



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

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

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Activity in relation to the prosecution of war crimes remained high in the first five months of 2007. The Mission is following 89 cases involving 283 individuals in police investigations, fourteen trial courts plus the Supreme Court as well as extradition proceedings in third countries. Repeated proceedings were frequent and as in previous years, more than half of the individuals against whom proceedings are pending are *in absentia*. Of these 89 per cent are Serbs. Most trials continue to be conducted in the locations where the crimes occurred. The Supreme Court reviewed trial court verdicts as well as issues related to *in absentia* proceedings, detention, and change of trial venue. Concrete steps and results have been observed in co-operation between Croatian prosecutors and their counterparts in Serbia and Montenegro to pursue prosecution in those countries of persons suspected of war crimes in Croatia.

I. Pre-trial: Arrests, Extraditions, Investigations, and Indictments

Nine persons (8 Serbs, 1 Croat) have been arrested since the beginning of the year; four at border crossings. Among those arrested was independent parliamentarian Branimir Glavaš who was re-arrested after the Osijek County State Attorney indicted him along with six others [see Fortnightly Reports No. 4, 5 and 8/2007]. In addition, one suspect was extradited from Serbia. Six Serbs remain in investigative or pre-indictment detention, while thirteen Serbs and twelve Croats are in pre-trial or trial detention.

In March a United Kingdom first instance court denied an extradition request for Milan Španović based on an *in absentia* conviction in Sisak from 1993 [see Fortnightly Report No. 7/2007], while in April Australia granted an extradition request based on a new investigation in

Šibenik against Dragan Vasiljković. In the extradition proceeding, the Government guaranteed that the investigation against Vasiljković would be conducted by one of Croatia's special war crimes courts. Similarly, in early May, a first instance Greek court granted an extradition request for Ernst Rađen based on a 2001 investigation from Zadar. Tihomir Orešković, convicted together with Mirko Norac and Stjepan Grandić and sentenced to 15 years for war crimes committed in Gospić in 1991, remains at liberty since his release in October 2006 for medical treatment. Mr. Orešković is frequently seen in public in Zagreb and Gospić.

During the first five months of the year, investigations were initiated against ten Serbs (8 in Osijek, 1 each in Šibenik and Sisak) for war crimes against civilians and prisoners of war. At least one of these relied in part on investigative materials transferred to Croatian prosecutors from the ICTY Office of the Prosecutor (OTP), i.e., 'Category 2' cases. Investigations opened in 2005-2006 against 21 persons (14 Serbs, 7 Croats) continued in Sisak, Split and Vukovar. Of these, thirteen are being investigated for war crimes against civilians and eight for war crimes against prisoners of war.

Six new indictments have been issued since January against twelve individuals (5 Serbs, 7 Croats) by prosecutors in Gospić, Osijek, Sisak, Vukovar and Zagreb. Branimir Glavaš is the subject of two separate indictments in Osijek and Zagreb, which are based at least in part on 'Category 2' information provided by the OTP.

II. Trial Court Activity

Eighteen trials, involving 59 accused (39 Serbs, 10 Croats, 8 Ruthenians, 1 Roma, and 1 Bosniak) were ongoing in Karlovac, Osijek, Rijeka, Šibenik, Sisak, Split, and Vukovar during the reporting period. Almost half of defendants currently on trial are *in absentia*, with one trial in Rijeka fully *in absentia* and two partially *in absentia* in Vukovar (21 of 29 Serbs on trial are *in absentia*). All trials, except one, are being conducted by courts where the crimes occurred. The fully *in absentia* trial in Rijeka was initially conducted before a panel with fewer than three professional judges contrary to the legal requirement. This error has subsequently been corrected. Seven are repeat trials and at least two are the third trial of the same case. Two trials in the Vukovar County Court involving crimes by Serb paramilitaries against civilians in Lovas and Mikluševci have been ongoing for four and three years, respectively.

Seven trials involving nine individuals (5 Croats, 3 Serbs, and 1 Bosniak) have been completed since the beginning of 2007, six of which were re-trials. One trial ended when the Vukovar County Court re-qualified the war crimes charges against Dragoljub Stork (Serb) to armed rebellion, which is subject to amnesty. Stork together with nine others in the 'Batina Group' case had been previously convicted *in absentia* and sentenced to fifteen years.

In the reporting period, three defendants were acquitted. For the second time the Osijek County Court acquitted Enes Viteskić (Croat), former member of the Croatian army, for the December 1991 murders of eighteen Serbs in Paulin Dvor, a village near Osijek. In a third trial, Boško Macura (Serb) was acquitted by the Šibenik County Court of having participated in a November 1991 assault on a Croat civilian in the municipality of Skradin. Macura was first convicted *in absentia* in 1993, but acquitted in a second trial in 2001 in which he participated. Two prosecution witnesses died during the four and a half years that the appeal was pending at the Supreme Court. The Karlovac County Court acquitted Mihajlo Hrastov (Croat), a police officer, for the third time of killing thirteen Yugoslav Army soldiers in 1991. Consistent with the two

prior acquittals since 1992, the Court found that Hrastov killed the soldiers in self-defence as part of a legitimate military action as they had not been placed *hors de combat* and hence presented an “objective and real danger” of imminent attack. The Court assessed that Hrastov was duty-bound “to stand in defence..., to repulse an imminent attack and prevent evil of larger proportions – invasion of the town by the enemy.”

Five defendants were convicted during the reporting period. Fred Marguš and Tomislav Dilber (both Croats) were convicted and sentenced to fourteen and three years of imprisonment, respectively, by the Osijek County Court for their roles as members of the Croatian armed forces in the robbery, torture, and murder of nine Serb civilians in Osijek and Čepin in 1991. After his extradition from Germany, Jovo Begović (Serb) was convicted for the second time and sentenced to five years imprisonment by the Sisak County Court for ordering the shelling of civilian targets in Petrinja, central Croatia. Begović and four others had previously been convicted and sentenced *in absentia* to twenty years of imprisonment. After a delay of nearly four years at the Supreme Court, Michael Husnik and Kasim Hekić (Croat and Bosniak) were convicted and sentenced to seven years imprisonment by the Vukovar County Court in their third trial since 1996. They were convicted of sexually abusing two girls, one a minor, during the Serb paramilitary occupation of Vukovar. In a 1996 *in absentia* trial, they were convicted and sentenced to twelve and eleven years of imprisonment, respectively, for war crimes during the occupation of Vukovar, while in a 2002 re-trial in which they participated, they were acquitted.

III. Supreme Court Supervision of Trial Courts

The Supreme Court has been active deciding appeals from verdicts as well as issues related to detention, *in absentia* proceedings, and changes of trial venue. Since the beginning of 2007, the Supreme Court confirmed the conviction and six to eight year sentences of eight Croats in the ‘Lora’ case, four of whom were *in absentia*, for the torture and killing of Serb civilians in the Lora prison in Split in 1992. The Supreme Court also upheld the Zadar County Court’s conviction and six-year sentence of Neven Pupovac, who was extradited from Bosnia and Herzegovina, for cruel, humiliating and degrading treatment of Croat civilians and pillage in a village in the municipality of Benkovac.

The Supreme Court reversed convictions by the Sisak and Vukovar County Courts against Dragan Djokić for killing a Croat civilian and Milovan Zdrnja for assaulting a Croat prisoner of war, respectively. The Supreme Court also reversed for the second time the acquittal of four Croats in the ‘Bjelovar Group’ by the Varaždin County Court, on charges of abducting and killing six imprisoned Yugoslav Army soldiers and seriously injuring a Serb civilian in 1991. Nearly five years after the verdict, the Supreme Court also reversed the Šibenik County Court's acquittal of four Croats in the ‘Prokljan case’ charged with killing two Serb civilians in the aftermath of Operation ‘Storm.’ Re-trials were ordered in all of these cases.

Past delays by the Supreme Court in deciding appeals had negative ramifications in a number of re-trials in 2007. For example, in late 2006, the Supreme Court reversed the 2001 acquittal of Boško Macura, instructing the Šibenik County Court to clarify the statements of two prosecution witnesses. Upon re-trial in early 2007, the trial court determined that it could not follow the Supreme Court’s instructions because both witnesses had died in the intervening five years. In a trial lasting only several hours, Macura was again acquitted. Similarly, in late 2006, the Supreme Court reversed the mid-2002 acquittal of Ilija Maričić. Upon re-trial in early 2007, the Zadar County Court had to abandon the case due to Maričić’s death in late 2002.

In April, the Supreme Court reversed the Vukovar County Court's decision to conduct an *in absentia* trial of fourteen Serbs together with two who are currently in detention in the 'Sotin case' accused of abusing Croat civilians with the intention to expel them from the village. It reasoned that the trial court, in ordering the *in absentia* trial within a few days of issuing arrest warrants in late 2006, had not permitted sufficient time or efforts to apprehend the accused and ensure their presence at trial. With regard to the two accused who have been detained for over a year, the Supreme Court noted that the Vukovar County Court could either separate their case from the others or grant them provisional release.

In April, the Supreme Court ordered the Zadar County Court to assess whether evidence put forward by Edita Rađen Potkonjak was sufficient to warrant a new trial. Potkonjak, together with 17 others, was convicted *in absentia* in 1995 of the murders of more than forty Croat civilians in Škabrnja and sentenced to 15 years imprisonment. Notably, the Croatian State Attorney supported Potkonjak's request to the Supreme Court that a review of the evidence be granted. The Supreme Court noted that Ms. Potkonjak provided evidence that she was elsewhere at the time of the crimes for which she was convicted *in absentia*. It also noted that her conviction rested on the hearsay testimony of a witness who had been told by a third person that she had been in Škabrnja on the day of the crime. In mid-May, the Zadar County Court confirmed its earlier decision, rejecting the evidence as insufficient and denying Ms. Potkonjak a new trial because she is not currently in Croatia and Bosnia and Herzegovina refuses to extradite her. The Zadar County Court concluded that the only way it would consider the evidence was for Ms. Potkonjak to surrender to Croatian authorities. She would then be imprisoned and begin to serve her sentence as a convicted felon and could request a new trial during which she could present her evidence. Ms. Potkonjak's second appeal is currently pending at the Supreme Court.

The Supreme Court also changed the venue for several war crimes cases, either upon the request of a local court or the prosecutor. Notably defendants neither participate nor have any role in the proceedings which determine whether the venue is changed. Using legal provisions unique to the special war crimes courts,¹ the Supreme Court transferred cases against the same accused pending in several courts to a single court. For example, in April, the President of the Supreme Court granted the request of the Chief State Attorney to transfer two separate indictments against former Yugoslav defense minister Veljko Kadijević and others from the Bjelovar and Vukovar County Courts to the Osijek County Court, where a third indictment against Mr. Kadijević is pending.² The transfer was granted on the grounds that the charges against Mr. Kadijević are similar, hence conducting them in one court would serve the purpose of conserving judicial resources. Similarly, in late May the Supreme Court President granted the request of the Chief State Attorney to transfer the 'Sellotape' case against Branimir Glavaš and six others from the Osijek to the Zagreb County Court, where a second indictment against Mr. Glavaš in the 'Garage case' is pending. The transfer was granted in order to avoid the danger of witness

¹ Article 12.3 of the Law on the Application of the Statute of the International Criminal Court and the Prosecution of Criminal Acts against International Law on War and Humanitarian Law (ICC Law): "Upon an explained proposal of the Chief State Prosecutor, the President of the Supreme Court of the Republic of Croatia may approve that the conduct of the proceeding is moved from one court with subject-matter jurisdiction to another, when it is in accordance with the circumstances of the criminal act and the needs of conduct of the proceeding."

² In Bjelovar, Kadijević has been indicted together with Zvonko Jurjević, head of the former Yugoslav Air Force, for bombing civilian targets with resultant civilian deaths and property damage in multiple towns and villages in Western Slavonia. In Vukovar, Kadijević and Jurjević have been indicted together with seven other high-ranking figures in the former Yugoslav and Republika Srpska Krajina forces including ICTY indictees Mile Mrkšić, Veselin Slivančanin, Miroslav Radić, Vojislav Šešelj and Goran Hadžić for planning and executing the Yugoslav military action against Vukovar in 1991 in coordination with Serb paramilitaries. In Osijek, Kadijević and Jurjević have been indicted for ordering attacks on civilian targets in multiple towns and villages in Eastern Slavonia.

tampering and also to economize on judicial resources. The Supreme Court also changed venue when a local court was unable to satisfy the legal requirement of a three-judge panel. In May, the Supreme Court transferred the indictment against two Serbs, Željko Šuput and Milan Panić, charged with abuse of Croat prisoners of war in Korenica Police Station in 1991-1992, from Gospić to Rijeka County Court because the Gospić County Court was unable to establish a three-judge panel for trial since all judges were involved in previous stages of the proceeding.

In mid-May 2007, the Supreme Court upheld the detention of Branimir Glavaš and six others in the ‘Sellotape’ case due to the severity of the crimes alleged. While acknowledging that war crimes charges alone do not justify detention, the Supreme Court concluded that the trial court had properly determined that the accused were charged with having committed war crimes in a particularly brutal manner. The Supreme Court noted that the victims “were Osijek citizens whose safety was the responsibility of defendant Branimir Glavaš.” It also found relevant the fact that the accused were charged with organizing a special unit which detained, tortured, and ‘liquidated’ in a particularly brutal manner Serb civilians.

Further, concluding that the purpose of detention due to the gravity of crime is to maintain public confidence in the judiciary, the Supreme Court decided that provisional release with precautionary measures was inappropriate. It distinguished its decision in the case of Rahim Ademi and Mirko Norac, noting that Norac was in prison and Ademi “has completely withdrawn from the public eye.” As a result, the Supreme Court found that even with the provisional release of Ademi, the proceedings against Ademi and Norac could go forward uninterrupted and without provoking negative public reactions or diminishing the reputation of the judiciary. In contrast, the Supreme Court found that based on the conduct to date of the accused in the ‘Sellotape case’, it could not conclude that provisional release would permit for the uninterrupted conduct of the proceedings. The European Court of Human Rights is currently reviewing a challenge to Croatia’s ‘serious crime’ detention provision in *Karan v. Croatia*, in light of the ECHR precedent that limits use of this reason as the sole basis for long-term detention.

IV. Developments in Inter-state Co-operation

In the first months of 2007, concrete steps were taken by the State Attorney in co-ordination with his counterparts in Serbia and Montenegro to hand-over investigative materials and evidence for purposes of prosecutions of those suspected of war crimes by Croatia. According to the Chief State Attorney, evidence in four cases has already been provided to Serbian prosecutors and similar materials are being prepared in four more. The Serbian prosecutor has initiated an investigation in two of the cases in which materials were transferred, one each from Bjelovar and Vukovar. The Serbian prosecutor has also provided witness statements to his Croatian counterparts in relation to three investigations involving Croatian citizens. In addition, in late May, the Serbian authorities arrested twelve persons suspected of participating in the torture and killing of numerous Croat civilians in the eastern Croatian village of Lovas. A trial against one present and fifteen *in absentia* defendants has been ongoing in the Vukovar County Court since 2003.

Regarding co-operation with Montenegro, the State Attorney transferred investigative materials and evidence to his Montenegrin counterpart related to allegations of torture of Croat prisoners in the ‘Morinj’ prison camp in Montenegro.

V. State Attorney, EU, and Council of Europe Reports

In response to a request from a war veteran's association, in early May the Chief State Attorney issued a report indicating that since 1991, the State had initiated war crimes proceedings against more than 3,600 persons, with more than 98 per cent of the charges involving persons associated with Yugoslav Army or Serb paramilitaries, while less than two per cent involved members of the Croatian Armed Forces.

Reports of several European bodies issued in early 2007 focused on war crimes proceedings. In late April 2007, the European Parliament adopted a resolution observing *inter alia* that the 'effective prosecution of war crimes might be undermined by hostility at the local level, persisting bias amongst some of the judicial staff against non-Croatian nationals and insufficient protection of witnesses against intimidation'. The European Parliament urged the Government 'to continue actively to encourage and support the prosecution of war crimes, regardless of the nationality of the perpetrators'. It expressed concern about the Government's 'offer to support the defence costs for army generals and its request to act as *amicus curiae* in cases pending before the ICTY'.

In addition, in early May the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (PACE) issued a report that *inter alia* addressed the readiness and ability of national judiciaries to conduct war crimes proceedings consistent with international standards. The Rapporteur recognized positive steps in the region, but observed that judicial bodies appeared to lack adequate political support. He called on political leaders to urge the courts to 'adopt a more objective approach that guarantees the impartiality of war crimes trials'. In particular, he highlighted the importance of States reforming their legislation to permit greater co-operation between national judiciaries, thereby ending this basis for impunity. Until legislative reform was finalized, he urged that practical measures be taken to ensure in-person trials of war crimes suspects, even if that meant the proceedings occurred in a state other than where the crimes occurred.