljenović et al. ('Mikluševci') Vukovar County Court (one attorney represents 6 defendants in the same case, including several present and *in absentia*). Multiple representation in the same case is contrary to Article 63, para. 1, CPC.

<sup>53</sup> E.g., RH v. Nenad Tepavac, Karlovac County Court (defense attorney left the courtroom after his closing statement, failing to remain while the Presiding Judge summarized his statement for the record); RH v. Fred Marguš and Tomislav Dilber (defense attorneys did not appear for Supreme Court hearing); RH v. Jugoslav Misljenović et al. ('Mikluševci') Vukovar County Court (multiple defense attorneys came and went during the trial) RH v. Radoslav Čubrilo et al. ('Lovinac') – court-appointed attorneys for five *in absentia* accused failed to appear for reconstruction of crime); RH v. Jugoslav Misljenović et al. ('Mikluševci') Vukovar County Court (During the hearing an attorney was replaced by a trainee. Pursuant to the Criminal Procedure Act accused of a crime for which the maximum sentence is more than 5 years of imprisonment can be represented only by Bar member.)

<sup>54</sup> RH v. Nikola Cvjetičanin, Gospić County Court (third trial).

<sup>55</sup> RH v. Željko Šuput and Milan Panić ('Korenica') Rijeka County Court.

<sup>56</sup> RH v Nenad Tepavac, Karlovac County Court; RH v. Radoslav Čubrilo et al. ('Lovinac') Rijeka County Court.

<sup>57</sup> RH v. Zoran Obradović and Janko Banović, Sisak County Court.

initiative to develop a shared systematic approach to the identification, investigation, and prosecution of war crimes. In July, these national prosecutors committed to compiling parallel ‘inventories’ of war crimes cases according to criteria developed in consultation with the ICTY Office of the Prosecutor (OTP).<sup>58</sup> A follow-up meeting of regional prosecutors was held in October.

The inventories are intended to assist prosecutors in avoiding the current situation in which multiple States investigate or try the same individuals for the same crimes while other crimes go un-investigated. The inventories should further aid the prosecutors in determining which State would be in the best position to prosecute a particular case, given legal barriers to other forms of co-operation such as extradition and the transfer of proceedings. The inventories should also assist the OTP in handing over information to national prosecutors in ‘Category II’ and ‘Category III’ cases. According to the Chief State Attorney, as of early November evidence in ten war crimes cases involving seventeen suspects has been provided to Serbian prosecutors. While an investigation is ongoing in Belgrade in the ‘Lovas’ case as described above, reportedly the Serbian war crimes prosecutor has declined initiating charges in another case in which evidence was transferred from Croatia.<sup>59</sup> Montenegrin authorities postponed the judicial investigation in the ‘Morinj’ case, in which evidence was transferred from Croatia, after the charged individuals failed to appear for the proceeding.

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<sup>58</sup> Concluding Document, State Attorneys’ Regional Conference, ‘Co-operation among States Attorney Offices (Prosecutors) in War Crimes Prosecutions – Current and Future Modes of Co-operation,’ Brijuni, 11-13 July 2007.

<sup>59</sup> Mile Novaković.