



Organization for Security and Co-operation in Europe

Mission to Croatia

Headquarters

BACKGROUND REPORT: DOMESTIC WAR CRIME TRIALS 2005

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EXECUTIVE SUMMARY

In 2005 and the first half of 2006, ICTY prosecutions, ICTY Completion Strategy transfers and EU accession heightened the focus on the political and legal context in which war crimes prosecutions are conducted in Croatia. Progress has been noted compared with prior years, but further efforts to consolidate this progress are needed. Among continuing concerns are: impartiality and the application of a uniform standard of criminal accountability, quality of judicial decisions, witness security and support, adequate defence by court-appointed counsel, and inter-state judicial cooperation, particularly with Serbia, Montenegro, and Bosnia and Herzegovina. Political support for reforms as well as an even-handed approach by state institutions will be key to de-politicizing the prosecution of war crimes and ensuring the determination of individual criminal responsibility.

There are indications over the past year of an increasingly objective and impartial approach by prosecutors, judges, and police. This has entailed repudiating a past policy of politicized prosecution largely determined by the ethnic origin of victims and military affiliation of defendants in favour of even-handed prosecution. It will also require a clearly articulated policy in the future about what level of perpetrators and which severity of crimes will be pursued prospectively. Reaching these goals will require action along two inter-related tracks. First, it will be necessary to continue revision of the “old chapter” (numerous and long standing charges, some of which were filed under questionable standards and procedures) on prosecutions of Serbs for crimes against Croats in order to further eliminate unsubstantiated charges. Without additional action in relation to this group of proceedings, some past excesses may be carried forward into the future. Second, further steps will be required in the “new chapter” of prosecution directed more towards Croats and members of the Croatian armed forces for crimes against Serbs, to ensure accountability. This second chapter may also include charges against some individual higher-rank Serb perpetrators, some of whom have not been prosecuted given the prior tendency of local prosecutors to focus on large numbers of low-ranking Serb defendants, particularly those from the community where crimes occurred.

While diminishing in impact, ethnic origin continues to be a factor in determining against whom and what crimes are prosecuted, with discrepancies seen in the type of conduct charged and the severity of sentencing. One source of this ethnic disparity may be the extent to which evidence is available, including the availability or willingness of witnesses to testify. While the number of *in absentia* trials decreased compared with earlier years, in 2005 still more than half of all accused and two-thirds of Serb accused were tried *in absentia*. Service in the Croatian army continued to be used as a factor to mitigate punishment. As stated in prior Mission reports, there is no imperative to have numerical equivalence of defendants by ethnic origin. However, in combination with the above factors, the significant disproportion observed from the early 1990s through 2005 between the numbers of Serbs and Croats prosecuted supports a conclusion that the

numerical differences cannot be attributed only to different levels of criminality of the warring parties.¹

As State institutions increasingly investigate possible crimes committed by the Croatian armed forces, including those responsible as superiors for the acts of subordinates, resistance to such inquiries has arisen and can be expected to continue. One of the most visible and crude manifestations of such resistance was the public announcement in late 2005 by MP Anto Djapic of the names of persons co-operating with war crimes investigators, following the earlier exposure of a witness who was being placed into the witness protection programme. The investigation initiated in mid 2006 against MP Branimir Glavas is similarly testing the independence of State institutions and the integrity of the prosecution process. It will also present challenges to those in the media and civil society that have insisted on government accountability and who are also exposed to potential repercussions. There is a continuing need to establish accountability for documented efforts to cover-up war crimes, such as the transfer and re-burial of Serb civilians killed in Paulin Dvor. How State institutions respond to these challenges will be key for the future of domestic prosecutions, including cases transferred from the ICTY. In this environment, the State policy to support Croatian ICTY indictees, in particular Ante Gotovina, is a complicating factor and conveys a mixed message to the judiciary, witnesses, and the public.

Further efforts are warranted to enhance security and support for witnesses, including firm action against those who would attempt to threaten or intimidate witnesses. In 2005 and early 2006, cases were referred for the first time to the specially designated war crimes court in Zagreb. These cases, which were seen to require special measures, included the Norac/Ademi case referred from the ICTY as well as Glavas/Fehir case transferred due to concerns about witness security and judicial impartiality in Osijek. The Glavas/Fehir case highlighted the fact that transfer to this special court does not eliminate the significant challenges to the integrity of the investigation, including the participation of witnesses and maintaining the confidentiality of information gathered in closed court proceedings. The vast majority of trials continue to be conducted in local courts, in areas most directly affected by the conflict, considerably increasing the risks of witness intimidation and lack of judicial impartiality. Adequate corrective measures must also be found to address the continuing high rate of error that has led to the reversal of numerous trial court verdicts by the Supreme Court. In addition, there is a need to better ensure the adequacy of defence provided by court-appointed counsel, including an end to the practice of group representation.

The ICTY Prosecutor's withdrawal in mid 2005 of her request to transfer the so-called "Vukovar Three" case to either Croatia or Serbia and Montenegro highlighted the political complexities associated with inter-state co-operation related to war crimes prosecutions. Nevertheless, individual accountability will not be possible in the

¹ In its prior reports covering war crime proceedings for the years 2002 through 2004, the Mission has documented based on its own reporting as well as Government information that the overwhelming majority of war crime prosecutions during and in the aftermath of the 1991 to 1995 conflict involved prosecutions of Serbs for crimes against Croats.

foreseeable future for numerous crimes committed in Croatia – be it for Croat or Serb victims – without substantially enhanced judicial co-operation by Croatian institutions with their counterparts in Serbia,² Montenegro and Bosnia and Herzegovina. A key indicator of insufficient inter-state co-operation is the conduct since the early 1990s of *in absentia* trials against hundreds of Serbs who were inaccessible to Croatian justice. Emerging cases against members of the Croatian armed forces will frequently depend on witnesses who similarly live outside Croatia’s borders.

The challenge for political leaders in Croatia, as well as in Serbia, Montenegro, and Bosnia and Herzegovina, is whether they will gradually dismantle the rigid legal frameworks that significantly restrict inter-state judicial co-operation, by building on existing examples of good co-operation between prosecutors and courts. Agreement to develop enhanced forms of inter-state judicial co-operation will undoubtedly require a series of interim confidence-building measures. But if Croatia and the other States are serious about ending impunity and providing justice for victims, there is no alternative but to begin this process without further delay. Systematic co-operation in relation to the large number of persons wanted by Croatia, including cases transferred from the ICTY, would provide a means for beginning to close the chapter on war crimes prosecutions and enhance regional stability and facilitate refugee return. While this would place significant demands upon Croatian authorities, it would also require considerably increased activity by their counterparts in the neighbouring states.

Starting in April 2006 the Mission, together with the EC and the ICTY, began an intensified discussion with the Minister of Justice, the Chief State Attorney, and representatives of the Supreme Court to address concerns related to the prosecution of war crimes, many of which are addressed in this report. Among issues flagged for further discussion and action during the first three meetings were lowering specific barriers to inter-state judicial co-operation, enhancing witness security, ensuring adequate court-appointed defence, and a systematic means of addressing the problem of persons sought by Croatia for war crimes in neighbouring states. This effort is intended to complement the OSCE’s regional activities related to improving inter-state judicial co-operation.

This report contains substantive discussion as well as statistical data related to war crimes proceedings monitored by the Mission in 2005 at the trial and appellate court level.³ The report highlights legal developments as well as trends observed. Where possible, it compares and contrasts observations from 2005 to those contained in the Mission’s prior war crimes trial reports from 2002 to 2004. The report also includes a number of developments in the first half of 2006.

² During the period covered by this report, Serbia and Montenegro became separate and independent States. With regard to past events, this report refers to the former federal State Serbia and Montenegro, whereas for events in late Spring 2006 and the future, it refers to the States separately.

³ The Mission monitors all war crimes cases and trials conducted in Croatia through its field office and headquarters Rule of Law staff.

A. DEVELOPMENTS DURING 2005 AND EARLY 2006

Increased attention to domestic war crimes prosecution in 2005 and the first half of 2006 was evident in actions by a variety of national and international community actors. The inter-linkage between prosecutions in Croatia and at the ICTY has become evident with the transfer of the Norac/Ademi indictment as well as other investigative materials to Croatia in parallel with increased activity at the ICTY in Croatia-related cases. The “Completion Strategy” transfers heighten the focus on the adequacy of the legal framework and capacity of State institutions and services. Several trials were ongoing at the ICTY in 2005 and the first half of 2006 relating to war crimes committed against Croats in Croatia, including the trial of Milan Martić as well as the “Vukovar Three.” However, there appears to be little public awareness of the link between these trials and related cases in Croatia. To the contrary, public attention and debate related to the ICTY is largely limited to negative reaction to the indictments against Croatian military personnel. The cases against members of the Croatian armed forces at the ICTY provide a stark reminder of the politicized environment in which Croatian prosecutions are conducted. The State policy in support of Croatian ICTY indictees contrasts noticeably with the legal obligation to prosecute war crimes impartially at home.

I. ICTY Referrals to Croatia

In mid-September 2005, the ICTY referred the indictment against Mirko Norac and Rahim Ademi to Croatia as part of its Completion Strategy.⁴ The ICTY granted the transfer, finding that the Rule 11 *bis* prerequisites for a fair trial prevailed. These include an adequate legal framework, witness protection, inter-state co-operation, death penalty not in force, and a monitoring mechanism in place with the OSCE. The ICTY highlighted that the requirement of impartiality extends beyond the accused against whom there was little risk of bias. Important in light of indications of ethnic bias in some domestic war crimes proceedings, the ICTY highlighted that fair trial in this case would also include fairness toward the Serb victims as well as the international community.

The Chief State Attorney formally took over the case from the ICTY Prosecutor effective 31 October. On 2 December, the President of the Supreme Court granted the request of the Chief State Attorney to assign the case to the Zagreb County Court, one of four “special” war crimes courts, rather than the Gospić County Court in which jurisdiction the crimes occurred. Since late 2005, the Chief State Attorney has been preparing the case for presentation to the Zagreb County Court. As of September 2006, the judicial investigation has not been initiated nor a Croatian indictment issued. Some ICTY witnesses expressed reluctance to participate in the Croatian proceedings given security concerns, citing an incident in late 2005 where persons co-operating with prosecutors in another case were identified during a press conference by MP Anto Džapić in Osijek.

⁴ The ICTY indicted Norac and Ademi for war crimes allegedly committed against Serb civilians and soldiers *hors de combat* during a 1993 operation by the Croatian military in the “Medak Pocket” in south-western Croatia. They are alleged to be individually responsible as well as responsible as superiors (command responsibility) for acts of subordinates. Ademi voluntarily surrendered to the ICTY in 2001 and has been at liberty in Croatia since 2002. Norac is serving a 12-year prison sentence imposed by the Rijeka County Court for unrelated war crimes.

[See Section C.I.1.] An investigation of this incident was still ongoing as of late June 2006. Given the volume of documents transferred by the ICTY, issues as to the admissibility of such documents in Croatian courts may arise, including the admissibility of evidence in electronic form. It is anticipated that the trial may start in 2007.

In contrast, in late June 2005, the ICTY terminated its consideration of referring the indictment against the “Vukovar Three” to either Croatia or Serbia and Montenegro, concluding that “the interests of justice appear to be better met by this trial being conducted before this Tribunal.”⁵ The trial began in The Hague in late 2005.

In addition, the Chief State Attorney and the ICTY Prosecutor worked closely in 2005 to prepare a framework for the transfer of information and evidence related to other cases, now commonly referred to as “Category II” cases for which the ICTY did not issue an indictment, for further investigation and possible indictment and trial in Croatia.

II. ICTY Prosecutes Croatian Journalists for Revealing Protected Witnesses

In March 2006, the ICTY convicted Ivica Marijagic, editor-in-chief of the Croatian weekly *Hrvatski List*, and Markica Rebic, former head of the Croatian Intelligence Service, of contempt of the Tribunal.⁶ Based on an article written by Marijagic and an interview with Rebic that appeared in mid-November 2004, both were found guilty of knowingly and deliberately revealing the identity and testimony of a protected witness, contrary to an order of the Tribunal. The ICTY fined Marijagic and Rebic €15,000 each, citing the need to deter others from similar conduct that could undermine confidence in the ICTY’s ability to grant effective protective measures. Marijagic and Rebic have appealed the conviction.

In mid-June 2006, following a decision by the Trial Chamber rejecting the Prosecutor’s request to join contempt indictments against four other Croatian journalists, the ICTY Prosecutor withdrew three of the four indictments. These three, the publisher and two former editors-in-chief of *Hrvatsko Slovo*, Stjepan Seselj, Domagoj Margetic and Marijan Krizic, had been accused of revealing that President Stjepan Mesic testified as a protected witness in a 1998 closed hearing in the Blaskic trial. However, a trial against a fourth indictee, Josip Jovic, former editor-in-chief of *Slobodna Dalmacija*, similarly charged with revealing in 2000 that President Mesic testified as a protected witness, was conducted in early July 2006. In contrast to Marijagic and Rebic, Jovic published in violation of specific ICTY orders to cease and desist.⁷ At the end of August 2006, the ICTY convicted Jovic for contempt of the Tribunal and imposed a fine of €20,000. The Trial Chamber was particularly concerned that Jovic’s deliberate defiance of the Tribunal’s orders negatively affected its ability to safeguard a protected witness thus undermining confidence in the Tribunal.

⁵ Mile Mrksic, Miroslav Radic, and Veselin Sljivancanin, all former officers of the Yugoslav People’s Army, are on trial in relation to the execution of more than 260 Croats and other non-Serbs at the Ovcara farm near Vukovar in Eastern Slavonia in late 1991.

⁶ Prosecutor v. Ivica Marijagic and Markica Rebic, Case No. IT-95-14-R77.2, Judgement, 10 March 2006.

⁷ The Trial Chamber’s Order for the Immediate Cessation of Violations of Protective Measures for Witnesses dated 1 December 2000.

The balance between press freedom and respect for court orders at issue in these cases has direct relevance for media coverage of war crimes proceedings in Croatia.

III. Arrest and Transfer of Ante Gotovina to ICTY

In early December 2005, Ante Gotovina, the sole remaining ICTY fugitive from Croatia, was arrested in the Canary Islands, Spain and transferred to The Hague. While re-stating the Government's continued commitment to co-operate with the ICTY, the Prime Minister pledged full Government support in helping to establish "the truth" in relation to Gotovina as well as other Croatian ICTY indictees including Mladen Markac, Ivan Cermak, Rahim Ademi, and six Bosnian Croats, indicating that the Government would act as *amicus curiae* at the ICTY. Both the former and current Ministers of Justice publicly expressed their belief in Gotovina's innocence.

In addition to State funding of the defence, in early 2006 the Foundation for the Truth About the Homeland War was established, one function of which is to provide funding for the defence of Gotovina and others before the ICTY. In April 2006, the Zadar City Council donated nearly €70,000 in city funds to the Foundation for Gotovina's defence, an initiative supported by other cities and towns.⁸ In May 2006, Zagreb hosted a football match, contributing nearly €140,000 in proceeds to the defence fund of Gotovina and others.

The Government's Action Plan issued in late April 2005 in relation to the effort to arrest Gotovina contained reform measures such as new legislation on re-organization of the security services and data secrecy. Legislation on these subjects introduced by the Government in Spring 2006 was criticised by the political opposition as well as civil society. A new security service law – revised to address publicly raised concerns - was adopted in late June 2006, while the data secrecy law remains under review and revision.

IV. EU on Domestic War Crime Prosecutions

In its 2005 Progress Report, the EU applied a multi-faceted evaluation to domestic war crimes prosecutions, noting the relevance of both political Copenhagen criteria as well as *acquis* requirements.⁹ From the perspective of the judiciary and rule of law, the EU noted concerns about impartiality and the need to eliminate ethnic bias as well as enhance witness security. From a minority protection perspective, the EU noted that despite improvements, remaining ethnic bias and unsubstantiated charges weighed particularly heavily on the Serb minority. From a regional obligation perspective, the EU observed the need for enhanced inter-state co-operation as well as the risk that unsubstantiated war

⁸ Other counties, cities and municipalities that contributed to the Foundation include: Zadar County (approx. €17,000), Split (approx. €14,000), Drnis (approx. €7000), Novska (approx. €7000), Pakostane (approx. €5000), Stankovci (approx. €7000) and Ruzic (approx. €1500). Other cities, including Benkovac, Biograd, Sisak and Knin, have indicated their intention to contribute. All of these cities and towns were directly affected by the conflict. The Mayor of Zagreb, Croatia's capital, also indicated his support for these efforts. In addition, private companies such as Croatia insurance have contributed (approx. €35,000).

⁹ EC, Croatia 2005 Progress Report, SEC (2005) 1424, 9 November 2005.

crimes charges would continue to act as an impediment to refugee return. The EU set substantial improvement in the prosecution of war crimes as a short-term priority.¹⁰

V. First Cases Delegated to Special War Crimes Courts

In 2005, for the first time the Chief State Attorney exercised his discretion to request that the Supreme Court transfer a case to a specially designated war crimes court, both cases being sent to the Zagreb County Court.¹¹ As described above, in December 2005, the Supreme Court consented to transfer the Norac/Ademi case. The Supreme Court found that transfer was appropriate given the complexity of the case as the first transferred from the ICTY. Other factors cited were: the large amount of evidence, keen public interest that will present challenges in providing access to the trial, including for monitors from the ICTY and OSCE, and the need for appropriate conditions and security for a large number of witnesses, including those from abroad.

In June 2005, the Supreme Court transferred the investigation against Slobodan Davidovic for crimes committed in Bosnia and Herzegovina as a member of the “Skorpions” from the Vukovar County Court to the Zagreb County Court. The Supreme Court found that the gravity of the crime as well as the possible need to co-operate with the ongoing investigation of the same crime by the Belgrade Special War Crime Court against other members of the “Skorpions” warranted transfer to the Zagreb County Court. In May 2006, the Supreme Court consented to transfer the investigation against MP Branimir Glavas and Krunoslav Fehir to the Zagreb County Court given concerns about possible intimidation of witnesses and the ability of the Osijek County Court – itself a designated special war crimes court - to conduct an impartial proceeding. Similar impartiality concerns had been the basis for the earlier transfer of Zagreb-based police investigators to Osijek for purposes of conducting the preliminary investigation.

VI. Prison Conditions Require Attention

Considerable periods of pre-trial detention as well as post-conviction imprisonment are served by the significant number of persons prosecuted for war crimes, possibly including in the future persons whose cases were transferred from the ICTY. In March 2006, Croatia’s Ombudsman as well as the European Court of Human Rights (ECHR) issued findings related to sub-standard conditions in Croatia’s prisons. The Ombudsman identified overcrowding as a primary problem, with prisons in Osijek, Split, and Varazdin holding twice their capacity. Notably, prisons are not overpopulated due to the number of convicted prisoners serving their sentences, but rather due to the large number

¹⁰ EU Council’s Decision 2006/145/EC on the principles, priorities and conditions contained in the Accession Partnership with Croatia and repealing Decision 2004/684/EC (20 February 2006; Official Gazette, 25 February 2006).

¹¹ County courts in Zagreb, Osijek, Rijeka and Split have extra-territorial jurisdiction to adjudicate war crimes. The Chief State Attorney can initiate proceedings at these courts upon the consent of the President of the Supreme Court that such delegation would be “in accordance with the circumstances of the criminal act and the needs of conduct of the proceedings.” Article 12 of the Law on the Application of the Statute of the International Criminal Court and on the Prosecution of Criminal Acts against International Law on War and Humanitarian Law (ICC Law), NN 175/03, 4 November 2003.

of people awaiting final verdicts. The Ombudsman also found inadequate hygienic conditions and medical care in some facilities. Similar concerns were raised in the *Cenbauer* case in which the ECHR found that the conditions of Cenbauer's imprisonment at Lepoglava State Prison violated the prohibition against inhuman and degrading treatment under the European Convention on Human Rights.¹² The ECHR acknowledged that the Government had shown willingness to comply with ECHR recommendations related to the earlier *Benzan* case and that during the period Cenbauer's case was pending it renovated part of the prison where he was held.

VII. Domestic NGOs Increasingly Involved in Trial Monitoring; Focus on Victims

In 2005, Croatian NGOs monitored war crimes trials in an increasingly systematic manner, in collaboration with NGOs from Serbia and Montenegro and Bosnia and Herzegovina.¹³ In early 2006, the Center for Peace, Non-violence and Human Rights issued a report summarizing its findings and recommendations based on monitoring conducted in 2005 of 13 war crimes trials in 8 county courts.¹⁴ In a press conference at the end of 2005, the NGOs publicly criticized perceived attempts by MP Anto Djapic to intimidate witnesses in Osijek, calling on the authorities to act.

The NGOs focused particular attention on the position and treatment of victims. They concluded that trials *in absentia* did not serve the best interests of victims. The NGOs noted that victims frequently felt that prosecutors did not adequately represent their interests and that trials did not sufficiently highlight their plight. The NGOs cited the failure of prosecutors to inform victims about the status of proceedings, including when a case was abandoned for lack of evidence and/or their rights related to the trial, including the right to separate counsel. The Report recommends that a legal representative for victims be appointed by the court in war crimes cases to protect their interests¹⁵ and that public funding be provided through the Law on Free Legal Aid, a draft of which is currently under review by the Council of Europe.¹⁶

¹² The ECHR noted that Cenbauer had less than the minimum space required for inmates in multi-occupancy cells according to domestic law and international standards and was confined to his cell for substantial periods of each day. Cenbauer was also found to have been subject to unhygienic and humiliating living conditions.

¹³ NGOs were: Centar for Peace, Non-Violence and Human Rights from Osijek, Altruist Center from Split, and Civic Committee for Human Rights, and Croatian Helsinki Committee, both from Zagreb. Monitors from Croatia monitor trials in SiCG and BiH and *vice versa*. NGOs outside Croatia involved in the project were Humanitarian Law Fund from Belgrade and the Investigative Documentation Center from Sarajevo.

¹⁴ Monitoring of War Crime Trials, Annual Report '05.

¹⁵ Article 60 of the Criminal Procedure Code permits victims and other injured parties to participate and have separate representation in criminal proceedings. State funding for attorneys to represent private parties is contemplated only if the state is not prosecuting the crime. Notably, while such participation is not contemplated at the ICTY, it is permitted at the ICC.

¹⁶ The draft Law on Free Legal Aid is intended to establish a system for the provision of free legal aid in civil proceedings for poor persons who are party to legal actions. Free legal aid for criminal defendants is regulated in the Criminal Procedure Code.

Attorneys representing victims or survivors participated in at least part of two trials ongoing in 2005.¹⁷ Based on the Mission's observation, the impact of this separate representation was negligible in terms of the proceedings themselves, although its importance to the victims may be considerable. However, an open question remains whether separate counsel for victims is preferable to more extensive and integrated state services to victims and witnesses.

B. INTER-STATE JUDICIAL CO-OPERATION LIMITED BY RIGID LEGAL FRAMEWORKS, FACILITATING IMPUNITY

During 2005, both the need for and the remaining obstacles to inter-state judicial co-operation became increasingly apparent. Due to the nature of the conflict as well as significant population displacements, witnesses, defendants and crime scenes frequently are found in two or three of the successor states of the former Yugoslavia. Successful prosecution of cases referred from the ICTY as well as the much greater number of domestically initiated cases will depend upon effective and efficient co-operation. In its absence, impunity will prevail, with accused remaining out of reach, witnesses remaining un-heard, and individual guilt un-determined.

I. Domestic Legal Reform Needed to Facilitate Enhanced Forms of Inter-state Judicial Co-operation

Croatia, similar to Bosnia and Herzegovina (BiH) and Serbia and Montenegro (SiCG), has entered into an array of Council of Europe Conventions, bilateral agreements, and domestic laws touching on inter-state judicial co-operation in criminal matters. However, restrictions contained in domestic law as well as reservations to ratified Conventions (or lack of ratification) significantly limit the forms of co-operation currently possible between these three, now four, states. Chapter 24 of the European Union *acquis* specifically addresses inter-state judicial co-operation in criminal matters.

Progress in inter-state co-operation in 2005 was largely limited to exchange of information, witness testimony, and the extradition by BiH and SiCG of a very limited number of non-citizens wanted for war crimes or other serious crimes in Croatia. First, pursuant to protocols signed by the Chief State Attorney with his counterparts in BiH and SiCG, co-operation was ongoing in terms of investigations and exchange of information, including that related to witnesses. Second, co-operation between judicial and police authorities facilitated the transport of witnesses from SiCG and BiH to Croatia for purposes of testifying in person at the "Lora" trial. [See Section C.I.4.] Third, statements from witnesses residing in SiCG were taken by the SiCG court and sent to the Croatian court investigating or trying the case. Finally, in December 2005, the former Minister of Justice and her counterpart from SiCG signed a co-operation protocol, which while not specific to war crimes prosecution, could be used for such specific co-operation.

¹⁷ RH vs. Mihajlo Hrastov, KT-48/91 (attorney for victim participated in hearings throughout 2004 and 2005); RH vs. Tomislav Duic et al. ("Lora") K-DO-131/01 (attorney for victim appeared at one hearing).

This progress is welcome, but more remains to be done. Few if any of the domestic legal impediments to co-operation identified during four OSCE-sponsored meetings convened between November 2004 and April 2006 have been rectified.¹⁸ Consequences were seen in the denial of extraditions of nationals in tandem with the lack of criminal proceedings initiated by the state refusing extradition and the rejection of video-link testimony for witnesses residing outside Croatia.¹⁹ [See Section C.I.4] This impasse points to the growing imperative for political engagement to undertake the necessary domestic reforms.

Direct contacts between the Croatian judiciary and foreign judicial authorities are a rarity, requests for assistance running through the Ministry of Justice.²⁰ Mechanisms are not available for either the transfer of war crimes proceedings (i.e., **sending the proceeding** to a court in the accused's country of citizenship/residence)²¹ or extradition of nationals (i.e., **sending the accused** regardless of citizenship to a court in the country where the war crimes occurred).²² To circumvent this legal impasse, prosecutors send criminal files and evidence for use by their counterparts in the accused's home state. In some individual cases, this type of co-operation in 2005 succeeded in overcoming years of stalemate during which the accused was at large because one country would not extradite its national and the other country would not send the case because the crime occurred on its territory.²³ Further, the status of Croatia's recognition of the validity of foreign criminal judgments remains unclear.²⁴

This inflexibility of legal frameworks has resulted in trials in multiple states for persons who participated in the same crime, dependent upon the citizenship of the accused. For example, trials were conducted in both Zagreb and Belgrade of former members of the "Skorpions" paramilitary unit for murders committed in BiH, made infamous by a

¹⁸ See SEC.GAL/279/04, 6 December 2004 (Palic); SEC.GAL/135/05, 13 June 2005 (Brijuni); SEC.GAL/222/05, 2 November 2005 (Mostar); SEC. GAL /66/06, 26 April 2006 (Novi Sad).

¹⁹ Croatia has signed but not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (provides a protocol for use of video-link).

²⁰ Croatia maintains a reservation to Article 15 of the European Convention on Mutual Legal Assistance in Criminal Matters (limits direct inter-state co-operation between judicial bodies).

²¹ The Law on International Legal Assistance in Criminal Matters (ILA Law) does not permit transfer of proceedings to another state for crimes, like war crimes, punishable by more than 10 years imprisonment. Croatia has signed but not ratified the European Convention on the Transfer of Proceedings in Criminal Matters. Similar limitations on transfer of proceedings exist in the law of SiCG and BiH.

²² Croatia maintains a reservation to the European Convention on Extradition (prohibits extradition of nationals). Croatia, SiCG and BiH all bar extradition of nationals, either by law or Constitution.

²³ E.g., In summer 2005, BiH prosecutors agreed to share relevant documents with their Croatian counterparts in relation to a Croatian citizen, Miroslav Anic, wanted for crimes in BiH and cited as a co-perpetrator in crimes for which the ICTY sentenced Ivica Rajic to 12 years imprisonment. See Prosecutor v. Ivica Rajic, Sentencing Judgment, 8 May 2006. Although initially arrested in 2001 in Croatia, Anic remained at liberty during the intervening years given Croatia's refusal to extradite and BiH's refusal to hand over the case. In late 2005/early 2006, the Croatian Chief State Attorney provided information to his SiCG counterpart in relation to a SiCG citizen Cedo Budisavljevic wanted for crimes in Croatia.

²⁴ Croatia has neither signed nor ratified the European Convention on International Validity of Criminal Judgments. However, the ILA Law permits the execution of foreign judgments subject to certain conditions. Notably, Croatia and BiH entered into a bilateral agreement in 1996, never published although reportedly in effect, which permits the mutual execution of judgments.

videotape shown at the ICTY in 2005. Croatia tried and convicted in December 2005 one of the accused, a Croatian citizen Slobodan Davidovic, while five others, citizens of SiCG, were put on trial in Belgrade in December 2005.²⁵

Similarly, the primacy retained by the state of the accused's citizenship has resulted in investigations of the same crime in multiple states. For example, the Vukovar County Court in 2005 conducted a trial of a Croatian citizen, Ilija Vorkapic, present in the court together with 14 others *in absentia* for the murder of nearly 100 Croats as well as injury and expulsion of numerous others from the village of Lovas.²⁶ In late 2005, the SiCG Prosecutor for War Crimes announced that in co-operation with Croatian authorities he was investigating those accused known to be in SiCG.

These arrangements while sometimes cumbersome and duplicative are preferable to impunity in the state of citizenship or *in absentia* proceedings in the state where the crime occurred. Such positive examples provide a good foundation for political leadership to undertake the necessary legal reforms in order to permit intensified forms of co-operation that require even greater degrees of inter-state confidence. One possible interim measure would be agreement to limited transfers of proceedings between the special war crimes courts in Zagreb, Belgrade, and Sarajevo, which have already developed some positive experience in co-operation. Inter-state co-operation between police merits particular attention.

II. Systematic Co-operation Needed to Resolve Large Number of Open Cases and *in absentia* Convictions

As of June 2006, Croatia is seeking approximately 1,100 persons on suspicion of war crimes while approximately 400 additional persons are sought on the basis of *in absentia* convictions. The Chief State Attorney has transmitted this information to the Minister of Justice for purposes of conveying it to the appropriate authorities in Serbia, Montenegro, and BiH. An earlier version of this information was provided to SiCG in late 2004. To date, Croatia is the only state in the region that has compiled such a list of wanted persons, which when shared with the relevant authorities in neighbouring states could provide the basis for systematically resolving the cases of accused persons residing in those states. It is apparent that BiH also seeks large numbers of persons on suspicion of war crimes and a systematic inter-state approach could also be beneficial to BiH authorities.

Maintaining the status quo means that a majority of the 1,500 persons wanted by Croatia will face the charges against them only when they cross an international border, entering Croatia or another state that executes international arrest warrants and is willing to extradite. More rarely, persons who wish to challenge the validity of a war crimes charge surrender voluntarily. Such an approach ensures that this issue will burden relations with the neighbouring states for years to come. It is likely that a significant number of persons wanted by Croatia reside in or are citizens of Serbia, Montenegro, or BiH. Given this

²⁵ Republic of Serbia v. Slobodan Medic et al., KTRZ 3/05.

²⁶ RH v. Ljuban Devetak et al. ("Lovas"), K-DO-44/04.

likelihood, Croatia should together with these States develop a mechanism for the systematic review of all cases for purposes of determining how, where, or if an individual case would proceed to completion. For suspects, outcomes could be abandonment of the case by Croatia for lack of evidence or death of the accused, transfer of the case to the other country, or transfer of the accused to Croatia. A step toward the systematic resolution of cases between states was taken in late July 2006 when the Chief State Attorneys of Croatia and Montenegro signed an Agreement establishing a mechanism, including timetables, for co-operation in the prosecution of citizens or residents of Montenegro suspected of committing war crimes in Croatia.²⁷ Resolution of *in absentia* convictions, however, poses a particular challenge as the current legal framework only contemplates surrender of the person to Croatia for re-trial. Such a review would also include related documents maintained by police authorities including international arrest warrants and warrants to bring persons in for questioning.

Acknowledging that numerous war crimes investigations were initiated without sufficient evidence, the Chief State Attorney has taken corrective action to reduce the list of wanted persons. In contrast, under applicable law *in absentia* convictions as final judicial verdicts are subject to review only when the convicted person becomes accessible to the court and a new trial conducted. Those convicted *in absentia* bear the burden of coming forward with evidence of their innocence. The exoneration at re-trial of some persons previously convicted *in absentia* suggests that a co-operative mechanism for the review and resolution of such cases should also be found.²⁸ Enhancing co-operation among the concerned states in relation to *in absentia* verdicts is also desirable given that these verdicts can neither be implemented in other states nor the final proceeding transferred.

C. FINDINGS FROM TRIAL MONITORING

I. Witnesses: Remaining Challenges to Reliable Testimony

As in prior years, the predominant if not exclusive form of evidence in war crimes trials during 2005 was eyewitness testimony. Other forms of evidence, e.g., documentary and

²⁷ Under the terms of the agreement, by late August 2006 Croatia should provide information to Montenegro about all current war crimes cases that it alleges were committed in Croatia by persons who either reside in or are citizens of Montenegro. The Montenegrin State Attorney should, after review of this information, inform his Croatian counterpart whether Montenegro will undertake prosecution in any or all cases. Upon notification of Montenegro's intention to prosecute, the Croatian Chief State Attorney should within two months provide all relevant information and evidence. Montenegro should report periodically to Croatia about the status of any cases prosecuted.

²⁸ Based on information available to the Mission for 2002 through 2005, 13 persons, including 2 extradited from EU countries, have either been acquitted or had charges dropped in the new trial after having been previously convicted *in absentia*, although several appeals of acquittals are pending at the Supreme Court. These include Jovan Petkovic, Savo Bosnjak, Savo Sasic, Vlado Tepavac, Dane Serdar, Momcilo Grbic, Dragoljub Savicin, Veljko Macura, Zivojin Crnogorac, Milenko Dabic (all Serbs); Ivica Jelusic, Mihail Husnik (both Croats), and Kasim Hekic (Bosniak).

forensic evidence, were introduced only rarely.²⁹ Requests for documents by several courts to the Ministry of Defence (MoD) were largely unsuccessful, most often with the explanation that the MoD could not locate the documents.³⁰ Hence, the outcomes of investigations and trials depended upon the reliability of witness testimony, necessitating adequate measures for witness security and support as well as increased inter-state judicial co-operation. Despite improvements during 2005, further efforts are needed to create conditions that permit witnesses to testify in security and confidence. Frequent and often extensive inconsistencies in witness testimony present an additional challenge to courts and prosecutors.

Similar to past years, most trials were conducted where the war crimes occurred.³¹ This included trials at the Osijek and Split County Courts, which are also authorized to serve as “special” war crimes courts. As discussed below, intimidation and harassment of witnesses is most directly correlated with trials conducted in the community directly affected by the crime, particularly when the accused are members of the Croatian armed forces and the prosecution witnesses are Serbs. Witnesses who reside in the community are most susceptible to pressure, supporting greater use of the specialized war crimes courts for trials that rely on local witnesses. An important illustration of this use of the special courts was the transfer of the proceedings against MP Branimir Glavas from Osijek to Zagreb, specifically to avoid pressure on witnesses as well as threats to judicial impartiality. However, this case also highlights that transfer alone does not eradicate concerns about pressures on witnesses and that additional measures are required. Hostile climates can also jeopardize the testimony of witnesses who reside outside the community, including abroad, who must return to the community to testify.

Witnesses are frequently reluctant to testify, as manifested by the failure of some to appear for trial as well as the manner in which others testify. Reasons range from exhaustion after testifying in repeated proceedings to illness and fear. It is likely that lack of information, preparation, and support for testifying has a significant impact upon whether a witness will appear for trial, the quality of the witness’ testimony if s/he appears, as well as his/her experience of the court proceeding. In addition, as demonstrated by one day of the “Lora” trial in which three of four prosecution witnesses failed to appear, there is no prior confirmation of whether a witness received notification and will appear to testify, resulting in frequent trial delays for no-show witnesses.³²

²⁹ E.g., RH v. Slobodan Davidovic [IX-K-rz-1/05] Zagreb County Court (video recording of crimes entered as evidence although obtained without the request of an investigative judge per Articles 180 and 183 of the Criminal Procedure Code because accused was aware of and agreed to filming).

³⁰ E.g., RH v. Luka Markesic et al. (“Bjelovar group”), K-18/04-84 (MoD could not locate files of 1991 investigation); RH v. Zeljko Iharos et al. (“Virovitica group”) K-DO-62/01 (trial delayed for several months awaiting MoD’s response to document request); RH v. Tomislav Duic et.al. (“Lora”) K-93/04, (MoD able to provide only part of records requested).

³¹ Of 17 trials ongoing in 2005, 14 were conducted where the war crimes occurred.

³² Of three no-show witnesses, one later informed the court that she was sick and asked to have her previous testimony read; the summons for the second was returned and the Presiding Judge upon telephoning the residence was informed that the witness had a stroke; and the third summons was returned as the witness did not live at that address. In another example, a witness whom the court ordered brought to the court by police because he did not respond to summons again failed to appear after claiming to be ill.

1. Beyond witness protection: witness security, prevention of witness tampering, and support for testimony

To date, discussions about witness security have disproportionately focused on the most extreme forms of protection, which apply in limited circumstances and leave most witness security and support issues unaddressed. The Witness Protection Law and the crime of revealing the identity of a protected witness apply to only the few witnesses who are formally included in the witness protection program as “Endangered Persons.”³³ Most witnesses in war crimes proceedings will neither need nor receive formal witness protection. Nonetheless, they need to be safeguarded at all stages of the proceedings – police investigation through post-trial – from either direct or indirect intimidation. Particular attention to the support and protection of sexual assault victims appears necessary in light of the particularly poor handling of a high-profile investigation and trial of a non-war crime sexual assault.³⁴ Security is essential not only for witnesses involved in a proceeding, but also to ensure that potential witnesses are not deterred from cooperating with investigations. A legal framework sufficient to reach intimidation at all procedural stages, rigorous enforcement, and the creation of a “zero tolerance” environment for witness intimidation are required.

Public disclosures thwarted implementation of the Witness Protection Law and posed challenges to the integrity of war crimes investigations. For example, while the authorities were placing a witness into the protection programme in relation to an investigation of war crimes against Serb civilians in Osijek, the witness’ father identified his son at a press conference.³⁵ Similarly, MP Anto Djapic identified at a press conference broadcast on local television 20 persons who were co-operating with the Osijek investigation.

In addition to security and freedom from intimidation, witnesses would benefit from information and support during the investigation and trial, although such services must safeguard against directing the content of a witness’ testimony. Although the trial outcome is almost completely dependent upon their testimony, most witnesses receive little or no information from authorities in advance of testifying. While frequently called to testify about traumatic events, witnesses receive little or no psychological support. In the absence of State services, NGOs have become engaged in providing services such as logistical and psychological support. A Witness Support Unit was established in the Ministry of Justice in June 2005 to provide assistance and support to witnesses in inter-state cases only; however as of June 2006, few activities were observable. In early 2006, two pilot projects funded by the United Kingdom in the Vukovar and Sisak County Courts for victim support were initiated, although not specifically targeted at war crimes

³³ Witness Protection Law (NN 163/03); Article 305a Criminal Code (NN 62/03). In 2005, the Mission observed only one protected witness testifying at a war-related murder trial – RH v. Josip Sutak, K-DO-56/5 – and none in war crime trials.

³⁴ RH v. Joso Mraovic, K-10/05-107, 1 December 2005 (Gospic County Court).

³⁵ As of October 2006, pursuant to a recent amendment to the Criminal Code, it will also be a crime to reveal the identity of a person who is in the process of being included in the Witness Protection Programme. Amended Article 305a (NN 71/06).

proceedings. Another by-product of the UK project was a draft Government strategy for victim support.

2. In-court harassment of witnesses

The treatment of witnesses during some trials – and the court’s response thereto - remains a concern. Although fewer incidents occurred than in prior years, prosecution witnesses were subject to abusive comments from the public in the courtroom on several occasions.³⁶ The courts’ usual response was to call for order. However, on several occasions, the court ejected the person who caused the disturbance from the courtroom.³⁷

Some defendants and defence counsel were also abusive to witnesses. During the “Lora” trial, a defendant verbally attacked a prosecution witness from Serbia and Montenegro when they came into proximity outside the courtroom. This example suggests that additional measures may be required to minimize contact between defendants and witnesses outside the courtroom.

In some cases, defence counsel verbally attacked or insulted Serbs testifying for the prosecution. Some defence lawyers sought to question the credibility of Serb witnesses solely on the basis of their ethnic origin, political affiliation or participation in the armed rebellion, arguably exceeding legitimate efforts to impeach the witnesses’ credibility.³⁸ In the “Lora” trial, two defence lawyers repeatedly addressed Serb witnesses from SiCG and BiH by their first names or referred to them as “Chetnik.” One defence lawyer also objected to some witnesses because they had served in the RSK or JNA forces.³⁹ The court issued repeated warnings but neither entered its warnings into the court minutes nor used its discretion to fine the defence counsel.⁴⁰

Witnesses who had not yet testified were on several occasions present during the testimony of other witnesses.⁴¹ Such instances demonstrate the need for additional measures to identify and sequester witnesses until they testify. This is needed not only to comply with the law,⁴² but also to avoid possible additional pressures on witnesses.

³⁶ See e.g., “Lora” (during testimony of several witnesses, relatives of a defendant repeatedly made loud comments (e.g., “See this Chetnik”) and reacted with loud laughter).

³⁷ See e.g., “Lora” (court had bailiffs remove a member of the public who loudly commented on witness’ testimony); RH v. Milan Stojisavljevic (defendant’s wife ejected after repeated outbursts). In contrast, RH v. Ljuban Devetak et al. (“Lovas”) (defendant’s wife ejected for chewing gum in the courtroom).

³⁸ “Virovitica group.”

³⁹ Defence attorney objected to prosecution calling additional witnesses from abroad stating that “...these people cannot be credible witnesses as they were ‘chetniks’ and enemies of Croatia.”

⁴⁰ If a warning fails to produce the desired effect, the panel may order the party to be removed from the courtroom and also impose a fine up to 2000 HRK. Article 300, Criminal Procedure Code (CPC).

⁴¹ See e.g., “Bjelovar group” (prosecution witness present during another witness’ testimony until removed by the court); “Virovitica group” (witnesses summoned in 2 groups during one day of testimony; during testimony of first group, two military policemen who later testified were present in the court room).

⁴² Art 248, CPC stipulates that “each witness shall be examined separately and without the presence of other witnesses...”

3. Out-of-court pressure on witnesses/changed testimony

Some witnesses were exposed or claimed they were exposed to pressure during investigations as well as during trial. This underscored the need to enhance protection for informants and witnesses during all stages of the proceedings as well as vigorous prosecution of confirmed incidents of coercion.

As in prior years, witnesses in some trials claimed that they were subject to harassment, threats, or other types of tampering. However, it was not possible to conclude whether some or all of these incidents actually occurred and if so, whether they affected the testimony. Several witnesses testified that they had been offered bribes or threatened so that they either alter their testimony or refrain from testifying.⁴³ In several cases, witnesses who changed their testimony at trial claimed that their prior statements were the result of pressure by the police or the investigative judge.⁴⁴ However, the court rejected these claims of coercion and credited the original testimony. A witness whose testimony had been key to the Slavonski Brod County Court *in absentia* conviction of Jovan Petkovic, on which basis he was extradited from Switzerland, recanted her accusation of rape, contending that it had been coerced by the police and investigative judge in the first trial. The court rejected the witness' claim, stating that "since the entire proceeding was initiated and based on the witness testimony, the court does not believe there was any pressure." The court also suggested that the witness was mentally unstable.

In contrast to prior years, few trials were marked by examples of witnesses testifying that they could no longer recall relevant events to which they had previously testified.

4. Access to witnesses residing abroad – in person and video-link testimony

In 2005, improved inter-state co-operation facilitated in-court testimony by witnesses currently residing in SiCG and BiH. Following a practice established when witnesses from Croatia went to Belgrade to testify in the "Ovcara" trial, the authorities of SiCG and Croatia co-operated in the transport and security for witnesses from SiCG in the "Lora" trial. The Witness Protection Unit of the Serbian Ministry of Interior accompanied the witnesses at all times. At a press conference organized upon their return to Belgrade, the

⁴³ See e.g., "Lora". Two prosecution witnesses from BiH testified that prior to trial they had been contacted by persons attempting to influence their testimony, one claiming that he had been offered 30.000 KM not to testify. Another witness sought to be excused from testifying, claiming that he had received anonymous threatening phone calls and was afraid for his life and that of his family. The court subsequently withdrew the summons for this witness to testify.

⁴⁴ E.g., "Bjelovar group" (several witnesses claimed that in an earlier stage of the case, they were subject to threats to testify either in favour of or against defendants; one witness claimed police pressured him during investigation); "Virovitica group" (two prosecution witnesses alleged police coerced their testimony implicating the accused by threatening them with criminal charges and by eliciting their statements under the influence of alcohol. Recanting an earlier statement, one witness stated that the police detained him for 24 hours, gave him alcohol, threatened him with jail, dictated the contents of his statement and told him that he had to repeat the same story before the investigative judge. He claimed not to remember what he had stated to police or before the investigative judge since he was drunk. Also recanting, another witness stated that his prior statement was given only because the police threatened that they would criminally charge him.)

witnesses stated that they felt secure in Croatia, expressed gratitude to the authorities of both countries, and encouraged other witnesses to come forward. While ultimately successful, co-operation between the authorities of Croatia and BiH in relation to witnesses in the “Lora” trial was initially complicated by a lack of coordination. After several witnesses responded negatively to Croatian summons to testify, additional efforts including the intervention of NGOs resulted in the witnesses agreeing to testify.

In the absence of an agreement by all parties, Croatian law does not explicitly permit the use of video-link to obtain the testimony of a witness who resides abroad and who cannot or will not appear in person. In late January 2006, the Split County Court rejected the prosecution’s request in the “Lora” trial that testimony be received by video-link from a witness in Australia.⁴⁵ As one of four specialized war crimes court, Split County Court was provided with video-link equipment by the United States in 2005.⁴⁶ The need to utilize video-link testimonies was identified during the OSCE-facilitated meeting on inter-state judicial co-operation held in Mostar, BiH in October 2005.⁴⁷ The ICTY, which routinely accepts testimony by video-link, underlined the importance of solving this issue.

The rejection of video-link in the “Lora” trial suggests a gap in domestic law. In May 2006, the Minister of Justice acknowledged that amendments to the Criminal Procedure Code would be required in order to ensure the routine admissibility of video-link testimony from persons abroad. Proposed amendments are pending as of late June 2006. The Minister further acknowledged that the Government would move ahead with ratification by Parliament of the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters – signed by Croatia in 2004 – which provides guidelines for the use of video-link testimony.

5. Inconsistent witness statements and procedural errors – court approach

While inconsistencies in witness testimony are not unusual in criminal cases, war crimes trials appear to experience an increased rate of inconsistency due to a number of factors, including passage of time, frequent reliance on elderly or uneducated witnesses, possible intimidation or harassment, or witnesses simply not wanting to be involved. The extensive and frequent inconsistencies seen in the testimony of individual witnesses as well as between the testimony of different witnesses creates an additional challenge for courts and prosecutors to determine where the facts and whether testimony is of a sufficient quality and credibility to sustain a guilty verdict. The high frequency of such

⁴⁵ The court determined that this would constitute “indirect” testimony. Article 331 (Art 348), CPC.

⁴⁶ To date, video-link has been used in war crimes trials in the inter-state context only to provide testimony by witnesses in Croatia for use in foreign proceedings, e.g., video-link between the Zagreb County Court and the Belgrade Special War Crime Court in June 2005 in the “Ovcara” case for witnesses who did not want to travel to Belgrade. The only domestic use of video-link involved a witness residing in Croatia who suffered from post-traumatic stress disorder. The witness provided testimony in the “Bjelovar group” case via video-link from another room in the courthouse. The law explicitly provides for use of video-link for particularly vulnerable witnesses. Article 248 para. 6, CPC.

⁴⁷ Report, SEC. GAL/222/05, 2 November 2005.

inconsistencies highlights the need for an objective assessment of witness credibility as well as possibly more structured questioning of such witnesses than is commonly done.

For example, the Karlovac County Court accepted several witnesses' identification of Svetozar Karan as the perpetrator although the identification procedure did not comply with applicable law.⁴⁸ Further, although the witnesses identified Karan, only one testified that Karan had beaten him. Others testified only that they had seen Karan in the relevant location or that his voice was similar to a person who had beaten them. Milan Stojisavljevic was convicted on the basis of testimony given by two witnesses who although arrested together, gave significantly different descriptions of where they were arrested. Further, one witness during the investigation stated that Stojisavljevic beat him, but during the trial he testified that it was possible that the defendant hit him from behind, but he did not see him. The Osijek County Court took note of these discrepancies, but reasoned that they were a natural consequence of the trauma to which this witness was exposed during detention. The court concluded that the testimony was reliable given that "according to life experience and logic, it cannot be expected for the injured...to fully and reasonably describe the events".⁴⁹ Finally, the Supreme Court upheld the Osijek County Court's acceptance of a witness' testimony who identified Stokan Sekanic for the first time at trial as his assailant, although he had not previously so testified. The Supreme Court found that there was no reason to reject the witness's testimony because "according to life logic, it is in the interest of an injured party that precisely the person who caused the injuries is held responsible for it."⁵⁰

II. Supreme Court Supervision of Trial Courts

In 2005, the Supreme Court reversed war crimes verdicts in 65 per cent of the appeals decided. The reasons for reversal were procedural errors as well as the failure to properly establish facts and apply the law to the facts. In addition, in several cases where the Supreme Court confirmed the trial court's conviction, it changed the sentence. The reasons for sentencing revision were improper consideration of aggravating and mitigating factors. Given the significant number of *in absentia* trials conducted in past years, the Supreme Court's war crime docket also includes a considerable number of *in absentia* appeals. Of 13 cases decided by the Supreme Court in 2005, four were fully *in absentia*.⁵¹ The Supreme Court also decided three cases in which it had previously issued a decision on appeal, including one fully *in absentia* case.⁵²

⁴⁸ RH v. Svetozar Karan, K-4/04-2, 30 June 2005.

⁴⁹ RH v. Milan Stojisavljevic, K-89/03-166, 16 July 2005 (re-trial).

⁵⁰ RH v. Stokan Sekanic, I Kz-968/04-6, 20 September 2005.

⁵¹ RH v. Macakanja et al., RH v. Nikola Gagic, and RH v. Djuro Mirkovic [all three Zadar County Court]; RH v. Radoslav Cubrilo et al. ("Lovinac") [Gospic County Court]. Two were reversed, two confirmed.

⁵² RH v. Fikret Abdic [Karlovac County Court]; RH v. Radoslav Cubrilo et al. ("Lovinac") (5 defendants *in absentia*) [Gospic County Court]; and RH v. Dejan Subotic [Dubrovnik County Court].

1. Procedural errors

As illustrated by the following cases, trial courts made a variety of procedural errors deemed sufficiently substantive by the Supreme Court as to require reversal of the trial court's verdict and re-trial.

For example, in the "Borovo group" case,⁵³ the Supreme Court identified multiple procedural errors by the Vukovar County Court. First, although the law stipulates that defendants should testify only after all other evidence has been presented, the defendants were interrogated prior to the introduction of other evidence.⁵⁴ Second, although the prosecutor amended the indictment during the trial, the court did not read the newly amended indictment during the trial. The trial court then compounded the error by re-interrogating the defendants on the basis of the amended indictment, without having them enter their plea on the amended indictment. Only after the prosecutor submitted the amended indictment in writing were the defendants permitted to re-enter their plea.⁵⁵

Third, the Supreme Court found that two defendants had the same defence lawyer, which is contrary to law.⁵⁶ The trial court appointed a lawyer for one defendant who had been retained privately by a co-defendant. On remand, the Supreme Court ordered that the defendants be provided with separate attorneys.

The Supreme Court found a similar error by the Osijek County Court because it interrogated defendant Milan Stojisavljevic prior to receiving all other evidence. The Supreme Court observed that the trial court applied the wrong law, improperly relying on the Criminal Procedure Code from 1993 instead of that from 1997.⁵⁷

The Supreme Court determined that the Sisak County Court erred in refusing to grant a new trial to Rade Vrga who, after his conviction had become final, approached the court with new evidence.⁵⁸ The trial court "prematurely" denied a second trial on the grounds that the new witnesses had sufficient time to come forward in the first trial without assessing the new evidence offered. The Supreme Court observed that the trial court must evaluate the new evidence in light of the facts established at trial, stressing that the amount of time between the first proceeding and the request for a new trial was not itself a sufficient basis for determining the probative value of the new evidence.

⁵³ RH v. Jovan Curcic et al., I Kz 1076/04-5, 23 February 2005; all re-convicted on remand K-12/05, 15 December 2005.

⁵⁴ Defendants can be examined prior to the presentation of all other evidence but only upon their explicit request, which was not done in this case. Article 321(2), CPC.

⁵⁵ Contrary to Article 367 (1 (8)), CPC.

⁵⁶ Defendants can have the same lawyer but only when they are charged for different offences or where joint representation is not contrary to the interests of their defence. Article 63 (1), CPC.

⁵⁷ RH v. Milan Stojisavljevic, I Kz 969/04-6, 1 February 2005.

⁵⁸ RH v. Rade Vrga, I Kz 1071/03-3, 13 April 2005.

2. Errors in finding and weighing facts and applying the facts to the law

In Stevo Macakanja and others, the Supreme Court reversed the Zadar County Court's *in absentia* conviction for the second time.⁵⁹ The Supreme Court found that the trial court failed to substantiate its verdict, in particular failing to indicate how the facts established during the trial supported its finding that two defendants were accomplices. Further, the trial court failed to determine the existence of a joint intent to commit the offence. In addition, the Supreme Court explicitly observed that the trial court failed to follow its instructions from 2002 when it invalidated the trial court's first verdict, and again failed to determine who of the four defendants committed the offence as an accomplice in contrast to those who committed it as direct perpetrators.

In Radoslav Cubrilo and others, the Supreme Court reversed the Gospić County Court's 2000 *in absentia* conviction for the same reason it had previously reversed its 1994 *in absentia* conviction.⁶⁰ The Supreme Court noted that the trial court failed to substantiate its verdict, inadequately explaining its reasoning and the facts that supported the conviction. The Supreme Court determined that the trial court found facts contrary to the witness testimony presented. Although it could not be concluded to the appropriate level of certainty from the witness testimony that all of the accused were present at the crime scene, the trial court nevertheless found that all were present. Moreover the Supreme Court found that the trial court had wrongly concluded from the presence of the accused at the crime scene that they had killed the victims, without establishing causation. The Supreme Court observed that the trial court made the same mistake as in the first trial although it had previously provided an explanation how the case should be tried on remand. The Supreme Court, therefore, ordered a retrial before a new panel of judges. As the Gospić County Court was unable to form a new panel because only one judge had not previously ruled in the case, the Supreme Court subsequently transferred the case for re-trial to the Rijeka County Court.⁶¹

In the appeal against the acquittal of one of the "Paulin Dvor" defendants, Enes Viteskić, the Supreme Court found that the Osijek County Court inappropriately disregarded evidence that might establish the defendant's guilt.⁶² The Supreme Court noted that there was no direct evidence that the defendant committed the crime. However, the trial court failed to consider statements of 16 prosecution witnesses. The Supreme Court concluded therefore that the trial court brought a "premature" decision on acquittal.

3. Sentencing errors

In the appeal against the conviction of the other "Paulin Dvor" defendant, Nikola Ivanković, the Supreme Court increased the 12-year sentence imposed by the Osijek County Court to 15 years.⁶³ The Supreme Court reasoned that the crime was committed

⁵⁹ RH v. Stevo Macakanja, et al., I Kz 682/03-3, 29 September 2005.

⁶⁰ RH v. Radoslav Cubrilo et al. ("Lovinac"), I Kz 573/00-3, 5 May 2005.

⁶¹ RH v. Radoslav Cubrilo et al. ("Lovinac"), II 4 Kr 41/06-3, 7 March 2006.

⁶² RH v. Nikola Ivanković and Enes Viteskić, I Kz 1196/04-5, 10 May 2005.

⁶³ RH v. Nikola Ivanković and Enes Viteskić, I Kz 1196/04-5, 10 May 2005.

in a particularly brutal and ruthless manner,⁶⁴ which was not properly assessed by the trial court when considering mitigating and aggravating circumstances. The Supreme Court found that the trial court “attributed too much significance to the mitigating circumstances, while on the other hand aggravating circumstances were not appreciated sufficiently.” Despite mitigating circumstances, such as no prior criminal record and participation in the Homeland War, as a result of which Ivankovic suffered from post-traumatic stress disorder, the brutality of the killing of 18 civilians was an aggravating circumstance that warranted a sentence higher than 12 years.

The Supreme Court in upholding the conviction of Stokan Sekanic discussed what it considered to be the Osijek County Court’s proper consideration of mitigating and aggravating circumstances. It found that for the purpose of mitigation, Sekanic’s assistance to Croats was the relevant fact, not his motivation for so doing. Rejecting the prosecution’s argument, the Supreme Court found that participation in armed rebellion could not properly be considered as an aggravating circumstance, given that such participation was amnestied by law.⁶⁵

Rejecting a prosecution argument that Sekanic should be sentenced more severely because the conduct for which he was convicted occurred in the context of a wider pattern of abuses, the Supreme Court reminded that Sekanic could only be punished for the crimes he committed. The Supreme Court found that the larger context in which Sekanic committed crimes could not be properly considered as an aggravating factor.

Acting on a third instance appeal, the Supreme Court reduced the sentence of Fikret Abdic from 20 to 15 years.⁶⁶ It deemed that given his age, 67, Abdic would not repeat the same or similar conduct for which he was sentenced. The Supreme Court found that the deterrence purpose of imprisonment could still be achieved with a reduced sentence.

4. Overcharging/errors in indictment

The Supreme Court also reviewed errors by the prosecution and investigative judges that led to unnecessary trials and appeals. For example, confirming the Dubrovnik County Court’s acquittal of Dejan Subotic,⁶⁷ the Supreme Court, deciding the case for the second time, found that the conduct for which Subotic had been indicted and tried twice did not constitute a war crime according to Croatian law or the Geneva Conventions. The Supreme Court found that the charged acts, such as transport of civilians to the place where they were interrogated and driving a vehicle illegally taken from a civilian do not constitute war crimes against the civilian population.

⁶⁴ For the Supreme Court, evidence of the brutality of the crime was established by the fact that the “[p]erpetrators returned to the house to check if anyone survived; they removed their face masks after they were sure that there were no survivors.”

⁶⁵ The Supreme Court’s decision appears internally inconsistent, however, as the Osijek County Court considered participation in the armed rebellion as an aggravating circumstance.

⁶⁶ RH v. Fikret Abdic, I Kz 2/04-11, 8 February 2005.

⁶⁷ RH v. Dejan Subotic, I Kz 471/01-8, 15 December 2005.

The Supreme Court also confirmed the Vukovar County Court's acquittal of Milan Paripovic, finding that a victim's statement given during the investigation and which served as the basis for the indictment was misinterpreted as an accusation.⁶⁸ Specifically, the victim mentioned Paripovic when providing names of people with whom he was familiar as well as names of people who participated in the events during which he was tortured and abused. During trial, however, he explained that Paripovic "saved his life," elaborating in detail the manner in which the defendant helped him. In its appeal of the acquittal, the Prosecutor challenged the credibility of the victim's statement, claiming that the victim "wanted to help the perpetrator avoid criminal responsibility." The Supreme Court rejected the Prosecution's claim as illogical, explaining that the victim would remember the events during which he was abused all his life.

III. Defence Counsel – Fair Trial Concerns – Equality of Arms and Adequate Representation

Nearly 75 per cent of accused on trial for war crimes in 2005 were represented by court-appointed defence counsel.⁶⁹ Further, of those accused represented by court-appointed counsel, approximately 70 per cent did not have their own attorney, but shared an attorney with between one and four other co-accused.⁷⁰ In two trials conducted by the Vukovar County Court in 2005, six attorneys represented 14 defendants and 7 attorneys represented 26 defendants, respectively.⁷¹ Three-quarters of these accused were tried *in absentia*. The Supreme Court in 2005 invalidated a conviction by the Vukovar County Court finding *inter alia* that representation by one attorney of two defendants, one a private client and the other court-appointed as well as *in absentia*, constituted reversible error.⁷² This type of group representation raises ethical questions about attorneys who accept such appointments as well as the adequacy of the attention paid by the court to fair trial concerns, including those specified in the Criminal Procedure Code.⁷³ It is also another indication of the weaknesses of *in absentia* trials.

The European Court of Human Rights (ECHR) has observed that the fair trial right of criminal defendants to counsel entails adequate representation.⁷⁴ The ECHR has further noted that where counsel is appointed for defendants lacking sufficient financial means,

⁶⁸ RH v. Milan Paripovic and Mile Pavkovic, I Kz 531/01-7, 8 November 2005 (Pavkovic died while the appeal was pending for 4 ½ years at the Supreme Court).

⁶⁹ Of 76 defendants on trial in 2005, 56 (35 Serbs) were represented by court-appointed counsel. Private counsel was retained by only 20 defendants. In RH v. Vaso Petrovic et al. ("Branjin Vrh") [Osijek County Court], pre-trial proceedings were conducted in May 2005 with 3 of 13 defendants present and represented by private counsel where genocide charges were re-qualified to armed rebellion and dropped. For the other 10 *in absentia* defendants, no lawyer has been appointed although there is a decision to continue proceedings *in absentia*.

⁷⁰ Of 56 accused represented by court-appointed counsel, 40 had counsel who represented other co-accused.

⁷¹ RH v. Ljuban Devetak et al. ("Lovas"); RH v. Jugoslav Misljenovic et al. ("Miklusevci").

⁷² RH v. Jovan Curcic et al. ("Borovo Group"), I Kz 1076/04-5, 23 February 2005.

⁷³ Multiple defendants can have the same lawyer but only when they are charged for different offences or where joint representation is not contrary to the interests of their defence. Article 63 (1), CPC.

⁷⁴ Mayzit v. Russia, 20 January 2005. Article 29 of the Croatian Constitution provides an analogous right to counsel, including court-appointed counsel for those lacking sufficient funds.

appointment alone does not fulfill the State's obligation to ensure effective assistance.⁷⁵ The State cannot be held responsible for every shortcoming on the part of a lawyer. However, authorities must intervene "if a failure by legal aid counsel to provide effective representation is manifest or sufficiently brought to their attention in some other way."⁷⁶ Decisive for the ECHR is whether the totality of the circumstances indicates that a court should not have remained passive in the face of representation by court-appointed counsel. Relevant indicators for determining whether a court has a positive obligation to act include efforts by the defendant to bring inadequacies to the court's attention or certain severe formal legal errors by the attorney.⁷⁷

In Croatia, a criminal defendant must be represented by a lawyer when ordered into detention, indicted for an offence punishable by imprisonment exceeding eight years, and at the time a decision is taken to proceed to trial *in absentia*.⁷⁸ If a defendant cannot afford counsel, s/he is appointed one by the president of the court for the duration of the proceeding.⁷⁹ The court appoints counsel from a list of attorneys registered to practice in its vicinity. The court is obligated to ensure that an adequate legal defence is provided and to take steps where representation is insufficient, including dismissal of appointed counsel.⁸⁰

Lawyers appointed by the courts to represent those accused of serious felonies, including war crimes, are compensated at a significantly reduced rate – approximately fifty per cent or less – than the standard tariff fixed by the Croatian Bar Association.⁸¹ The tariff provides for pro-rated compensation for each additional defendant represented in the same proceeding up to certain limits.⁸² Hence, the fee schedule establishes a financial incentive to accept multiple appointments in the same case, creating a potential conflict between the lawyer's financial interest and the individual defendant's interest in adequate representation.

⁷⁵ *Imbrioscia v. Switzerland*, 24 November 1993, para. 38

⁷⁶ *Kamasinski v. Austria*, para. 65.

⁷⁷ *Czekalla v. Portugal*, 10 January 2003, paras. 65, 66, 68.

⁷⁸ Article 65, paras. 2, 3, 4, CPC.

⁷⁹ Article 65, para. 5, CPC.

⁸⁰ Article 67 para 4, CPC. The Court President can dismiss a defence counsel who is not performing his/her duties properly and appoint substitute counsel. The Bar Association is to be notified of the dismissal.

⁸¹ The Bar Association fixes the rates for compensating attorneys' work (both fees and costs), while the Ministry of Justice establishes the maximum fee payable to court-appointed attorneys. Article 18, Law on Attorneys (NN 9/94). For criminal defence, the Bar Association calibrates remuneration by the type of activity as well as by the seriousness of the offence. For example, for crimes subject to imprisonment exceeding ten years, such as war crimes, attorneys are entitled to charge paying clients 4000 kunas (approximately €555) per trial day. Item 4, para. 1, point 4, Tariff of Fees and Reimbursement of Costs for the Work of Attorneys of the Croatian Bar Association (NN 91/04) (Tariff). However, court-appointed attorneys representing clients charged with the same crime would receive half of that amount - 2000 kunas (approximately €277) per trial day – for purposes of costs. Item 4, para. 7, Tariff. In addition, court-appointed attorneys would receive a fee of 300 kunas (approximately €40) per trial day, for a total of 2300 kunas (approximately €320) per trial day. Article 2, Item 1, point 4, Ministry of Justice Rulebook on Fees for Court-Appointed Defence Counsel (NN 3/05).

⁸² For each additional defendant represented in the same proceeding, a lawyer receives 10 per cent of the tariff, up to a maximum of 50 per cent regardless of the additional number of defendants. Item 36, para. 1, Tariff.

The adequacy of court-appointed defence counsel was particularly questionable in the trial of Slobodan Davidovic, convicted by the Zagreb special crimes court in December 2005.⁸³ During the trial and appeal, the attorney's involvement was largely *pro forma* and the court did not attempt to increase the attorney's engagement.⁸⁴ Concerns about adequacy of representation are also raised by procedural errors by court-appointed defence counsel to the detriment of the accused,⁸⁵ as well as tardiness and absence for significant periods during the trial.⁸⁶

Given the legal principles involved in war crimes trials, including the application of international humanitarian law, appointment of defence counsel with no or limited experience or training in war crimes raises fair trial concerns. In order to better ensure equality of arms in relation to court-appointed defence counsel, the Mission proposes that a roster of certified counsel be developed and that courts only appoint defence counsel from this list. The list could include attorneys with considerable experience or specific training related to war crimes trials.

Training specific to war crimes prosecution was provided to defence attorneys in late 2005 by ABA-CEELI, through a project funded by the United States. To date, the Ministry of Justice has provided training only for prosecutors and judges, primarily in the four special courts, although local courts regularly appoint counsel to defend war crimes defendants.

IV. Prosecution: What Has Been Prosecuted and What Remains; Civil Damages

According to Mission information, all new war crimes indictments raised in 2005 were against Serbs, although this changed in early 2006 with the initiation of several indictments and investigations against Croats. Prosecutors continued their review of pending cases, the vast majority of which are against Serbs, to determine whether there was sufficient evidence to proceed. A by-product of the review is an updated list of approximately 1,100 persons sought by Croatia on suspicion of war crimes as of Spring 2006. Despite this review, some unsubstantiated charges continued to be processed, as evident from cases where charges were abandoned, including for persons extradited from third countries, as well as war crime and genocide charges re-qualified to armed rebellion and amnestied. [See Section C.VIII.1, 2] This indicates that further review of cases initiated in prior years is appropriate. Inter-state co-operation between prosecutors

⁸³ RH v. Slobodan Davidovic, K-DO-182/05 (sentenced to 15 years for crimes committed in Croatia and BiH while part of "Skorpions" paramilitary unit); Supreme Court confirmed 25 April 2006, I KS 174/06-4.

⁸⁴ The attorney proposed no witnesses and asked no questions, lodged one technical motion and a made cursory summation.

⁸⁵ E.g., RH v. Milan Loncar, Kio-25/99-2 [Slavonski Brod County Court]. The trial court rejected as untimely an appeal against the decision to initiate an investigation given that court-appointed defence lawyer missed the legal deadline. Loncar was released in early 2006 when the charges against him for which he had been extradited from Germany were abandoned.

⁸⁶ In RH v. Tomislav Duic et al. ("Lora") [Split County Court], the court issued a written warning to appointed counsel about tardiness. In RH v. Jugoslav Misljenovic et al. ("Miklusevci") [Vukovar County Court], several court-appointed defence counsel were absent from the courtroom for portions of the trial during which time the defendants had no representation.

increased considerably during 2005, largely due to the initiative of the Chief State Attorney. [See Section B.I]

Media, survivors, veterans' organizations and local and international NGOs have repeatedly highlighted crimes that remain unpunished, in particular those involving Serb victims but also Croat victims. Prosecutors cite lack of evidence and witnesses in addition to the passage of time as primary obstacles to initiating prosecutions, particularly those against members of the Croatian armed forces for crimes against Serbs. The ongoing transfer of investigative materials from the ICTY, improved co-operation with prosecutors in Serbia, Montenegro, and BiH, further progress in the retrieval and identification of approximately 2,000 persons still missing from Croatia, as well as a more positive climate for the co-operation of informants with authorities provide reason for optimism that some previously unprosecuted crimes may be pursued.⁸⁷

On the basis of the war crimes convictions in the "Paulin Dvor" and "Gospic Group" cases, local courts awarded civil damages to surviving family members of some of those killed.⁸⁸ Other civil verdicts awarding compensation to Serb survivors for intentional killings perpetrated by members of the army and police for which there are no criminal verdicts suggest that further prosecutions may be warranted.⁸⁹ Croat victims have initiated a series of lawsuits against the Croatian Government attempting to obtain civil damages for killings perpetrated by the Yugoslav Army or the RSK forces. To date, these attempts have been rejected as Croatia is found not liable for such damages. Indeed, such civil damages would more appropriately be filed against the Government of Serbia or other relevant government responsible for the actions of those armed forces.⁹⁰ Claims seeking compensation for property damage allegedly resulting from the excessive use of force outside legitimate operations by Croatian forces have been largely unsuccessful.

V. Impartiality Concerns

There has been an observable decrease in ethnic bias as a result of corrective measures in various aspects of Croatia's war crimes proceedings. One significant indicator of this was

⁸⁷ For example, on the tenth anniversary of Operation Storm in early August 2005, Amnesty International as well as the Croatian Helsinki Committee urged Croatian authorities to investigate killings and disappearances allegedly committed by Croatian armed forces.

⁸⁸ Nenad Jelic v. RH, Osijek Municipal Court, 4 May 2005, P-75/04 (awarded €28,000 in damages to surviving family member whose parents were killed in Paulin Dvor in November 1991 by Croatian army members, along with 17 other civilians); Darinka Vujnovic v. RH, Gospic Municipal Court, 14 June 2006, P-512/05-17 (awarded €39,000 in damages to surviving wife whose husband was killed after being taken from their home in late 1991, having been last seen in military and police custody.)

⁸⁹ E.g., in early August 2005, the Otocac Municipal Court awarded €5,000 to surviving family members of a Serb who disappeared in November 1991 while in police custody. Skendzic and others v. RH, P-82/02/51, 6 May 2005. Once it has information, a State is obligated to investigate deaths or disappearances, particularly where they are racially or ethnically motivated. The failure to effectively investigate constitutes a violation of the right to life and the right to enjoy Convention protected rights free of discrimination on the basis of race or national origin. See e.g., ECHR Grand Chamber Judgment in *Nachova and others v. Bulgaria*, 43577/98 and 43579/98, 5 July 2005.

⁹⁰ Marinko Ledenko v. RH, Benkovac Municipal Court, P-413/05. Claim filed under the Law on Terrorist Acts denied in April 2006. Several similar claims were subsequently denied by the same court. The Gospic Municipal Court has similarly rejected such claims. See Ante Brkljacic v. RH, P-154/05, 10 May 2006.

the ICTY transfer of the Norac/Ademi indictment, in which the ICTY concluded that adequate conditions and safeguards exist for a fair trial, both in terms of the accused but also the larger public interest. However, several indicators present in 2005, continue to suggest that impartiality remains a concern in some individual cases and when viewing prosecutions as a whole.

1. Serbs were prosecuted for a wide range of conduct involving abuse, expulsion, property destruction, and killings while Croats were almost exclusively prosecuted for killings. [See Section C. VI.] This pattern suggests that the police and prosecution applied a different threshold for charging defendants directly correlated with ethnic origin. This may partially reflect a difference in the time period in which the charges were lodged, those against Serbs largely initiated in past years, while those against Croats are quite recent. Without corrective measures this inequity will continue in future proceedings.

2. The continuing use of “participation in the homeland war” as a mitigating circumstance to decrease punishment for members of the Croatian armed forces convicted of war crimes remains of concern. [See Section C.VII.1] The Supreme Court confirmed the Osijek County Court’s conviction of one accused in the “Paulin Dvor” case, but increased the sentence from 12 to 15 years, indicating that the trial court’s application of this mitigating circumstance had not been properly balanced against aggravating circumstances.⁹¹ It did not, however, deem the application of this mitigating factor as inappropriate *per se*. In 2006, trial courts continued to apply this mitigating factor.⁹² The ICTY does not apply this type of mitigating factor and in the Mission’s view, military service is not an appropriate sentencing factor.

3. War crime trials in 2005 were, as in past years, primarily conducted in those areas of Croatia most directly affected by the conflict. [See Section C.I., C.VIII.2] Zagreb was the only specially designated war crimes court to receive cases delegated by the Supreme Court from local courts in 2005 and the first half of 2006, receiving a total of three cases. Concerns about witness security and intimidation, particularly for witnesses residing in the same community, as well as judicial impartiality are at their highest when cases are tried locally. Pressures can also affect prosecutors and the defence.

The Mission would recommend that the Chief State Attorney in 2006 consider making greater use of his discretion under the ICC Law to request transfer of cases from some local courts to those courts deemed to be more insulated from pressure, such as in Zagreb and Rijeka.

4. As in past years, the vast majority of Serb defendants were tried *in absentia*, particularly in large group cases in the Vukovar County Court. [See Section C.VIII.2.] With improving inter-state judicial co-operation, the continuation of this practice is increasingly questionable. A significant number of *in absentia* cases are also pending appeal at the Supreme Court.

⁹¹ RH vs. Nikola Ivankovic, I Kz 1196/045, 10 May 2005.

⁹² RH vs. Tomislav Duic et al. (“Lora”) K-DO-131/01 Split County Court.

5. Linked to the *in absentia* cases against Serb defendants is the practice of courts appointing one defence counsel to represent multiple defendants, up to 5 or 10, in the same case. [See Section C.III.] Common sense indicates that the quality of representation provided to any one defendant is compromised by these additional and conflicting responsibilities, casting doubt on the validity of any convictions that might result. Since the defendants are not present they cannot waive these conflicts of interest. A number of cases on appeal at the Supreme Court indicate that this practice has been used by several courts over a period of years.

6. Numerical parity in terms of the ethnic origin of defendants is not required. However, the significant disproportion between the numbers of Serbs and Croats charged with war crimes as well as differences observed in charging, including the prosecution of members of the armed forces for common crimes, support a conclusion that ethnicity continues to play a role in war crime proceedings.⁹³

As of the end of July 2006, the Mission is aware of a total of 4 final convictions of Croats for war crimes committed against Serbs since 1991,⁹⁴ while there are hundreds of convictions against Serbs for crimes against Croats. Lack of accountability, criminal or otherwise, for crimes and attempts to hide war crimes remains a concern, particularly for possible crimes by the armed forces. Prosecutors continue to encounter difficulties in obtaining sufficient evidence and witness testimony to prosecute certain crimes.

VI. Conduct Found to Constitute War Crimes and Genocide

While less pronounced than in past years, there continues to be a difference on the basis of ethnic origin in the conduct charged as war crimes, with some Serbs charged for conduct other than killings, while Croats tend to be prosecuted solely for killings. In 2005, the Supreme Court addressed a related issue of inappropriate charging, clarifying types of conduct that were insufficiently severe to constitute war crimes. [See Section C.II.4] At least some war-related crimes involving accused associated with the Croatian armed forces were prosecuted as “common crimes.” The Croatian judiciary appears to apply a broader definition of genocide than that generally found in international humanitarian law, particularly as applied by the ICTY.

⁹³ According to the Chief State Attorney’s 2001 Annual Report, crimes committed during Operations “Storm” and “Flash” when Croatian authorities launched military offensives to re-gain Serb-controlled territory were not prosecuted as war crimes but as common crimes, including charges for murder, robbery and theft. The State Attorney reported that a total of 3970 charges for common crimes were filed pertaining to Operations Storm and Flash and that 1492 convictions were rendered. See also *RH v. Munib Suljic et al.* (“Pakracka Poljana”), VIII-K-16/01, 29 December 2005, Zagreb County Court.

⁹⁴ As of the end of July 2006, the Mission is aware of war crimes trials pertaining to the 1991 to 1995 conflict against a total of 47 Croats. Of these 47, 32 were tried for crimes against Serbs while the remaining 15 were prosecuted for crimes against Croats. Of the 32 that were indicted for crimes against Serbs, 4 Croats have been finally convicted, 8 Croats were found guilty by first instance courts while 12 were acquitted by first instance courts, 1 subject of a final acquittal, 3 had charges dropped, while trials against 4 were ongoing as of the end of July 2006. Of the 15 indicted for crimes against Croats, 4 Croats have been finally convicted, 4 Croats have been found guilty by first instance courts while 2 were acquitted by the first instance courts, 1 had charges dropped, while trials against 4 Croats were ongoing at the end of July 2006.

1. Forms of criminal responsibility: individual responsibility and co-perpetration

In contrast to prior years, in 2005, there were no trial court or appellate decisions in which accused were held responsible for failing to prevent war crimes committed by subordinates, i.e., command responsibility. This finding confirms that the bulk of past prosecutions have involved “rank and file” accused rather than mid-level or even high-level commanders. Several accused were, however, held responsible for their actions as superiors, both civilian and military, in planning or ordering others to commit crimes or directly committing crimes themselves.⁹⁵

Several accused were found guilty of having committed crimes in association with others. Milan Stojisavljevic and Slobodan Davidovic were separately convicted for having committed crimes as accomplices of other unknown perpetrators.⁹⁶ Davor Tosic and Milan Jurjevic were convicted as co-perpetrators, with Tosic as the leader and Jurjevic playing a subordinate role. Similarly, three of the accused in the “Borovo Group” were convicted for committing crimes together. The Supreme Court in Stevo Macakanja and others highlighted the problems some trial courts have in establishing the facts and applying the legal elements specific to co-perpetration, in particular the requirement of a joint intent to commit an offence.⁹⁷ [See Section C.II.2]

2. War crimes against the civilian population

Most war crime trials concluded in 2005 involved crimes that were qualified as war crimes against the civilian population. This offence can *inter alia* be committed by ordering or directly committing “attacks against civilians,” “killings,” “torture,” “inhuman treatment,” “applying measures of intimidation and terror,” and “wanton destruction of property.”⁹⁸

Conduct found to constitute war crimes against the civilian population included killing civilians to “interrogation of non-Serb civilians including torture and abuse during interrogation”, as well as “inhumanly treating civilians ... violating their bodily integrity and intimidation and terror...” Serbs were convicted for war crimes against the civilian population for the range of behaviour described above, while the sole Croat was convicted as an accomplice to the killing of a civilian.

⁹⁵ RH v. Jovan Curcic (“Borovo Group”) Vukovar County Court (as militia station commander, ordered detention, forced labor, and abuse); RH v. Miodrag Balint, Supreme Court (joined “the Serb paramilitary units and was, at the critical moment, commander of reconnoiter units”); RH v. Stokan Sekanic, Osijek County Court (“was commander of a small group of people who participated in the attacks on Kozarevac village”, he was “aware of the nature of the attack” and “he was actively participating in it”); RH v. Fikret Abdic, Supreme Court (overall political and military commander responsible for establishing concentration camps in which abuse of civilians and POWs occurred pursuant to his orders).

⁹⁶ Five alleged co-perpetrators of Davidovic were prosecuted in SiCG.

⁹⁷ RH v. Stevo Macakanja et al., Supreme Court, I Kz 682/03-3, 29 September 2005.

⁹⁸ Article 120, 1993 Criminal Code.

a. Torture and inhuman treatment. Croatian courts found several accused responsible for torture and inhuman treatment, including both those who committed the acts and those who ordered them. The type of conduct that was found to constitute torture and inhuman treatment included:

- as part of the occupying forces, handcuffed and brought in for interrogation 2 civilians, physically abusing them in an attempt to gain confessions;⁹⁹
- as a paramilitary station commander:
 1. ordered subordinates to incarcerate 11 civilians in inhumane conditions,
 2. ordered 11 prisoners imprisoned where they lacked sufficient food and water,
 3. ordered 13 prisoners to be taken to forced labour, and
 4. ordered 6 prisoners to be tortured during interrogation and 19 other prisoners beaten, as a result of which one prisoner died;¹⁰⁰
- following acts against civilians:
 1. physical abuse and torture of civilian prisoners,
 2. cutting off a civilian's ear,
 3. confiscating a civilian vehicle and handing it over to paramilitary forces,
 4. threatening to gouge out a civilian's eyes and kill him,
 5. hitting a civilian prisoner on the head with a rubber stick,
 6. kicking a civilian prisoner for 10 minutes and banging a civilian's head against a wall,
 7. beating and torturing a civilian, placing an unloaded gun in his mouth and pulling the trigger;¹⁰¹
- hitting a civilian with a rifle while forcing him to write names of members of the HDZ party; handing over a civilian to a prison guard with instructions not to release the prisoner without his approval;¹⁰²
- arresting civilians and, during questioning, beating them with a rubber truncheon, and rifle;¹⁰³ and
- detaining sick people in concentration camps, without providing basic health care; systematic mental and physical abuse of persons detained in camps, including children, elderly, disabled and sick persons, resulting in severe bodily injuries and death; forced labor of detainees, including sending them to front (combat) lines; forced conscription.¹⁰⁴

⁹⁹ RH v. Milan Stojisavljevic, Osijek County Court, K-89/03-166, 16 July 2005. The trial court did not clearly distinguish between the conduct that constituted torture and inhuman treatment. It defined torture as inflicting severe bodily injuries, mental anguish or suffering, directed at extracting information as well as punishment, intimidation or exerting pressure. It defined inhuman treatment as wanton infliction of severe mental or bodily suffering or injury that infringed human dignity.

¹⁰⁰ RH v. Jovan Curcic et al., Vukovar County Court, K-12/05, 15 December 2005.

¹⁰¹ RH v. Jovan Curcic et al. Vukovar County Court, K-12/05, 15 December 2005.

¹⁰² RH v. Stokan Sekanic, Supreme Court, I Kz- 968/04-6, 20 September 2005 (confirming conviction of Osijek County Court).

¹⁰³ RH v. Miodrag Balint, Supreme Court, I Kz 967/04-5, 1 February 2005 (confirming conviction of Osijek County Court).

¹⁰⁴ RH v. Fikret Abdic, Supreme Court, III Kz 2/04-11, 8 February 2005.

b. Intimidation and terror. The Supreme Court confirmed the trial court's finding that Stokan Sekanic engaged in the following conduct that constituted intimidation and terror against civilians:

- commanding a group in an armed attack against the defenceless population of Kozarac village during which indiscriminate firing at civilians occurred, civilians were detained and taken hostage, several persons were wounded and 1 killed; and
- invading and destructing of an apartment.¹⁰⁵

c. Killings. Examples of the type and extent of killings that were found by trial courts and the Supreme Court to constitute war crimes against the civilian population included:

- killing one civilian who was watching a passing military convoy by a single shot fired by the defendant, a member of the enemy territorial defence in an occupied area;¹⁰⁶
- killing a civilian who offered no resistance by one accused shooting him several times in the back after which the other shot him three times after he had fallen to the ground, both members of paramilitary forces;¹⁰⁷
- killing 6 persons *hors de combat* together with other members of a paramilitary unit, after abusing and humiliating them;¹⁰⁸
- killing 19 civilians by throwing hand grenades and shooting with an automatic weapon into a house where the civilians were sheltered;¹⁰⁹ and
- killing civilians and prisoners of war as a direct consequence of systematic physical ill-treatment in concentration camps.¹¹⁰

d. Attacks against civilians. The Zagreb County Court determined that the conduct of Slobodan Davidovic in taking custody of civilians from other Serb paramilitaries, transporting them to the site of execution, their subsequent abuse, humiliation and execution constituted participation in an attack on civilians. The court found that an "attack" is not only the attack itself, but also encompassed the subsequent acts of the accused that can be viewed as continuing the attack.¹¹¹

3. War crimes against prisoners of war

Examples of conduct found by trial courts to constitute war crimes against prisoners of war (POWs) included:

¹⁰⁵ RH v. Stokan Sekanic, Supreme Court I Kz- 968/04-6, 20 September 2005.

¹⁰⁶ RH v. Vlado Sladovic, Sisak County Court, K-13/05, 4 November 2005.

¹⁰⁷ RH v. Milan Jurjevic and Davor Tomic, Zadar County Court, II K-86/00, 15 September 2005.

¹⁰⁸ RH v. Slobodan Davidovic, Zagreb County Court, XI-K-rz-1/05, 28 December 2005, confirmed Supreme Court, I KS 174/06-4, 25 April 2006.

¹⁰⁹ RH v. Nikola Ivankovic et al., Supreme Court, I Kz- 1196/04-5, 10 May 2005

¹¹⁰ RH v. Fikret Abdic, Supreme Court, III Kz 2/04-11, 8 February 2005.

¹¹¹ RH v. Slobodan Davidovic, Zagreb County Court, XI-K-rz-1/05, 28 December 2005, confirmed Supreme Court, I KS 174/06-4, 25 April 2006.

- Following acts against POWs:
 1. on multiple occasions, kicking POWs in the head and body until unconscious,
 2. in the capacity of a prison guard, beating POWs with fists, shovel, aluminium bar, stick and wooden rod, and
 3. giving keys of Croat POW cells to Serb prisoners who entered the cells and repeatedly beat the Croats;¹¹²
- beating and kicking POW, hitting the POW's head against the wall, cutting off a POW's ear;¹¹³ and
- systematic physical and mental abuse of POWs in concentration camps, resulting in death of two POWs.¹¹⁴

4. Genocide

Croatian law largely re-iterates the definition of genocide contained in Article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.¹¹⁵ However, it expands the Convention's definition to include "forcible population displacement."

In 2005, two trials for genocide were ongoing at the Vukovar County Court. In May 2005, a long-pending trial re-started against 26 persons, 17 *in absentia* and mostly Serbs and Ruthenians, for having committed genocide by killing, injuring, and forcibly displacing the non-Serb population from the village of Miklusevci (approximately 200 persons, mostly Ruthenians) in 1991 and 1992. The indictment alleges that these acts were undertaken with the intent to partially exterminate an ethnic group and prevent non-Serbs from continuing to reside in that area.¹¹⁶

A second trial continued against 16 persons, 15 *in absentia* for abuse, rape, killing and expulsion of Croats as well as the destruction of property in the village of Lovas where Croats constituted a majority of the population. The indictment alleges that these actions, including forcing prisoners to walk through a mine field, as a result of which 69 persons were killed and 33 seriously injured, were pursuant to an overall plan to create Greater Serbia and intended to completely exterminate the Croat population in the area.¹¹⁷

¹¹² RH v. Svetozar Karan, Karlovac County Court, K-4/04-2, 30 June 2005.

¹¹³ RH v. Slobodan Davidovic, Zagreb County Court, XI-K-rz-1/05, 28 December 2005, confirmed Supreme Court, I KS 174/06-4, 25 April 2006.

¹¹⁴ RH v. Fikret Abdic, Supreme Court, III Kz 2/04-11, 8 February 2005.

¹¹⁵ Article 119 of the 1993 Criminal Code prohibits the killing, bodily injury or forcible displacement of a population with the intent to destroy in whole or in part a national, ethnic, racial or religious group. The ICTY statute defines Genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group: (a) killing; (b) causing serious bodily or mental harm; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group. In the ICTY statute, deportation is included as an act constituting a Grave Breach of the Geneva Convention as well as a Crime against Humanity.

¹¹⁶ RH v. Jugoslav Misljenovic et al. ("Miklusevci") [Vukovar County Court], K-DO-71/01.

¹¹⁷ RH v. Ljuban Devetak et al. ("Lovas") [Vukovar County Court], K-25/00.

In a third case, genocide charges against three of thirteen accused were re-qualified to armed rebellion and amnesty was applied, while the genocide charge remains pending against 10 *in absentia* defendants.¹¹⁸ The indictment alleges that systematic physical and mental abuse, including the killing of 17 persons, rape, forced labor, injury, forcible displacement as well as property damage in the village of Branjin Vrh was done with the intent to completely destroy the Croat population in the area in order to join the territory with so-called Greater Serbia.

5. War-related crimes prosecuted as “common crimes”

In 2005, some crimes directly tied to the conflict were tried as “common crimes” rather than war crimes. In “Pakracka Poljana,” the Zagreb County Court conducted a re-trial of five former members of the police reserve forces for the killing, extortion, and illegal detention of Serb civilians in late 1991.¹¹⁹ Three defendants were convicted of murder for executing a Serb civilian outside the illegal place of detention where he had been held, although the body has never been located. Two other accused were convicted of extortion and illegally detaining three Serb civilians. The detainees were ultimately killed and buried, their money and valuables having been appropriated prior to their deaths. Their bodies were subsequently transported to another location where they were exhumed years later. The then Minister of Interior testified that in late 1991, since the army was not fully organized, the reserve police forces “...carried out numerous war tasks...” While the case was not pursued as a war crime, the court expressly acknowledged that the crime violated international humanitarian law norms that were applicable to the accused.¹²⁰

VII. Sentencing Practices: Mitigating and Aggravating Factors

For war crimes murders, the sentences imposed in 2005 ranged from 4 to 15 years.¹²¹ For “common” murder in the context of the war, the “Pakracka Poljana” court issued sentences of 8 and 10 years for two accused convicted as accomplices and 4 years to a third accused for aiding and abetting. The maximum sentence issued in 2005 – 15 years – was also issued to several accused deemed responsible for multiple murders.¹²² For

¹¹⁸ RH v. Vaso Petrovic et al. (“Branjin Vrh”), [Osijek County Court,], K-48/96.

¹¹⁹ RH v. Munib Sulijc et al. (“Pakracka Poljana”), Zagreb County Court, VIII-K-16/01, 15 September 2005, Supreme Court confirmed in part, reversed in part I Kz 81 2006/7, 10 May 2006.

¹²⁰ The Court “did not find any justification for such behaviour of the accused, considering the achievement of civilization that war and the state of war have their rules to which, under those circumstances, the accused, although being aware of them, did not adhere to the minimum extent.” The Court further found that the Serb civilians “did not die on the battlefield ... but as a result of their unlawful imprisonment,” observing that the prison conditions were “unseen by civilized Europe on its territory since the time of Nazi camps during World War II...”

¹²¹ RH v. Davor Tosic, Zadar County Court (15 years – *in absentia* Serb defendant for killing 1 Croat civilian); RH v. Jovan Curcic (“Borovo” Group) Vukovar County Court (14 years – Serb defendant for ordering detention and abuse of civilians that resulted in one death); RH v. Vlado Sladovic, Sisak County Court (9 years – aggravated sentence for Serb defendant for killing elderly Croat); RH v. Milan Jurjevic, Zadar County Court (4 years – mitigated sentence for Croat defendant with diminished mental capacity for killing Croat).

¹²² RH v. Slobodan Davidovic, Zagreb County Court (aggregate sentence for Serb defendant who participated in killing of 6 Bosniak civilians and maltreated other Croat civilians in separate incident); RH v. Nikola Ivankovic, Osijek County Court (mitigated sentence for Homeland War defender who killed 18

convictions based on torture and inhuman treatment, sentences ranged between 6 and 10 years.¹²³ In contrast, 2 defendants in “Pakracka Poljana” were sentenced to 3 and 4 years for illegal detention.

1. Mitigating circumstances: sentence reduced below statutory minimum and factors considered

Courts are obliged to consider all mitigating and aggravating circumstances when determining the sentence and to impose a sentence within the prescribed range of punishment, e.g., five to 20 years. Only when particularly obvious mitigating circumstances exist may the court impose a sentence less than the prescribed minimum.¹²⁴ The only sentence below the statutory minimum in 2005 was rendered by application of mitigating circumstances to a Croat tried as an accomplice, including:

- diminished mental capacity as a result of which he was easily led astray by others and unable to independently make decisions; and
- subordinate position to Serb co-defendant convicted *in absentia*.¹²⁵

In all other cases, sentences ranged from 6 to 15 years and mitigating circumstances included:

- “father of three children,”¹²⁶
- “decent behaviour before the court and the fact the defendant voluntarily came back to Croatia after being a refugee abroad,”¹²⁷
- “decent life before the war,”¹²⁸
- diminished responsibility because of post-traumatic stress disorder,¹²⁹
- no prior criminal record,¹³⁰
- advanced age (67) reduces likelihood similar conduct would be repeated,¹³¹

Serb civilians); RH v. Fikret Abdic, Supreme Court (reduced sentence for aged Bosniak defendant who as the overall political and military commander established concentration camps and was found responsible for ordering systematic mental and physical abuse of civilians and POWs detained in the camps, resulting in severe injuries and death; forced labor of detainees and forced military recruitment).

¹²³ RH v. Milos Drzajic (“Borovo” Group), Vukovar County Court (10 years – physical abuse and detention of civilians); RH v. Stokan Sekanic, Supreme Court (8 years – commanded armed attack on village, including abuse/injury of several civilians); RH v. Miodrag Balint, Supreme Court (7 years – arrest, interrogation and beating of several civilians); RH v. Svetozar Karan, Karlovac County Court (7 years – torture and inhuman treatment of POWs); RH v. Mladen Maksimovic (“Borovo Group”), Vukovar County Court (7 years *in absentia*); RH v. Milan Stojisavljevic, Osijek County Court (6 years); RH v. Dusan Mistic, Dragan Savic, and Jovica Vucenovic (“Borovo” Group), Vukovar County Court (each 6 years, 2 *in absentia*).

¹²⁴ Article 38, 1993 Criminal Code (Article 57, 2003 Criminal Code, NN 105/04).

¹²⁵ RH v. Milan Jurjevic and Davor Tosic, Zadar County Court, II K-86/00, 15 September 2005.

¹²⁶ RH v. Milan Stojisavljevic, Osijek County Court, K-89/03-166, 16 July 2005.

¹²⁷ RH v. Vlado Sladovic, Sisak, County Court, K-13/05, 4 November 2005.

¹²⁸ RH v. Svetozar Karan, Karlovac County Court, K-4/04-2, 30 June 2005.

¹²⁹ RH v. Nikola Ivankovic, Supreme Court I Kz-1196/04-5, 10 May 2005.

¹³⁰ RH v. Slobodan Davidovic, Zagreb County Court, XI-K-rz-1/05, 28 December 2005; RH v. Milan Stojisavljevic, Osijek County Court, K-89/03-166, 16 July 2005; RH v. Nikola Ivankovic, Supreme Court, I Kz-1196/04-5, 10 May 2005.

- participation in the Homeland War,¹³² and
- treated Croat victims humanely.¹³³

2. Aggravating circumstances: defendants' attitude towards the crime decisive

In 2005 the trial courts and Supreme Court assessed aggravating circumstances primarily by judging the defendants' attitude toward the acts committed. Aggravating factors included:

- extreme lack of humanity as the defendant killed an 87-year old woman,¹³⁴
- persistence and frequency of beating POWs and allowing others to beat them as well as the intensity of the abuse over a period of weeks/months,¹³⁵
- defendant motivated by ethnic animus in killing an elderly Croat man solely because he was a Croat,¹³⁶
- persistence in committing war crimes over an extended period of time, e.g., defendant committed war crimes against POWs in fall 1991 in Croatia, continued committing war crimes against civilians in BiH in summer 1995, remaining a member of the "Scorpions" at all times; defendant remained in his village after the conflict as if nothing happened; defendant treated minor-aged victims in a particularly brutal and degrading manner, acquiescing in the same treatment by his accomplices; lack of remorse,¹³⁷ and
- "ruthless and brutal" killing of 19 civilians that resulted from defendant throwing hand grenades and shooting into a house where civilians were sheltered as particularly reflected in the fact that "the perpetrators ... returned in order to check whether anyone survived."¹³⁸

The defendant's relations with the victims before the war were also considered an aggravating factor, for example one trial court noted that the act was committed against the people of the village of Ernestinovo whom the defendant knew well.¹³⁹ The purpose of committing the crime was also taken into consideration as aggravating, especially the fact that it served the purpose of occupying parts of Croatian territory and joining it with the so called "Greater Serbia."¹⁴⁰ The Supreme Court clarified, however, that participation in the armed rebellion could not properly be considered as an aggravating factor as it had been amnestied by law. [See Section C.II.3]

¹³¹ RH v. Fikret Abdic, Supreme Court, III Kz 2/04-11, 8 February 2005.

¹³² RH v. Nikola Ivankovic ("Paulin Dvor"), Supreme Court, I Kz-1196/04-5, 10 May 2005 (confirming Osijek County Court)

¹³³ RH v. Stokan Sekanic, Supreme Court, I Kz-968/04-6, 20 September 2005 (confirming Osijek County Court).

¹³⁴ RH v. Vlado Sladovic, Sisak County Court, K-13/05, 4 November 2005.

¹³⁵ RH v. Svetozar Karan, Karlovac County Court, K-4/04-2, 30 June 2005.

¹³⁶ RH v. Davor Tomic, Zadar County Court, II K-86/00, 15 September 2005.

¹³⁷ RH v. Slobodan Davidovic, Zagreb County Court, XI-K-rz-1/05, 28 December 2005.

¹³⁸ RH v. Nikola Ivankovic, Supreme Court, I Kz- 1196/04-5, 10 May 2005 (confirming Osijek County Court conviction, increasing sentence due to aggravating circumstances)

¹³⁹ RH v. Milan Stojisavljevic, Osijek County Court, K-89/03-166, 16 July 2005.

¹⁴⁰ RH v. Milan Stojisavljevic, Osijek County Court, K-89/03-166, 16 July 2005.

VIII. Statistical Scope of Prosecution in 2005

During 2005, the Mission followed 90 war crimes cases involving police investigations, 14 trial courts and the Supreme Court as well as extradition proceedings in third countries. More than half of all persons against whom proceedings continued in 2005 were pursued *in absentia*. The monitored proceedings involved 240 individuals, approximately 76 per cent (183) Serbs, 17 per cent (41) Croats and a small number of other minorities.¹⁴¹ Sixty-one (61) cases involved single defendants¹⁴² while 29 cases involved groups totalling 179 defendants.¹⁴³ While all cases were pending in 2005, proceedings in some were apparently suspended given that defendants were not available to the court. One case involved war crime allegations from World War II.

Because of the significant difference in the number of proceedings against Serbs and Croats, the conclusions in this report regarding trends affecting Serbs are more reliable than trends concerning Croats.¹⁴⁴

1. Pre-trial: arrests, extraditions, releases, and indictments

As in previous years the vast majority of persons arrested during 2005 were Serbs. Two-thirds of Serbs arrested were returnees. Forty per cent of persons arrested in Croatia during 2005 were released in the course of the year. Of those, more than half were released after the prosecution abandoned the war crimes charges due to lack of evidence. Of individuals arrested abroad based on international arrest warrants issued by Croatia, slightly more than half were extradited, while extradition was refused or the warrant was withdrawn by Croatia in the remainder. Of those extradited, approximately half were freed of charges. The number of new indictments in 2005 increased slightly from 2004, with only Serbs being indicted.

a. Arrests [See Appendix I]. In 2005 the Mission followed 10 arrests (8 Serbs, 2 Croats) in Croatia based on war crimes charges, a substantial decrease from previous years.¹⁴⁵

Similar to 2004, 75 per cent (6 of 8) of Serbs arrested were returnees arrested either at border crossings or in their place of permanent residence,¹⁴⁶ including in police stations

¹⁴¹ Six Ruthenians, 3 Bosniaks, 1 Roma, 2 Hungarians, and 4 defendants of unknown ethnic origin.

¹⁴² Fifty-one Serbs, 7 Croats, 1 Hungarian, 1 Bosniak and 1 Montenegrin.

¹⁴³ One hundred and thirty one Serbs, 34 Croats, 6 Ruthenians, 2 Bosniaks, 1 Roma, 1 Hungarian and 4 of unknown ethnic origin.

¹⁴⁴ A defendant's ethnic origin is established during criminal proceedings based on Article 225 of the Criminal Procedure Code (CPC), which requires the court to inquire into the ethnic origin of the accused and to include this information in the indictment and verdict. In late 2005, the Constitutional Court upheld this practice, rejecting a defendant's challenge, finding that the courts must seek the information, but as provided by Article 4, para. 3, CPC, the accused is not required to answer. U-I-425/2001, 21 December 2005 [unpublished].

¹⁴⁵ In 2004, of 30 persons arrested, 83 per cent (25) were Serbs, and 17 per cent (5) were Croats; in 2003, of 37 arrested, 84 per cent (31) were Serbs, 14 per cent (5) were Croats and 1 Hungarian; and in 2002, of 35 arrested, 80 per cent (28) were Serbs, slightly less than 20 per cent (6) were Croats and 1 was Macedonian.

¹⁴⁶ In 2004 and 2003, respectively, 75 per cent and 45 per cent of Serbs arrested were returnees.

when obtaining identity documents.¹⁴⁷ One returnee was arrested when he came to Croatia to vote in local elections. Four of the 6 Serb returnees arrested were released in 2005, after charges were abandoned or the charge was re-qualified and amnesty applied.¹⁴⁸

In addition, the Mission is aware of the arrests of 11 Serbs in 2005 in third countries on the basis of international arrest warrants issued by Croatia for war crimes.¹⁴⁹ Seven Serbs were extradited to Croatia, including one arrested in 2004.¹⁵⁰ Of these, three were freed of charges, two when the prosecution abandoned the charges for lack of evidence and one after acquittal.¹⁵¹ Investigations or trials are pending against the four others.

Contrary to domestic and ratified Convention law, the Slavonski Brod County Court held Jovan Petkovic in detention after acquittal of the war crime for which he had been extradited in order to investigate a second war crime that had not been part of the extradition request.¹⁵² The court released Petkovic 6 days after the acquittal, having been notified by the Ministry of Justice of concerns related to the legality of continued detention.

In five cases third countries denied Croatia's request for extradition. BiH refused to extradite three persons, two because they are BiH nationals,¹⁵³ and a third (SiCG national) was denied first because an investigation for the same crimes committed in Croatia was initiated in BiH and later because BiH found the charge unsubstantiated.¹⁵⁴ Bulgaria refused to extradite one person on the basis of diplomatic immunity,¹⁵⁵ and Austria refused to extradite one person at least in part due to fair trial concerns.¹⁵⁶ In addition, Croatia withdrew its international arrest warrant for one person arrested in BiH after it was determined that the statute of limitations had expired and no further proceedings could be undertaken.¹⁵⁷

¹⁴⁷ E.g., Vlado Sladovic was arrested after visiting the local police station to register his residence.

¹⁴⁸ In 2004, 14 of 19 Serb returnees arrested (74 per cent) were released after charges were abandoned or the charge was re-qualified and amnesty applied.

¹⁴⁹ Four in BiH, 3 in Germany, 2 in Austria, 1 in Switzerland, and 1 in Bulgaria. Germany arrested and then released a suspect given a delay in receiving Croatia's extradition request beyond the applicable time limit. Upon receipt of the request, the suspect was re-arrested.

¹⁵⁰ Three from Germany, two from Austria, one from BiH (arrested in 2004) and one from Switzerland.

¹⁵¹ Charges were dropped against Borivoj Savic and Milan Loncar, extradited from Austria and Germany, respectively. Jovan Petkovic was acquitted after extradition from Switzerland.

¹⁵² Prosecution is limited to crimes for which a suspect was extradited, absent agreement otherwise by the surrendering state or suspect. Article 40, para. 2, Law on International Legal Assistance in Criminal Matters (NN 178/04); Article 14, European Convention on Extradition (NN 14/94, International Agreements).

¹⁵³ Milovan Zec and Zeljko Milovanovic.

¹⁵⁴ Goran Pankrtz-Dragojevic.

¹⁵⁵ Cedomir Brankovic was arrested in Bulgaria while travelling as part of an official military delegation from SiCG.

¹⁵⁶ Nikola Vujnovic convicted *in absentia* by the Gospić County Court.

¹⁵⁷ Djordje Bozicic was convicted *in absentia* and sentenced to 4½ years by the Pozega County Court in 1995. The statute of limitations for execution of the *in absentia* sentence expired prior to his arrest.

b. Bringing in for Questioning [See Appendix I]. The Mission is aware of two individuals (Serbs, citizens of SiCG) who were stopped at Croatia's main international border crossing with SiCG and taken to a police station for questioning in relation to war crimes. While for purposes of domestic law, these persons were not considered under arrest, they were not at liberty to leave the police station and after being held for several hours were released on the same day.¹⁵⁸

c. Releases [See Appendix II]. During 2005 the Mission followed the release in Croatia of 6 individuals (all Serbs) arrested during the same year on war crimes charges.¹⁵⁹ Four of those released were Serb returnees and two were extradited to Croatia from third countries. Those released had been detained from 1 day to 7 months with an average detention time of approximately 1 month and 20 days, including time spent in detention in third countries awaiting extradition.¹⁶⁰

The reasons for release were:

a. Four were released after the prosecution abandoned charges due to lack of evidence or re-qualified the charges, including one who had been extradited;¹⁶¹

b. One was released although the investigation would continue;¹⁶² and

c. One was released following acquittal after having been extradited.¹⁶³

d. Indictments [See Appendix III]. The Mission is aware of five cases in 2005 in which prosecutors raised first-time war crimes indictments against 23 individuals (all Serbs), a significant increase from 2004 when 2 individuals were indicted.¹⁶⁴ Four persons were indicted individually, while the fifth indictment issued by the Osijek County Court was against a group of 19 persons. All 23 were indicted for having committed *war crimes against the civilian population* while 1 was also indicted for having committed *war crimes against prisoners of war*.

¹⁵⁸ Mile Krmar and Gojko Velickovic were brought to Police Station Otok, Vukovar-Srijem County for questioning in relation to war crimes committed in Vojnic and Istria, respectively. Bringing in of possible witnesses or suspects is regulated by Articles 32-35, Law on Police (NN 129/00).

¹⁵⁹ During 2004, the Mission followed the release of 32 individuals (29 Serbs, 3 Croats) previously arrested on war crimes charges.

¹⁶⁰ Prior to their release, 4 individuals had spent less than 1 month in detention, 1 had been detained from 1 to 3 months, and 1 had been detained for longer than 6 months.

¹⁶¹ Slobodan Klisuric, released because witness could not identify Klisuric as perpetrator; Savo Savic and Mico Gargenta, released after the charges were re-qualified into armed rebellion (amnestied) because of lack of evidence for war crimes; Borivoj Savic, released due to lack of evidence after extradition. In 2004, 2003, and 2002, respectively, 53 per cent (17 of 32), 40 per cent (12 of 30) and 20 per cent (10 of 51) of those arrested were released due to discontinuation of proceedings.

¹⁶² Dusan Misina.

¹⁶³ Jovan Petkovic.

¹⁶⁴ In contrast, in 2003, 53 persons were indicted.

2. Trials/Re-trials

During 2005, the Mission monitored 18 trials in 11 courts involving 77 individuals (46 Serbs, 21 Croats, 5 Ruthenians, 1 Roma, and 4 of unknown ethnic origin).¹⁶⁵ [See Appendix IV] In 17 of these trials – involving 76 individuals – court proceedings were conducted during 2005.¹⁶⁶ More than three quarters (13 of 17) of the active trials were re-trials. In addition, pre-trial proceedings were conducted in one case with 13 defendants, ending the proceedings against 3 who were present while the case remains pending against 10 others *in absentia*.¹⁶⁷

In a decrease from past years, only one trial was conducted fully *in absentia*.¹⁶⁸ However, five trials were conducted partially *in absentia*¹⁶⁹ and 54 per cent (41 of 76) of all defendants and 71 percent (29 of 41) of Serb defendants were tried *in absentia*.

Three trials were conducted by courts other than the court in whose territorial jurisdiction the crimes occurred. One trial was conducted by the Zagreb County Court in its capacity as a special war crimes court after the Supreme Court President granted the Chief State Attorney's request.¹⁷⁰ Two trials were conducted by courts of general jurisdiction after the Supreme Court changed the venue upon the request of the courts within whose territorial jurisdiction the alleged crimes occurred.¹⁷¹ The transferred trials were conducted in nearby counties, including a court not previously involved in trying war crimes and a court that had requested a change of venue in another case.

a. Verdicts and Sentencing [See Appendixes V, VI, VII]. During 2005, twelve trials involving 22 individuals (15 Serbs, 7 Croats) were concluded, half the number of trials finished in 2004. More than 80 per cent (10 of 12) were re-trials, approximately the same as 2004. Trial outcomes were as follows: 12 persons (11 Serbs, 1 Croat) were found guilty¹⁷² and 6 persons (2 Serbs, 4 Croats) were acquitted. Trials against two Croats and

¹⁶⁵ In 2004, the Mission monitored 34 trials involving 108 persons (83 Serbs, 13 Croats, 7 Ruthenians, 1 Hungarian, 1 Roma, and 3 of unknown ethnic origin); in 2003, a total of 34 trials involving 101 persons (84 Serbs, 14 Croats, 1 Bosniak, and 1 Roma); and in 2002, 34 trials involving 115 persons (90 Serbs, 22 Croats, 2 Bosniaks, and 1 Hungarian).

¹⁶⁶ In *RH v. Djuro Djuric* [Sisak County Court] the trial started in 2001, but has not resumed since Djuric was released from detention in 2001 and subsequently became unavailable to the court.

¹⁶⁷ *RH v. Vaso Petrovic et al. ("Branjin Vrh")* [Osijek County Court].

¹⁶⁸ *RH v. Savo Bosnjak (Serb)* [Osijek County Court]. In 2004 and 2003, respectively, 3 trials (involving 16 Serbs) and 9 trials (involving 29 persons, mostly Serbs) were conducted fully *in absentia*.

¹⁶⁹ E.g., *RH v. Ljuban Devetak et al. ("Lovas")* [Vukovar County Court] (1 present defendant tried with 16 (13 Serbs, 3 Croats) *in absentia*).

¹⁷⁰ *RH v. Slobodan Davidovic*.

¹⁷¹ *RH vs. Luka Markesic et al. ("Bjelovar" Group) K-DO-57/01* (transferred from Bjelovar to Varazdin County Court); *RH vs. Zeljko Iharos et al. ("Virovitica" Group) K-DO-62/2001* (transferred from Virovitica to Bjelovar County Court).

¹⁷² Ten were convicted of war crimes against civilian population, 1 was convicted of war crimes against prisoners of war, and 1 was convicted of both. Unlike past years, there were no convictions for genocide, although two genocide trials were ongoing. *RH v. Jugoslav Misljenovic et al. ("Miklusevci")*; *RH v. Ljuban Devetak et al. ("Lovas")* [both in Vukovar County Court]. In addition, genocide charges are pending against 10 *in absentia* defendants in *RH v. Vaso Petrovic et al. ("Branjin Vrh")* [Osijek County Court].

two Serbs (1 *in absentia*) ended when the prosecution abandoned the charges. In addition, 2 Serbs and 1 Croat were amnestied after genocide charges against them were re-qualified into armed rebellion and the proceedings terminated prior to trial.¹⁷³

Based on 18 verdicts, the overall conviction rate was 67 per cent, a slight decrease from 2004.¹⁷⁴ Viewed from the perspective of the defendants' ethnic origin, 85 per cent of Serbs and 20 per cent of Croats were found guilty.¹⁷⁵ In 2005, Serbs constituted 92 per cent of those convicted, while they constituted 72 per cent of persons who received verdicts of acquittal or conviction.¹⁷⁶ Croats constituted approximately 8 per cent of all convicted while they represented 28 per cent of individuals who received a verdict of acquittal or conviction.¹⁷⁷

Thirty-six per cent (4 of 11) of Serbs were convicted *in absentia*.¹⁷⁸ This constituted a significant decrease both in terms of absolute numbers and percentage from prior years.¹⁷⁹

More than 90 per cent (all Serbs) of persons convicted received sentences over the legal minimum of five years,¹⁸⁰ a substantial increase from 2004.¹⁸¹ The only Croat convicted received a sentence below the statutory minimum through the application of mitigating circumstances. Sentences ranged from a low of four¹⁸² to a high of fifteen years. No maximum sentence (20 years) was given during 2005. The average sentence was

¹⁷³ RH v. Branko Tomic, Slavko Kecman, and Goran Culjak ("Branjin Vrh") [Osijek County Court].

¹⁷⁴ In 2004, 2003, and 2002, the overall conviction rate was 71 per cent (42 verdicts), 90 per cent (41 verdicts), and 67 per cent (77 verdicts), respectively.

¹⁷⁵ In 2004, 75 per cent of Serbs (28 of 37) and 25 per cent of Croats (1 of 4) were convicted; in 2003, 94 per cent of Serbs (30 of 32) and 71 per cent of Croats (5 of 7) were convicted; and in 2002, 83 per cent of Serbs (47 of 57) and 18 per cent of Croats (3 of 17) were found guilty.

¹⁷⁶ In 2004, Serbs constituted approximately 93 per cent of those convicted (28 of 30), while they constituted 88 per cent of persons (37 of 42) who received verdicts of conviction or acquittal. In 2003, Serbs constituted approximately 81 per cent of those convicted (30 of 37), while they constituted 78 per cent of persons (32 of 41) who received verdicts of acquittal or conviction.

¹⁷⁷ In 2004, Croats constituted approximately 3 per cent of all convicted (1 of 30) and 9 per cent (4 of 42) of individuals who received a verdict of acquittal or conviction. In 2003, Croats constituted approximately 71 per cent of all convicted (5 of 7) and 17 per cent (7 of 41) of individuals who received a verdict of acquittal or conviction.

¹⁷⁸ RH v. Davor Tomic & Milan Jurjevic (Tomic convicted *in absentia*) [Zadar County Court.]; RH. v. Jovan Curcic et al., ("Borovo" Group) Mladen Maksimovic, Dragan Savic, and Jovica Vucenovic convicted *in absentia* [Vukovar County Court].

¹⁷⁹ In 2004, 2003, and 2002, 50, 90, and 60 per cent of Serbs were convicted *in absentia*, respectively.

¹⁸⁰ RH v. Slobodan Davidovic (15 years) [Zagreb County Court]; RH v. Davor Tomic (15 years) [Zadar County Court]; RH v. Jovan Curcic et al. ("Borovo" Group) (Curcic - 14 years; Milos Drzajic - 10 years; Mladen Maksimovic - 7 years; Dusan Mistic - 6 years; Dragan Savic - 6 years; Jovica Vucenovic - 6 years) [Vukovar County Court]; RH v. Vlado Sladovic (9 years) [Sisak County Court]; RH v. Svetozar Karan (7 years) [Karlovac County Court]; RH v. Milan Stojisavljevic (6 years) [Osijek County Court].

¹⁸¹ In 2004 more than half of all persons convicted (16 of 30) received less than the prescribed minimum sentence. In contrast, in 2003 and 2002, approximately 5 per cent and 25 per cent received less than the minimum sentence, respectively.

¹⁸² The only Croat convicted, Milan Jurjevic, received the lowest sentence (4 years).

approximately 8 and one-half years, an increase from 2004 and approximately the same as 2003.¹⁸³

Ten re-trials involving 13 Serbs and 7 Croats were completed, accounting for 80 per cent of all completed trials in 2005. Eight re-trials were conducted after the Supreme Court reversed the prior verdict and remanded the case to the trial court.¹⁸⁴ Two were conducted after a defendant arrested on the basis of a previous *in absentia* conviction requested a new trial.¹⁸⁵ In some cases, the re-trial was the third or fourth trial.¹⁸⁶ More than half of previously convicted defendants, including one extradited from a third country, were released as a result of charges being dropped for lack of evidence, application of amnesty, or acquittal.¹⁸⁷ The rate of exoneration upon re-trial decreased from 2004 but increased in contrast to 2003.¹⁸⁸

b. Length of Proceedings [See Appendix IV]. In 2005, half (6 of 12) of trials were completed within less than one month. Three trials were completed within one to six months and one trial was completed within six to 12 months. Finally, one trial took more than a year and one trial lasted more than three years.¹⁸⁹

Unlike prior years, the Mission observed that virtually all trial court verdicts were delivered in writing within the time period required by law, i.e., 2 months after the verdict was announced orally. The Mission observed delays in the commencement of some re-trials after the Supreme Court granted an appeal and remanded the case for further proceedings, although some of these delays may be attributed to an attempt to avoid *in absentia* trials.¹⁹⁰

¹⁸³ In 2004 and 2003, the average sentence was approximately 5 and one-half years (based on 42 convictions) and approximately 9 years (based on 37 convictions), respectively.

¹⁸⁴ Eight cases involving 11 Serbs and 7 Croats (RH v. Ivan Vrbanić & Adželko Kasaj [Bjelovar County Court]; RH v. Davor Tosić & Milan Jurjević [Zadar County Court]; RH v. Jovan Curčić et al. (“Borovo” Group) [Vukovar County Court]; RH v. Svetozar Karan [Karlovac County Court]; RH v. Luka Markesić et al. (“Bjelovar” Group) [Varaždin County Court]; RH v. Marinko Stanković, RH v. Savo Bosnjak and RH v. Milan Stojisavljević [all three Osijek County Court]).

¹⁸⁵ Two cases involving 2 Serbs (RH v. Jovan Petković [Slavonski Brod County Court]; RH v. Savo Sasić [Sibenik County Court]).

¹⁸⁶ RH v. Marinko Stanković (4th trial) [Osijek County Court]; RH v. Mihajlo Hrastov (3rd trial) [Karlovac County Court].

¹⁸⁷ In 2005, 5 of 9 previously convicted defendants were released as a result of re-trial. One was acquitted (RH v. Jovan Petković [Slavonski Brod County Court] (extradited from Switzerland)); while 2 had charges dropped for lack of evidence (RH v. Ivan Vrbanić and Adželko Kasaj (“Virovitica” Group) [Bjelovar County Court]). Finally, 2 other previously convicted individuals had charges dropped because amnesty was applied (RH v. Savo Bosnjak (part of “Branjina” Group) [Osijek County Court], and RH v. Savo Sasić [Sibenik County Court]). Three of these 5 individuals had been convicted *in absentia* earlier (Jovan Petković, Savo Bosnjak, and Savo Sasić).

¹⁸⁸ In 2004, 2003, and 2002 the rate of exoneration on re-trial of previously convicted defendants was 66, 33 and 55 per cent, respectively.

¹⁸⁹ RH v. Davor Tosić & Milan Jurjević [Zadar County Court]. The re-trial started in March 2002 but was postponed shortly thereafter due to Jurjević’s health. The trial re-commenced in May 2005 and a verdict was issued in September 2005.

¹⁹⁰ E.g., RH v. Enes Viteskić (Supreme Court invalidated acquittal in late May 2005; re-trial not started as of late June 2006); RH v. Dušan Skorić et al. [Zadar County Court] (Supreme Court invalidated *in absentia* conviction in December 2003; re-trial not started as of late June 2006).

3. Appeals

a. Decisions on Appeal [See Appendix VIII]. During 2005 the Mission followed 48 cases at the Supreme Court involving appeals from trial court verdicts by 116 individuals (92 Serbs, 18 Croats, 3 Bosniaks, 2 Hungarians, and 1 Montenegrin).

In 2005, the Supreme Court decided appeals involving 26 individuals¹⁹¹ (21 Serbs, 2 Croats, 1 Bosniak, 1 Hungarian, and 1 Montenegrin) in 13 cases, four of which were fully *in absentia*.¹⁹² The Supreme Court quashed verdicts and remanded the case for re-trial in 65 per cent (17 of 26) of individual appeals (involving 16 Serbs, 1 Croat),¹⁹³ an increase from 2004.¹⁹⁴ The Supreme Court confirmed 9 verdicts (involving 5 Serbs, 1 Croat, 1 Bosniak, 1 Hungarian and 1 Montenegrin).¹⁹⁵ In two appeals in which it confirmed the conviction, the Supreme Court lowered one sentence,¹⁹⁶ while it increased another.¹⁹⁷

b. Length of Proceedings. Of 26 decisions issued in 2005, approximately 38 per cent were delivered by the Supreme Court within 6 months of appeal; 12 per cent within one and one-half years; 15 per cent after approximately two and one-half years, with 35 per cent taking more than four years.

Delays of more than four years occurred at the Supreme Court in cases where defendants were acquitted and the prosecution appealed.¹⁹⁸ Substantial delays were also seen when appeals involved accused who were convicted *in absentia*.¹⁹⁹ Finally, at the end of 2005 some cases remained pending at the Supreme Court in excess of 3 years.²⁰⁰ Delays of

¹⁹¹ In addition, the Supreme Court terminated the appeal of Mile Pavkovic (Serb) who died during the more than 4 ½ years the State's appeal against his acquittal was pending. I Kz-531/01-7, 8 November 2005.

¹⁹² RH v. Stevo Macakanja et al., RH v. Djuro Mirkovic, and RH v. Nikola Gagic [all three Zadar County Court]; RH v. Radoslav Cubrilo et al. ("Lovinac") [Gospic County Court].

¹⁹³ The Supreme Court granted 16 Serb defendants' appeals reversing 16 convictions (Stevo Macakanja, Zeljko Lezaja, Zeljko Cupac, Branko Kuzen; "Borovo" Group: Milos Drzac, Mladen Maksimovic, Dusan Mistic, Dragan Savic, Jovica Vucenovic, Jovan Curcic; "Lovinac": Radoslav Cubrilo, Milorad Cubrilo, Milorad Zagarac, Petar Hajdukovic, Gojko Mrkailo; Milan Stojisavljevic) and granted one appeal by the prosecutor reversing the acquittal of 1 Croat (Enes Viteskic).

¹⁹⁴ In 2004, 2003 and 2002 the reversal rate was 55, 50 and 95 per cent, respectively.

¹⁹⁵ The Supreme Court confirmed 6 convictions (Fikret Abdic; Nikola Ivankovic; Stokan Sekanic; Djuro Mirkovic; Nikola Gagic; Miodrag Balint) and 3 acquittals (Savo Grulovic; Milan Paripovic; Dejan Subotic).

¹⁹⁶ RH v. Fikret Abdic [Karlovac County Court] (3rd instance appeal, sentence reduced from 20 to 15 years).

¹⁹⁷ RH v. Nikola Ivankovic [Osijek County Court] (sentence increased from 12 to 15 years).

¹⁹⁸ E.g., RH v. Milan Paripovic & Mile Pavkovic ("Vinkovci") (prosecution appeal of acquittal pending 54 months); RH v. Savo Grulovic (prosecution appeal of acquittal pending 51 months).

¹⁹⁹ E.g., RH v. Radoslav Cubrilo et al. ("Lovinac") (defendants' appeal of second *in absentia* conviction decided after 5 years); RH v. Djuro Mirkovic (defendant's appeal of *in absentia* conviction decided after 5 years); RH v. Macakanja Stevo et al. (defendants' appeal of *in absentia* conviction decided after 31 months).

²⁰⁰ RH v. Kasim Hecic & Mihail Husnik ("Vukovar II") [Vukovar County Court] (pending 44 months); RH v. Janko Ostojic et al. ("Tovarnik" Group) [Vukovar County Court] (pending 44 months); RH v. Damir Zuzic et al. ("Batina" Group) [Osijek County Court] (pending 42 months); RH v. Nenad Bizic [Bjelovar County Court] (pending 39 months); RH v. Repaja et al. [Zadar County Court] (pending 38 months); RH v. Zeljko Bjedov [Sibenik County Court] (pending 38 months); and RH v. Bozo Bacelic et al. ("Prokljan")

such duration raise fair trial concerns such as those addressed by the ECHR in *Camasso v. Croatia*.

D. RECOMMENDATIONS

Based on its observations in 2005 and the first half of 2006, the Mission proposes the following recommendations:

- Government and Parliament to reduce legal obstacles to enhanced forms of inter-state judicial and police co-operation through, *inter alia*, ratification of relevant Council of Europe conventions and harmonization of domestic law;
- In co-operation with Serbia, Montenegro, and Bosnia and Herzegovina, relevant State institutions to establish a mechanism for the systematic resolution of all cases of persons wanted by Croatia for war crimes, including those convicted *in absentia*, demonstrating observable progress in the mid-term;
- All relevant State institutions to ensure a single standard for the administration of justice in war crime prosecutions, whether cases are tried in special courts or local courts and whether cases are transferred from the ICTY or initiated domestically;
- All relevant State institutions to make further observable progress towards the elimination of ethnic bias in prosecutions, including implementation of a uniform standard of criminal accountability;
- Government and Parliament to adopt measures to ensure the integrity of witness testimony and witness support services; and
- Government and Parliament to adopt measures to ensure that adequate defence is provided by court-appointed defence counsel.

Group) [Sibenik County Court] (pending 37 months). The pending period extends from the date when the appeal was lodged until the end of 2005. Most cases involve prosecutor's appeals of acquittals or defendants' appeals of *in absentia* convictions.

APPENDIX I

WAR CRIME ARRESTS IN 2005 BY JURISDICTION: 10

Court	Croats	Serbs	Others
Sisak County Court	0	2	0
Karlovac County Court	0	1	0
Split County Court	0	2	0
Sibenik County Court	0	2	0
Dubrovnik County Court	1	0	0
Vukovar County Court	0	1	0
Osijek County Court	1	0	0
TOTAL	2	8	0

Suspects were arrested for the following crimes: some suspects were arrested on more than one charge, 1 was arrested but amnestied

- War crimes against civilian population: 8 individuals (6 Serbs, 2 Croats)
- War crimes against prisoners of war: 2 individuals (1 of which was also arrested for war crimes against civilian population) (2 Serbs)
- Armed rebellion: 1 individual (1 Serb)

NOTE: Separately, 2 individuals (Serbs, SiCG citizens) were brought in to the police station for questioning in relation to war crime cases.

Arrests in third Countries 2005: 11

COUNTRY	Serb	Croat	Others
Austria	2	0	0
BiH	4	0	0
Germany	3	0	0
Switzerland	1	0	0
Bulgaria	1	0	0
TOTAL	11	0	0

Extraditions to Croatia from third Countries 2005: 7

COUNTRY	Serb	Croat	Others
Austria	2	0	0
BiH	1	0	0
Germany	3	0	0
Switzerland	1	0	0
TOTAL	7	0	0

APPENDIX II

RELEASES IN 2005 BY JURISDICTION: 6

Court	Croats	Serbs	Other
Sibenik County Court	0	2	0
Slavonski Brod County Court	0	1	0
Split County Court	0	2	0
Karlovac County Court	0	1	0
TOTAL	0	6	0

6 individuals spent the following amount of time in detention:

Duration of detention in Croatia:

- Less than 1 month: 3 individuals (3 Serbs)
- 1 to 3 months: 1 individual (1 Serb)
- 3 to 6 months: 1 individual (1 Serb)

Duration of detention in a third country:

- 1 to 3 months: 1 individual (1 Serb)
- 3 to 6 months: 1 individual (1 Serb, also detained in Croatia for over 3 months following extradition)

APPENDIX III

INDICTMENTS IN 2005 BY JURISDICTION: 23

Court	Croat	Serb	Others	Cases
Sisak County Court	0	2	0	2
Osijek County Court	0	19 (16 <i>in absentia</i>)	0	1
Vukovar County Court	0	1	0	1
Zagreb County Court	0	1	0	1
TOTAL	0	23 (16 in absentia)	0	5

- War crimes against prisoners of war: 1 individual (1 Serb, also indicted for war crimes against civilian population)
- War crimes against civilian population: 23 individuals (23 Serbs)

APPENDIX IV

TRIALS IN 2005 BY JURISDICTION TRIALS ONGOING/PENDING IN 2005: 18

Court	Croat	Serb	Other	Cases
Sisak County Court	0	2	0	2
Karlovac County Court	1	1	0	2
Bjelovar County Court	4	0	0	1
Varazdin County Court	4	0	0	1
Slavonski Brod County Court	0	1	0	1
Zadar County Court	1	2 (1 <i>in absentia</i>)	0	2
Vukovar County Court	3 (3 <i>in absentia</i>)	35 (27 <i>in absentia</i>)	10 (5 <i>in absentia</i>)	3
Split County Court	8 (4 <i>in absentia</i>)	0	0	1
Sibenik County Court	0	1	0	1
Osijek County Court	0	3 (1 <i>in absentia</i>)	0	3
Zagreb County Court	0	1	0	1
TOTAL	21 (7 <i>in absentia</i>)	46 (29 <i>in absentia</i>)	10 (5 <i>in absentia</i>)	18

TRIALS COMPLETED IN 2005: 12

Court	Croat	Serb	Other	Cases
Bjelovar County Court	2	0	0	1
Slavonski Brod County Court	0	1	0	1
Zadar County Court	1	1 (1 <i>in absentia</i>)	0	1
Vukovar County Court	0	6 (3 <i>in absentia</i>)	0	1
Karlovac County Court	0	1	0	1
Varazdin County Court	4	0	0	1
Sibenik County Court	0	1	0	1
Osijek County Court	0	3 (1 <i>in absentia</i>)	0	3
Sisak County Court	0	1	0	1
Zagreb County Court	0	1	0	1
TOTAL	7	15 (5 <i>in absentia</i>)	0	12

RE-TRIALS ONGOING in 2005: 13

Court	Croat	Serb	Other	Cases
Karlovac County Court	1	1	0	2
Bjelovar County Court	4	0	0	1
Varazdin County Court	4	0	0	1
Slavonski Brod County Court	0	1	0	1
Zadar County Court	1	2 (1 <i>in absentia</i>)	0	2
Vukovar County Court	0	6 (3 <i>in absentia</i>)	0	1
Split County Court	8 (4 <i>in absentia</i>)	0	0	1
Sibenik County Court	0	1	0	1
Osijek County Court	0	3 (1 <i>in absentia</i>)	0	3
TOTAL	18 (4 <i>in absentia</i>)	14 (5 <i>in absentia</i>)	0	13

RE-TRIALS COMPLETED IN 2005: 10

Court	Croat	Serb	Other	Cases
Bjelovar County Court	2	0	0	1
Slavonski Brod County Court	0	1	0	1
Zadar County Court	1	1 <i>in absentia</i>	0	1
Vukovar County Court	0	6	0	1
Karlovac County Court	0	1	0	1
Varazdin County Court	4	0	0	1
Sibenik County Court	0	1	0	1
Osijek County Court	0	3 (1 <i>in absentia</i>)	0	3
TOTAL	7	13 (2 <i>in absentia</i>)	0	10

The 12 cases monitored in 2005 were completed within the following time periods:

Less than 1 month: 6 trials involving 7 individuals (Sisak 1; Bjelovar 2; Slavonski Brod 1; Sibenik 1; Osijek 2)

1 to 6 months: 3 trials involving 6 individuals (Varazdin 4; Osijek 1; Zagreb 1)

6 to 12 months: 1 trial involving 6 individuals (Vukovar 6)

More than 1 year: 1 trial involving 1 individual (Karlovac 1)

More than 3 years: 1 trial involving 2 individuals (Zadar 2)

APPENDIX V

CONVICTIONS AND SENTENCES IN 2005 BY JURISDICTION: 12

Court	Croat	Serb	Others
Sisak County Court	0	1	0
Karlovac County Court	0	1	0
Zadar County Court	1	1 <i>in absentia</i>	0
Vukovar County Court	0	6 (3 <i>in absentia</i>)	0
Osijek County Court	0	1	0
Zagreb County Court	0	1	0
TOTAL	1	11 (4 <i>in absentia</i>)	0

Sentence (years)	Croat	Serb	Others
1-4	1	0	0
5-9	0	7	0
10-14	0	2	0
15-20	0	2	0
TOTAL	1	11	0

Convictions were as follows:

- War crimes against civilians: 11 individuals (10 Serbs, 1 Croat)
- War crimes against prisoners of war: 2 individuals (2 Serbs, 1 of them also convicted for war crimes against civilians)

APPENDIX VI

ACQUITTALS IN 2005 BY JURISDICTION: 6

Court	Croat	Serb	Others
Varazdin County Court	4	0	0
Slavonski Brod County Court	0	1	0
Osijek County Court	0	1	0
TOTAL	4	2	0

APPENDIX VII

DISMISSALS IN 2005 BY JURISDICTION: 7

Dismissals by verdict:

Court	Croat	Serb	Others
Osijek County Court	0	1 <i>in absentia</i>	0
TOTAL	0	1 in absentia	0

Dismissals by decision:

Court	Croat	Serb	Others
Sibenik County Court	0	1	0
Bjelovar County Court	2	0	0
Osijek County Court	1	2	0
TOTAL	3	3	0

APPENDIX VIII

APPEALS PENDING IN 2005 BY JURISDICTION:

ALL PENDING APPEALS: 116

Court	Croat	Serb	Other	Cases
Karlovac County Court	0	1	1	2
Bjelovar County Court	4	5	0	6
Sisak County Court	2	0	0	1
Slavonski Brod County Court	0	2	0	2
Gospic County Court	0	7 (5 in absentia)	0	3
Osijek County Court	4 (2 in absentia)	21 (15 in absentia)	2 (1 in absentia)	7
Sibenik County Court	5	4	0	6
Zadar County Court	1	30 (24 in absentia)	1 in absentia	12
Vukovar County Court	2 (1 in absentia)	21 (8 in absentia)	1	7
Dubrovnik County Court	0	0	1	1
Virovitica County Court	0	1	0	1
TOTAL	18 (3 in absentia)	92 (52 in absentia)	6 (2 in absentia)	48

COMPLETED APPEALS IN 2005: 26 (+ 1 terminated)

Court	Croat	Serb	Other	Cases
Karlovac County Court	0	0	1 (conf'd)	1
Zadar County Court	0	7 (4 rev'd) (4 in absentia); (3 conf'd) (2 in absentia)	0	4
Dubrovnik County Court	0	0	1 (conf'd)	1
Vukovar County Court	0	7 (6 rev'd) (3 in absentia); (1 conf'd) (+ 1 terminated)	0	2
Gospic County Court	0	5 (rev'd) (in absentia)	0	1
Osijek County Court	2 (conf'd 1; rev'd 1)	2 (conf'd 1; rev'd 1)	1 (conf'd)	4
TOTAL	2	21 (14 in absentia) + 1 terminated	3	13

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

- 1 to 6 months: 4 cases involving 10 individuals (Vukovar 6; Osijek 4)
- 12 to 18 months: 3 cases involving 3 individuals (Karlovac 1; Zadar 1; Osijek 1)
- 24 to 28 months: 1 case involving 4 individuals (Zadar 4)
- More than 48 months: 5 cases involving 10 individuals (Zadar 2; Vukovar 1 (+ 1 terminated); Dubrovnik 1; Gospic 5)