

Transitional Justice in Post-Yugoslav Countries

Report for 2010 - 2011



Humanitarian Law Center



Udruga Association
"Transicjska pravda, odgovornost i
opisano u Bosni i Hercegovini"
"Transitional Justice, Accountability and
Reconciliation in Bosnia and Herzegovina"



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I. Summary

War Crimes Trials

Trials for war crimes committed in the armed conflicts in the period from January 1991 until June 1999 are conducted in all successor countries of the former Yugoslavia except in Macedonia. What is typical of all of these trials is that they last a long time and victims are not informed about the progress made in the proceedings.

The uncoordinated judicial practice in the application of the laws for the prosecution of war crimes in Bosnia and Herzegovina seriously jeopardizes the equality of the suspects, defendants and convicts before the law. The Criminal Code of the Socialist Federal Republic of Yugoslavia is applied in war crimes trials at the entity level and in Brčko District, while the BiH Court applies the Criminal Code of BiH. The Supreme Court of BiH has not yet been instituted because of the resistance of the Republic of Srpska, which invokes the Dayton Agreement, and the appeals procedure is thus under the jurisdiction of the BiH Court, which also handles cases in the first instance.

The transfer of jurisdiction for war crimes trials to the lower courts is slow. In the period from 2006 until late 2011, a total of 83 cases were transferred to courts that have territorial jurisdiction. A total of 52 of these cases were transferred to courts in the Federation of BiH, 27 to courts in the Republic of Srpska, and one case to the Basic Court of the Brčko District of BiH. The new obligations of cantonal and district courts require certain technical, expert, and financial forms of support, in order that trials be conducted in a professional manner without violations of the right to a fair and just trial.

The institution of the guilty plea, along with the participation of victims' associations in the rendering of rulings with its application in particular cases, has proven to be an appropriate criminal justice instrument, considering the passage of time from the commission of war crimes, the age of victims and witnesses, and the need of victims to live to experience the public remorse and apology of perpetrators.

Trials are most intensive before the BiH Court, which has finally convicted 88 persons and completed a total of 78 cases of war crimes, crimes against humanity, genocide, and other serious violations of international humanitarian law in the period from its establishment until the end of 2011.

On account of the synergy of criticism by international institutions and human rights organizations, and of the recommendations of the European Commission, the closing of negotiations on Chapter 23, concerning the judiciary and fundamental rights, brought about an enhancement of the legal framework in which prosecution of war crimes in the Republic of Croatia is carried out. Amendments to the Law on Application of the Statute of the International Criminal Tribunal for the Former Yugoslavia introduced the exclusive jurisdiction of county courts in Osijek, Rijeka, Split, and Zagreb, and the possibility to use evidence gathered by the ICTY in criminal proceedings conducted in the Republic of Croatia.

Progress was made in the prosecution of war crimes in the year 2011. The pressures of Amnesty International and local human rights organizations during 2011 contributed to the fact that the Republic of Croatia State Prosecutor's Office (RCSPPO) filed indictments against Tomislav Merčep, the wartime Advisor in the Republic of Croatia Ministry of Interior, and Vladimir Milanković, the Commander of all active duty and reserve units within the Sisak Police Department during 1991 and 1992. However, apart from these few examples, there are still no investigations or indictments against political and military superiors in cases of criminal offences committed against members of a minority national group. Despite the existence of public information and evidence used in criminal cases that have already been completed, proceedings against Vladimir Šeks, who was the Chief of the Crisis HQ for East Slavonia and allegedly involved in crimes committed in Osijek in 1991, have not yet been initiated.

In cases of rape victims/victims of sexual violence, not in one single case have the courts applied victims' identity

protection measures – namely, measures which involve giving testimony from another room via video link, with face and voice distortion, the use of pseudonyms and so forth. The only measure that has been applied in certain cases was the exclusion of the public from main hearing sessions during the testifying by the victims.

Reasonings for lenient imprisonment sentences and acquittals show the partiality of judges towards members of the Croatian army and police. A judge of the County Court in Sisak, Snježana Mrkoci, stated while presenting the reasons for the acquittal of four members of the Croatian Army in November 2010: “I am very sorry that I have to try members of the Croatian Army for acts that we are used to hearing members of the opposite side committed, especially now when we are lighting candles for Vukovar.”

The announcement of the first instance judgement against Generals Ante Gotovina and Mladen Markač by the ICTY was followed by general politically biased commentaries, the celebration of the convicted persons as national heroes, organized protests of support throughout Croatia, and the ignoring of factual findings and of the suffering and injustice caused to victims.

The legislation in the Republic of Serbia does not meet the standards established by the ICTY with regard to command responsibility. The concept of command responsibility does not exist in the criminal legislation of Serbia. There is also no political will to prosecute generals. Even though the ICTY rendered a first instance judgment convicting almost the entire former leadership of the Government of the Republic of Serbia, this did not bring about criminal proceedings against highly ranked officers in the Army and the Ministry of Interior, in whose areas of responsibility mass war crimes were committed.

Investigations prepared and initiated by the Office of the War Crimes Prosecutor of the Republic of Serbia (OWCP) last a long time, and in a significant number of cases, do not result in indictments. The OWCP undertook preliminary actions in the case of mass crimes committed in the Dubrava Penitentiary in 2008; however, by the end of 2011, it still had not started an investigation. With regard to the criminal complaint filed by the HLC against the Commander of the Tenth Anti-Sabotage Detachment of the Republic of Srpska Army, Milorad Pelemiš, dating from August 2010, the OWCP publicly announced the initiation of criminal proceedings, but this still had not happened by the end of 2011.

During the year 2011, the OWCP indicted only nine persons, and only one of these indictments (charging three persons) is filed in a new case, while the indictments against six of the other persons emerged from earlier proceedings held before the Higher Court in Belgrade War Crimes Department.

In cases of war crimes committed in Kosovo, the OWCP often files indictments on the basis of partial investigations, as happened in the Suva Reka/Suharekë and Čuška/Qushk Cases.

The OWCP is in the practice of modifying indictments prior to the rendering of the judgments, lessening the responsibility of the accused who held command positions, as happened in the *Zvornik II* Case [defendants Popović and Grujić]. Again in 2011, there were more transferred cases than new cases before the Higher Court in Belgrade War Crimes Department and before the Court of Appeal in Belgrade.

As was the case in 2010, the Court of Appeal in Belgrade continued to confirm low imprisonment sentences imposed by courts of the first instance in 2011. The most negative example was the *Zvornik II* Case, in which the accused Branko Popović was sentenced to 15 years of imprisonment and the accused Branko Grujić to six years of imprisonment. Bearing in mind the fact that at the time when the crimes in question were committed they were the leading civilian and military authorities in the Municipality of Zvornik by virtue of the nature of their positions, and therefore the individuals most responsible, as well as being active participants in the implementation or even the organizers of the plan for the expulsion of the Muslim population, the low sentences imposed on them were highly inappropriate.

The question of the protection of insider witnesses gives much cause for concern, especially bearing in mind the report on irregularities in the prosecution of war crimes, which the HLC had raised with state institutions in November 2010, with the reaction of the OWCP to the allegations in this report.¹ The HLC points to the fact that the Witness Protection Unit operates as a pressure group, which has the task to prevent members of the Army and Police from testifying about war crimes. Allegations made by insider witnesses that the OWCP tried to deter them from testifying against an accused police general, as well as claims of the OWCP that insider witnesses are fabricating lies about this institution, are particularly disturbing.

The Criminal Code of Kosovo meets the requirements of International Law more than the Criminal Code of the Socialist Federal Republic of Yugoslavia does. The Kosovo legislation covers rape and the command responsibility of a military commander or a person effectively acting as a military commander who can be, in certain circumstances, held responsible for the actions of all persons under his effective control, unlike the Criminal Code of the Socialist Federal Republic of Yugoslavia, which only recognizes criminal responsibility for ordering or committing a war crime.

There are more than 200,000 backlog court cases waiting for action from the courts in Kosovo. The Judicial Council of Kosovo adopted the National Strategy for Reduction of Backlog Cases in November 2010, but the implementation of this Strategy has not yet given any visible results. Problems such as political pressure, the lack of local prosecutors and judges and their unprofessional behaviour are still current.

In 2010, EULEX, which is in charge of war crimes trials, was more engaged in cases of organized crime, corruption, abuse of official position, and acting upon extraordinary legal remedies, and less on war crimes trials. During the year 2011, there were more completed investigations resulting in confirmed indictments and first instance or final judgments. It is important to mention that local prosecutors were engaged in two cases of war crimes. In Case the *Prosecutor vs. Slobodan Martinovic et al.* Case, a local prosecutor took over the case in the main hearing stage, and in the *Prosecutor vs. Zoran Kolić* Case, a local prosecutor led the investigation.

Witness protection represents a major concern in the prosecution of war crimes in Kosovo. In July 2011, the Parliament of Kosovo passed the Witness Protection Law, which foresees the establishing of a Witness Protection Committee, which shall decide on the beginning, duration and the termination of the witness protection programme. The provision which prescribes “a special regime for protected person in custody, in a correctional facility” represents a huge concern.

EULEX, and UNMIK before them, prosecute and investigate cases of kidnappings of Kosovo Albanians by the KLA because of suspicions that they cooperated with the Serbian authorities, but they are still not dealing with the kidnappings of Serbs, Roma and other non-Albanians. In June 2011, EULEX established a Special Investigative Task Force with its seat in Brussels, tasked with carrying out an investigation of disappearances in Kosovo, the transfer of kidnapped persons to Albania and the extraction of human organs. This is an opportunity to speak about the fate of the missing Serbs, Roma and other non-Albanians not only in the context of criminal responsibility, but also in the context of the humanitarian and human need to express solidarity and compassion with all victims.

With amendments of the Criminal Code of Montenegro passed in 2003, command responsibility was foreseen as being an independent criminal offence. By the end of 2011, there were no persons who were charged on the basis of command responsibility.

The feature characteristic of all four war crimes cases is the fact that all of the accused are immediate perpetrators of the criminal offences. The prosecution proposed and the court ordered detention against the defendants only after the indictment was filed, which resulted in the fact that almost half of the persons charged with the

1 “Objections to Reports Submitted by the Humanitarian Law Center”, the Republic of Serbia Office of the War Crimes Prosecutor, November 14th, 2011. http://www.tuzilastvorz.org.rs/html_trz/VESTI_SAOPSTENJA_2011/S_2011_11_14_LAT.pdf.

deportations, as well as the principle defendant in the *Kaluđerski laz* Case and one of the accused in the *Morinj* Case, were tried *in absentia*.

The Higher Court in Podgorica rendered an acquittal on March 29th, 2011 finding all nine accused in the *Deportation of Refugees* Case not guilty, with the explanation that “the defendants did not commit a war crime by their unlawful actions, which it was established that the defendants had committed, because they were not members of any armed forces and they were not in the service of any of the sides to the conflict.” The judgment in the *Bukovica* Case was abolished and the case sent for retrial. The second acquittal in this case was rendered in early October 2011. Both judgments caused severe criticism by human rights non-governmental organizations.

There are no war crimes trials in Macedonia. The Amnesty Law was passed in 2002, allowing for the amnesty of all members of the Albanian armed forces who were suspected of committing war crimes up till September 26th, 2001. According to this Law, amnesty does not apply to persons who have stood trial before the ICTY. On the initiative of Albanian political parties (the Democratic Party of Albanians - DPA, and the Democratic Alliance for Integrations - DUI), the voting procedure was initiated in the Parliament of Macedonia on July 19th, 2011 in order to obtain majority support for the authentic interpretation of the Amnesty Law. That same day, the initiative was adopted with 63 ‘yes’ votes and 29 ‘no’ votes, which led to the withdrawal from criminal prosecution of cases of serious violations of human rights committed in the course of the armed conflict in Macedonia.²

The authentic interpretation of the Amnesty Law allowed for the amnesty to be applied to suspects in cases that the ICTY had transferred back to Macedonia for prosecution.

Crimes against Albanians have not yet been prosecuted. The *Jama* Case has been sitting in the Primary Public Prosecutor’s Office, and according to the Amnesty Law it will be closed. In the area of Jama, between Kičevo and Debra, a grave containing the mortal remains of persons who went missing during the conflict in 2001, namely Radoslav Ginov, a citizen of Bulgaria, and three Albanians from Macedonia, Islam Veliju, Hajredin Halimi and Ibrahim Veliju. The Prosecution did not file an indictment. Suspects for the killing of these persons were unidentified members of the regular security authorities.

There are no courts and prosecutions in Slovenia with particular responsibility for war crimes and there are no special witness protection services.

Nine cases of war crimes against the civilian population and breaches of the Geneva Conventions are pending. The proceedings have been lasting for almost 20 years in the absence of the accused. The most notorious is the criminal case before the court in Murska Subota against former officers of the then Yugoslav Peoples’ Army, Colonel Berislav Popov and General Vlada Trifunović, a citizen of the Republic of Serbia. Both indictments were merged into one in April 2008. The Prosecution in Murska Subota charged Trifunović and Popov on the basis of command responsibility for the war crime against civilian population that was committed during the intervention of the Yugoslav Peoples’ Army in Slovenia in 1991.³

15 investigations against members of the Yugoslav People’s Army, which were initiated immediately after the armed conflict in Slovenia was over, are pending.

Courts in Slovenia have rendered five acquittals. The last one was rendered in 1999. Four acquittals were rendered in cases of members of the former Yugoslav People’s Army who were of non-Slovenian nationality, and one of a Slovenian, an officer in the Yugoslav People’s Army (a.k.a. JNA) accused of “serving with foreign troops”.

2 Armed conflict in Macedonia lasted from January until November 2001.

3 “General Trifunović: I Will Not Attend Trial”, *Radio Free Europe* web page, July 14th, 2010, http://www.slobodnaevropa.org/content/general_trifunovic_optuzen_za_ratni_zlocin_u_sloveniji/2099828.html.

Active indictments and investigation cases require serious expert examination because they belong to the time period which was characterized by not only a legal, but also a political approach to cases involving members of the former JNA. This may be seen, among others, in the case of the acquittal of the JNA driver who was charged with causing a threat to security because he was “driving very fast in the direction of children under the influence of alcohol”.

As part of the regional cooperation in prosecuting war crimes, several bilateral agreements between prosecutions in BiH, Croatia, Serbia and Montenegro were signed by the end of 2011. These agreements have significantly contributed to the efficient resolution of requests for exchange of information and examination of witnesses outside state borders, because they allow prosecutions to send and respond to requests without using diplomatic channels.

The Agreement on Cooperation in Prosecuting Perpetrators of War Crimes, signed by Croatia and Serbia in 2006, proved to be a useful instrument for removing obstacles in the prosecution of war crimes which had piled up during the years after the war, when Croatia mainly prosecuted Serb perpetrators, while there were no war crimes trials in Serbia.

In February 2010, BiH and Croatia signed the amended Agreement on Mutual Execution of Court Judgments in Criminal Matters, which prevents the escape of convicts from one state to another. One result of this agreement is the fact that the convicted fugitive Branimir Glavaš is serving his sentence today in a prison in Zenica.

It is positive that judicial bodies of Serbia and Croatia continued to exchange evidence and court cases despite the deteriorating conditions caused by the arrest of the Croatian citizen Tihomir Purda in BiH upon the Republic of Serbia's arrest warrant, issued on the basis of his self-incriminating admission that he had killed Serbs, made while he was in detention in Serbia, followed by the refusal of the Republic of Serbia War Crimes Prosecutor's Office to transfer the indictment and the evidence incriminating a citizen of Croatia, Veljko Marić, to the Croatian judicial authorities, by announcing the indictment filed by the former JNA Court Martial Prosecutor against Vladimir Šeks and another 33 citizens of Croatia, and finally by the Bill Declaring Null and Void Certain Legal Documents of the former JNA and the judicial bodies of the former SFRY and the Republic of Serbia, which the Croatian Parliament passed on November 21st, 2011.

The signing of the Protocol between BiH and Serbia on cooperation in the prosecution of perpetrators of war crimes, which among other things includes joint efforts in the prevention of parallel investigations, and which was scheduled for November 2011 in Brussels, was postponed a day prior to the signing. The OSCE Mission to BiH believes that “the proceedings in cases of war crimes relating to the armed conflict in BiH led by Serbian authorities were the reason for the increased tensions between BiH and Serbia, even though they are legitimate pursuant to the international law.” The improvement of relations between the Prosecutions of BiH and Serbia depends on the abstention of the Republic of Serbia War Crimes Prosecutor's Office from abusing the principle of universal jurisdiction.

In October 2010, Serbia and Montenegro signed the Extradition Treaty, which regulates the extradition for criminal acts against humanity and other values protected by International Law, including for war crimes; however, by the end of 2011, it had not been applied in the case of the principal accused in the *Kaluđerški Laz* Case, Predrag Strugar.

Even though there is a great need for strong cooperation with Kosovo institutions because of the suffering of some 13,500 people during the armed conflicts in 1998 and 1999 and immediately after the end of the war, the judiciary of the Republic of Serbia cooperates only with the EULEX War Crimes Investigation Unit.

The Institutional Reforms

In most of the post-Yugoslav states there are legal provisions preventing persons sentenced to imprisonment for longer than the prescribed minimum for any kind of crime, to hold the office of Member of Parliament; this includes persons sentenced for war crimes.

In BH, in the period of 2002 through 2004, police (certification) and judiciary (re-nomination) reform was implemented. However, the vetting process was not comprehensive, because certain persons who had been involved in war crimes or in other breaches of human rights still occupy positions in state organs. The applicable legal framework forbids the nomination, as well as both the active and passive electoral rights of persons against whom certified indictments have been raised and whose trial has been pending in certain war crimes cases, and of persons serving related prison sentences. However, the law does not apply to persons who have served a prison sentence for war crimes. The normative framework in Kosovo does not specify whether a person serving a sentence for war crimes or one who has served it may be nominated as an electoral candidate, while persons indicted for war crimes may be eligible candidates. There are cases of such persons holding prominent public offices.

The applicable Law on Responsibility for Breaches of Human Rights in Serbia is still not in use, but the Draft Law Amending the Law on Responsibility for Breaches of Human Rights has been tabled, providing for an extension of the applicability of the original law to 20 years. This draft is still being processed by the Assembly. In Croatia and Montenegro, there have been no requests for lustration to date.

Slovenia had implemented the institutional reform as early as the mid-nineties, whereby one of the criteria for the nomination of judges and prosecutors, or for the continuing in service of police officers, was the nonparticipation of such persons in breaches of human rights, which included war crimes. The law additionally prevents the re-election of judges who had pronounced verdicts which breached human rights.

By the Law Amending the Law Determining the Additional Condition for Holding a Public Office, the Commission for Verification of the Facts in Macedonia in 2001 extended the background check on collaboration with secret services to priests, journalists, NGO activists, lawyers and scientists. Later that year, the constitutionality of this legal provision on extending the investigation was challenged before the Constitutional Court. The Macedonian university professor and long time human rights activist, Vladimir Milčin, was proclaimed a collaborator with the communist secret service, which provoked a questioning of the independence of this Commission with respect to political pressures.

The political and public support of persons accused of war crimes is still strong in the countries in the region. Their role in times of armed conflict is being praised, and the sufferings of their own nation are being emphasized. Such an attitude was dominant in Croatia after the pronouncement of the first instance verdict on the Croatian generals in April 2011, while political representatives of Serbs in Bosnia and Herzegovina continued to emphasize the ordeal of their people, insisting on the balance between the victims, particularly in relation to the Srebrenica genocide. Serbian Members of Parliament launched the majority of remarks regarding the work of the BH institutions dealing with war crimes, attributing bias and double standards to them with respect to ethnic affiliation. The Assembly of Serbia adopted in 2010 the Declaration Condemning the Crime in Srebrenica, by which an important step had been made in the process of confronting the past. However, both the wording of the Declaration and its adoption were met with criticism, particularly in BH. The representatives of the Association of Srebrenica Victims criticized the Declaration for avoiding explicit mention of the word «genocide», while the representatives of the organizations of war veterans interpreted the adoption of the Declaration as an imposition of collective guilt on the Serbian people.

War crimes related issues are very seldom mentioned in the media, while «patriotic» journalism, i.e. imposition of a nationalistic ideology, is still present in most post-Yugoslav countries. The question of the criminal responsibility of journalists for the instigation of war crimes during the armed conflicts of the nineties has been raised in Serbia. A similar request was made in Montenegro by human rights organizations. The media landscape of Croatia in 2011 was marked by the reaction to the first instance verdict on the generals. It was dominated by the attitude that it was unjust and that the sentences had been «draconic». No room was provided for the victims' reactions.

Fact-finding and truth-telling

During 2010 and 2011, there were no official initiatives to establish at state (national) level a truth commission in the region.

During that period, an Expert Work-group developing a Transitional Justice Strategy for B&H was conducting consultations on the model and draft proposals for the establishment of an extra-judicial body to be tasked with fact-finding and truth-telling at a national level. Despite numerous court rulings, a significant number of BiH citizens still believe that relevant conflict-related facts have not yet been established. Many fact-finding and truth-telling initiatives had been undertaken in BiH since the signing of the Dayton Peace Accords, mostly within the civil sector. Most of them, however, were primarily aimed at urban centers, and lacked coordination with each other.

After many years of intensive consultations within the RECOM process framework, the RECOM Statute Draft was finally adopted in March of 2011. It was presented to all heads of state in the former Yugoslavia, along with more than half a million signatures gathered from citizens across the region. Towards the end of 2011, the RECOM Process entered its institutionalization phase, defined by the initiative's shift from the civilian to the political levels.

The Croatian State Memorial-Documentation Center of the Homeland War continued to document facts about the conflict in Croatia, and expanded its activities in order to include the conflict in BiH as well. In 2011, the Republic of Kosovo formed an official War Crimes Institute charged with conducting, monitoring and coordinating all war crimes investigations. In Serbia, Croatia and Kosovo, human rights organizations engaged in documenting war crimes (HLC, HLC Kosovo and Documenta) continued their work of creating a comprehensive registry of human losses suffered in the armed conflicts of the nineties. In Slovenia, the Peace Institute in Ljubljana continued its investigation into the facts concerning "the erased".

The process of regional coordination and the linking of associations of families of the disappeared in the former Yugoslavia began in 2011, under the auspices of the International Commission for Missing Persons (ICMP). The aim was to increase pressure on the region's governments to investigate effectively and shed light on the fates of those who went missing during the conflict. According to the ICRC, as of December 31, 2011, the fates of ~13,500 people who disappeared in connection with the conflict between 1991 and 2001 were still unresolved. Leading the efforts on locating and identifying the mortal remains of the disappeared were the State Commissions on Missing Persons in Montenegro, Croatia and Serbia, and the Institute for Missing Persons in BiH. In Kosovo, efforts aimed at discovering the fates of the disappeared were being conducted by the Government Commission on Missing Persons, and the departments of forensic medicine within EULEX and Kosovo's Justice Ministry.

Most textbooks used in elementary and high schools in 2010 and 2011 in BiH, Croatia, Serbia, Kosovo, Montenegro and Slovenia exhibit a quite evident ethnic bias. Most of them assign responsibility for war crimes or the breakup of Yugoslavia to the "other" side, while being noticeably silent on their "own" side's involvement; while textbooks used in Macedonian elementary and high schools fail to mention the 2001 conflict.

Reparations

The post-Yugoslav states, for the most part, have not modified the previous laws prescribing the status and the rights of the civilian victims of war, and this segment of transitional justice leaves much to be desired. Most of these states still grant the right to administrative reparations only to civilians and military personnel who sustained bodily harm, but to become beneficiaries of these rights they need to produce proof of ill-treatment. Victims who do not meet these conditions, that is did not suffer bodily harm due to ill-treatment during the armed conflicts, do not enjoy the status of civilian victims of war in the majority of post-Yugoslav states. The only exception is BiH, where the law prescribes that victims of rape and sexual assault are entitled to compensation without having to prove any bodily harm.

During the preceding period, persons who had been detained in camps also had to prove bodily injury in the majority of these states, Croatia being the exception, and detention did not suffice to become eligible for reparations. With regard to individuals detained in camps, progress can be expected in Kosovo, which in late 2011

adopted a law regulating the status, rights and benefits of the civilian and military victims of war. It prescribes that detention in a camp suffices for the acquisition of the status of civilian victim and/or prisoner of war.

Kosovo has made a step forward with regard to reparations for the victims of human rights violations outside the armed conflict but in relation to it. In 2010 it adopted the Law on the Rights of Former Political Prisoners and Persecuted, regulating the legal status, rights and benefits of this large category of victims.

The legal provisions on the status, rights and benefits of the victims of war continue to be in force in all post-Yugoslav states. They are discriminatory in terms of the conditions required to get the status of war invalid, the amount of compensation and the scope of the benefits, as they still give preference to combatants over civilians.

Regardless of the huge number of compensation claims filed with courts of law across the region, very few victims manage to get compensation for the damage suffered during the armed conflicts, due to the protracted proceedings, interpretations of the legal provisions on the status of limitations relative to claims going against the victims, the application of the exceptionally high standards of evidence, inappropriate treatment of the victims and because courts declare that such cases are beyond their jurisdiction. Victims thus increasingly seek protection of their rights before international institutions. In 2010, in its first-instance judgment in the case of ten “erased” citizens, the European Court of Human Rights found Slovenia responsible, stating that in this case Slovenia had acted in breach of the European Convention on Human Rights. The judgment created room for the regulation of these persons’ status in the future.

Almost all post-Yugoslav countries, as before, erect memorials only in honour of the victims who are members of the ethnic majority. Montenegro is the only country which has dedicated a monument to all civilian victims who perished in the armed conflicts of 1991-2001. A small number of such monuments are the result of private initiative or the effort of the victims’ families, without any involvement of the authorities and often without the necessary authorisation. In several cases the authorities have prohibited or removed such memorials.

II. War Crimes Trials Before Local Courts

1. Summary

Trials for war crimes committed in the armed conflicts in the period from January 1991 until June 1999 are conducted in all successor countries of the former Yugoslavia except in Macedonia. What is typical of all of these trials is that they last a long time and victims are not informed about the progress made in the proceedings.

The uncoordinated judicial practice in the application of the laws for the prosecution of war crimes in Bosnia and Herzegovina seriously jeopardizes the equality of the suspects, defendants and convicts before the law. The Criminal Code of the Socialist Federal Republic of Yugoslavia is applied in war crimes trials at the entity level and in Brčko District, while the BiH Court applies the Criminal Code of BiH. The Supreme Court of BiH has not yet been instituted because of the resistance of the Republic of Srpska, which invokes the Dayton Agreement, and the appeals procedure is thus under the jurisdiction of the BiH Court, which also handles cases in the first instance.

The transfer of jurisdiction for war crimes trials to the lower courts is slow. In the period from 2006 until late 2011, a total of 83 cases were transferred to courts that have territorial jurisdiction. A total of 52 of these cases were transferred to courts in the Federation of BiH, 27 to courts in the Republic of Srpska, and one case to the Basic Court of the Brčko District of BiH. The new obligations of cantonal and district courts require certain technical, expert, and financial forms of support, in order that trials be conducted in a professional manner without violations of the right to a fair and just trial.

The institution of the guilty plea, along with the participation of victims' associations in the rendering of rulings with its application in particular cases, has proven to be an appropriate criminal justice instrument, considering the passage of time from the commission of war crimes, the age of victims and witnesses, and the need of victims to live to experience the public remorse and apology of perpetrators.

Trials are most intensive before the BiH Court, which has finally convicted 88 persons and completed a total of 78 cases of war crimes, crimes against humanity, genocide, and other serious violations of international humanitarian law in the period from its establishment until the end of 2011.

On account of the synergy of criticism by international institutions and human rights organizations, and of the recommendations of the European Commission, the closing of negotiations on Chapter 23, concerning the judiciary and fundamental rights, brought about an enhancement of the legal framework in which prosecution of war crimes in the Republic of **Croatia** is carried out. Amendments to the Law on Application of the Statute of the International Criminal Tribunal for the Former Yugoslavia introduced the exclusive jurisdiction of county courts in Osijek, Rijeka, Split, and Zagreb, and the possibility to use evidence gathered by the ICTY in criminal proceedings conducted in the Republic of Croatia.

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The announcement of the first instance judgement against Generals Ante Gotovina and Mladen Markač by the ICTY was followed by general politically biased commentaries, the celebration of the convicted persons as national heroes, organized protests of support throughout Croatia, and the ignoring of factual findings and of the suffering and injustice caused to victims.

The legislation in the Republic of Serbia does not meet the standards established by the ICTY with regard to command responsibility. The concept of command responsibility does not exist in the criminal legislation of Serbia. There is also no political will to prosecute generals. Even though the ICTY rendered a first instance judgment convicting almost the entire former leadership of the Government of the Republic of Serbia, this did not bring about criminal proceedings against highly ranked officers in the Army and the Ministry of Interior, in whose areas of responsibility mass war crimes were committed.

Investigations prepared and initiated by the Office of the War Crimes Prosecutor of the Republic of Serbia (OWCP) last a long time, and in a significant number of cases, do not result in indictments. The OWCP undertook preliminary actions in the case of mass crimes committed in the Dubrava Penitentiary in 2008; however, by the end of 2011, it still had not started an investigation. With regard to the criminal complaint filed by the HLC against the Commander of the Tenth Anti-Sabotage Detachment of the Republic of Srpska Army, Milorad Pelemiš, dating from August 2010, the OWCP publicly announced the initiation of criminal proceedings, but this still had not happened by the end of 2011.

During the year 2011, the OWCP indicted only nine persons, and only one of these indictments (charging three persons) is filed in a new case, while the indictments against six of the other persons emerged from earlier proceedings held before the Higher Court in Belgrade War Crimes Department.

In cases of war crimes committed in Kosovo, the OWCP often files indictments on the basis of partial investigations, as happened in the Suva Reka/Suharekë and Ćuška/Qushk Cases.

The OWCP is in the practice of modifying indictments prior to the rendering of the judgments, lessening the responsibility of the accused who held command positions, as happened in the *Zvornik II* Case [defendants Popović and Grujić]. Again in 2011, there were more transferred cases than new cases before the Higher Court in Belgrade War Crimes Department and before the Court of Appeal in Belgrade.

As was the case in 2010, the Court of Appeal in Belgrade continued to confirm low imprisonment sentences imposed by courts of the first instance in 2011. The most negative example was the *Zvornik II* Case, in which the accused Branko Popović was sentenced to 15 years of imprisonment and the accused Branko Grujić to six years of imprisonment. Bearing in mind the fact that at the time when the crimes in question were committed they were the leading civilian and military authorities in the Municipality of Zvornik by virtue of the nature of their positions, and therefore the individuals most responsible, as well as being active participants in the implementation or even the organizers of the plan for the expulsion of the Muslim population, the low sentences imposed on them were highly inappropriate.

The question of the protection of insider witnesses gives much cause for concern, especially bearing in mind the report on irregularities in the prosecution of war crimes, which the HLC had raised with state institutions in November 2010, with the reaction of the OWCP to the allegations in this report.⁴ The HLC points to the fact that the Witness Protection Unit operates as a pressure group, which has the task to prevent members of the Army and Police from testifying about war crimes. Allegations made by insider witnesses that the OWCP tried to deter them from testifying against an accused police general, as well as claims of the OWCP that insider witnesses are fabricating lies about this institution, are particularly disturbing.

The Criminal Code of **Kosovo** meets the requirements of International Law more than the Criminal Code of the Socialist Federal Republic of Yugoslavia does. The Kosovo legislation covers rape and the command responsibility of a military commander or a person effectively acting as a military commander who can be, in certain circumstances, held responsible for the actions of all persons under his effective control, unlike the Criminal Code of the Socialist Federal Republic of Yugoslavia, which only recognizes criminal responsibility for ordering or committing a war crime.

There are more than 200,000 backlog court cases waiting for action from the courts in Kosovo. The Judicial Council of Kosovo adopted the National Strategy for Reduction of Backlog Cases in November 2010, but the implementation of this Strategy has not yet given any visible results. Problems such as political pressure, the lack of local prosecutors and judges and their unprofessional behaviour are still current.

4 "Objections to Reports Submitted by the Humanitarian Law Center", the Republic of Serbia Office of the War Crimes Prosecutor, November 14th, 2011. http://www.tuzilastvorz.org.rs/html_trz/VESTI_SAOPSTENJA_2011/S_2011_11_14_LAT.pdf.

In 2010, EULEX, which is in charge of war crimes trials, was more engaged in cases of organized crime, corruption, abuse of official position, and acting upon extraordinary legal remedies, and less on war crimes trials. During the year 2011, there were more completed investigations resulting in confirmed indictments and first instance or final judgments. It is important to mention that local prosecutors were engaged in two cases of war crimes. In Case the *Prosecutor vs. Slobodan Martinovic et al.* Case, a local prosecutor took over the case in the main hearing stage, and in the *Prosecutor vs. Zoran Kolić* Case, a local prosecutor led the investigation.

Witness protection represents a major concern in the prosecution of war crimes in Kosovo. In July 2011, the Parliament of Kosovo passed the Witness Protection Law, which foresees the establishing of a Witness Protection Committee, which shall decide on the beginning, duration and the termination of the witness protection programme. The provision which prescribes “a special regime for protected person in custody, in a correctional facility” represents a huge concern.

EULEX, and UNMIK before them, prosecute and investigate cases of kidnappings of Kosovo Albanians by the KLA because of suspicions that they cooperated with the Serbian authorities, but they are still not dealing with the kidnappings of Serbs, Roma and other non-Albanians. In June 2011, EULEX established a Special Investigative Task Force with its seat in Brussels, tasked with carrying out an investigation of disappearances in Kosovo, the transfer of kidnapped persons to Albania and the extraction of human organs. This is an opportunity to speak about the fate of the missing Serbs, Roma and other non-Albanians not only in the context of criminal responsibility, but also in the context of the humanitarian and human need to express solidarity and compassion with all victims.

With amendments of the Criminal Code of Montenegro passed in 2003, command responsibility was foreseen as being an independent criminal offence. By the end of 2011, there were no persons who were charged on the basis of command responsibility.

The feature characteristic of all four war crimes cases is the fact that all of the accused are immediate perpetrators of the criminal offences. The prosecution proposed and the court ordered detention against the defendants only after the indictment was filed, which resulted in the fact that almost half of the persons charged with the deportations, as well as the principle defendant in the *Kaluđerski laz* Case and one of the accused in the *Morinj* Case, were tried *in absentia*.

13

The Higher Court in Podgorica rendered an acquittal on March 29th, 2011 finding all nine accused in the *Deportation of Refugees* Case not guilty, with the explanation that “the defendants did not commit a war crime by their unlawful actions, which it was established that the defendants had committed, because they were not members of any armed forces and they were not in the service of any of the sides to the conflict.” The judgment in the *Bukovica* Case was abolished and the case sent for retrial. The second acquittal in this case was rendered in early October 2011. Both judgments caused severe criticism by human rights non-governmental organizations.

There are no war crimes trials in **Macedonia**. The Amnesty Law was passed in 2002, allowing for the amnesty of all members of the Albanian armed forces who were suspected of committing war crimes up till September 26th, 2001. According to this Law, amnesty does not apply to persons who have stood trial before the ICTY. On the initiative of Albanian political parties (the Democratic Party of Albanians - DPA, and the Democratic Alliance for Integrations - DUI), the voting procedure was initiated in the Parliament of Macedonia on July 19th, 2011 in order to obtain majority support for the authentic interpretation of the Amnesty Law. That same day, the initiative was adopted with 63 ‘yes’ votes and 29 ‘no’ votes, which led to the withdrawal from criminal prosecution of cases of serious violations of human rights committed in the course of the armed conflict in Macedonia.⁵

The authentic interpretation of the Amnesty Law allowed for the amnesty to be applied to suspects in cases that the ICTY had transferred back to Macedonia for prosecution.

5 Armed conflict in Macedonia lasted from January until November 2001.

Crimes against Albanians have not yet been prosecuted. The *Jama* Case has been sitting in the Primary Public Prosecutor's Office, and according to the Amnesty Law it will be closed. In the area of Jama, between Kičevo and Debra, a grave containing the mortal remains of persons who went missing during the conflict in 2001, namely Radoslav Ginov, a citizen of Bulgaria, and three Albanians from Macedonia, Islam Veliju, Hajredin Halimi and Ibrahim Veliju. The Prosecution did not file an indictment. Suspects for the killing of these persons were unidentified members of the regular security authorities.

There are no courts and prosecutions in **Slovenia** with particular responsibility for war crimes and there are no special witness protection services.

Nine cases of war crimes against the civilian population and breaches of the Geneva Conventions are pending. The proceedings have been lasting for almost 20 years in the absence of the accused. The most notorious is the criminal case before the court in Murska Subota against former officers of the then Yugoslav Peoples' Army, Colonel Berislav Popov and General Vlada Trifunović, a citizen of the Republic of Serbia. Both indictments were merged into one in April 2008. The Prosecution in Murska Subota charged Trifunović and Popov on the basis of command responsibility for the war crime against civilian population that was committed during the intervention of the Yugoslav Peoples' Army in Slovenia in 1991.⁶

Fifteen investigations against members of the Yugoslav People's Army, which were initiated immediately after the armed conflict in Slovenia was over, are pending.

Courts in Slovenia have rendered five acquittals. The last one was rendered in 1999. Four acquittals were rendered in cases of members of the former Yugoslav People's Army who were of non-Slovenian nationality, and one of a Slovenian, an officer in the Yugoslav People's Army (a.k.a. JNA) accused of "serving with foreign troops".

Active indictments and investigation cases require serious expert examination because they belong to the time period which was characterized by not only a legal, but also a political approach to cases involving members of the former JNA. This may be seen, among others, in the case of the acquittal of the JNA driver who was charged with causing a threat to security because he was "driving very fast in the direction of children under the influence of alcohol".

As part of the regional cooperation in prosecuting war crimes, several bilateral agreements between prosecutions in BiH, Croatia, Serbia and Montenegro were signed by the end of 2011. These agreements have significantly contributed to the efficient resolution of requests for exchange of information and examination of witnesses outside state borders, because they allow prosecutions to send and respond to requests without using diplomatic channels.

The Agreement on Cooperation in Prosecuting Perpetrators of War Crimes, signed by Croatia and Serbia in 2006, proved to be a useful instrument for removing obstacles in the prosecution of war crimes which had piled up during the years after the war, when Croatia mainly prosecuted Serb perpetrators, while there were no war crimes trials in Serbia.

In February 2010, BiH and Croatia signed the amended Agreement on Mutual Execution of Court Judgments in Criminal Matters, which prevents the escape of convicts from one state to another. One result of this agreement is the fact that the convicted fugitive Branimir Glavaš is serving his sentence today in a prison in Zenica.

It is positive that judicial bodies of Serbia and Croatia continued to exchange evidence and court cases despite the deteriorating conditions caused by the arrest of the Croatian citizen Tihomir Purda in BiH upon the Republic of

6 "General Trifunović: I Will Not Attend Trial", *Radio Free Europe* web page, July 14th, 2010, http://www.slobodnaevropa.org/content/general_trifunovic_optuzen_za_ratni_zlocin_u_sloveniji/2099828.html.

Serbia's arrest warrant, issued on the basis of his self-incriminating admission that he had killed Serbs, made while he was in detention in Serbia, followed by the refusal of the Republic of Serbia War Crimes Prosecutor's Office to transfer the indictment and the evidence incriminating a citizen of Croatia, Veljko Marić, to the Croatian judicial authorities, by announcing the indictment filed by the former JNA Court Martial Prosecutor against Vladimir Šeks and another 33 citizens of Croatia, and finally by the Bill Declaring Null and Void Certain Legal Documents of the former JNA and the judicial bodies of the former SFRY and the Republic of Serbia, which the Croatian Parliament passed on November 21st, 2011.

The signing of the Protocol between BiH and Serbia on cooperation in the prosecution of perpetrators of war crimes, which among other things includes joint efforts in the prevention of parallel investigations, and which was scheduled for November 2011 in Brussels, was postponed a day prior to the signing. The OSCE Mission to BiH believes that "the proceedings in cases of war crimes relating to the armed conflict in BiH led by Serbian authorities were the reason for the increased tensions between BiH and Serbia, even though they are legitimate pursuant to the international law." The improvement of relations between the Prosecutions of BiH and Serbia depends on the abstention of the Republic of Serbia War Crimes Prosecutor's Office from abusing the principle of universal jurisdiction.

In October 2010, Serbia and Montenegro signed the Extradition Treaty, which regulates the extradition for criminal acts against humanity and other values protected by International Law, including for war crimes; however, by the end of 2011, it had not been applied in the case of the principal accused in the *Kaluđerški Laz* Case, Predrag Strugar.

Even though there is a great need for strong cooperation with Kosovo institutions because of the suffering of some 13,500 people during the armed conflicts in 1998 and 1999 and immediately after the end of the war, the judiciary of the Republic of Serbia cooperates only with the EULEX War Crimes Investigation Unit.

2. Bosnia and Herzegovina

15

Two criminal codes, namely the Criminal Code of the Socialist Federal Republic of Yugoslavia from 1976 and the Criminal Code of BiH from 2003, are applied in cases of war crimes. The BiH Court applies the Criminal Code of BiH⁷, while the cantonal courts and the Basic Court in Brčko District apply the Criminal Code of SFRY, which is also being applied in cases of war crimes in Croatia, Serbia, Montenegro and Kosovo. According to the interpretation of the BiH Court⁸, local courts have the right to decide independently which criminal code they wish to use to prosecute war crimes. The main principle is to prosecute the accused on the basis of the law which was enforced at the time when the crimes were committed, but this principle may be disregarded if there is a risk that the suspect/accused will escape trial for war crimes. In such cases, the more recent criminal code should be applied.⁹ Pursuant to the Criminal Code of SFRY, the maximum imprisonment sentence that may be imposed is 15 years, and the minimum five years. The Criminal Code of BiH prescribes a maximum of 45 years of imprisonment and a minimum of 10 years.

2.1. Capacities

The Special Department for War Crimes in the BiH Court (Department I) was founded on January 6th, 2005 as a common initiative of the Office of the High Representative of the European Union in BiH and the ICTY, for the purpose of prosecuting perpetrators of middle and low rank in the command hierarchy. By establishing the

⁷ The BiH court has applied the Criminal Code of SFRY in two cases.

⁸ "One war crime, two codes", *IWPR* web page, February 16th, 2012, <http://iwpr.net/sr/report-news/bosna-i-hercegovina-jedan-ratni-zlo%C4%8D-dva-zakona>.

⁹ According to the statement given by the Assistant to the Minister of Justice of BiH, Niko Grubješić, to an *IWPR* journalist: "One person who was prosecuted for war crimes before the BiH Court has filed an application with the Strasbourg Court. This person claims that his fundamental human rights have been violated because he was prosecuted on the basis of the new criminal code". *Ibid*.

BiH Court and with the series of changes that followed, the BiH Court took over a part of the jurisdiction from cantonal and district courts in the prosecution of war crimes.

Besides nine local judges, four international judges were also appointed in Department I in late 2011.¹⁰ The BiH Court's Appellate Chamber has 14 judges who are acting in other cases besides cases of war crimes. There are 26 legal advisors and professional associates who are directly cooperating with judges in Department I and the Appellate Chamber. There are 27 employees in other departments who directly or indirectly provide support in the prosecution of war crimes (Court Administration Department).¹¹ The prosecutorial function has also been internationalized at the level of BiH, and therefore four international prosecutors of the 19 were also engaged in Department I in late 2011. The mandate of international prosecutors and judges in the Criminal Department and the War Crimes Department expired in late 2009; however, it was extended for another three years.

According to the jurisdiction of courts for cases of war crimes, there are two groups of such cases. The first group encompasses cases of war crimes that were filed after the BiH Criminal Procedure Code (CPC) entered into force. The BiH Court has jurisdiction to try these cases: judgments are rendered by the BiH Court Criminal Division Section I, and the BiH Court Appellate Division Section I renders decisions in the second instance. The second group encompasses cases that the courts and prosecution offices in Entities and the Brčko District acted upon before the BiH CPC entered into force and in which indictments were not valid, i.e. they were not confirmed. These courts and prosecutions are obliged to complete these cases, but the BiH Court has the right pursuant to Article 449 of the BiH CPC to take over any of these cases.

There are two supreme courts in the two Entities (The Supreme Court of the Federation of BiH and the Supreme Court of the Republic of Srpska), the State court of BiH, which does not have the jurisdiction of a supreme court, the Appellate Court of the Brčko District of BiH, ten cantonal courts, and six district courts in two different state administrative units.¹² War crimes are being tried before all of these 20 courts at different levels.¹³ The situation is the same with prosecutor's offices: four higher level prosecutor's offices (entity, district, and national), 15 mid-level prosecutor's offices (district/cantonal level), one special prosecutor's office, and eight prosecution departments. All 28 prosecutor's offices have the jurisdiction to investigate and prosecute war crimes.

2.2. Transferring Jurisdiction to Lower Courts

Immediately after the establishing of the BiH Court it became obvious that this court would not be able to take over all the cases that were transferred to it by the constitutional Act. Hence, the issue of the transfer of jurisdiction for war crimes to lower courts has still remained one of the key problems in the processing of war crimes in BiH.

Besides this, the prosecution of war crimes is also burdened by the lack of accurate information relating to unresolved cases. For instance, in April 2010 the BiH Prosecutor's Office reported the existence of 1,381 cases of war crimes in the investigation stage referring to 8,249 suspects and being processed by 17 prosecution offices, which is much less than the assessment made by the same authorities in 2007, which was between 13,000 and 17,000 perpetrators. According to the interpretation of the OSCE Mission, the cause for this huge difference in numbers may lie in cases which were prosecuted parallelly in different prosecution offices and the inadequate

10 The list of judges of the Court of Bosnia and Herzegovina on January 27th, 2012, web page of the BiH Court, <http://www.sudbih.gov.ba/?opcija=bio&jezik=b>.

11 Information received from the BiH Court, January 27th, 2012.

12 Two Constitutional Courts operate in BiH, three Ministries of Justice, and one Judicial Commission, which has the jurisdiction of a ministry.

13 11 courts in the Federation of BiH have jurisdiction to try the second group of cases of war crimes (10 cantonal courts as first instance courts and the Supreme Court of the Federation of BiH as the second instance court), and a total of 6 courts in the Republic of Srpska (5 district courts as first instance courts and the Supreme Court of the Republic of Srpska as the second instance court), and a total of 2 courts in the Brčko District (Basic Court of Brčko District as the first instance court and the Appellate Court of the Brčko District of BiH as the second instance court).

coordination between prosecutor's offices in the exchange of information.¹⁴

The BiH Court renders the decision to transfer cases to other courts (which have territorial jurisdiction), on the basis of the criteria prescribed in Article 27a of the BiH Criminal Procedure Code, or more precisely on the basis of the gravity of the criminal offence, the capacity in which perpetrators had acted and other circumstances relating to the assessment of the complexity of the case. The same criteria were prescribed and defined in detail in the National Strategy for War Crimes Processing from 2008.¹⁵ The Strategy defines timelines, capacities, the criteria and mechanisms for case administration, coordination of judicial practice, the issue of regional cooperation, victims'/witnesses' protection and support, as well as the financial aspects and the monitoring of the implementation of the Strategy. There is a plan for creating a central data base at the level of the BiH Court and the BiH Prosecutor's Office, which would contain information about all cases of war crimes in BiH. It was decided that persons who bear the greatest responsibility for the commission of war crimes will be prosecuted before the BiH Court. It was also prescribed that judicial practice should be coordinated in order to provide legal security and equality of citizens before the law.¹⁶ The Strategy emphasizes the necessity to prosecute the most complex and high priority cases of war crimes within a period of seven years, and the prosecution of other cases of war crimes within a period of 15 years. In order to facilitate the transfer of cases to other courts, the House of Peoples of the Parliamentary Assembly of BiH passed the amendments to the BiH Criminal Procedure Code in September 2010. However, some experts believe that the target set is still too ambitious.¹⁷

In the period from 2006 until late 2011, by the decision of the BiH Court a total of 83 cases were transferred to the courts which have the territorial jurisdiction. 52 of these cases have been transferred to courts in the Federation of BiH, 27 to courts in the Republic of Srpska, and one case to the Basic Court of the Brčko District of BiH.¹⁸ The OSCE Mission to BiH assesses that the judicial system in BiH has not yet allowed for the efficient transfer of less complex cases to lower levels according to the set criteria, and that the number of transferred cases is still insufficient.¹⁹

The National Strategy prescribes that war crimes trials be conducted at all levels and that one code be applied, namely, the BiH Criminal Code. As a possible method for the coordination of judicial practices on the territory of the entire BiH, the OSCE suggests the establishing of a Supreme Court of BiH. There is no explicit constitutional basis for this and this is what the government of the Republic of Srpska invokes, but there is also no explicit constitutional prohibition for passing a law on establishing and organizing the mandate of a Supreme Court of BiH, which is strongly favoured by the Government of the Federation of BiH. However, all those concerned demand that a solution be found for the BiH Court not to render first instance judgments but to decide in second instance proceedings.

The High Judicial and Prosecutorial Council of BiH proposed in November 2011 the establishing of the BiH Appellate Court, but the Republic of Srpska opposed this proposal, explaining that the Constitution of BiH and the Constitutions of the two entities do not envisage such an institution. The Republic of Srpska finds that it is acceptable to have the Appellate Chamber in the BiH Court, which would be in charge of trying criminal offences according to the Criminal Code of BiH, and would not be in charge of trying criminal offences defined by the criminal codes at entity level.²⁰

14 *Delivering Justice in Bosnia and Herzegovina: An Overview of War Crimes Processing from 2005 to 2010*, OSCE BiH, 2011, page 24-25.

15 The Humanitarian Law Center, Documenta & BIRN, *Transitional Justice in Post-Yugoslav Countries: Report for 2009*, page 7.

16 The second periodical report by Bosnia and Herzegovina on the application of the International Covenant on Civil and Political Rights, Ministry for Human Rights and Refugees, October 2010.

17 Interview with Branko Mitrović, a prosecutor in the District Prosecutor's Office in Banja Luka, December 20th, 2011.

18 Information obtained from BiH Court, January 27th, 2012.

19 Information received from the OSCE Mission, January 27th, 2012.

20 "HJPC proposes the establishing of the Appellate Court of BiH", *Glas Srpske* web page, November 9th, 2011, http://www.glassrpske.com/novosti/vijesti_dana/VSTS-predlaze-osnivanje-apelacionog-suda-BiH/lat/66019.html.

2.3. Federation of BiH

The total number of war crimes prosecutors in the Federation of BiH is 12. Only five of the total of 10 cantonal prosecutor's offices have specialized departments for war crimes, which were established after the adoption of the National Strategy for War Crimes Processing. Only four prosecutor's offices have prosecutors who are exclusively working on cases of war crimes.²¹ A more efficient distribution of the prosecutorial staff depends greatly on the passing of the FBiH Law on the Prosecutor's Office, which is still pending. It would establish a common legal framework for all 10 cantonal and one federal court. This draft law stipulates that an advisor and an assistant prosecutor should be appointed in order to increase the capacities and the efficiency of the entity prosecutions.²²

2.4. Republic of Srpska BiH

War crimes trials in the Republic of Srpska are conducted before five district courts (Banja Luka, Doboj, Bijeljina, East Sarajevo and Trebinje) and before the Supreme Court of the Republic of Srpska. The Supreme Court of the Republic of Srpska also decides on the legal remedies against rulings rendered by district courts and it renders final judgments.²³ The prosecutorial structure comprises the Prosecutor's Office of the Republic of Srpska, five district prosecutor's offices, and the Special War Crimes Prosecutor's Office within the District Prosecutor's Office in Banja Luka.

There are 21 judges in six courts who work on cases of war crimes. There are 12 prosecutors in all prosecutor's offices who deal with the investigation and criminal prosecution. In the Republic of Srpska Ministry of the Interior, there is a War Crimes Investigation Department, which deals with the investigation of war crimes; however, the number of employees is considered confidential, according to the Republic of Srpska Ministry of the Interior Protocol on Protection of Confidential Information.²⁴ A team of investigators was established in the Special War Crimes Prosecutor's Office in Banja Luka comprising members of the Banja Luka Public Security Center.²⁵ The prosecution also often receives criminal complaints against unidentified perpetrators for aggravated murders, about which only an investigation can reveal the existence of evidence indicating possible war crimes.²⁶

The Criminal Code and the Criminal Procedure Code of the Socialist Federal Republic of Yugoslavia, which were in force at the time of the armed conflict, are applied in the prosecution of war crimes.²⁷

2.5. Brčko District of BiH

The Basic and Appellate Courts of the Brčko District in BiH process cases of war crimes in the Brčko District. The Criminal Law of SFRY is applied.

21 Information on the number of prosecutors received from the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, January 6th, 2012.

22 Information received from the OSCE Mission, January 27th, 2012.

23 Law on Courts, Article 28, *Official Gazette of the Republic of Srpska*, nr. 111/04, nr. 109/05, nr. 37/06, nr. 119/08, nr. 58/09, nr. 116/09.

24 Information received from Mirna Šoja a public relations officer in the Republic of Srpska Ministry of the Interior, January 13th, 2012.

25 Interview with Branko Mitrović, a prosecutor from the Banja Luka District Prosecutor's Office, December 20th, 2011.

26 According to Prosecutor Mitrović, there were instances in which the original criminal complaint referred to aggravated murder and causing general danger, but later on the action would be redefined and identified as a war crime. *Ibid.*

27 The courts in the Republic of Srpska apply the Criminal Law and the Criminal Procedure Code of the SFRY, which do not allow for the acceptance of the records from the investigation to be tendered as evidence, which is however allowed by the Criminal Procedure Code applied by the BiH Court. "Banja Luka: Legacy of the Time We Lived In", *BIRN* web page, December 27th, 2007, <http://www.bim.ba/bh/95/10/7151/>.

2.5.1. Statistics

From the beginning of 2011 until December 31st, 2011, the total number of cases before courts in BiH was 115²⁸: 64 in the BiH Court, 22 in the Federation of BiH, 21 in the Republic of Srpska, and 8 in the Brčko District.²⁹

During the year 2010, there were a total of 108 cases in all courts in BiH. The greatest number of war crimes trials was conducted in the BiH Court - a total of 47 cases. The FBiH Supreme Court had 14 cases, and the Supreme Court of the Republic of Srpska had 7 cases. Cantonal courts had 22 cases, district courts had 12, and the Basic Court in Brčko District had 2 cases.³⁰ In 2011, a total of 52 proceedings were initiated, 27 of which were initiated in the BiH Court, 8 in the Republic of Srpska district courts, 13 in the FBiH, and 4 in the Brčko District Court. 33 cases were completed, 19 of which in the BiH Court, 4 in district courts, 10 in cantonal courts, and none in the Brčko District of BiH.³¹

In 2010, a total of 39 proceedings relating to criminal acts of war crimes, crimes against humanity and other violations of international humanitarian law were initiated. 26 of these proceedings were initiated in the BiH Court, six in courts in the Republic of Srpska, five in the FBiH, and two in the Brčko District of BiH. 23 cases were completed, 13 of which in the BiH Court, four in the RS courts, five in the FBiH, and one in the Brčko District of BiH.³²

Four cases of war crimes were conducted before the Basic Court in the Brčko District of BiH during the year 2010, and in 2011 there were seven trials. The Appellate Court of the Brčko District of BiH had one case of war crimes in 2010 and one person was finally convicted. In 2011, there were no cases of war crimes before this court.³³

As regards investigation, the BiH Prosecutor's Office led 365 investigations in cases of war crimes, cantonal prosecutor's offices led 320, district prosecutor's offices led 437, and the Brčko District Prosecutor's office led 28 investigations.³⁴ The Center for War Crimes Investigation of the State Investigation and Protection Agency (SIPA) acted upon 480 orders from the BiH Prosecutor's Office in 2010, of which six orders came from the entity prosecutor's offices; and 197 investigations were completed. During the first nine months of 2011, SIPA acted on 317 orders of the BIH Prosecutor's office, 5 of which were orders from the entity prosecutor's offices; and 211 investigations were completed. In the period from 2006 until 2011, SIPA arrested 137 persons suspected of committing war crimes.³⁵

The BiH Prosecutor's Office filed 26 indictments for war crimes against 42 persons in 2010³⁶, and in 2011, they filed 25 indictments against 40 persons.³⁷

The Prosecutor's Office of the Basic Court in Brčko District filed three indictments against seven persons in 2010, and in 2011 they filed three indictments against five persons.³⁸

28 The High Judicial and Prosecutorial Council of Bosnia and Herzegovina, the only body responsible for the collection and processing of all statistical data relating to the work of all courts and prosecutor's offices in Bosnia and Herzegovina, refused to give statistics for this report, explaining that they do not possess the data.

29 Information received from the OSCE Mission, January 27th, 2012.

30 Information received from the High Judicial and Prosecutorial Council of BiH, January 6th, 2011.

31 Information received from the OSCE Mission, January 27th, 2012.

32 Completed cases of war crimes 2004-2010, OSCE BiH web page <http://www.oscebih.org/Default.aspx?id=70&lang=BS>.

33 Email communication with Amela Perezović, an officer in the Brčko District of the BiH Appellate Court, December 15th, 2011.

34 Annual report of the High Judicial and Prosecutorial Council for 2010, Table 16, page 267.

35 Information received from SIPA, January 6th, 2012.

36 The Registry of the BIH Court and the BiH Prosecutor's office, Annual Report for 2010, page 37.

37 "State court in 2011: 31 judgments in cases of war crimes", *Radio Free Europe* web page, January 8th, 2011, http://www.slobodnaevropa.org/content/drzavni_sud_u_2011_33_presude_za_ratne_zlocine/24444988.html.

38 Brčko District of BiH Prosecutor's Office web page, <http://jt-brckodistriktbih.pravosudje.ba/>.

2.6. Results of the BiH Court

From the time the BiH Court was founded until late 2011, it reached convictions for 88 persons and completed a total of 78 cases of war crimes offences, crimes of against humanity, genocide, and other serious violations of international humanitarian law. Since the beginning of its work, the BiH Court has rendered a total of 91 first instance judgments against 133 accused, including 23 judgments rendered on the basis of plea agreements with 23 persons.³⁹ The BiH Court ordered the provisional release of six persons out of the total number of convicted persons, namely Dušan Fuštar,⁴⁰ Mitar Rašević, Vasa Todorović, Momčilo Gruban, Paško Ljubičić and Ivica Vrdoljak, while Abduladhim Maktouf was finally convicted to 5 years and served his sentence.⁴¹

During the year 2010, the BiH Court received 106 new cases in the pre-trial investigation stage of the proceedings, including 12 new cases in the pre-trial hearing stage of the proceedings after the filing of the indictments. They finally convicted 16 persons. 13 first instance judgments, including five judgments rendered on the basis of the plea agreements, were rendered before Department I, and the Appellate War Crimes Chamber rendered 10 judgments, which became final.⁴²

By December 26th, 2011, the BiH Court had 117 cases in the investigation phase and 11 new cases with indictments filed. In late 2011, 25 cases were in the pre-trial or trial stages, and 9 cases were in the appeals stage of the proceedings. 15 persons were finally convicted. Department I rendered 18 first instance judgments. The Appellate Department rendered 14 final judgments.⁴³ From the beginning of the War Crimes Chamber work, the greatest number of plea agreements concluded were in 2011, which the BiH Court accepted, convicting 7 persons and sentencing them to a total of 70 years of imprisonment.⁴⁴ Plea agreements represent one of the key institutions in criminal proceedings in BiH.⁴⁵

33 convicted persons were sentenced to a total of 436 years of imprisonment. The highest sentence was imposed on Milorad Trbić; he was sentenced to 30 years of imprisonment for crimes committed in Srebrenica. The most lenient final sentence was rendered in the case of the former Assistant Commander for Security in the *Hamze* Battalion of the Republic of BiH Army Fifth Corps, Šefik Alić, who was sentenced to 10 years of imprisonment.⁴⁶

2.7. Extraditions to and from BiH

Extraditions of suspects from and to BiH are mainly executed on the basis of international arrest warrants. During 2010 and 2011, countries outside the region of the former Yugoslavia extradited a greater number of suspected perpetrators of war crimes to judicial institutions in BiH.

The US Department of Justice extradited Edin Džeko and Rasema Handanović to the BiH Judiciary on January

39 Information received from the BiH Court, January 27th, 2012.

40 The provisional release of Dušan Fuštar who surrendered to the Hague Tribunal and pleaded guilty to crimes against Bosniaks and Croats committed in Keraterm lasted until March 29th, 2011, when the prison sentence finally imposed expired. He was in detention at the ICTY from 2002 until 2006. The time he spent in the ICTY Detention Unit was included in the sentence imposed by the BiH Court.

41 Information received from the BiH Court, January 4th and 25th, 2012.

42 Information received from the BiH Court, January 4th, 2012.

43 Information received from the BiH Court, January 4th, 2012.

44 "State Court in 2011: 31 judgments in war crimes cases," *Radio Free Europe*, web page, January 8th, 2011, http://www.slobodnaevropa.org/content/drzavni_sud_u_2011_33_presude_zaradne_zlocine/24444988.html.

45 As part of the comprehensive reform of the criminal justice system, this practice, based on Anglo-Saxon customary law, enables prosecutors and suspects, i.e. the accused to bargain on the kind and duration of the criminal sentence and agree to give up certain fundamental rights, such as the right to public discussion before the court, to public court proceedings and the right to appeal. Cases are thereby resolved uncomparably faster, because there is no public hearing. However, the problem that victims still point to is that the convicts receive more lenient sentences in return, and therefore justice, from their point of view, has not been served.

46 "State court in 2011: 31 judgments in cases of war crimes," *Radio Free Europe* web page, January 8th, 2011, http://www.slobodnaevropa.org/content/drzavni_sud_u_2011_33_presude_zaradne_zlocine/24444988.html.

12th, 2010 on the basis of the international arrest warrants issued by the BiH judicial authorities.⁴⁷ The BiH Prosecutor's Office suspects that Edin Džeko, as a member of the *Zulfikar* special operations unit, which operated as part of the BiH Army HQ, participated in the attack on Trusina in April 1993, when 18 Croat civilians were killed and four members of the Croatian Defence Council (HVO) were detained.⁴⁸

Rasema Handanović aka 'Zolja', a member of the same unit, is also suspected by the BiH Prosecutor's Office of participating in the attack on Trusina on April 16th, 1993 when 18 civilians and 4 prisoners of war were killed, and a number of persons were wounded, including two children. Rasema Handanović is suspected of personally participating in the execution of three prisoners of war and three civilians.⁴⁹

Marko Boškić, a former member of the Tenth Anti-Sabotage Detachment of the Republic of Srpska Army, suspected of committing the act of genocide in Srebrenica in July 1995, was extradited to BiH on April 24th, 2010 from the US, where he was serving a sentence for the criminal act of immigration fraud. On July 19th, 2010, in Sarajevo, he signed a plea agreement with the BiH Prosecutor's Office, which was also supported by victims' associations. He was convicted on July 27th, 2010 to 10 years of imprisonment for crimes against humanity.

On the basis of the international arrest warrant issued by the BiH Prosecutor's Office, Spain extradited Veselin Vlahović aka 'Batko' on August 26th, 2010. The BiH Prosecutor's Office charges Veselin Vlahović with the fact that in the period from May to August 1992 on the territory of Grbavica, Vrace, and Kovačić in the Municipality of Sarajevo, he killed and participated in the killing of more than 30 persons, and that he alone, or together with a group of other armed individuals, abused, beat, and confiscated money and valuables from citizens of Croat and Bosniak nationality. The trial of the accused Vlahović continued during 2012.

A citizen of Croatia, Azra Bašić, who was arrested in March 2011 in the US on the basis of an international arrest warrant issued by the BiH judicial authorities in 2006, has not yet been extradited to the judicial institutions in this country. Ms. Bašić is suspected of torturing and killing detained Serbs in three camps in Derventa in the period from April until June 1992, while she was the Commander of the 108th Rijeka Brigade of the Republic of Croatia Army. The US Federal Court approved extradition on the basis of the documents delivered from the BiH Ministry of Justice. The BiH Prosecutor's Office analysed the evidence in the case, after which it transferred the case to the District Court in Doboj.

Azra Bašić's Defence Attorney, Patrick Nash, claims however that there is no agreement between BiH and the US which allows for the extradition, especially since Ms. Bašić is a naturalized US citizen, while the US Federal Court judge thinks that the existing agreements allow for the deportation of Ms. Bašić to Europe.⁵⁰

2.8. Trials for Sexual Crimes Committed During the War

By the end of 2011, there were around 20 cases of wartime sexual violence before the BiH Court⁵¹, in which approximately 100 women victims testified. The UN Committee Against Torture believes that "in BiH rape is not defined as an individual criminal offence and the definition of war-time sexual violence is not consistent with international definitions, because of which indictments based on these articles may easily be dismissed and the

⁴⁷ *Ibid.*

⁴⁸ "BiH: War Crime Suspect Extradited from the US", *Daily* web page, December 20th, 2011. http://www.dnevno.hr/vijesti/regija/bih_osumnjiceni_za_ratni_zlocin_izrucen_iz_sada/498431.html.

⁴⁹ "Rasema Handanović extradited to BiH Judiciary", *BIRN* web page, December 27th, 2011, <http://www.bim.ba/bh/302/10/34130/>.

⁵⁰ "Azra Bašić Demands Trial in the US", *B92* web page, July 9th, 2011, http://www.b92.co.rs/info/vesti/index.php?yyyy=2011&mm=07&dd=09&nav_category=64&nav_id=524340.

⁵¹ Associations of victims of sexual violence insist on having all cases of wartime sexual violence tried before the BiH Court, since victims do not trust lower level courts for various reasons and in most cases their greatest concern is the issue of adequate witness protection.

accused acquitted.”⁵² There are only two articles in the BiH Criminal Code that define rape as either a war crime against humanity (Article 172) or as a war crime against a civilian population (Article 173). In 2010, the act of rape as a war crime is mentioned in nine judgments rendered by the BiH Court, three of which were acquittals (Savić Miomir, Savić Krsto and Hodžić Ferid), while six were guilty judgments.⁵³ By the end of 2011, seven of 27 judgments rendered by Department I were guilty judgments.⁵⁴

The trial of Albina Terzić, the first woman to have been, among other criminal offences, also charged with acts of wartime sexual violence, is certainly one of the cases before the BiH Court which “marked” the year 2011⁵⁵. The BIH Prosecutor’s Office charges Albina Terzić with the fact that in the period from May until mid-July 1992, in her capacity as a member of the Croatian Defence Council (HVO) Military Police, she acted individually or together with other members of the HVO, in perpetrating inhumane acts against Serb civilians. She beat them, tortured them mentally and physically, organized “camp weddings” and forced male detainees to rape one mentally challenged female detainee, thus committing multiple counts of sexual violence against male prisoners and the one female prisoner. The trial began on October 4th, 2011.

2.9. Trial for Crimes in *Silos* Camp, 9 *Maj* Elementary School and *Krupa* Barracks

On December 30th, 2012, the BiH Prosecutor’s Office filed an indictment against eight persons charging them with the fact that in the period from May 1992 until January 1996 they participated in a joint criminal enterprise and by planning, ordering, committing, inciting, aiding and abetting committed the criminal offence of war crimes against civilians and the criminal offence of war crimes against prisoners of war of Serb and Croat ethnicity in the facilities of *Silos* in Tarčin, at the 9 *Maj* primary school in Pazarić and the warehouse of the *Krupa* barracks in Zovik.⁵⁶ The accused Mustafa Đelilović was the President of the Municipal Assembly in Hadžići at the time of the commission of the crime, as well as the President of the Crisis HQ and Wartime Presidency in the Municipality of Hadžići. The accused Fadil Čović was the Chief of the Hadžići Public Security Station, and Mirsad Šabić was a police officer in the aforementioned station. Nezir Kazić was the Commander of the 9th Mountain Brigade of the Army of Bosnia and Herzegovina, Bećir Hujić was the Warden of the *Silos* camp, Halid Čović and Šerif Mešanović were his deputies, and Nermin Kalember was a guard in the *Silos* camp.⁵⁷

Prosecutor Marjan Pogačnik charges that the accused comprised a “chain” of mutually connected roles, aimed at the systematic arrest of the Serb and Croat populations from Pazarić, Hadžić and Tarčin, and their imprisonment at detention sites in the *Silos* camp and detention facilities in the premises of the 9. *Maj* primary school in Pazarić, and in the camp located in the warehouses in the *Krupa* military barracks.

According to the indictment, at least 500 Serb civilians and at least 90 Croat civilians were unlawfully detained for different time periods ranging from one to 1334 days in the *Silos* camp. At least 140 persons of Serb nationality were imprisoned in the 9. *Maj* primary school in Pazarić, which was also an organized camp, and at least 150 Serbs and 30 Croats were imprisoned in warehouses in the *Krupa* military barracks in Zovik. The imprisoned

52 Committee Against Torture (CAT), Concluding Observations (CAT/C/SR.978) re Combined 2-5 Reports by BiH CAT/C/BIH/2-5 (Article 1 and 4), <http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/804bb175b68baaf7c125667f004cb333/3fa9a2542602ec44c12578730046b79e?OpenDocument>.

53 Bastah Predrag was sentenced by the first instance judgment to 18 years of imprisonment, Radić Marko to 25 years, Ćerim Novalić to 7 years, Nikačević Miodrag to 10 years, Kovač Ante to 13 years, and Krsto Savić to 17 years of imprisonment.

54 Novica Tripković was sentenced by the first instance judgment to 8 years of imprisonment, Saša Barićanin to 18 years, Slavko Lalović to 5 years, Velibor Bogdanović (still at large)– to 6 years; Ćerim Novalić was sentenced by the second instance judgment to 8 years and 6 months of imprisonment, Miodrag Marković to 7 years, Bastah Predrag by the second instance judgment was sentenced to 22 years; there was one acquittal (Dolić Darko), while seven proceedings are still pending (Vlahović Veselin, Albina Terzić, Oliver Krsmanović (*Vilina vlas*), Jasko Gazdić (*Rape House*), Jukić Željko, Lipovac Damir and Jarak Vlatko).

55 To see more about the case, please visit the web page of the BiH Court, <http://www.sudbih.gov.ba>.

56 Case S11 K 007914 KRI - ĐELILOVIĆ MUSTAFA ET AL, AVAILABLE AT THE WEB PAGE OF THE BIH COURT, [HTTP://WWW.SUDBIH.GOV.BA/?OPCIJA=PREDMETI&ID=683&JEZIK=B](http://WWW.SUDBIH.GOV.BA/?OPCIJA=PREDMETI&ID=683&JEZIK=B).

57 “Eight suspects for crimes in Tarčin Arrested”, *BIRN* web page, November 22nd, 2011. <http://www.bim.ba/bh/297/10/33848/>.

civilians were exposed to inhumane treatment, torture and intentional infliction of great suffering and violations of physical integrity and health, the deprivation of the right to a fair trial, and forced labour.⁵⁸ A number of persons died as a result of the aforementioned acts.⁵⁹

The accused have been in detention since November 23rd, 2011. The prosecutor publicly warned that prosecution witnesses have been influenced.⁶⁰ The main hearing had not started by the end of 2011.⁶¹

2.10. Trial of members of the Tenth Anti-Sabotage Detachment of the Republic of Srpska Army

The trial of the Commander of the First Bijeljina Platoon of the Tenth Anti-Sabotage Detachment of the Republic of Srpska Army Headquarters, Franc Kos, and members of this Detachment, to wit Stanko Kojić, Vlastimir Golijan and Zoran Goronja began on September 8th, 2010, with the defendants' pleas before the BiH Court.⁶² Golijan was the only one who pleaded guilty. The indictment of the BiH Prosecutor's Office charges them with the criminal act of genocide. The accused are charged with the fact that they participated in the execution of more than 800 Bosniak men and boys from Srebrenica, who were brought in groups to the Branjevo farm. The accused Kos and other accused, in the capacity of co-perpetrators, "killed men of Bosniak ethnicity and inflicted serious physical and mental injuries with the purpose of complete or partial extermination of the national, ethnic, and religious group of Bosniaks". The accused Kos was the Commander of the First Unit of the Tenth Reconnaissance Squad and Kojić, Golija and Goronja were members of this Squad. Allegedly, they jointly shot prisoners, some of whom were tied and blindfolded.⁶³ The principle defendant Kos confirmed this. He said that "all the defendants participated in the execution at Branjevo".⁶⁴ The second defendant, Stanko Kojić, was the only one who claimed that he "did not kill anyone". He interpreted the "verification" of the shot prisoners carried out by Kos as a "humane act", because "people were screaming after being shot at from the machine gun."⁶⁵

The trial in 2011 was marked by the testimony of the protected prosecution witness Z-1, who confirmed that members of the Tenth Reconnaissance Squad knew about the plan for the killing of Bosniaks in Branjevo. Z-1 was also a member of the same Squad. Z-1 gave information that "members of his Squad received the order for the killing of civilians at the military farm of Branjevo (Zvornik Municipality) from Milorad Pelemiš".⁶⁶ "Pelemiš asked who was going, there were no volunteers (...) We killed them with one bullet in the head and some members later checked for survivors. Military police officers came in buses with the detainees. They told us the job would be done when there were no more buses", said Z1.⁶⁷

The witness for the principle defendant Kos's defence, Velibor Popović, who was also a member of the Tenth Reconnaissance Squad, gave the same allegations. Popović said that members of this Squad "did not know where they were going and they did not have a choice to refuse any sort of order", and that "all orders came from Mišo Pelemiš" and no members of the Squad "could even think about refusing his order nor was there a possibility to do so".⁶⁸

58 "The 'Silos' Case: indictment for war crimes filed", *Oslobodjenje* Daily web page, December 30th, 2011, <http://www.oslobodjenje.ba/vijesti/bih/sud-bih-potvrdena-optuznica-za-zlocine-u-silosu>.

59 "Eight Persons Arrested Because of Torture Committed in Silos Camp", *Nezavisne novine* Daily web page, November 22nd, 2011, <http://www.nezavisne.com/novosti/hronika/Osam-uhapsenih-zbog-mucenja-u-logoru-Silos-116097.html>.

60 "Detention of Eight Suspects Demanded to be Extended", *BIRN* web page, December 20th, 2011, <http://www.bim.ba/bh/301/10/34079/>.

61 BiH Court confirmed the indictment filed by the Prosecutor's Office on January 12th, 2012.

62 Case S11 K 003372 10 KRI - KOS FRANC ET AL, AVAILABLE AT THE BIH COURT'S WEB PAGE, [HTTP://WWW.SUDBIH.GOV.BA/INDEX.PHP?OPCIJA=PREDMETI&ID=316&JEZIK=B](http://WWW.SUDBIH.GOV.BA/INDEX.PHP?OPCIJA=PREDMETI&ID=316&JEZIK=B).

63 "Kos et al: Bullet in the Head", *BIRN* web page, September 2nd, 2011, <http://www.bim.ba/bh/285/10/33232/?tpl=30>.

64 "Kos et al: Vis Major in Branjevo", *BIRN* web page, November 22nd, 2011, <http://www.bim.ba/bh/297/10/33857/>.

65 "Kos et al. Murder as a Humane Act", *BIRN* web page, December 9th, 2011, <http://www.bim.ba/bh/299/10/33994/>.

66 "Kos et al: Aware of Crimes", *BIRN* web page, August 3rd, 2011, <http://www.bim.ba/bh/284/10/33184>.

67 "Kos et al: Bullet in the Head", *BIRN* web page, September 2nd, 2011, <http://www.bim.ba/bh/285/10/33232/?tpl=30>.

68 "Kos et al: Low-spirited and Nervous Soldiers", *BIRN* web page, September 27th, 2011, <http://www.bim.ba/bh/289/10/33434/>.

A number of former members of the Tenth Reconnaissance Squad testified in the main hearing.⁶⁹ Zijad Žigić also testified that members of the Tenth Reconnaissance Squad of the Republic of Srpska Army “had to execute every order or they would themselves be killed”. The principle defendant Kos said that he “never hid that he participated in the execution of Bosniaks at the Military Farm of Branjevo in July 1995, but that he did not participate in the extermination of the Bosniak population, he only executed orders.”⁷⁰ The Defence denied that the acts described in the Indictment could be characterized as genocide, and during the proceedings (in 2011) it focused on the presentation of evidence that point to the fact that Kos and others were not able to refuse an order and that they did not know about the plan to commit genocide or the purpose of the execution that they participated in.⁷¹

Franc Kos, a citizen of Slovenia, was a member of the Croatian Army, then the Army of BiH, and he was recruited into the Republic of Srpska Army from *Batković* camp near Bijeljina. Dražen Erdemović, the first member of the Tenth Reconnaissance who was tried before the ICTY and who pleaded guilty, identified Kos as one of the commanders and executors.⁷² Kos was at large for years and he was hiding under a false name in Bijeljina. He was arrested on the basis of an international arrest warrant at the border between Croatia and Serbia, and was extradited to the authorities in BiH. All other defendants were in BiH at the moment of the arrest. The trial had not been completed by the end of 2011.⁷³

2.11. Dobrovoljačka Street Case⁷⁴

The BiH Prosecutor’s Office has been conducting an investigation into the events on Dobrovoljačka Street since 2006. In the past three years, the investigation has been led by an international prosecutor, June Romano. The investigation intensified after a British court dismissed the request filed by the Republic of Serbia for the extradition of the former member of the BiH Presidency, Ejup Ganić, on July 27th, 2010; he was in the group of people, which included Stjepan Kljuić, also a former member of the BiH Presidency, as well as General Jovan Divjak and 16 other citizens of BiH, against whom the Republic of Serbia Office of the Prosecutor initiated an investigation in 2008 because of the suspicion that they had committed a war crime against wounded and sick, unlawful killing and wounding of enemy [JNA soldiers], and used prohibited means of combat on May 2nd and 3rd, 1992 on Dobrovoljačka Street in Sarajevo. The BiH Prosecutor’s Office had not completed the investigation by the end of 2011.⁷⁵ The Republic of Serbia Office of the Prosecutor also had not completed the investigation by the end of 2011.

69 “Kos et al: Witness confrontation”, *BIRN* web page, December 23rd, 2011, <http://www.bim.ba/bh/301/10/34110/>.

70 “Kos et al: Execution of Orders”, *BIRN* web page, November 8th, 2011, <http://www.bim.ba/bh/295/10/33770/>.

71 “Kos et al: Higher Power in Branjevo”, *BIRN* web page, November 22nd, 2011, <http://www.bim.ba/bh/297/10/33857/>.

72 Besides Erdemović, there was only one more member of the Tenth Reconnaissance Squad, Marko Boškić, who was finally sentenced to ten years of imprisonment (July 19th, 2010) because of his participation in the executions in Srebrenica. Boškić also pleaded guilty and made a plea agreement by which he was obliged to testify in trials before the BiH Court and the ICTY. Boškić was extradited from the US on April 28th, 2010.

73 The HLC filed a criminal complaint against a number of soldiers from the Tenth Reconnaissance Squad with the Republic of Serbia Office of the War Crimes Prosecutor on August 11th, 2010, because of their participation in the genocide committed in Srebrenica. Some of the people mentioned in this criminal complaint included Milorad Pelemiš, Petar Salapura, Radoslav Janković, Milo Petrović, Radoslav Kremenović, Franc Kos, Dragan Pećanac, Brano Gojković, Vlastimir Golijan, Aleksandar Cvetković, Stanko Savanović and Zoran Obrenović, six of whom are, according to information with the HLC, located in Serbia. In September 2011, the HLC published a dossier on the Tenth Sabotage Detachment, which reveals facts about the participation of these persons in the Srebrenica genocide. By the end of 2011, the Serbian Office of the Prosecutor had not filed an indictment against Commander Milorad Pelemiš and other soldiers of the Tenth Sabotage Detachment.

74 Serbian sources, including the Republic of Serbia Office of the Prosecutor, claim that on May 2nd and 3rd, 1992, 42 soldiers of the Yugoslav Peoples Army (JNA) were killed, 73 wounded, and 215 detained. The BiH Prosecutor’s Office, and independent sources, claim that when the JNA convoy was withdrawing on May 3rd, 1992, seven persons were killed and 14 were wounded.

75 January 17th, 2012, the BiH Prosecutor’s Office rendered a ruling to abort the investigation against 14 suspects on the grounds of 352 statements and 412 pieces of material evidence. It was established in the investigation that during the attack on Dobrovoljačka Street on May 3rd, 1992, seven persons were killed and 14 were wounded hors de combat. However, as the BiH Prosecutor’s Office stated, “the investigation will continue because of the reasonable suspicion that a criminal act of war crime was committed, because victims were shot at after they were incapacitated for combat or while they were in the ambulance”. They further stated the investigation would continue into the alleged incident in which a number of soldiers were taken away from the JNA convoy and detained at the premises of FIS, Central Prison, and Territorial Defence HQ, where they were, as it was pointed out, tortured and abused. “No Indictment for Dobrovoljačka Street Incident”, *Novi magazin* web page, January 17th, 2012, <http://www.novimagazin.rs/svet/nema-optuznice-za-dobrovoljacku>.

The ICTY Office of the Prosecutor concluded that there was not enough evidence to indict Ejup Ganić – and it forwarded this decision to the BiH Prosecutor’s Office. “Our assessment cannot be taken as a final position in this case because it is not a final decision based on all the facts”, a representative of the Office of the Prosecutor in The Hague stated⁷⁶.

In 1996, BiH, Serbia and Croatia signed the Rome Agreement, i.e. the Rules of the Road, which were in force until 2004 and obliged them to demand an opinion from the ICTY Office of the Prosecutor on the gathered evidence prior to filing an indictment for war crimes.

In July 2002, the Republic of Srpska sent its records on the victims of the incident in Dobrovoljačka Street to the ICTY Office of the Prosecutor and asked for their assessment regarding the justification for the filing of indictments, including the one against Ejup Ganić. A year later, the ICTY informed the RS that there was not enough evidence to indict Ganić for a serious breach of international humanitarian law.

Apart from the Dobrovoljačka Street incident, Serbia and BiH also led parallel investigations in the *Tuzla Convoy* Case up till the end of 2011.

3. Croatia

The Criminal Code of the SFRY from 1976 and the Basic Criminal Law of the Republic of Croatia from 1993 are applied in Croatia for the prosecution of war crimes. The legal basis for the application of the principle of command responsibility was created by the passing of amendments to the Basic Criminal Law in 2004. By amendments to the Law on the Application of the ICTY Statute, which entered into force in June 2011, it was allowed for evidence gathered by the ICTY bodies to be used in criminal proceedings for war crimes, in which courts will assess facts in accordance with the Criminal Procedure Code. These amendments will allow for the use of ICTY evidence in all criminal proceedings that have been initiated after these amendments entered into force, and in cases which were in the main hearing stage before these amendments entered into force.

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The Bill Declaring Null and Void Certain Legal Documents Adopted by Judicial Bodies of the Former JNA, former SFRY, and the Republic of Serbia was passed on June 21st, 2011, immediately before the Croatian Parliament was dissolved.⁷⁷ The justification for the passing of this Law was the claim that this law was intended to prevent the intervention of the judicial authorities of the Republic of Serbia on the territory of the Republic of Croatia. The Law was created and passed in a summary procedure as a reaction to the indictment filed by the former JNA Military Prosecutor’s Office against 44 citizens of Croatia, which the Republic of Serbia Office of the War Crimes Prosecutor forwarded to the Republic of Croatia Attorney General’s Office. The indictment included high ranking representatives of state institutions and members of the governing Croatian Democratic Alliance (HDZ), Vladimir Šeks, the Vice-President of the Croatian Parliament, Ivan Vekić, former Minister of the Interior of the Republic of Croatia, Branimir Glavaš (who is serving his prison sentence in BiH), Tomislav Merčep, former Secretary of National Defence in the Municipality of Vukovar and Advisor to the Republic of Croatia Minister of the Interior in 1990 and 1991), and another 40 Croatian defendants accused of war crimes and genocide.

The President of the Republic of Croatia, Ivo Josipović, filed a request on December 27th, 2011 with the Constitutional Court of the Republic of Croatia for the assessment of the constitutionality of this law, explaining that the law passed violates the constitutional right to defence of the Croatian defendants in possible criminal

76 “Serbia Continues Investigation on Dobrovoljačka Street Incident”, *Tanjug* web page, January 18th, 2012, <http://www.tanjug.rs/novosti/30432/srbija-nastavlja-istragu-o-dobrovolja%C4%8Dkoj.htm>.

77 Bill Declaring Null and Void Certain Legal Acts Adopted by Judicial Bodies of the Former JNA, former SFRY, and the Republic of Serbia, *Republic of Croatia Official Gazette* 124/11.

proceedings for war crimes and that it exposes them to legal uncertainty⁷⁸ and that “it does not complement the principle that every crime should be punished.”⁷⁹ Further problems lie in the fact that as an organic law it was not adopted by majority votes as prescribed by law⁸⁰, and that it “grants the power to the Minister of Justice to decide whether some of the actions from the jurisdiction of regular courts shall be carried out or not, which is in violation of the Constitution.”⁸¹ The new Government of Croatia, which was formed on December 24th, 2011, announced the abolishment of this law in a summary procedure.

3.1. Capacities

In 2010, the Ministry of the Interior and the State Attorney’s Office of the Republic of Croatia created a list of priority cases of criminal offences in which the perpetrators had not yet been identified. 127 crimes were set as a priority, 8 of which are at the national level, the others at the regional level. The Ministry of the Interior formed 20 investigation teams, and the State Attorney’s Office of the Republic of Croatia appointed 15 deputy state attorneys for the prosecution of national priorities, and 34 deputy state attorneys for regional priorities.

In February 2011, the Republic of Croatia State Attorney’s Office and the Ministry of the Interior adopted the Strategy for the Investigation and Prosecution of War Crimes Committed in the Period from 1991 to 1995.

In May 2011, in the last phase of the negotiations for joining the European Union,⁸² the Croatian Parliament adopted amendments to the Law on the Application of the ICTY Statute, which defines the use of ICTY evidence in criminal proceedings conducted in the Republic of Croatia, which were initiated after these amendments entered into force.⁸³ These amendments regulate the exclusive jurisdiction of the county courts in Osijek, Rijeka, Split and Zagreb [specialized war crimes departments] for all new criminal proceedings in cases of war crimes, which guarantees that new proceedings will not be initiated before courts of lower level. These specialized departments have 16 investigative judges and 38 judges in trial and extra-procedural chambers.⁸⁴ The trials are conducted before other county courts as well if they were in the main trial phase before the amendments to the law were adopted.⁸⁵

The same judges who sit in war crimes chambers also act in proceedings for other criminal acts⁸⁶. The necessary

78 President Josipović filed a request with the Constitutional Court demanding the assessment of the constitutionality of the Bill Declaring Null and Void Certain Legal Documents with respect to the Constitution of the Republic of Croatia, press release, web page of the President of the Republic of Croatia, December 27th, 2012, <http://www.predsjednik.hr/27122012>.

79 Response of the President Josipović to the letter of Amnesty International and the Youth Initiative for Human Rights from November 27th, 2011.

80 President Josipović filed a request with the Constitutional Court demanding the assessment of the constitutionality of the Bill Declaring Null and Void Certain Legal Documents with respect to the Constitution of the Republic of Croatia, press release, web page of the President of the Republic of Croatia, December 27th, 2012, <http://www.predsjednik.hr/27122012>.

81 *Ibid.*

82 Chapter 23 in the negotiations for joining the European Union refers to the judiciary and fundamental rights, and the most important point in it is the establishing of an independent and efficient judicial system. In this phase of negotiations, the European Commission ordered Croatia to establish specialized courts for war crimes, and Croatia resolved this issue by establishing war crimes chambers in cantonal courts in Osijek, Rijeka, Split, and Zagreb.

83 Law on Amendments to the Law on Application of the Statute of the International Criminal Court and Prosecution of Criminal Offences Against International Wartime and Humanitarian Law, *Official Gazette of the Republic of Croatia*, nr. 55/2011. In June 2011, after these amendments entered into force, the County Court in Osijek refused to use witness statements taken by investigators from the ICTY Office of the Prosecutor in the repeated trial in the Damir Kufner et al. Case. The Centre for Peace, Non-Violence and Human Rights, Documenta, and the Civic Committee for Human Rights, *Monitoring of War Crimes Trials, Report for 2011*.

84 Non-governmental associations and organizations point to the lack of an implementation strategy, which would follow the establishing of specialized war crimes departments.

85 After amendments to the law were adopted, at least eight proceedings were activated before regular county courts, the greatest number of which were conducted before the County Court in Vukovar. These were the indictments, which were separated from other proceedings or were additionally modified or were sent for retrial in less than one year.

86 The President of the War Crimes Chamber in Osijek County Court, Zvonko Vekić, is at the same time the President of the First Instance Criminal Chamber and a judge in the Department for Cases of the Office for the Fight Against Corruption and Organized Crime (USKOK).

funding for the increased amount of their work has not been allocated and no special advisors, who would assist them in the preparation and execution of the procedures, have been hired.

A certain number of state attorneys, appointed in the special war crimes departments, have completed a special training for the prosecution of war crimes. The Chief State Attorney, Mladen Bajić, appointed his deputy, Jasmina Dolmagić, as the person responsible for the prosecution of war crimes on the basis of the “annual work schedule”.

The Supreme Court of Croatia (SCC) may approve a delegation for conducting proceedings before one of the four special courts, upon the well-reasoned proposal of the Chief State Attorney. In 2010, nine criminal cases were transferred, and 30 cases were transferred in 2011.⁸⁷

Human rights organizations point to the problem of conducting investigations and trials in small environments. According to their opinion, the priority is to transfer cases from county state attorney’s offices and courts in smaller environments to one of the four special courts, which have greater expert capacities, technical potentials, and are less susceptible to the pressures of local institutions. The Youth Initiative for Human Rights in Croatia (Youth Initiative) gave an example of the killing of Serb civilians in Sisak, which has not resulted in an indictment even 19 years after the incident. Upon the proposal of the Chief State Attorney, Mladen Bajić, the Supreme Court of the Republic of Croatia transferred the case to the County State Attorney’s Office in Osijek, which, as the Youth Initiative assessed, can represent an instance of the new practice in avoiding political pressures on investigation institutions. On the other hand, Chief State Attorney Mladen Bajić believes that the court judgment should be announced in local environments, because only then will the message be sent to the entire community. However, Zoran Pusić, the President of the Civic Committee for Human Rights (CCHR), thinks that it is possible to provide protection for the participants in the proceedings only in a small number of cases.⁸⁸

3.2. Availability of Information on Prosecution of War Crimes

Non-governmental organizations estimate that in 2011 progress was made as regards the availability of information on the prosecution of war crimes. The Republic of Croatia State Attorney’s Office publishes statistical data from the War Crimes Data Base pertaining to the number of persons who have been subject to criminal proceedings, the number of the accused, the number of persons against whom the proceedings have been completed, and the number of prosecuted individuals, by their affiliation to the parties to the conflict. However, that this information is not sufficient to follow the progress in the prosecution of war crimes is something that non-governmental organizations which monitor war crimes trials have noted.

3.3. Statistics

Up to and including December 2011, the Republic of Croatia State Attorney’s Office registered 490 war crimes in which 5,987 people died. 393 of these crimes were committed by members of the former JNA or the formations of the so-called Serb Autonomous Province of Krajina, 86 were committed by members of the Croatian Army and police, two were committed by members of the so-called Peoples Defence of the Autonomous Province of West Bosnia and seven were committed by members of unidentified units.⁸⁹ 103 cases of 316 crimes with identified perpetrators have been resolved. Criminal proceedings against 3,432 persons have been initiated and 104 of the perpetrators are members of Croatian units. In the case of 2,998 alleged perpetrators, the criminal proceedings have been initiated *in absentia*. 704 persons were acquitted by non-final judgements, or the proceedings against

87 Centre for Peace, Non-Violence and Human Rights, Documenta and Civic Committee for Human Rights, *Monitoring of War Crimes Trials– Report for 2011*.

88 Interview with Zoran Pusić, Civic Committee for Human Rights, January 17th, 2012.

89 Report on fulfilling obligations from Chapter 23, Judiciary and Fundamental Rights, Government of the Republic of Croatia, May 12th 2011.

them were aborted, or the indictments were changed, and 554 persons were convicted by non-final judgments.⁹⁰

During 2011, investigations against 370 alleged perpetrators were pending. Approximately 540 cases were in pre-investigation phase in which the alleged perpetrators were not identified.⁹¹

According to the information obtained by non-governmental organizations,⁹² during 2011, 29 persons were indicted – 18 members of Croatian and 11 members of Serb units. Almost all of the indicted members of Serb units are inaccessible to the judicial bodies of the Republic of Croatia. 28 first instance proceedings were pending before 10 county courts, in which 65 persons were indicted. There were no trials before the County Court in Split, even though it is a specialized court. Main hearings in 11 criminal cases were not held, even though they were scheduled, mainly because the defendants were inaccessible and no rulings granting *in absentia* trials have been rendered in their cases. County courts rendered first instance judgements in 17 criminal cases against 36 defendants. In six criminal proceedings, 14 persons were finally convicted for war crimes against civilian populations.⁹³ Nine of them were members of Croat units, four were members of Serb units and one was a member of the units of the so-called Autonomous Province of West Bosnia. These are the cases with a relatively small number of victims (12). The Supreme Court of the Republic of Croatia rendered judgements in the cases of 23 defendants during the year of 2011: it annulled first instance judgements against four members of Croat and five members of Serb units and sent the cases for retrial; in the cases of six defendants (three members of Croat units and three members of Serbian units) it confirmed the not guilty judgments rendered in the first instance; in the cases of two members of Croat units and one member of Serb units, it confirmed the first instance guilty judgments, and in the case of two convicted individuals it reduced the sentences of imprisonment, and in the case of one defendant it confirmed the first instance dismissal judgment⁹⁴.

The Republic of Croatia State Attorney's Office received 58 criminal complaints for war crimes, crimes against humanity and other criminal acts which represent violations of international humanitarian law and wartime law in 2010. Since there are 44 complaints from last year which remained unresolved, there are still 102 pending reports.⁹⁵ According to the same source, indictments against 71 persons were filed.⁹⁶ Data of the State Statistics Institute (SSI)⁹⁷ show that, in 2010, a total of 120 persons were reported as alleged perpetrators of war crimes (108 for war crimes against civilians population), 14 persons for crimes against humanity, and 10 persons for genocide. According to the SSI information, a total of 12 persons were found guilty of committing war crimes against civilian populations in 2010, while one person was convicted for unlawful wounding and killing of the enemy in 2010. In the same time period, the OSCE registered 60 convicted persons, 42 of whom were of Serbian ethnicity (38 were convicted *in absentia*) and 18 of Croatian nationality (one convicted *in absentia*).⁹⁸

According to the records of non-governmental organizations, in 2010, county courts rendered 15 first instance judgments, 11 of which were guilty sentences. In eight cases, 11 convicted individuals were members of Serb units; in three cases, four convicted individuals were members of Croat units. One acquittal was rendered in the case of a member of Serb units.

90 There is no accurate information for finally convicted persons. Information obtained from the Republic of Croatia State Attorney's Office upon the request of YIHR pursuant to the Law on the Right to Access Information, November 2nd, 2011.

91 Republic of Croatia State Attorney's Office web page, <http://www.dorh.hr>.

92 Centre for Peace, Non-Violence and Human Rights, Documenta, and Civic Committee for Human Rights, *War Crimes Trials Monitoring – Report for 2011*.

93 Except in the case against Branimir Glavaš and his associates, in which the sentence was confirmed and modified, i.e. mitigated.

94 Centre for Peace, Non-Violence, and Human Rights, Documenta, and Civic Committee for Human Rights, *Monitoring of War Crimes Trials – Report for 2011*.

95 Report of the Republic of Croatia State Attorney's Office for 2010, web page of the Republic of Croatia State Attorney's Office, <http://www.dorh.hr/IzvjescjeORadu>.

96 *Ibid.*

97 Information received from the State Statistics Institute, December 13th, 2011.

98 Centre for Peace, Non-Violence, and Human Rights, Documenta, and Civic Committee for Human Rights that monitored 22 trials, registered 55 defendants.

3.4. *In Absentia* Trials

In July 2010, the Republic of Croatia Ministry of Justice delivered a list of 1,543 persons against whom criminal proceedings were initiated because of war crimes committed, to the Ministry of Justice of Serbia. There is no precise information on the number of persons who were convicted *in absentia*. Local and international human rights organizations agree that the majority of the total of 554 finally convicted persons were actually convicted *in absentia*.

According to the information of the Republic of Croatia State Attorney's Office, state attorney's offices' bills of review in the cases of 94 convicted individuals, members of Serb units, the Supreme Court of the Republic of Croatia approved state attorney's offices' requests and, in repeat trials, the indictments were modified and the Amnesty Law was applied, hence terminating the proceedings against 69 finally convicted persons.⁹⁹ Bills of review filed by convicted persons are rather rare. The Republic of Croatia State Attorney's Office stated that by the end of 2011, 22 convicted persons had demanded revision of their cases.

Non-governmental organizations point to the fact that in the greatest number of cases, the same county state attorney's offices which filed indictments without respecting the standards of objectivity and impartiality, were the ones that demanded the revision of cases.¹⁰⁰

3.5. Long-lasting proceedings

Some criminal proceedings last for 10 years and more. The proceedings against Mihajlo Hrastov for war crimes at the Korana bridge¹⁰¹ have been pending since 1992. The Supreme Court of the Republic of Croatia annulled the not guilty judgment rendered by the County Court in Karlovac twice and then, after the third not guilty judgment, the Supreme Court held a hearing session and convicted Hrastov to 8 years of imprisonment. In 2010, the Constitutional Court annulled the guilty judgment and sent the case back to the Supreme Court for the repeat procedure. The hearing had not started by the end of 2011.

In November 2011, the Supreme Court of the Republic of Croatia annulled the not guilty judgment of the first instance rendered by the County Court in Osijek for the fourth time in the case of defendant Petar Mamula. The proceedings against defendant Enes Viteškić, a member of Croatian units, for the execution of 18 Serbian civilians in Paulin Dvor, has been pending since 2002. The Supreme Court has annulled guilty judgments rendered by the County Court in Osijek on two occasions. The *in absentia* trial against the defendant Radoslav Čubrilo for the murder of six Croat civilians has been pending since the 1990's.

3.6. Partiality of Courts

Non-governmental organizations point to the partiality of courts in cases of trials of former members of the Croatian forces. During the proceedings against Mihajlo Hrastov for the murder of 13 soldiers of the former JNA (Korana Bridge Case) before the County Court in Karlovac, members of the War Veterans' Association commented on the proceedings out loud and offended the victims and witnesses.¹⁰² Someone pierced the tyres on the county state attorney's car and sent her a threatening note warning her to be careful "because she has children".¹⁰³

In the proceedings against former members of the Croatian forces, the partiality of the County Court in Sisak

99 Centre for Peace, Non-Violence, and Human Rights, Documenta, and Civic Committee for Human Rights, *Monitoring of War Crimes Trials- Report for 2011*.

100 Interview with Zoran Pusić, Civic Committee for Human Rights, January 17th, 2012.

101 Hrastov was charged with the fact that he, as a member of the Republic of Croatia Special police, killed 13 and wounded two imprisoned members of the JNA on the Korana Bridge.

102 Interview with Zoran Pusić, Civic Committee for Human Rights, January 17th, 2012.

103 *Ibid.*

is obvious in the application of mitigating circumstances to the accused soldiers of the Croatian Army and the treatment of witnesses. Serbs were considered unreliable witnesses when they testified in defence of the accused Serbs, while Croats who testified in favour of the perpetrators were considered credible witnesses. The judge of the County Court in Sisak, Snježana Mrkoci, stated during the delivery of the reasoning of the judgement in November 2010 by which the indictment against four soldiers of the Croatian Army was dismissed: "I am very sorry that I have found myself in a situation in which I have to try soldiers of the Croatian Army for criminal offences which we are used to seeing members of the opposite side being tried for, especially now when we are lighting candles for Vukovar."¹⁰⁴

The Youth Initiative alleges that on several occasions the Supreme Court of the Republic of Croatia, when ruling on the duration of imprisonment sentences, took into consideration the fact that the accused had been awarded medals¹⁰⁵ or had acted in a "patriotic trance".¹⁰⁶

3.7. (Non)Prosecution of Crimes Committed by Croatian Forces

Progress was made in the prosecution of war crimes during the year 2011. In June 2011, an investigation against three persons for war crimes committed in Sisak was initiated; these persons include Đuro Brodarac, who was the Chief of the Sisak Police Department in 1991. Brodarac died in July 2011 while in detention. Osijek County State Attorney's Office filed an indictment in December 2011 against Vladimir Milanković, the Commander of Police Forces in the wider area of Sisak and Banovina and Deputy Chief of the Police Department in Sisak, and against Drago Bošnjak, a member of the Sisak Police Department "Wolves" special unit. They are charged with violent breakings into houses and apartments and unlawful torture of a number of Serb civilians, 24 of whom were killed.¹⁰⁷

An indictment against Tomislav Merčep, as Commander of the Ministry of Interior Reserve forces stationed in Pakračka Poljana and at the Zagreb Fair, was filed in early June 2011, because he personally ordered the unlawful deprivations of freedom, torture and killings of civilians and because, although he knew that his subordinates were committing criminal offences, he failed to prevent such illegal acts. As a consequence, his subordinates imprisoned 52 persons in the area of Kutina, Pakrac and Zagreb, 43 of whom were killed.

Youth Initiative points to the fact that numerous crimes against Serb civilians still remain unpunished. In the already mentioned report *Against the Power of Immunity*, the Initiative mentioned the killings and destruction of property of Serbs in Vukovar in 1991¹⁰⁸, and that compensation lawsuits filed by victims' family members were dismissed because there was no final criminal judgment, and that they were further obliged to pay for the costs of the proceedings. The Initiative also mentions the evacuation of 26 Serb villages in the Municipality of Požega which occurred in October 1991, during which time Croat forces killed dozens of civilians and destroyed several hundreds of apartments and businesses.

In the course of the military and police Operation *Bljesak* (Lightning), on May 1st and 2nd, 1995, a part of the occupied territories of the Republic of Croatia were liberated, but the operation also resulted in the evacuation

104 Centre for Peace, Non-violence and Human Rights, Osijek, Documenta, and CCHR, Zagreb, press release anent the judgment rendered by the Sisak County Court for the crime committed in Novska, November 25th, 2011, http://www.centar-za-mir.hr/index.php?page=article_news&article_id=594&lang=hr.

105 The judgment confirming the judgment of the County Court in Osijek was rendered in the case of Tomislav Dilber and Fred Marguš. Youth Initiative for Human Rights Croatia, *Against the Power of Immunity: Prosecution of War Crimes in Croatia*, March 2011.

106 Verdict in the case of Mirko Norac and Rahim Ademi, Supreme Court of the Republic of Croatia, nr. I Kž 1008/08-13.

107 According to official police sources this was the murder of about 40 civilians, while other sources, including the Serb Community in Croatia, point to 600 Serb civilians who were killed in Sisak by police, military and paramilitary units of the Republic of Croatia. Youth Initiative for Human Rights Croatia, *Against Immunity of Power: Prosecution of War Crimes in Croatia*, March 2011.

108 In December 2010, an investigation was launched against Tomislav Merčep, a former advisor to the Minister of the Interior and the Commander of the Special Police Unit, which was popularly known as "Merčep's Guys", for the murders and disappearance of Serbs on the territory of Zagreb and Pakračka Poljana. The indictment against Merčep was filed in June 2011.

of the Serb population. According to the information of the Croatian Helsinki Committee for Human Rights, members of Croatian forces killed 83 Serb civilians during and immediately after the action.

The military and police Operation *Oluja* (Storm) began on August 4th, 1995, and it officially ended on August 7th, 1995. According to the information of the Croatian Helsinki Committee for Human Rights, during the operation itself and five weeks after the operation, at least 677 persons lost their lives.¹⁰⁹ Unlike the information offered by the Helsinki Committee for Human Rights, the records of the Republic of Croatia State Attorney's Office contain information on 214 killed persons, 167 of them victims of war crimes, and 47 victims of the criminal offence of murder. 33 persons were prosecuted because of the murder of 21 persons, 14 of whom were convicted.¹¹⁰ There are no final judgments for the war crimes committed during and after the military and police Operations *Lightning* and *Storm*.

3.8. Non-prosecution of high ranking military and civilian commanders

By the end of 2011, a prompt, thorough, independent and unbiased investigation in accordance with international standards, aimed at identifying persons who were commanders, including those who may be charged with war crimes, was not conducted in Croatia. The prosecution of persons who were in command at times and places where war crimes were committed is being prevented by unsuitable legislation and the lack of political will.¹¹¹ Despite the publicly available information and evidence used in completed criminal proceedings, Amnesty International has warned that the proceedings against Vladimir Šeks, the President of the Crisis HQ for East Slavonia at the time of the war and who was allegedly involved in crimes committed in Osijek in 1991, has not yet been initiated.¹¹²

The Youth Initiative points to other high ranking persons, who are still protected from criminal accountability. In their report, they mentioned the name of Ivan Vekić, who was the Minister of the Interior during 1991, with whose consent Tomislav Merčep founded the Ministry of the Interior reserve units. Then this report also mentions Colonel General Karlo Gomišek, who issued the order for the evacuation of villages around Požega which resulted in the murder of dozens of Serb civilians. The investigating authorities have not yet examined the responsibility of Doctor Darko Milinović, who is linked to the crimes committed in Gospić against Serb civilians. Even though the Republic of Croatia Supreme Court rendered a judgment convicting Mirko Norac for war crimes committed during and immediately after the action carried out in 1993 in Medački džep, near Gospić, and Rahim Ademi was acquitted on the basis of the established facts proving the existence of a parallel chain of command consisting of Davor Domazet, Željko Sačić and the late General Janko Bobetko, the proceedings against Domazet and Sačić have not yet been initiated. Mate Laušić, who was the Chief of the Military Police Department at the time of the war, is linked to the war crimes committed in the military prisons of *Lora* and *Kuline*, and with crimes committed by members of the Military Police after Operation *Storm*.

The Center for Peace, Non-Violence and Human Rights, Documenta, and the Civic Committee for Human Rights also assessed that the criminal prosecution of persons who were in positions of political and military command responsibility has not happened, most notably in cases of criminal acts committed against members of minority national groups. These non-governmental organizations show how the courts have merged the legal grounds defined by Article 28 of the Basic Criminal Law of the Republic of Croatia and the elements of the responsibility of military commanders for acts committed by their subordinates as defined by the international law in the cases against defendants Rahim Ademi and Mirko Norac, and against defendant Branimir Glavaš his represents the beginning of new practice relating to the concept of command responsibility.¹¹³

109 Croatian Helsinki Committee for Human Rights, Report: *Military Operation Storm and its Aftermath*, Zagreb, April 8th, 1999.

110 Centre for Peace, Non-violence, and Human Rights, Documenta, and Civic Committee for Human Rights, *Monitoring of War Crimes Trials – Report for 2011*. The information was revealed by the representatives of the Republic of Croatia State Attorney's Office at the Public Discussion on Unprosecuted Crimes Committed During and After Military and Police Operation Storm, April 28th, 2011.

111 Briefing to the European Commission on ongoing impunity for war crimes in Croatia, Amnesty International, October 2011.

112 Briefing to the European Commission on ongoing impunity for war crimes in Croatia, Amnesty International, October 2011.

113 Centre for Peace, Non-Violence and Human Rights, Documenta, Civic Committee for Human Rights, *Monitoring of War Crimes Trial – Report for 2011*.

3.9. Victims of sexual violence

Amnesty International points to the inadequacy of the legal framework, as a result of which sexual violence is not prosecuted in line with international standards and the practice of international courts. The main problem lies in the application of the Basic Criminal Law from 1993, which prescribes that the use of force must be proven as an element of rape, which is contradictory to the existing international standards. According to Amnesty International, such practice contributes to the impunity of war crimes of sexual violence. AI warns that, according to the ICTY standards, a victim of sexual violence does not have to prove that she actively confronted her assaulter.

The Center for Peace Non-Violence, and Human Rights, Documenta, and the Civic Committee for Human Rights have analysed 17 cases in which 28 persons are indicted, and only a minor number of them are charged exclusively with the commission of rape. In the analysed cases, there are 27 victims of rape/sexual violence. These organizations have noted that courts have failed to apply necessary measures to protect victims' identities in all of these cases – giving testimony from another room via video link, face and voice distortion, use of pseudonyms, etc. The only measure that was applied in some of the cases during the testimonies of victims was the exclusion of the public during victims' testimonies.¹¹⁴

3.10. Early Releases from Prison

Non-governmental organizations did not manage to collect information about the number of convicted war criminals who were granted early release from prison, because the Ministry of Justice Department for Prison Structure treats this information as confidential.¹¹⁵

3.11. Final judgment on Branimir Glavaš

The BiH Court Appellate Chamber rendered a judgment on December 14th, 2010 in the case of Branimir Glavaš, the Secretary of National Defence and the Commander of the Osijek Defence, which finally confirmed the sentence of eight years of imprisonment that had already been rendered by the County Court in Zagreb.¹¹⁶

According to Count One of the indictment in the *Garage* Case, Glavaš was found guilty of not preventing the torture and murder of Čedomir Vučković and of failure to prevent the torture of Nikola Vasić. In the *Sellotape* Case, he was convicted for ordering the arrest, torture and killing of seven Serb civilians, whose bodies were thrown into the Sava River.

3.12. New Criminal Proceedings

3.12.1. Indictment Against Tomislav Merčep

Tomislav Merčep, a former member of Parliament, Secretary of National Defence in the Municipality of Vukovar and Advisor to the Minister of the Interior of Croatia during 1990 and 1991, was arrested on December 10th, 2010, only two days after Amnesty International expressed concern in its report because Vladimir Šeks, Ivan Domazet aka Lošo and Tomislav Merčep were not being prosecuted for war crimes.¹¹⁷

114 Centre for Peace, Non-Violence and Human Rights, Documenta, and Civic Committee for Human Rights, *Monitoring of War Crimes Trials - Report for 2011*.

115 Centre for Peace, Non-Violence and Human Rights, Documenta, and Civic Committee for Human Rights, *Monitoring of War Crimes Trials - Report for 2011*.

116 Branimir Glavaš is a retired Major-General, one of the founders of the Croatian Democratic Alliance (HDZ), a standing representative of the HDZ and the Croatian Democratic Alliance of Slavonia and Baranja (HDSSB) in all of the Parliamentary Assemblies, and the Prefect of Osijek and Baranja County for two mandates.

117 Briefing to the European Commission on the ongoing impunity for war crimes in Croatia, Amnesty International, October 2011.

The indictment was filed on June 9th, 2011.¹¹⁸ He is charged with the fact that he personally issued orders for unlawful deprivation of freedom, torture and murders of civilians, and that, even though he knew that his subordinates acted unlawfully, he failed to prevent them. The indictment covers only crimes committed on the territory of Kutina, Pakrac and Zagreb where his subordinates unlawfully detained 52 persons, 42 of whom were killed, while three are considered missing. This unit also participated in the murder of the Zec family.¹¹⁹

3.12.2. Indictment Against Brodarac, Milanković and Bošnjak

Đuro Brodarac¹²⁰, a high ranking official of the HDZ and a retired General of the Croatian Army (HV)¹²¹, was arrested on June 20th, 2011 and taken to the investigative judge of the County Court of Osijek because of the suspicion that he, together with Vladimir Milanković and Drago Bošnjak¹²², during 1991 and 1992 on the territory of Sisak and its vicinity, unlawfully detained and tortured 69 civilians of Serbian nationality, 31 of whom were killed.

In the meantime, on July 14th, 2011, Đuro Brodarac passed away, on account of the consequences of sepsis. The County State Attorney's Office in Osijek filed an indictment on December 16th, 2011 against Milanković and Bošnjak because of war crimes against the civilian population and a war crime against prisoners of war. Milanković is charged with the fact that he knew and failed to prevent and punish members of his subordinate units guilty of unlawful entries into apartments, unlawful arrests and detention, abuse of civilians and the execution of at least 24 persons. The indictment alleges that he personally ordered and participated in some cases of abuse of civilians. Drago Bošnjak is charged by the indictment with organizing and leading a group of *Vukovi* unit members, who unlawfully arrested, abused and murdered eight persons. The total number of victims was reduced from 31 victims, the number which was stated in the motion for investigation from June 2011, to 24.

3.12.3. Indictment Against Aleksandar Vasiljević and Miroslav Živanović

The County State Attorney's Office in Osijek filed an indictment in April 2011 against Aleksandar Vasiljević, a former Chief of the Federal Secretariat of the National Defence Security Department and Miroslav Živanović, a Lieutenant-Colonel of the former JNA, for crimes against Croat civilians and prisoners of war in camps on the territory of the Republic of Serbia. The accused were not accessible to the judicial authorities of the Republic of Croatia.

3.13. First instance judgement of the ICTY Against Generals Gotovina and Markač

On April 15th, 2011, the ICTY rendered a first instance judgement against two Croat generals, namely Ante Gotovina and Mladen Markač, finding them responsible on the basis of their command responsibility for crimes against humanity committed during the armed conflicts in Croatia. The ICTY established that the generals were responsible for participating in a joint criminal enterprise during and after Operation *Storm*, which aimed at the forcible and permanent evacuation of the Serbian population from the Krajina region in Croatia. Immediately after the judgment was announced, representatives of the Croatian government refused to accept the findings of the Hague Tribunal in their public appearances and statements, thus denying the crimes committed by Croatian

118 The trial of Tomislav Merčep began on February 10th, 2012, before the County Court in Zagreb.

119 The murder of the Zec family was committed in December 1991 and the perpetrators, who were arrested soon after the incident, were released on account of a procedural error committed when statements were being taken from the perpetrators (they did not make their statements in the presence of their lawyers).

120 Đuro Brodarac was the Chief of the Sisak Police Department at the time of the commission of the crime and the Chief of the Banija and Kordun Area HQ, and a member of the Regional Crisis HQ for Sisak and Banija, and commanded all active duty and reserve units within the Sisak Police Department, National Defence and Croatian National Guard reserve units.

121 He executed the function of Member of Parliament, Prefect of Sisak and Moslavac County, President of the Croatian Football Association and Government Advisor for mine clearance in the Government of Ivo Sanader.

122 Vladimir Milanković was the Commander of all active duty and reserve units in the Sisak Police Department during 1991 and 1992, while Drago Bošnjak was a member of the Sisak Police Department *Vukovi* ('Wolves') reserve unit.

armed forces.¹²³ The Prime Minister, Jadranka Kosor, among other high ranking representatives of the Government, publicly stated that the judgment was unacceptable and that Croatia should be proud of all those who participated in the operation and contributed to the Croatian victory.¹²⁴ The President of the Social Democratic Party (SDP), Zoran Milanović, evaluated the judgment as being politically motivated.¹²⁵

The announcement of the judgment was followed by political commentaries, praise of the convicts and their proclamation as heroes, the organization of support protests throughout Croatia, and a general disregard of the facts and the victims, according to the observation and assessment of the Centre for Peace, Non-Violence and Human Rights, Documenta, and the Civic Committee for Human Rights.¹²⁶

4. Serbia

The Law on Organization and Jurisdiction of State Bodies in War Crimes Trials established the jurisdiction of a number of state bodies in the discovery and prosecution of perpetrators of war crimes.¹²⁷ The Office of the War Crimes Prosecutor of the Republic of Serbia (OWCP), as well as the Department for Revealing War Crimes within the Ministry of the Interior, the Unit for Victims and Witnesses Support and Assistance within the District Court of Belgrade / Higher Court of Belgrade War Crimes Department (which carries out administrative and technical duties related to witnesses and victims protection), and the Special Detention Unit as part of the District Prison in Belgrade, were established on the basis of this law on July 1st, 2003.

This law is enforced in order to identify and prosecute perpetrators of criminal offences against humanity and international law (Chapter XVI of the Basic Criminal Law) and criminal acts as defined in Article 5 of the Statute of the International Criminal Tribunal for the Former Yugoslavia. In Article 3 of the Law it was defined that the state authorities of the Republic of Serbia are responsible for prosecuting the aforementioned criminal offences committed on the territory of the former Yugoslavia, “regardless of the nationality of perpetrators or victims”.¹²⁸ There are certain opinions that the Republic of Serbia is abusing the concept of universal jurisdiction in order to amend the “truth from the Hague” with indictments and trials of foreign citizens [citizens of states successors of the former Yugoslavia].

Just like in Croatia, Montenegro and Kosovo, the judicial authorities in the Republic of Serbia apply the Criminal Code of the Socialist Federal Republic of Yugoslavia.¹²⁹

The Criminal Procedure Code of the Republic of Serbia prescribes a prison sentence (6 months) and a fine for anyone “who gives public statements during the proceedings before the court and prior to rendering the court judgment, in order to violate the assumption of innocence or impartiality of the court”.¹³⁰

123 “President Josipović and Prime Minister Kosor Shocked by the Verdict”, *Večernji list* web page, April 15th, 2011, <http://vecernji.hr/vijesti/predsjednik-josipovic-premierka-kosor-sokirani-presudama-clanak-276870>.

124 “Judgment is Unacceptable”, *Tportal* web page, April 15th, 2011, <http://www.tportal.hr/vijesti/hrvatska/122662/presuda-je-neprihvatljiva>.

125 “Judgment is Political”, *Dalmacija News* web page, April 15th, 2011, <http://dalmacijanews.com/vijesti/Milanovic-optuznica-protiv-Gotovine-politicka-inkriminacija.aspx>.

126 Centre for Peace, Non-Violence and Human Rights, Documenta, and Civic Committee for Human Rights, *Monitoring of War Crimes Trials - Report for 2011*.

127 Law on Organization and Jurisdiction of State Bodies in War Crimes Trials, *Official Gazette of the Republic of Serbia*, nr. 67/2003, 135/2004, 61/2005, 101/2007 and 104/2009.

128 *Ibid.*

129 The provisions of the new Criminal Procedure Code of the Republic of Serbia, which introduces prosecution investigation and the concept of guilty pleas in cases of war crimes, have been applied since January 15th, 2012. The new Code establishes that the attorney has a monopoly as regards representing the interests of victims of crimes, abolishing their right to choose a representative who is not an attorney. Consequently, experts for human rights/human rights defenders are prevented from representing victims of war crimes, unless they are attorneys. The Criminal Procedure Code, *Official Gazette of the Republic of Serbia*, nr. 72/2011.

130 Criminal Procedure Code of the Republic of Serbia, Article 336a, *Official Gazette of the Republic of Serbia*, nr. 72/2009.

The Republic of Serbia Civil Procedure Code limits the access to justice to individuals, organizations, independent bodies, associations and the media. With Articles 499 and 500, the legislator threatens with strict fines anyone who would want to give a critical opinion about public matters.¹³¹

For acting in cases of criminal acts which are prescribed by the law, the Higher Court in Belgrade Department for War Crimes has jurisdiction in the first instance and the Court of Appeals in Belgrade in the second instance.

4.1. Capacities¹³²

The Republic of Serbia Parliament appoints the War Crimes Prosecutor and his mandate lasts for six years. Vladimir Vukčević has held this position since the establishment of the OWCP. Deputy prosecutors are appointed by the Prosecutor for a period of four years. The War Crimes Prosecutor has eight deputy prosecutors.¹³³

The War Crimes Department has two trial chambers, which act in first instance proceedings in three member panels. A total of seven judges act in the first instance proceedings for war crimes.¹³⁴ The Court of Appeals in Belgrade has a War Crimes Chamber consisting of three judges. If the first instance proceedings were to be conducted before a higher court other than Belgrade, then the second instance proceedings would be conducted before a court of appeals that is responsible for trying a case according to the territorial jurisdiction.

In a few cases, war crimes trials are conducted before courts of general jurisdiction. These trials were initiated in the time period before the OWCP was established, and they deal with the cases which had been conducted before the courts displaced from Kosovo, which carried the names of courts in Kosovo and were under the jurisdiction of UNMIK. Prosecutors and judges who worked in the Kosovo judiciary prior to June 1999 were employed in these courts. After these courts were abolished, the cases of war crimes were transferred to higher courts in Niš, Kraljevo, Požarevac and Prokuplje.

4.2. Statistics

Since the War Crimes Department was founded in the Higher Court of Belgrade by late 2011, final judgments in 23 cases against 54 persons were rendered, as well as first instance judgments in five cases against 17 persons. A total of 145 indictments were filed and another 100 investigations are pending.¹³⁵

In 2010, the OWCP filed nine indictments against 32 persons, and in 2011 it filed nine indictments against 55 persons.¹³⁶ Among these indictments, the one filed against three persons in the Bijeljina Case has initiated a new trial, while indictments against six defendants emerged from two cases, which are already pending before the War Crimes Department trial chambers.¹³⁷

131 Civil Procedure Code, *Official Gazette of the Republic of Serbia*, nr. 72/201, has been applied since February 1st, 2012.

132 Through the project entitled "Justice and War Crimes", which was implemented during 2010 and 2011 by the OSCE/ODIHR together with the OSCE Mission in Serbia and which was sponsored by the EU, over a period of more than a year, 12 associates were hired (in positions of lawyers, analysts and associates) in the Office of the War Crimes Prosecutor, six of whom continued working in this institution on the completion of the project in October 2011. Eight expert associates (lawyers) were hired in the war crimes departments of the Higher Court in Belgrade and the Court of Appeals in Belgrade, five of whom were offered permanent employment by these institutions on the completion of the project. In the period 2010 and 2011, the OSCE Mission Department for Human Rights and the Rule of Law in Serbia, through the War Crimes Department and the aforementioned OSCE/ODIHR project, organized work-study visits for 13 war crimes judges (from the Higher Court and the Court of Appeals) to the Hague Tribunal; and also organized trainings on several occasions, in Belgrade and the Hague, in international humanitarian and criminal law and practice and the work experiences of the ICTY, for 15 expert associates from the Office of the Prosecutor and the War Crimes Department. Email communication with Ivan Jovanović, Head of the OSCE War Crimes Unit in Belgrade, December 21st, 2012.

133 Email communication with the Office of the War Crimes Prosecutor, December 23rd, 2011.

134 Information received from the Higher Court in Belgrade, February 10th, 2012.

135 Email communication with the OWCP, December 23rd, 2011. All information was verified in a number of interviews with deputy war crimes prosecutor Bruno Vekarić, during March 2012.

136 Email communication with the OWCP, December 23rd, 2011.

137 Cases *Skočić* and *Čuška/Qushk*.

Investigations generally last a long time. With regard to the mass crimes committed in Dubrava Prison in Kosovo, the OWCP started acting in 2008, but by the end of 2011 it still had not opened an investigation. In cases of war crimes committed in Kosovo, the OWCP often files indictments on the basis of partial investigations, as was the case with the indictment for war crimes committed in Suva Reka/Suharekë, which were filed because of crimes committed on March 26th, 1999, even though those same units of the Serbian police killed Albanian civilians in this town on March 22nd and 25th, 1999, as well. The situation is the same with the investigation of war crimes committed in the villages of Ćuška/Qushk, Pavljane/Pavjan and Zahać/Zahaq, which were committed on May 14th, 1999. The OWCP filed an indictment in 2010 for war crimes committed in Ćuška/Qushk, and they announced an extension of the investigation, which had not happened by the end of 2011. The OWCP is in the habit of modifying indictments on the eve of the rendering of judgments and of reducing the responsibility of the defendants who held commanding positions, as was the case of the accused Commander of the 37th Detachment of the Serbian Ministry of the Interior Special Police Units Radoslav Mitrović and the accused Branko Grujić, the former Mayor of Zvornik.

The Higher Court in Belgrade War Crimes Department (hereinafter referred to as the War Crimes Department) rendered nine judgments of the first instance in 2010, convicting 13 accused and acquitting one defendant. The Court of Appeals in Belgrade rendered seven judgments, finally convicting 21 accused, and acquitting three accused, and dismissing the first instance judgments in the case of five accused and sent their cases back to the first instance court for retrial. In the *Tuzla Convoy* Case, the Court of Appeals in Belgrade started the proceedings and after examining the defence witnesses sent the case back to the first instance court for retrial before a different trial chamber. In the *Suva Reka* Case, the Court of Appeals confirmed the judgment and the sentence of 20 years in the case of the accused Radojko Repanović, the former commander of the police station in Suva Reka/Suharekë in Kosovo.

In 2010, most cases before the trial chambers of the War Crimes Department referred to war crimes against Croat civilians committed during the armed conflicts in Croatia, which the Republic of Croatia Ministry of Justice had transferred to the Republic of Serbia Office of the War Crimes Prosecutor because the suspects were not accessible to the police and judicial authorities of the Republic of Croatia [they reside in Serbia].¹³⁸ The BiH Ministry of Justice transferred one case to the Office of the War Crimes Prosecutor, and another case, also a case of war crimes committed in BiH, was initiated on the basis of the agreement reached between the Office of the War Crimes Prosecutor and the Supreme Court of the Republic of Srpska, which rendered a judgment in the case of one accused (who lives in Serbia) in absentia. Six cases transferred from the Republic of Croatia were completed in 2010, as well as these two cases from BiH. These are cases with a small number of victims.

13 proceedings were conducted before the War Crimes Department in 2011. Verdicts were rendered in six cases by which 17 accused were convicted and two were acquitted, while seven other proceedings are still pending. In 2011, the Court of Appeals in Belgrade rendered 11 decisions on appeals against judgments rendered by the War Crimes Department of the Higher Court in Belgrade, by which 23 accused were finally convicted, and 15 accused first instance judgments were annulled and the cases sent back for retrial.

During 2011, seven out of 20 cases conducted before the Higher Court in Belgrade War Crimes Department and the Court of Appeals in Belgrade, were transferred by the Republic of Croatia State Attorney's Office (SAORC) to the Office of the War Crimes Prosecutor of the Republic of Serbia,¹³⁹ and two were transferred there by the judicial authorities of the Republic of Srpska, BiH.¹⁴⁰

In 2010 and 2011, cases of war crimes and ethnically motivated crimes committed during the armed conflicts

138 The cases were transferred on the basis of the Agreement on Cooperation in Prosecuting Perpetrators of War Crimes, signed between the Republic of Serbia and the Republic of Croatia in 2006.

139 The *Stara Gradiška*, *Vukovar*, *Lički Osik*, *Tenja*, *Medak*, *Banski Kovačevac* and *Beli Manastir* Cases.

140 The *Bijeljina* and *Prijedor* Cases.

in Kosovo were also prosecuted before courts of general jurisdiction in Niš, Požarevac, Kraljevo, and Sremska Mitrovica. What is characteristic of the proceedings before these courts is that they have been lasting for more than 10 years, the judges empathize with the accused, the defence counsel's inappropriate behaviour goes unpunished, and the proceedings are conducted without the participation of surviving victims and injured parties, and without the presence of the public¹⁴¹.

4.3. Lenient punishments

Just like in 2010, in 2011 the Court of Appeals in Belgrade again confirmed the lenient prison sentences rendered by the Higher Court of the Belgrade War Crimes Department.¹⁴²

The most negative example is the *Zvornik II* Case, in which the accused Branko Popović was sentenced to 15 years of imprisonment and the defendant Branko Grujić was sentenced to 6 years of imprisonment. Bearing in mind that the two of them at the time of the commission of the crime, in their capacity as heads of the civilian and military government in the municipality of Zvornik, were by the nature of their positions the individuals with greatest responsibility, that they actively participated in the implementation and were maybe even the launchers of the plan for the expulsion of the Muslim population from the territory of the Municipality of Zvornik, that this was only one of 5 proceedings initiated and conducted for the war crimes committed on the territory of the Municipality of Zvornik, and that the crimes which are subject of other proceedings are a result of the circumstances and conditions created by the actions of the convicted Popović and Grujić, it would seem that the sentences imposed in their case are highly inappropriate.¹⁴³

4.4. Pending war crimes trials

4.4.1. *Lovas Case*

The trial of the leaders of Serb authorities in the village of Lovas, the Republic of Croatia, in the period October – November 1991, namely, Ljuban Devetak, Milan Devčić, Milan Radojčić and Željko Krnjajić, along with officers of the former JNA Miodrag Dimitrijević, Darko Perić, Radovan Vlajković and Radosav Josipović, and members of the *Dushan the Mighty* (*Dušan Silni*) volunteer unit Saša Stojanović, Dragan Bačić, Jovan Dimitrijević, Zoran Kosijer, Petronije Stevanović and Aleksandar Nikolaidis, for the war crime against Croat civilians in which 69 Croat residents of this village were killed, began on April 17th, 2008 before the trial chamber presided over by Judge Olivera Anđelković¹⁴⁴.

A total of 167 trial days had been held by the end of 2011. The court examined 192 witnesses, 32 of whom were injured parties, *via* video link from county courts in Croatia, and seven officers of the former JNA, who were at the time of the commission of the crimes holding command posts, were aware of the events and failed to take any measures to prevent the commission of the crimes or to punish the perpetrators. The HLC, who represented the injured parties, proposed five witnesses. Seven victims' family members regularly attended the trial through the organization of the HLC. This is the first trial of officers of the former JNA. The indictment did not include the high ranking officers in the former JNA whose responsibility is unambiguously pointed to by the evidence presented during the evidentiary proceedings.

141 There is no public information about these trials.

142 Humanitarian Law Center, *Trials for War Crimes and Ethnically Motivated Criminal Offences in Serbia in 2010* – Report, page 7.

143 Besides this, the *Zvornik I* Case has been finally completed, while the *Zvornik III* and *IV* Cases, and the *Skočić* Case are still pending.

144 The Office of the War Crimes Prosecutor of the Republic of Serbia filed the indictment on November 28th, 2007.

4.4.2. *Skočić Case*

On the basis of the criminal complaint filed by the HLC¹⁴⁵, the OWCP filed an indictment on April 30th, 2010 against Sima Bogdanović, Damir Bogdanović, Zoran Stojanović, Tomislav Gavrić, Đorđe Šević and Zoran Alić, members of the *Sima's Chetniks* volunteer unit, because of the war crime against a civilian population, as defined by Article 142 Paragraph 1 of the Criminal Code of the Federal Republic of Yugoslavia, committed in co-perpetration, as with reference to Article 22 of the CC of the FRY.

The accused are charged with the fact that they gathered into an empty house 27 Roma, including children, women and adult men at the command of the accused Sima Bogdanović, on July 12th, 1992 in the village of Skočić, the Municipality of Zvornik, BiH, confiscated all valuables from them, then punched them, kicked them and hit them with rifle butts and other objects; that they killed one man, and ordered a number of men to take their clothes off and engage in oral sex with each other, even though they were all in close or distant family relations; that they raped three girls on multiple occasions, two of whom were juvenile, then took all of them by truck to the neighbouring village of Malešić. In Malešić, they separated three girls from the group and in the period following, sexually abused them and enslaved them. The remaining victims they took to a pit in the Hamzići settlement, took them from the vehicle one by one and executed them by firearms and knives, throwing the corpses into the pit. They killed 22 people at this spot, including a woman who was visibly pregnant; and they wounded the injured party Zijo Ribić, born on February 16th, 1984, who was the only one who survived this incident, even though he was shot and stabbed with a knife and afterwards thrown into the pit.

The Office of the War Crimes Prosecutor filed an indictment against Zoran Alić because of the same criminal offence, and his trial was then joined to the proceedings against the accused Sima Bogdanović et al. By the end of the year, namely on December 22nd, 2011, the Office of the War Crimes Prosecutor had indicted Zoran Đurđević and Dragana Đekić, also members of the *Sima's Chetniks* volunteer unit, for the same criminal offence.¹⁴⁶

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Just as in other cases, again in this case Serb witnesses do not know anything about the killings of their neighbours. One witness categorically refused any possibility that he had ever stated to his Muslim neighbour that “Chetniks killed the Roma”, but still he described in detail during the main hearing several situations in which they had discussed the crime committed against the Roma people.

Three protected witnesses testified from other rooms and under pseudonyms. Their experiences were painful also because no one had ever provided them with professional support, not even in relation to the trial. One witness had a bad experience with the court’s Witness Protection Unit. In the hotel where she stayed as a protected witness, she did not get lunch because the court’s Unit had booked a room with breakfast only.

4.4.3. *Ćuška/Qushk Case*

The indictment filed on September 10th, 2010 charged the defendants with the fact that, during the armed conflict between the forces of the Federal Republic of Yugoslavia Army and the Republic of Serbia Ministry of the Interior on one side and the NATO forces and members of the Kosovo Liberation Army on the other, for the purpose of banishing the Albanian population from and establishing full control over the territory of Kosovo and creating an ethnically clean area, ordered and carried out on May 14th, 1999 an armed attack on the civilian population of the village of Ćuška/Qushk. On this occasion they engaged in individual and mass killings, applied measures of terror and intimidation, including the destruction by burning of civilians’ houses, support facilities and motor vehicles.

¹⁴⁵ In 2008, the HLC filed a criminal complaint with the OWCP against Sima Bogdanović et al, for the criminal act of war crimes against a civilian population to which it attached a statement given by one of the survivors, to wit, the injured Zijo Ribić.

¹⁴⁶ Zoran Đurđević is being prosecuted before the same court on the basis of another OWCP indictment from June 5th, 2011 in the *Bijeljina Case*, in which he is charged with the commission of the criminal act of a war crime against a civilian population defined by Article 142 Para 1 of the Criminal Code of the Federal Republic of Yugoslavia in relation to Article 22 of the FRY CC.

A total of 44 of civilians were killed, and more than 40 family houses and more than 40 support facilities, 3 trucks, 5 personal vehicles and 3 tractors were destroyed. They seized the property of Albanian civilians by confiscating from them money (more than 125 000 DEM in total), an undetermined amount of jewellery and valuables, and a number of personal vehicles and two trucks without a justifiable military need. They relocated the surviving civilian population, namely more than 400 women, children and elderly, with the purpose of making them move to the Republic of Albania, thus banishing them from the village of Čuška/Qushk. The persons indicted for these crimes are Toplica Miladinović, the Commander of the 177th of the VTO (Military Territorial Department) of Peć/Pejë, the late Nebojša Minić, Commander of the First Platoon of the 177th VTO, aka the *Jackals*, as well as members of this unit, including Srećko Popović, Slaviša Kastratović, Zvonimir Cvetković, Boban Bogičević, Ranko Momić, Zoran Obradović, Milojko Nikolić, Siniša Mišić, Siniša Dunder and Predrag Vuković, and members of the reserve and active police units, including Vidoje Korićanin and Radoslav Brnović, who were volunteers in the *Jackals* unit.

The OWCP dropped charges against Saša Džudinović, a member of the Task Force, and Vidoje and Zoran Jašović, residents of Čuška/Qushk of Serb nationality, and the court terminated the proceedings against them by a ruling on September 2nd, 2011.

During the evidentiary proceedings, it was very obvious that the witnesses who were members of the Serbian Ministry of the Interior and the Yugoslav Army had “only short term memory”, were in a state of fear and wished to remove any possibility of their personal involvement and possible responsibility for the crimes committed. This was especially conspicuous in the case of witness Borislav Vlahović, the then Chief of the Peć Secretariat of Interior, Milić Janković, the then Commander of the Armoured Battalion of the 125th Motorized Brigade of the Yugoslav Army, and Duško Antić, the then commander of the Peć/Pejë Military Department.

The most significant and the most convincing of all the witnesses was certainly protected witness PS – Zoran Rašković. At the beginning of his six days long testimony in December 2011, Zoran Rašković insisted that he testify without protection measures, using his full name, with the explanation that he wanted to look the defendants in the eyes and tell all of them what he thought about them and the crimes they committed. The witness vividly explained that on May 14th, 1999, the Unit Commander, the late Nebojša Minić, ordered them to move, or, as he put it, “to go hunting for Germans”. The witness especially underlined that in this moment in the village of Čuška/Qushk there were no “terrorists” and no one had shot at them. The women, children and elderly gathered in the center of the village and, according to the witness, “the war began”. At the moment when they arrived in the village, he saw the defendant Sokić kill two Albanians who were approaching them and asking “whether they needed anything”. After some time, he saw the defendant Popović execute three Albanians in front of a house, and he saw 25 men who were lined up at the other end of the village and after this he heard shooting. The witness also saw defendants Momić, Nikolić and Mađ Vuković as they were taking 15 Albanians inside a house, after which he heard a burst of gunfire. After members of the *Jackals* unit had confiscated their money and other valuables, Albanian civilians were forced to pack their things onto tractors and other vehicles and leave the village. The *Jackals* were sent from the village of Čuška/Qushk to the village of Pavljane/Pavlan, where they encountered an Albanian man at the entrance to the village whom defendant Popović shot in the head while yelling the words “For Serbia!” In the same village, the defendant Momić raped and killed an Albanian woman, whom the witness assumed was pregnant. After 40 minutes, they left the village of Pavljane/Pavlan and arrived in the village of Zahać/Zahaq, where they again split into several groups, entered houses, looted, killed, pillaged, and banished the population found in the village.¹⁴⁷ In response to his testimony, defendant Mišić called the witness by the name of “Vuk Branković”. The witness told him that he would always play ‘traitor’ to a Serb such as him.

The main hearing in 2011 was marked by the unprofessional comportment of the defence counsel, who tried in

147 Crimes committed in the villages of Paljane/Pavlan and Zahać/Zahaq were not included in this indictment. The HLC filed a criminal complaint for the war crimes committed in these villages and a request for the extension of the investigation, but by the end of 2011, the OWCP had not initiated the investigation.

every possible manner, contrary to the law and the attorneys' code of professional ethics, to deny the right of the injured parties' representatives to participate in the proceedings.¹⁴⁸

The president of the trial chamber, Judge Snežana Garotić-Nikolić, managed the proceedings in a calm and orderly fashion, thus preventing any interference with the trial.

The Swedish Prosecution filed an indictment for the same event on September 11th, 2011 against Milić Martinović, a member of the Republic of Serbia Ministry of the Interior Special Police Units *Operation Pursue* Group, commanded by Goran Radosavljević a.k.a. 'Guri', for crimes against humanity. In the main hearing held before the District Court of Stockholm, the Deputy War Crimes Prosecutor of the Republic of Serbia, Dragosljub Stanković, testified upon the summons of the accused Martinović's defence counsel, as well as Nataša Kandić, who testified upon the request of the Prosecution, in the capacity of a human rights expert.

4.5. Command responsibility

The HLC had serious objections relating to the duration of the prison sentences imposed on the finally convicted persons in the *Zvornik II Case*¹⁴⁹ pointing out that the court should have considered the positions that the accused Branko Grujić, former Mayor of Zvornik (BiH), and Branko Popović, former Commander of the Zvornik Municipality Territorial Defence, had command responsibility, mainly because the crimes were committed in this municipality under their control,¹⁵⁰ and the gravity of the crimes fits the definition of crimes against humanity, which is not punished by the Criminal Code of the SFRY/FRY, which is the Code applied by the judicial authorities in Serbia.

In its report on war crimes trials in 2011, the HLC alleged that the sentence of 15 years of imprisonment imposed on the accused Branko Popović and 6 years of imprisonment imposed on the accused Branko Grujić cannot in any event be assessed as a decision which matches the gravity of the crime committed, because the court should have considered the concept of command responsibility, even though it could not have applied it. The actions of the accused, which constituted murder, torture, inhumane treatment, violation of physical integrity, forced relocation and displacement, taking hostages, denial of rights to proper and unbiased trial, and looting of people's property¹⁵¹, in the given circumstances and in the manner determined represented persecution as the most serious type of crimes against humanity, which unfortunately was not defined by the domestic criminal law.

5. Kosovo

In 2010, the Parliament of Kosovo adopted four laws, which contain measures for strengthening the independence of courts: the Law on Courts, Law on State Prosecutor, Law on the Kosovo Judicial Council, and Law on the Prosecutorial Council. The full enforcement of these laws is envisaged for 2013. In 2011, the Parliament of Kosovo passed the Law on Missing Persons.

148 The representatives of the injured parties on behalf of the HLC were Nataša Kandić, and attorneys Mustafa Radoniqi and Slavica Jovanović. As the HLC alleged in its report on war crimes trials in 2011, "Even though they had no legal grounds to do so, they insisted on preventing the representatives of the injured parties from carrying out their function. By questioning their professionalism, they tried to undermine their work, and demanded that their right to ask questions be limited; they also made rude comments, using foul language and insults. Such behaviour of the defence counsel made the representative of the injured parties, to wit, attorney Mustafa Radoniqi, remark that he sensed some hostility coming from his colleagues. It was also evident that some defence counsel tried to involve politics in the proceedings and used this to take the focus away from the serious crimes and turn the courtroom into a battlefield for the defence of 'national interests'". The Humanitarian Law Center, *Trials for War Crimes and Ethnically Motivated Crimes in Serbia in 2010 – Report*, pages 101-102.

149 Humanitarian Law Center, *Trials for War Crimes and Ethnically Motivated Criminal Offences in Serbia in 2010 – Report*, page 10.

150 The Court of Appeals in Belgrade rendered on October 3rd, 2011 a final judgment against the accused Branko Grujić and Branko Popović for taking hostages, the killing of more than 700 Muslims and the deportation of 1,800 Muslims. *Ibid.*

151 Witness Milorad Davidović, the FRY Federal Secretariat of the Interior Federal Brigade Commander, speaks volumes about the role of the convicted persons, explaining that the policy of the Serb Democratic Party, whose President in the Municipality of Zvornik was Branko Grujić, was "to remove Muslims in an organized, planned, and systematic manner from the territory of the Republic of Srpska", and that Branko Popović was "the Alpha and the Omega" of all events in Zvornik. *Ibid.*

The Criminal Law of the SFRY from 1976 (CCY) is applied in cases of war crimes. The Criminal Procedure Code of Kosovo (CPCK), which the Parliament of Kosovo passed in November 2008, has been applied since April 2004, when it entered into force as UNMIK Regulation no. 2003/26. According to the provisions of this law, the Law on Criminal Procedure of the SFRY (CPCY) is applied in cases in which indictments were filed before this law entered into force, except that the Kosovo law is applied when extraordinary legal remedies are filed.¹⁵²

5.1. Capacities

War crimes trials in Kosovo are conducted before five district courts in the first instance,¹⁵³ and the Supreme Court of Kosovo has jurisdiction to act in the second instance proceedings. Trial chambers for war crimes are mixed and they comprise two international judges and one local judge. The president of the trial chamber is always an international judge. The exception is only the District Court of Mitrovica/Mitrovicë, where all members of the trial chamber are only international judges.¹⁵⁴

Investigation of war crimes is placed under the jurisdiction of the EULEX War Crimes Investigation Unit (WCIU), which has 28 international investigators. The WCIU assisted in the establishing of the War Crimes Unit within the Kosovo Police Service, which has 9 local investigators. The Republic of Kosovo Special Prosecutor's Office (SPORK)¹⁵⁵, led by the Kosovo Ministry of Justice and EULEX, the chief of which is a EULEX prosecutor, is responsible for investigating war crimes, in cooperation with WCIU, and for criminal prosecution of war crimes. SPORK is a specialized prosecutor's office within the Office of the State Prosecutor of Kosovo. There are only two international prosecutors who deal exclusively with war crimes.¹⁵⁶ Two local prosecutors started working on cases of war crimes in 2011.

Pursuant to the Law on Jurisdiction,¹⁵⁷ EULEX judges have primary (exclusive) and secondary (subsidiary) jurisdiction for criminal offences, which are investigated or prosecuted by municipal and district courts.¹⁵⁸

There are more than 200,000 backlog cases waiting for the the courts' actions. The most burdened is the District Court in Mitrovica /Mitrovicë, with more than 10,000 unresolved cases.

The Kosovo Judicial Council adopted the National Backlog Reduction Strategy in November 2010 as part of the Strategic Plan for the Promotion of the Judiciary in the period 2007-2012. The application of the Strategy has not yet produced any visible results, and problems such as political pressures, and the lack or unprofessionalism of local prosecutors and judges are still current.¹⁵⁹ The Kosovo Judicial Council and the Ministry of Justice assess the application of the Strategy as a success, but inspection of the statistics shows that the number of unresolved cases is not diminishing, but rather, increasing.¹⁶⁰

152 Amnesty International stresses in its reports that the Kosovo Criminal Code responds more to the requirements of International Law than the Criminal Law of the SFRY. Kosovo law covers rape and the command responsibility of military commanders or persons who effectively act as military commanders, and who can, in certain circumstances, be held responsible for the actions of all persons under their effective control, which is not the case with the Criminal Law of SFRY, which recognizes criminal responsibility only for the ordering and commission of war crimes.

153 There are five: District Court of Gnjilane/Gjilan, District Court of Prizren/Prizren, District Court of Peć/Pejë, District Court of Priština/Priştinë, and District Court of Mitrovica/Mitrovicë.

154 The Humanitarian Law Center Kosovo, *Trials for War Crimes and Ethnically and Politically Motivated Criminal Offences in Kosovo in 2010 Report*, Priština, 2011, page 51.

155 SPORK was established by the Law on the Kosovo Special Prosecutor's Office, no. 03/L-052, which was passed in March 2008.

156 OSCE Mission, Department for Human Rights and Communities, *Kosovo War Crimes Trials; An Assessment 10 Years On: 1999-2009*, May 2010, page 14.

157 Law no.03/L-053 on Jurisdiction, Case Selection and Case Allocation to EULEX Judges and Prosecutors in Kosovo, passed on March 13th, 2008, <http://www.eulex-kosovo.eu/training/?id=139>.

158 Law no.03/L-053 on Jurisdiction, Article 3, Para 1

159 Failure of Courts, web page of *Kosova Sot*, June 18th, 2011, http://www.kosova-sot.info/te_tjera/kronika_e_zeze/deshtojne-gjykatat.

160 Statistical report of the Kosovo Judicial Council, statistics of the regular courts, http://kgjk-ks.org/repository/docs/RAPORTI-I-PERGJITHSHEM--TREM-III-2011-SERBISht_Final_5424.pdf.

5.2. Statistics

EULEX inherited 1,187 cases of war crimes from the UNMIK Administration, which were after an inspection reduced to approximately 750 cases. According to the assessment of the HLC on the basis of talks with EULEX investigators, SPORK during 2010 and 2011 initiated dozens of preliminary investigations and some ten official investigations.¹⁶¹ According to EULEX information, international judges rendered judgments of the first and second instances during 2009 and four during 2010,¹⁶² and in 2011 they rendered three first instance and two final judgments.¹⁶³ In June 2011, the SWCPO announced that 27 cases were finally completed, and that there were four cases pending and five cases in appellate stage of the proceedings.¹⁶⁴

All indictments were represented by international prosecutors in 2010 and 2011. There were several exceptions in cases of repeated trials, in which indictments were, at the decision of the SWCPO, represented by local prosecutors.¹⁶⁵ These were the *Prosecutor vs. Slobodan Martinović et al*, and *Prosecutor vs. Zoran Kolić* Cases.

During 2010, EULEX was more engaged in cases of organized crime, corruption and abuse of official positions, and in acting upon extraordinary legal remedies, and less in war crimes trials.

In November 2010, the District Court in Peć/Pejë sentenced a former member of the Serbian Ministry of the Interior reserve units, Vukmir Cvetković, to seven years of imprisonment because of his participation in the displacement of the Albanian civilian population from Klina/Klinë by ordering people to leave the town and burning down at least two Albanian houses in March 1999.¹⁶⁶

The proceedings against Idriz Gashi, a member of the KLA, for the murder of an Albanian woman, Sanije Balaj, on August 12th, 1998 because of the suspicion that she had cooperated with Serb authorities, was finally completed in November 2010. The Supreme Court of Kosovo confirmed the judgment of the District Court of Peć/Pejë, sentencing Gashi to 14 years of imprisonment.

The criminal proceedings against Sabit Geci and Rezak Aliu, members of the KLA who held responsible positions during the war, started before the District Court in Mitrovica/Mitrovicë in October 2010 because of the abuse of Kosovo Albanians in two camps in North Albania. The two court sessions in which the indictment was confirmed were closed to the public because of the witness protection measures. Even though Article 330 of the CPCK offers the possibility of the attendance of experts from among the public in private court sessions, even representatives of the HLC Kosovo, the only non-governmental organization that monitors trials, did not receive the EULEX permit to attend these sessions.

161 In 2010 the HLC gave its documents pertaining to war crimes committed in Dubrava Prison in Kosovo to the WCIU, on the basis of which the WCIU contacted witnesses and surviving victims for the purpose of providing assistance in the preliminary investigative actions of the War Crimes Prosecutor's Office, interview with Nataša Kandić, Executive Director of HLC, December 15th, 2011.

162 *Annual Report On The Judicial Activities Of EULEX Judges*, 2010, <http://www.eulex-kosovo.eu/docs/justice/annual-report2010/Judges%20Annual%20Report%202010.pdf>.

163 According to the information of the District Court in Peć /Pejë, the case of Veselin Bešović was also finally completed by the prosecutor dropping charges against him, in a statement from July 5th, 2005 in the preparation phase for the retrial. The Humanitarian Law Center Kosovo, *Report on Trials for War Crimes and Ethnically and Politically Motivated Criminal Offences in Kosovo in 2010*, Priština, 2011.

164 The number of announced judgments by municipal and district courts and the Supreme Court for criminal offences. *Annual Report On The Judicial Activities Of EULEX Judges*, 2010 <http://www.eulex-kosovo.eu/docs/justice/annual-report2010/Judges%20Annual%20Report%202010.pdf>.

165 The Humanitarian Law Center Kosovo, *Report on Trials for War Crimes and Ethnically and Politically Motivated Criminal Offences in Kosovo in 2010*, Priština, 2011.

166 The Supreme Court of Kosovo confirmed the decision on the sentencing on August 16th, 2011, but it modified the legal qualification of the criminal act. Instead of charging the defendant with the criminal act of a war crime against a civilian population pursuant to Article 142 Para 1 of the SFRY (FRY) CC, in relation to Article 22 of the SFRY CC, the Supreme Court charged him with a war crime against a civilian population pursuant to Article 142 Para 1 of the SFRY (FRY) CC, Article 3 of the Geneva Conventions and Articles 1 and 17 of the Second Protocol Additional to the Geneva Conventions.

The witness protection issue has been raised again in the *Gjergj Luli et al.* Case, before the Municipal Court in Peć/Pejë. Bekim, Engjell, Prenk and Gjergj Luli were sentenced to a suspended five months imprisonment sentence for the unlawful arrest of Albanian Pashk Luli, the father of Gjergj Luli, on March 24th, 1999, all trace of whom has been lost since that moment. International Judge Malcolm Sammons stated in the reasoning of the judgment as mitigating circumstances that the court received the impression that defendant Gjergj had withdrawn from his earlier statements¹⁶⁷ in order to protect his family and himself from the revenge of Gjeloš Krasniqi.

There were more investigations that were completed in 2011 and resulted in confirmed indictments and judgments of the first and the second instances.¹⁶⁸ Local prosecutors were engaged in two cases of war crimes. In the *Prosecutor vs. Slobodan Martinović et al.* Case the local prosecutor took over the case in the main hearing stage, and in the *Prosecutor vs. Zoran Kolić* Case, the local prosecutor led the investigation¹⁶⁹.

The Supreme Court of Kosovo mixed Trial Chamber presided over by international Judge Charles Louis Smith III, confirmed on June 14th, 2011 the judgment rendered by the District Court of Peć/Pejë, by which Gjeloš Krasniqi was sentenced to seven years of imprisonment because he took Pash Luli hostage on March 24th, 1999 in the village of Doblibare/Doblibarë in Kosovo, and every trace of the victim has been lost since then.

5.3. Pending war crimes trials

5.3.1. *Sabit Geçi* Case

Sabit Geci and three other KLA soldiers were sentenced in July 2011 before the District Court of Mitrovica/Mitrovicë to imprisonment sentences of seven to fifteen years because of the abuse of Kosovo Albanians in the KLA camps *Kuks* and *Cahan* in North Albania.¹⁷⁰ In these proceedings, the International Prosecutor Maurizio Salustra used his right as prosecutor, pursuant to Article 322 of the CPCK, to continue gathering and proposing new evidence and witnesses even after the confirmation of the indictments. The trial chamber presided over by international Judge Jonathan Welford-Carroll, confirmed at the very beginning of the proceedings its jurisdiction for criminal offences that were committed on the territory of another country, referring to Article 105 of the CC of SFRY, which was in effect at the time of the commission of the crime and Article 135 of the KCC, which prescribes that the KCC shall be applied to citizens of Kosovo who commit criminal offences which represent breaches of the Geneva Conventions. 20 witnesses in these proceedings had the status of protected witnesses. During the trial, a great number of these witnesses were relocated together with their families from their homes to other concealed locations in Kosovo.

5.3.2. *Klečka/Klečkë* Case

The main hearing against ten persons charged with the commission of war crimes against a civilian population and war crimes against prisoners of war began in August 2011 before a mixed trial chamber of the District Court of Priština/Prishtinë. The case is known to the general public as the *Klečka/Klečkë* Case or the *Limaj et al.* Case. The indictment included also Fatmir Limaj, former Minister of Infrastructure and a high ranking official of the governing Democratic Party of Kosovo. Limaj has been under house arrest since September 22nd, 2011. Limaj was previously acquitted in a trial before the ICTY, where he was prosecuted for crimes committed in 1998. The accused are charged with multiple counts of war crimes against the civilian population and war crimes against prisoners of war, to wit, that they, in the capacity of soldiers or commanders of the KLA in *Klečka/Klečkë* Detention Centre, participated in the beating and the killing of prisoners, including members of the Serbian Ministry of the

167 Defendant Gjergj Luli stated on a number of occasions to police and investigators of the ICTY and UNMIK that Gjeloš Krasniqi, together with a group of uniformed KLA soldiers, took his father from his uncle's yard on March 24th, 1999.

168 Humanitarian Law Center Kosovo, *Report on Trials for War Crimes and Ethnically and Politically Motivated Criminal Offences in Kosovo in 2010*, Priština, 2011.

169 *Ibid.*

170 *Ibid.*

Interior Nebojša Đuričić and civilians Veljko Marković, Arben Avdyli, Bojan Cvteković, Žarko Filipović, Života Todorović and other unidentified prisoners. After the reading of the indictment, the defence raised a number of objections to the prosecutor's actions, especially challenging the admissibility of the statements and journals of anonymous witness X, who was the key prosecution witness in the proceedings. He kept a detailed diary about the events in the detention centre at Klečka/Klečkë, where he worked as a prison guard. The body of Witness X was found on September 28th, 2011 in a park in Duisburg, Germany. That is when the public learnt that he was a Kosovo Albanian by name of Agim Zogaj, Police investigation showed that Zogaj committed suicide. He left a letter in which he accused EULEX of mental torture. The beginning of the main hearing was postponed to January 30th, 2012, when the trial chamber presided over by international judge Jonathan Welford-Carroll will discuss the admissibility of the statements and the diaries of Witness X.

5.4. Prosecution of Kidnapping of Serbs, Roma, and Members of Other Ethnic Communities

Hundreds of Serbs, Roma and members of other ethnic minorities were kidnapped by KLA soldiers during and immediately after the war in Kosovo, in the period from January 1st, 1998 until late December 2000. Only a small number of cases have been investigated. UNMIK, and later EULEX, have prosecuted and continue investigating cases of Kosovo Albanians who were kidnapped by the KLA because of the suspicion that they had cooperated with Serb authorities, but they still do not deal with the cases of the kidnapping of Serbs, Roma and other non-Albanians. District prosecutor's offices have the jurisdiction to prosecute cases of kidnappings and the international human rights organization Amnesty International quite rightly opposes this. This organization thinks that SWCPO should investigate cases of post-conflict kidnappings which it considers contain elements of crimes against humanity. AI concluded that the qualification of kidnappings as regular crimes contributes to the maintenance of the culture of impunity in Kosovo. This organization highlights three reasons which strongly support the initiative that the SWCPO has the jurisdiction over prosecuting kidnappings and disappearances related to the war: the establishing of the EULEX Special Investigation Team for Post-Conflict Transfer of Kidnapped Serbs to Albania; the ICRC Data Base of Missing Persons at the time of war and in relation to the war which contains information about the persons who went missing until late 2000; and the Law on Missing Persons, passed by the Parliament of Kosovo in 2011, which highlights the right of families to know the fate of their family members who went missing in the period from January 1st, 1998-December 31st, 2000 in relation to the war in Kosovo during 1998 and 1999.

The judgment of the Supreme Court of Kosovo rendered on April 26th, 2011 by which Besim Berisha was acquitted of criminal responsibility for the death of Momčilo Milenković and the disappearance of his son Svetomir on August 2nd, 1999 in Priština/Prihtinë, caused major dissatisfaction among family members of the Serb victims. Besim Berisha was charged in November 1999 with the commission of the criminal act of Murder pursuant to Article 30 Para 2 Item 2 of the CCK, and Unlawful Detention pursuant to Article 63 Para 4 in relation to Article 1 of the Criminal Code of Serbia.¹⁷¹ The trial began on March 20th, 2000, and lasted one day; and the same day the local judge rendered a judgment finding the defendant not guilty. Upon the Prosecutor's appeal, the Supreme Court of Kosovo annulled the judgment and sent the case back for retrial. Because of Berisha's failure to appear before the court, the trial began only on July 28th, 2009. The court did not manage to establish the cause of the death of Momčilo Milenković, who died after the assaulter left his house, or what happened with Svetomir Momčilović, who in the presence of the assaulter jumped out of the window of the house, in front of which two men from the assaulter's group were keeping guard. Because of this, the Prosecutor modified the indictment and charged the accused with the criminal offence of exposing to danger, which envisages punishment for the person who leaves another person without help in life-threatening circumstances. The accused was sentenced to six years of imprisonment, but the Supreme Court annulled the judgment and acquitted the accused with the explanation that the first instance court failed to prove sufficiently the link between Besim Berisha and the criminal offence that he was convicted of.

171 Verdict of the District Court in Priština, EULEX Mission web page, <http://www.eulex-kosovo.eu/docs/justice/judgments/criminal-proceedings/DCPriština/Besim-Berisha2/Judgment%20Besim%20Berisha%20aka%20Burim%20Dibrani%20Serbian.pdf>.

5.5. Investigation into allegations about trafficking of human organs (Dick Marty's Report)

The Parliamentary Assembly of the Council of Europe (PACE) adopted the Report of the Rapporteur Dick Marty on January 25th, 2011, in which Kosovo Prime Minister Hashim Thaçi is linked to the abductions, torture, and murders of Serb and Albanian civilians who were transferred to the prison camps in Albania. According to this report, prisoners in one camp were killed and their organs were extracted for the purpose of being sold. This report, for the first time initiated the investigation into the abductions and disappearances of Serbs in the context of international crimes. In June 2011, EULEX announced that it had established the Special Investigative Task Force located in Brussels for the purpose of conducting an investigation into the disappearances in Kosovo, the transferring of the kidnapped persons to Albania and the extraction of human organs. In August 2011, EULEX appointed John Clint Williamson as the Chief Prosecutor in the Special Investigative Task Force. In October 2011, the Head of the EULEX Mission, Javier Bout De Marnhac, signed the agreement on cooperation with the Minister of Police of Albania, Bujar Nishani, which allows for the conducting of an investigation into the alleged prison camps in Albania.

6. Montenegro

The Criminal Code (CC) of Montenegro was amended in 2003 to include criminal offences against humanity (Article 427) and failure to take measures to prevent criminal acts against humanity and other values protected under International Law (Article 440). According to this latter criminal code, command responsibility has been envisaged as an individual criminal offence.¹⁷²

Partial application of the new Criminal Procedure Code, including the articles and provisions which refer to the prosecution investigation and the concept of the guilty plea agreement began in August 2010 and as of September 2011 the Code has been applied in its entirety.¹⁷³

6.1. Capacities

A Department for the Fight Against Organized Crime, Corruption, Terrorism and War Crimes led by the Special Prosecutor was established in the Supreme State Prosecutor's Office in 2008. In higher courts in Podgorica and Bijelo Polje, specialized departments for the prosecution of the criminal offences of organized crime, corruption, terrorism and war crimes have been operating since 2008, and there are a total of eight specialized judges and three investigative judges working in them. The special prosecutor and the judges in the specialized departments are stimulated by special fees added to their monthly payments. The Court of Appeals in Podgorica is in charge of the second instance proceedings, while the Supreme Court of Montenegro decides in the third instance proceedings and in the proceedings initiated upon extraordinary legal remedies.

The Police Administration does not have a special department for uncovering war crimes and in the Department for the Fight against Organized Crime and Corruption there is a systemized position for the Police High Commissioner, whose activities are, among other things, directed to the uncovering of serious crimes against life and body.¹⁷⁴

172 No one in Montenegro has been indicted so far on the basis of command responsibility for failure to prevent and/or punish for crimes committed.

173 The Human Rights Action non-governmental organization thinks that the decision on initiating a prosecution investigation may lead to an unequal application of the law, because the prosecutor alone decides whether it is a case of a criminal act of organized crime, corruption, terrorism, or war crimes, or whether it is some criminal act which does not belong to any of the aforementioned groups. Human Rights Action, *Human Rights in Montenegro 2010 – 2011*, Podgorica 2011, page 198.

174 Email communication with the Director of the Montenegro Police Administration, Božidar Vuksanović, January 17th, 2012.

6.2. War Crimes Trials

During 2010 and 2011, there were four war crimes trials pending: for crimes against prisoners of war and civilians in *Morinj* camp; against the civilian population – refugees from Bosnia and Herzegovina (*Deportation of Refugees* Case); against the civilian population on the territory of Bukovica (*Bukovica* Case); and crimes against the civilian population, refugees from Kosovo (*Kaluđerski Laz* Case). Three first instance judgments/ were rendered, one of which was the guilty judgment in the *Morinj* Case, and the other two, the acquittals of all the accused in the *Bukovica* and *Deportation of Refugees* Cases. The Court of Appeals annulled the first instance judgment in the *Morinj* Case on November 25th, 2011 and sent the case back for retrial, which had not been completed by the end of 2011.

The judgment in the *Bukovica* Case was also annulled in June 2011 and the case was sent back for retrial. The second acquittal in this case was rendered in early October 2011

What is characteristic of all these cases is the fact that all the accused were immediate perpetrators of the criminal acts they had been charged with.

In all the war crimes proceedings, the prosecution proposed detention only after the indictment was filed and the investigations were completed. This led to the situation in which almost a half of the persons accused of deportations, the principle defendant in the *Kaluđerski Laz* Case,¹⁷⁵ and one of the accused in the *Morinj* Case were tried *in absentia*.

6.2.1. Bukovica Case

The Supreme Prosecutor's Office filed an indictment on April 21st, 2010 against five members of JNA reserve units (Radmilo Đuković, Radiša Đuković, Slobodan Cvetković, Đorđe Gogić, Milorad Brković) and two members of the Reserve Police units (Slaviša Svrkota and Radoman Šubarić) on the grounds of the criminal offence of a crime against humanity. They have been charged with the fact that "during the international armed conflict in BiH in the period 1992-1995, as members of the Yugoslav Army border battalion in Pljevlje and the Ministry of the Interior Security Centre in Pljevlje, in violation of the rules of International Law, on the territory of the Bukovica local community in the Municipality of Pljevlja, they inhumanely treated the civilian population of Bosniak Muslim ethnicity, as a result of which a part of the population was displaced from this area".¹⁷⁶ The trial began on June 28th, 2010 before the Higher Court in Bijelo Polje.¹⁷⁷ The Director of the Montenegro Police Administration, Veselin Veljović, who was at the time of the indictment the commander of the Police Station in Pljevlja and, according to some testimonies, led the searches of houses in Bukovica, testified in the main hearing. He claimed that during the war events in the area of Bukovica not a single war crime was committed and that everything was done in accordance with the professional rules. He said that he knew the accused police officers Svrkota and Šubarić, and that during the entire time of the events that happened on this territory he did not receive a single complaint relating to their work. The Higher Court chamber rendered on December 31st, 2010, a judgment acquitting the accused of all charges for the criminal offence of a war crime against humanity, on the grounds that "it was not proved that the accused went to Bukovica of their own initiative in order to intimidate, torture and treat the Bosniak-Muslim population there inhumanely, but that they, within their legal powers, as members of the police, acted in order to secure peace and order, i.e. that they as Yugoslav Army soldiers acted in order to secure the border so that war activities would not spread from the territory of Bosnia and the Republic of Srpska to the territory of Pljevlje".¹⁷⁸ On June 29th, 2011, the court annulled the judgment and sent the case back for retrial.¹⁷⁹ The Higher Court in Bjelo Polje rendered an acquittal again on October 3rd, 2011.¹⁸⁰ Velija Murić,

175 Predrag Strugar was tried *in absentia*.

176 Press release of the Higher Court in Bijelo Polje, April 22nd, 2010.

177 Press release of the Higher Court in Bijelo Polje, June 30th, 2010.

178 Press release of the Higher Court in Bijelo Polje, December 31st, 2010.

179 Youth Initiative for Human Rights Montenegro, *II Quarterly Report on Human Rights*, page 5.

180 Press release of the Higher Court in Bijelo Polje, October 3rd, 2011.

an attorney and the President of the Montenegro Lawyers' Committee for Human Rights, stated with regard to this acquittal, that "the accused are not those most responsible for the consequences, which occurred in the case in question [...] because it was a case of ethnic cleansing. What is characteristic is the fact that in this area there were no war activities. This area was under the control of the Montenegrin Police and the Yugoslav Army."¹⁸¹

6.2.2. Case Deportation of Refugees

The Supreme State Prosecutor's Office of Montenegro Department for the Fight Against Organized Crime, Corruption, Terrorism and War crimes, filed an indictment in January 2009 against nine former and present members of the Montenegrin Ministry of the Interior: Bojović Boško, The Republic of Montenegro Assistant Minister of the Interior for the State Security Department; Marković Milisav, Assistant Minister of the Interior of the Republic of Montenegro for Public Security Department; Radunović Radoje, Head of the State Security Department Sector in Herceg Novi; Bakrač Duško, operations officer in the State Security Department Sector in Herceg Novi; Stojović Božidar, Chief of the State Security Department Sector in Ulcinj; Ivanović Milorad, Chief of the Security Centre in Herceg Novi; Šljivančanin Milorad, Commander of the Herceg Novi Police Station; Bujić Branko, Chief of the Security Centre in Bar; and Glendža Sreten, Chief of the Ulcinj Security Department¹⁸². They are charged with the fact that in May 1992 in Podgorica, Herceg Novi, Bar and Ulcinj, they committed an unlawful relocation of the civilian population – BiH citizens of Muslim and Serb nationality, who had the status of refugees. The accused are charged with the commission of a war crime against a civilian population by unlawfully arresting 79 persons, citizens of BiH, and handing them over to the Sokolac Secretariat of the Interior, the Foča Secretariat of the Interior and Penitentiary, and the Srebrenica Secretariat of the Interior, thus executing an order issued by the Republic of Montenegro Minister of the Interior, the late Pavle Bulatović, to act upon the requests of the Republic of Srpska Ministry of the Interior (at that time officially known as the Serb Republic of BiH), and arrest persons who came from the territory of BiH to Montenegro and send them back to BiH.

The trial began on November 26th, 2009 before the Higher Court in Podgorica chamber comprising Judge Milenko Žižić and two lay judges. Duško Bakrač, Boško Bojović, Milorad Ivanović, Milisav Marković and Radoje Radunović were tried *in absentia*, since they were still at large, residing in Serbia. A great number of witnesses testified at the main hearing, including the surviving victims, deceased victims' family members, and officers of the Montenegrin Ministry of the Interior. Momir Bulatović also testified.¹⁸³

The accused defended themselves by saying that they had only executed orders, acting upon the order from telegram 14–101 of May 23rd, 1992 which contained a request to act in line with the request of the Republic of Srpska Ministry of the Interior to arrest all persons from the territory of BiH aged between 18 and 65 in order to take charge of them and send them back to BiH.

During his testimony on November 12th, 2010, Bulatović stated that the deportation was not an isolated action, but a regular police procedure. He handed over some ten documents, including the original letter, which contained an order for the arrest of 161 persons from BiH about whom there was information that they could be terrorist threats. He said that "the extradition of refugees was the error of the state and not individuals", and he confirmed that the police and Chief State Prosecutor Šušović "were in constant communication at that time".

The Higher Court in Podgorica rendered on March 29th, 2011 an acquittal of all nine accused, with an explanation

181 "Murić: Bukovica Case is Another Defeat for the Montenegrin Judiciary", *Portal Analitika* web page, October 4th, 2011.

182 Momir Bulatović was the President of Montenegro at the time of the deportations, and the Prime Minister was Milo Đukanović; the Deputy Prime Minister for Internal Policy, who was directly in charge of controlling the work of the Ministry of the Interior, was Zoran Žižić, and Nikola Pejaković was Deputy Minister of the Interior, when the Minister of the Interior was the late Pavle Bulatović.

183 The judge dismissed the motions of the defence to have brought to the witness stand Milo Đukanović, Zoran Žižić, Deputy Prime Minister of Montenegro at the time and in charge of internal policy, and Vladimir Šušović, Chief State Prosecutor at the time, and Svetozar Marović and Milica Pejanović-Đurišić, Members of the Montenegrin Presidency led by Momir Bulatović at the time of the deportations. Human Rights Action, *War Crimes Trials*, Podgorica 2011.

that “the unlawful actions of the accused, which they did performed as was established by the court, did not constitute a war crime, because they were not part of armed forces and they were not in the service of any of the parties to the conflict”.¹⁸⁴ Human Rights Action (HRA) assessed that the judgment is contradictory and “its legal qualification is confusing and not founded on the sources or relevant interpretation of International Law”.¹⁸⁵ HRA also thinks that there is no doubt that “in this case a war crime against a civilian population in relation to the armed conflict in BiH was committed”.¹⁸⁶ The State Prosecutor’s Office filed an appeal on June 15th, 2011 against the judgment of the Higher Court in Podgorica,¹⁸⁷ and this case is currently pending before the Appellate Court of Montenegro.

There were many public critiques made by various political parties and non-governmental organizations with regard to the not guilty judgment. Human Rights Action stated in its report on war crimes trials that the judgment was contradictory and its legal qualification confusing and not based on the sources or relevant interpretations of International Law.¹⁸⁸

6.2.3. *Kaluđerski Laz Case*

The investigation was opened in early March 2007 against an active duty officer in the Yugoslav Army, Predrag Strugar from Belgrade, who resides in Podgorica, and against ten soldiers of the YA Podgorica Corps reserve units from the territory of the Municipality of Berane. The Investigation Request referred to four persons who had nothing to do with the crime, and later on the prosecutor dropped charges against them.

On the territory of Kaluđerski Laz and surrounding villages, where there were no conflicts, members of the YA killed 21 Albanian civilians whom the Serbian Ministry of the Interior or Yugoslav Army forces had banished from Kosovo. Six were killed in Kaluđerski Laz and others were killed at other locations in the Municipality of Rožaje. Four victims of this crime were not included by the Prosecutor among the victims according to the indictment, which is the basis for the trial pending before the Higher Court in Bijelo Polje. The accused Predrag Strugar, the son of General Pavle Strugar, who is convicted before the Hague Tribunal for the siege of Dubrovnik, is prosecuted on the basis of command responsibility for the commission of the crime in Kaluđerski Laz, because at this time he was the only active duty officer of the YA, while the other seven members of the reserve units of the Podgorica Corps of the former YA, are prosecuted in their capacity as executors. The territory on which the crimes happened was within the area of responsibility of the Second Army of the YA, which was under the command of Milorad Obradović. As Human Rights Action alleged, command responsibility went through him to the commander of the Podgorica Corps, Sava Obradović, and all the way to the suspected Battalion Commander, Predrag Strugar. Milorad Obradović and Savo Obradović are mentioned in the investigation only in the capacity of witnesses, even though they were Strugar’s superiors. The Higher Court in Bijelo Polje claims that it is not able to find out the addresses of these two high ranking officers of the YA because they reside in the Republic of Serbia.

The trial began on March 19th, 2009. At the current hearings, approximately 100 witnesses have been examined. They have all claimed that they did not see the accused and that they knew almost nothing. The extra-procedural

184 Overview of the court decision, http://sudovi.me/odluka_prikaz.php?id=623.

185 Human Rights Action, *Human Rights in Montenegro 2010-2011*, Podgorica 2011, page 566.

186 *Ibid.* page 568.

187 Youth Initiative for Human Rights, Report on Human Rights for Third Quarter of 2011, page 6.

188 As was stated in the Human Rights Action report: “For instance, the opinion presented on page 72, where the court established that the armed conflict in BiH was armed conflict between the peoples who lived on its territory, namely Serbs, Croats, and Muslims, because of which this conflict does not have the character of an international armed conflict, is contradictory to the opinion given on page 90: For the period after May 1992, when the forces of the FRY as such withdrew from the territory of BiH, the armed forces of the Republic of Srpska acted under the general control and for the sake of the FRY, which is a fact that was established in the judgments of the International Court; from which it may be concluded that the FRY was involved in the armed conflict together with the BiH government forces, and this is opposed to the opinion of the Defence. Namely, if the armed forces of the RS “acted under the general control and for the sake of the FRY, the conflict in BiH was international, even though the court in the end came to the opposite conclusion”. Human Rights Action, *War Crimes Trials in Montenegro*, Podgorica, 2011.

chamber of the Higher Court in Bijelo Polje ordered the release of Barjaktarović, Labudović, Novaković, Bojović and Đurašković from detention on August 1st, 2011, because the first instance judgment was not rendered within three years from the day they were sent to detention.

The accused Predrag Strugar was arrested in Serbia on October 30th, 2010, according to the Interpol Podgorica international arrest warrant in line with the Agreement concluded between Serbia and Montenegro on the extradition of their own citizens. He was examined and then released.¹⁸⁹

The representative of the victims' families, Velija Murić, thinks that the investigation was superficial, in that at least four suspects were "randomly named, even though it was known that they had nothing to do with the crime". He has pointed to the fact that the "defence managed on several occasions to transform a lie, which was repeated on several occasions, into a principle thesis: that the victims were allegedly killed in Kosovo and that they were transported to the scene of the crime".¹⁹⁰ By the end of 2011, the evidentiary proceedings were still pending. He points to the fact that the main hearing lasted unusually long, "with the resistance coming from the authorities in Serbia, from whom a lot of evidence was required".

6.2.4. *Morinj Case*¹⁹¹

The indictment was filed on August 15th, 2008 against six former members of the JNA, namely Mladen Govedarica, Chief of Security Service in the Command of the Logistics Navy Base and Zlatko Tarle, an investigator, Ivo Gojnić, a reserve officer in charge of the administrative and commissioner's work, Špiro Lucić, of the Military Police, Ivo Menzalin, a cook, and Boro Gligić, a guard. The accused are charged with the fact that in the period from October 3rd, 1991 until August 18th, 1992, at the time of the armed conflict in the Republic of Croatia, in the "prisoners' collection centre" they ordered and/or executed torture, inhumane treatment, violations of the physical integrity of six persons brought from the territory of Dubrovnik. After the indictment was filed, the accused were taken into detention, except for Ivo Menzalin, who was at large and was tried *in absentia*.¹⁹²

The trial began on March 12th, 2010 before the Higher Court in Podgorica. The judgment was rendered on May 15th, 2010. The Court found the accused guilty of committing war crimes against prisoners of war and sentenced Mladen Govedarica to two years of imprisonment, Zlatko Tarle to a year and a half, Ivo Gojnić to two years and a half, Špiro Lucić to three and a half years, Boro Gligić to three years and Ivo Menzalin to four years of imprisonment. The accused were released from detention. The court ordered detention against Menzalin, who had been at large, and this order was applied as of the day he was arrested. Dubrovnik reacted bitterly to this judgment, because the accused were sentenced to very lenient prison sentences, "as if they had stood trial for

189 The Higher Court in Belgrade rendered a ruling on January 24th, to extradite Strugar to Montenegro, but the Court of Appeals in Belgrade annulled this ruling. In the repeated procedure, the Higher Court in Belgrade ruled on October 25th, 2011 that there was none of the necessary evidence for the extradition. "Higher Court Refuses to Extradite a War Crime Indictee to Montenegro", *Blic* web page, November 3rd, 2011, <http://www.blic.rs/Vesti/Hronika/287401/Visi-sud-odbio-izrucenje-Crnmoj-Gori-optuzenog-za-ratne-zlocine>.

190 Email communication with the attorney of the victims' families, Velija Murić, December 12th, 2011.

191 The Republic of Croatia State Attorney's Office delivered to the Supreme Prosecutor's Office of Montenegro evidentiary material against ten citizens of Montenegro, who are suspected of committing war crimes against civilians and prisoners of war in Morinj in the period from October 3rd, 1991 until July 2nd, 1992, Human Rights Action, *War Crimes Trials in Montenegro*, Podgorica 2011.

192 "The following persons were mentioned as superior officers, i.e. as persons responsible for the Morinj collection centre in JNA at this period of time: the commander of the JNA Navy, Admiral Mile Kandić; the commanders of the 9th Army-Navy Sector, Navy Colonel Krsto Đurović (died on October 5th, 1991) and his successor Vice-Admiral Miodrag Jokić; the Chief of Staff of the 9th VPS, Navy Colonel Milan Zec; the commander of the 2nd Task Force Major-General Pavle Strugar; the chiefs of the Security Department of the Federal Secretariat of the Peoples' Defence – the Generals Marko Negovanović, Aleksandar Vasiljević and Nedeljko Bošković; and the name of the officer for military security, Mirsad Krluč, was mentioned as the Chief of the special Counter-intelligence Task Force for Interrogations in Morinje. The Higher State Prosecutor Ranka Čarapić, stated that the prosecution had no evidence against persons who held command positions. Zec, Jokić and Strugar were indicted, and Jokić and Strugar were found guilty of war crimes committed during the siege of Dubrovnik, before The Hague Tribunal, but this indictment did not include the events that occurred in Morinje". Human Rights Action, *War Crimes Trials in Montenegro*, Podgorica 2011.

some minor traffic offences and not for crimes committed in the defence of the SFRY". The injured parties thought that the judgment was a shameful mockery of the prisoners of war and civilians who were beaten, abused and humiliated on a daily basis by the six former JNA soldiers.¹⁹³

In late November 2010, the Appellate Court annulled the first instance judgment and sent the case back for retrial. The Appellate Court established that the judgment was based on non-credible copies of the records of witnesses' statements given in the investigation before county courts in Croatia and on non-credible copies of medical documentation of the injured parties and, therefore, it ordered the exemption of these documents from the case file in the repeated trial.

The court of the first instance found the accused guilty only of the crime against prisoners of war, and not of the war crime against the civilian population as had been demanded by the indictment, because it considered that the decisive fact was that the accused considered all of the injured parties to be prisoners of war. The State Prosecutor failed to file an appeal against this court ruling, and the accused were only tried for the crime against prisoners of war in the repeated trial. The retrial began on April 12th, 2011. Deputy Special Prosecutor, Lidija Vukčević, amended the indictment in her closing argument on November 11th, 2011, thus charging Mladen Govedarica, Bora Gligić, Špiro Lucić and Ivo Menzalin with the commission of the war crime against a civilian population concurrently with the act of "a war crime against prisoners of war". Defence Counsel filed a motion for the exemption of Deputy Special Prosecutor Vukčević, claiming that she had no right to amend the indictment, because it was stated in the ruling of the Appellate Court that the accused would not be prosecuted in the repeated trial for crimes against a civilian population because the Prosecutor had failed to file an appeal against this part of the first instance judgment. By the end of 2011, the judgment did not become final.

7. Macedonia

In 1996, Macedonia passed the Criminal Code which, among other things, refers to war crimes committed.

7.1. Capacities

The court responsible for the prosecution of war crimes¹⁹⁴ is the Special Department for Organized Crime and Corruption within the Primary Court 1 in Skopje.¹⁹⁵ The Supreme and Appellate Courts of Macedonia are responsible for rendering second instance judgments. Primary Court 1 in Skopje is responsible for acting in cases of crimes that are under the jurisdiction of the ICTY.¹⁹⁶ Primary Court 1 in Skopje has been specially equipped and has a courtroom which meets the highest technical standards. There are 11 judges and 24 civil servants who are acting in cases of war crimes, organized crime and corruption.¹⁹⁷ There are no judicial officials who are responsible exclusively for war crimes.

The Special Department for Monitoring and Discovering Criminal Activities within the Primary Prosecutor's Office, which is in charge of prosecuting organized crime and corruption, is also responsible for investigating and prosecuting war crimes. The Prosecutor's Office is based in Skopje and is responsible for the entire territory of entire Macedonia.¹⁹⁸ A total of 11 prosecutors have acted in cases initiated on the basis of charges for war crimes,

193 Human Rights Action, *War Crimes Trials in Montenegro*, Podgorica 2011.

194 In Macedonia war crimes are prosecuted pursuant to the Criminal Code of the Republic of Macedonia passed in 1996.

195 Law on Amendments to the Law on Courts, Article 2, *Official Gazette of the Republic of Macedonia*, no. br.35/2008..

196 Law on Cooperation Between the Republic of Macedonia and the International Criminal Tribunal for Former Yugoslavia (ICTY), Article 26, Paragraph 2, *Official Gazette of the Republic of Macedonia*, no. 73/2007.

197 Official information of the Primary Court 1 in Skopje, http://oskopje1.mk/cms/FCKEditor_Upload/File/WVr/osn.html.

198 The Public Prosecutor's Office of Macedonia is organized in the following manner: Public Prosecutor's Office of the Republic of Macedonia, Higher Public Prosecutor's Office, Primary Public Prosecutor's Office for Prosecution of Organized Crime and Corruption, and Primary Prosecutor's Office. Law on Public Prosecutor's Office, *Official Gazette of the Republic of Macedonia*, no.150, December 12th, 2007, Article 15, Paragraph 2.

and at the same time they have acted in cases of organized crime and corruption.¹⁹⁹

7.2. Statistics

After signing the Ohrid Agreement on August 13th, 2001, which officially ended the armed conflict, during the year 2002 four war crimes trials were initiated.²⁰⁰ In all these cases, the Prosecution charged members of the National Liberation Army (NLA).

The *Construction Workers* Case refers to the kidnapping of five employees of the Mavrov Construction Company on August 7th, 2001, who were abused and tortured by members of the NLA for eight hours. The *Lipkovska brana* Case refers to the forty days' long restriction of tap water supplies to the city of Kumanovo, by the closing of the vents on the Kumanovo water-pipe system near Lipkovsko Lake, which in this period was under NLA control.

The *Neprošteno* Case is also a case of kidnapping, namely, the abduction of 12 civilians in July 2001, who were kidnapped by the NLA soldiers from various locations on the territory of Tetovo.

In the *Vodstvo* Case the principle of command responsibility was applied, and by a joint indictment, which included 10-20 persons, the entire NLA leadership was charged with the commission of a number of war crimes.²⁰¹

The ICTY Office of the Prosecutor took over the jurisdiction for these four cases in September 2002.

Except for the cases transferred during 2004, the ICTY Office of the Prosecutor opened an investigation against the former Minister of Police Ljube Boškovski and the then member of the Ministry of the Interior Johan Tarčulovski for war crimes committed in the village of Ljubotena, in August 2001.²⁰² On this occasion, in January 2005, the then Prime Minister Vlado Bučkovski stated that “the recent history of Macedonia would be distorted if the ICTY initiated an investigation into one case only”.²⁰³ Ali Ahmeti, the President of the Democratic Union for European Integration, stated that it would be good if the ICTY aborted the cases, these cases, but also stressed that only one of these cases really “deserved to be investigated”, and this is the case from Mavrov, while the other three cases were affected by the Amnesty Law.²⁰⁴

Three years later, the ICTY completed the investigation and in February 2008 it transferred all of the cases again to the Macedonian judiciary. The then ICTY Chief Prosecutor, Carla Del Ponte, explained that the Tribunal did not have any other choice, since the UN Security Council demanded that all investigative proceedings be completed by the end of 2007.²⁰⁵

The transferred cases were first translated from English and Macedonian into Albanian, and then the Ministry of Justice transferred all four cases to the Prosecution (June/July 2008).²⁰⁶ The Primary Prosecutor's Office, after completing the procedure and registering the cases, forwarded the material to the Primary Court 1 in the Skopje investigation department.

Primary Court 1 in Skopje claims that it has received only three cases from the Primary Prosecutor's Office

199 Information received from the Primary Public Prosecutor's Office for Prosecution of Organized Crime and Corruption, December 28th, 2011.

200 Humanitarian Law Center, BIRN, and Documenta, *Transitional Justice in Post-Yugoslav Countries: Report for 2009*, page 17.

201 *Veje* Case – murder of members of Macedonian security forces; *Brioni* Case– planting explosives in a hotel in which two handcuffed security guards were placed; and *Čelopek* Case – murder of two civilians.

202 ICTY Prosecution vs. Boškovci and Tarčulovski, ICTY web page, http://www.icty.org/case/boskoski_tarculovski/4.

203 International Crisis Group, Report for Europe, no. 41 – Macedonia: tetaravenje kon Evropu, pg. 3.

204 *Ibid.*

205 “Hague Tribunal to Return Four Cases to Macedonia”, SE Times web page, <http://www.setimes.com/cocoon/setimes/xhtml/mk/features/setimes/features/2005/04/27/feature-02>.

206 Interview with Bisera Lazarova, professional associate in the Public Prosecutor's Office of Macedonia, December 23rd, 2011.

(*Construction workers, Lipkovska brana and Neprošteno*) and that they have never received the *NLA Leadership Case*.²⁰⁷ On the other hand, the Prosecution claims that the *NLA Leadership Case* is in the investigation stage of the proceedings in Primary Court 1 Skopje.²⁰⁸ The Prosecution filed an indictment in the *Case Construction Workers*. The other two cases remained in the investigation stage, while the *NLA Leadership Case* “got lost” on its way from the prosecution to the investigation bodies. In the end, all four cases were terminated, owing to the effect of the amnesty granted to the accused in July 2011.

The crimes against Albanians have not yet been prosecuted. The *Jama Case* has been sitting for years in the Primary Public Prosecutor’s Office and it will be closed in accordance with the Amnesty Law.²⁰⁹ In the *Jama* area (somewhere between Kichevo and Debar), a grave site with four bodies of people who went missing during the conflict in 2001, namely Radoslav Ginov, a citizen of Bulgaria, and three Albanians from Macedonia - Islam Veliju, Hajredin Halimi and Ibrahim Veliju - was found. The Prosecutor’s Office did not file an indictment. The persons suspected of committing the murder of these people are unidentified members of the regular security bodies.

7.3. Amnesty for War Crimes

Upon the initiative of two main Albanian political parties (Democratic Party of Albanians – DPA, and Democratic Union for Integration – DUI), on July 19th, 2011 the Parliament of Macedonia initiated a voting procedure for the majority support for an authentic interpretation of the Amnesty Law. That same day, the initiative was adopted by a majority of 63 yes votes and 29 no votes, by which the criminal prosecution of cases of serious violations of human rights during the armed conflict in Macedonia came to an end.²¹⁰

An Amnesty Law was passed in 2002, seven months after the Ohrid Agreement was signed, which granted an amnesty to all members of Albanian armed groups which were suspected of having committed war crimes, conclusive as of September 26th, 2001.²¹¹ Pursuant to this law, the amnesty did not refer to persons who were indicted before the ICTY. In 2009, the DPA filed a motion with the Government of Macedonia demanding the authentic interpretation of the Law on Amnesty, but at that moment the Government did not accept this suggestion.²¹² The DUI filed the same motion in 2011 and it was approved first by the Government and then in the Parliament.

Authentic interpretation of the Law on Amnesty would allow for the amnesty to be applied to suspects in cases which the ICTY transferred to Macedonia.

Amnesty International has strongly criticized such an application of the Law on Amnesty and characterized it as a violation of the international humanitarian law. The rights of victims to justice must not be subject to political bargaining, and the family members of all missing persons must learn the fates of their closest family members.²¹³

There are some high ranking politicians who are exempted from criminal prosecution on the basis of the application of the authentic interpretation of the Law on Amnesty. Ali Ahmeti, the President of the DUI, the political party which started the initiative for the application of the amnesty to the perpetrators of criminal offences in so-called Hague Cases, was one of the accused in the *NLA Leadership Case*. The DUI has been participating in the

207 Phone conversation with Vladimir Tufegdžić, spokesman and investigative judge of the Primary Court 1 Skopje Department for Fight Against Organized Crime and Corruption, December 23rd, 2011.

208 “Where did the *NLA Leadership Case* get lost?” Dnevnik web page, September 15th, 2011 <http://www.utrinski.com.mk/default.asp?ItemID=05E04FE092AE6B4C934690E20E0F752D>.

209 “After ICTY Cases, ‘Jama’ Next to Be Buried?”, web page of Dnevnik, July 29th, 2011, <http://www.dnevnik.com.mk/?ItemID=F46D93FB5374CB448DC5E8085CA87B71>.

210 Minutes of the fourth session of the Republic of Macedonia Parliament, July 19th, 2011, page 53.

211 Amnesty Law, Article 1, *Republic of Macedonia Official Gazette*, nr. 18/2002..

212 Record of the fourth session of the Republic of Macedonia Parliament, July 19th, 2011, page 3.

213 Amnesty International, “Macedonia: Time to deliver justice to the victims of war crimes”, PR 1 September 2011, <http://www.amnesty.org/en/for-media/press-releases/macedonia-time-deliver-justice-victims-war-crimes-2011-09-01>.

government since 2008. Ahmeti was the political leader of the NLA. Another high ranking official from this party is Sadula Duraku, who was the Minister of Agriculture in one government. Duraku was among the accused in the *Lipkovska brana* Case, and a Member of Parliament at the moment when the authentic interpretation of the Amnesty Law was adopted. Today, he is the Mayor of Likovo.

Daut Rexhepi, accused for crimes in the *Neprošteno* Case, who is an active politician, was also granted an amnesty.

8. Slovenia

War crimes in Slovenia are prosecuted in accordance with the Criminal Code of the SFRY.

8.1. Capacities

Court Martial was abolished in Slovenia after it gained independence, and all war crimes trials were transferred to the jurisdiction of regular courts, namely, to 11 district courts, 4 higher courts, and one Supreme Court. War crimes trials in the first instance are conducted before district courts and in the second instance they are conducted before the respective higher courts. There are no courts of prosecutor's offices in Slovenia which are responsible for war crimes, and there are no special witness support services. In fact, overall, there are no special witness protection services or services for their relocation or change of identity.

8.2. Statistics

After the end of the armed conflict in Slovenia,²¹⁴ because of a number of violations of international law and domestic provisions, 104 criminal complaints were filed with the respective authorities.²¹⁵ 70 of these criminal complaints were filed against JNA soldiers and one against a member of the Territorial Defence (TD). Only 10 criminal complaints resulted in indictments. Five final judgments have been rendered, four of which were acquittals, and one indictment was dismissed because it was affected by the statutory limitations. In 46 cases, courts dismissed the Prosecutor's Office motion for initiating criminal proceedings.

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8.3. Pending war crimes trials

Criminal proceedings against officers of the former JNA, Colonel Berislav Popov and General Vlade Trifunović, are pending before the court in Murska Subota, because of the operations of the Armoured Mechanized Unit of the 32nd Brigade of the Varaždin Corps, which had the task "to provide security and monitoring of the border crossing", which was qualified in the indictment as a war crime against a civilian population.²¹⁶ The individual indictments were in April 2008 incorporated into one joint indictment. The Prosecutor's Office in Murska Subota has charged Trifunović and Popov on the basis of command responsibility for the war crime against civilian

214 The armed conflict on the territory of Slovenia began after the Republic of Slovenia declared independence on June 25th, 1991 and it lasted for 10 days, from June 27th, 1991 until July 7th, 1991. The conflict arose between the forces of the Yugoslav Peoples' Army and the armed forces of the Republic of Slovenia (AFRS) comprising police units and units of the Territorial Defence (TD). The conflict ended with the Brioni Agreement, by which all unilateral decisions were banned. The Presidency of the SFRY accepted on July 18th, 1991 the decision to withdraw the JNA troops together with its equipment and weapons from the territory of Slovenia. The last JNA soldiers left Slovenia on October 25th and 26th, 1991. There were 76 victims of this conflict – 8 on the Slovenian side (4 police officers and 4 members of the territorial defence), 45 on the JNA side, and 12 foreign citizens and 10 Slovenian civilians.

215 Information received on the basis of Article 181 of the Republic of Slovenia Law on the State Prosecutor's Office from information from certain district state prosecutor's offices (DSPO) of the Republic of Slovenia with the facilitation of the General State Prosecutor's Office of the Republic of Slovenia and the General Secretary of the Supreme Court of Slovenia, and verified with the help of the public information announced in the media and through the application of the Slovenia Statistics Office at http://pxweb.stat.si/pxweb/Database/Dem_soc/Dem_soc.asp#13.

216 Both defendants are citizens of the Republic of Serbia.

population committed during the JNA intervention in Slovenia in 1991.²¹⁷ Both accused are being tried *in absentia*.

Both officers of the former JNA were finally convicted in Croatia to 15 years of imprisonment each. The Supreme Court of Serbia annulled the guilty verdict by which Popov and Trifunović were convicted of the act of “Undermining the Military and Defence Power of the State” and on the basis of which Trifunović and Popov spent 547 and 446 days in prison respectively.²¹⁸ In the meantime, Popov and Trifunović received material compensation for the damages suffered because of their unlawful detention on the basis of the Serbian Ministry of Justice ruling.

8.3.1. *Radovanović Case*²¹⁹

On June 27th, 1991, the 1st Battalion of the 1st Armoured Brigade of the 14th JNA Corps took over the south part of Brnik Airport near Ljubljana. Members of the AFRS stayed at the north part of the airport. The following day, two photographer-journalists, citizens of Austria, entered the airport runway, namely the clear zone, for a second time with their SUV. Another journalist was close to them, as well as some fire-fighters. They were shot at from the direction of JNA units. The vehicle, loaded with cans of petrol, was set on fire and the photojournalists were killed. The Slovenian Prosecutor’s Office demanded an investigation against the unit commander, the JNA Major, because of the “prohibited method of warfare” and the order to open fire. On June 24th, 1992, the court rendered a not guilty judgment in the case of the accused JNA officer, after it was established that the accused only ordered soldiers to open fire “as a warning”. The judgment has not become final.

8.3.2. *Grujović Case*²²⁰

The fuel storage site near Puščava in the vicinity of Mokronog was guarded by a JNA captain and two other sergeants. The captain wanted to cross over to the Slovenian TD; and the family of one of the two sergeants lived in Mokronog, and he wanted to surrender. However, Grujović, the other JNA sergeant, refused to surrender the fuel storage site. An armed conflict between the captain and Sergeant Grujović ensued. The captain was injured, but he managed to escape, while Sergeant Grujović organized the defence of the fuel and threatened to blow up the storage should the TD attempt to take control over it. On July 15th, 1993, the court initiated an investigation into the war crime against a civilian population. An indictment was filed against Grujović on October 28th, 1994. In mid-2007, the court renewed the international arrest warrant against the accused Grujović.

8.4. Pending investigations

There are 15 pending investigations of war crimes in Slovenia.

The Češča *vas*/Češče selo Case refers to the murder of a civilian on July 5th, 1991, was shot at by an unidentified driver of a vehicle near the JNA storage site. Police are still searching for the perpetrator.

The investigation in the *Medvedjek* Case is also still pending. AFRS forces intercepted the artillery anti-aircraft defence battery of the JNA 306th Light Antiaircraft Regiment, after which JNA aircraft launched an attack on the AFRS barricades and troops. Eight civilians were killed, including five Bulgarian citizens, and a great number of soldiers and civilian members of armed forces were injured. The Slovenian Prosecutor’s Office filed a motion for

217 “General Trifunović: I Will Not Go to Trial”, *Radio Free Europe* web page, July 14th, 2010, http://www.slobodnaevropa.org/content/general_Trifunovic_optuzen_za_ratni_zlocin_u_sloveniji/2099828.html.

218 Retired Colonel Berislav Popov and General Vladimir Trifunović were finally convicted in Croatia to 15 years of imprisonment each. The Ministry of Justice in Serbia signed an agreement with officers Trifunović, Popov and Sreten Raduški in May 2011 on the compensation for the damages they suffered because they were in detention; the damages were soon paid to them and several non-governmental organizations started an initiative for their rehabilitation.

219 Case file number: Ktr 66/98, DPO in Kranj; Collection of documents – war crimes committed in the June war in 1991: year 1992 (9 documents), number: Ktr 62/92.

220 Case file number: Kt 629/91, District State Prosecutor’s Office in Novo mesto.

initiating an investigation into this war crime against a civilian population with the court on January 29th, 1992. In May 1992, Bulgaria addressed the Slovenian Ministry of Justice with the question, “Whether the culpability of the persons responsible for the criminal offences committed has been examined?”²²¹ The response of the Prosecutor’s Office of Slovenia was that, “The persons responsible for the assault on civilians have not been identified and neither have the immediate perpetrators, as a consequence of which, criminal proceedings have not been conducted.”²²²

The investigation into the case of the air rocket assault which hit the *AR Holding* company building, is still pending. The Prosecutor’s Office is still in the stage of collecting information about the perpetrators.

Because of the air raid on the barricades next to the barracks in Murska sobota on June 28th, 1991, in which a JNA soldier was killed and another one injured, the Office of the Prosecutor of Slovenia is searching for the perpetrators of “a war crime against a civilian population”.

In the *Gibina* Case, the police are searching for the perpetrators from JNA units because of “the non-selective shooting”.

In the *Ljutomer* Case, the police are still searching for the JNA pilots who launched the attack on the AFRS barricades in the town of Ljutomer.

In the *Šentilj* Case, the police are still searching for the JNA officer who ordered soldiers to open artillery fire, as a result of which the premises of the police, customs service, *Kompas Company* and gas station were destroyed, which the Prosecution qualified as a war crime.

An investigation is also being conducted in the *Začevič* Case, against a JNA captain, who, in the capacity of Assistant Commander of the Armoured Battalion, “ordered the large scale destruction of property” and thereby destroyed a house in Štrihovac. The *Savić*, *Dučan Šentilj*, *Središče ob Dravi*, and *Mašanović* Cases, and investigations in the *Jurić*, *Lukić* and *Vujović* Cases are similar.

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8.5. Finally completed cases

8.5.1. *Arsim et al.* Case.²²³

Following instructions given by his superior, an employee of the *Elektro Maribor* power company business unit in Ptuj turned off the power line to the JNA barracks for the second time on May 24th, 1991. When he locked the power substation, he was hit in the leg by a bullet fired by a guard from the JNA barracks. The Prosecutor’s Office in Slovenia transferred the criminal report to the Zagreb Court Martial, because at that time the “moratorium” relating to the independence of Slovenia was in force. The Court Martial in Zagreb came to the conclusion that this was not an unlawful act. Nevertheless, later on, the Prosecutor’s Office in Ptuj filed an indictment for the criminal offence of inflicting a serious physical injury. The Higher Court in Maribor rendered a not guilty judgment on June 14th, 1994.

8.5.2. *Koder* Case²²⁴

A JNA Major (originally Slovenian), who was, prior to the conflict, serving as a teacher pilot at the military airport in Pula, Croatia, worked in Podgorica in 2001 (as a citizen of FRY). He was transferred to this duty during the conflict in Slovenia. The Prosecutor’s Office in Slovenia initiated an investigation on December 8th, 1994 because

²²¹ Pom 5/2006, March 7th, 2006.

²²² Ktn 328/91-JF/vj, March 27th, 2006.

²²³ Case file number: I KT 710/91, District State Prosecutor’s Office in Ptuj.

²²⁴ Case file number: Kt 188/94, District Prosecutor’s Office in Nova Gorica.

of his “serving with foreign troops” and because he “did not obey the call of the Slovenian Presidency (1991) to withdraw from that army”. The Prosecutor’s Office of Slovenia filed an indictment, but the District Court in Nova Gorica rendered a not guilty judgment on December 17th, 2001.

8.5.3. *Veliči Case*²²⁵

In the village of Crni Vrh above Idrija, there was a storage site for weapons and equipment of the Territorial Defence of the northern coastline municipalities. It was guarded by a JNA platoon. A member of the Slovenian TD took away part of the equipment on June 25th, 1991. Since a group of civilians decided to take control of the storage site, the guard commandant, together with his unit of JNA soldiers divided into two groups and left the storage site. The storage site was blown up that same night by a strong explosion. 178 houses in Crni Vrh were damaged on this occasion. The Prosecutor’s Office of Slovenia demanded an investigation against a JNA sergeant on charges that he blew up the storage site and acted on the order to blow up the storage site in the event of his “hearing shooting”. On April 29th, 1992, the court rendered a not guilty judgment, with the explanation that the “accused only had the intention of preventing the undamaged ordnances from ending up in the hands of the enemy”. The judgment is final.

8.5.4. *Štrihovec I Case*²²⁶

As a JNA tank company from the *Franc Rozman Stane* barracks in Maribor advanced towards the Šentilj border crossing at the border with Austria on June 27th, 1991, it was intercepted by the AFRS barricade in Štrihovac. The AFRS launched an attack on the JNA convoy at the moment when it attempted to break through the barricade. The JNA tank company was assisted by the JNA aviation. Four drivers of civilian trucks (who were in the convoy) were killed in the attack, while several civilians and members of the AFRS were injured. The Slovenian crime investigation unit investigated and established the identity of two JNA military pilots. Slovenian police arrested one of them on September 3rd, 1998 on the basis of the arrest warrant, at the Slovenian border crossing. In late 1998, the Prosecutor’s Office filed an indictment against JNA colonels because of the “use of unlawful warfare” and violations of the customs of war. On February 18th, 1999, the court rendered an acquittal, because there was no evidence that the arrested JNA pilot flew over Štrihovec in the type of plane alleged or carried out combat activities there.

The court also dismissed the charges filed by the Slovenian Prosecution in the *Kolenović Case*. A van driver in the JNA was accused without foundation of the act of jeopardizing security under the influence of alcohol by “driving very fast in the direction of children.”²²⁷

9. Witness Protection and Support

9.1. Bosnia and Herzegovina

9.1.1. Witness protection

BiH has two laws which regulate witness protection: the Law on Protection of Witnesses Under Threat and Vulnerable Witnesses²²⁸ was passed in 2003 and is enforced on the entire territory of Bosnia and Herzegovina, and the Law on the Witness Protection Programme in BiH,²²⁹ which establishes actual protection measures,

225 Case file number: KT 79/92), District Prosecutor’s Office in Nova Gorica.

226 Case file number: I Kt 1472/98, District State Prosecutor’s Office in Maribor.

227 Case file number: KT 137/91, District Prosecutor’s Office in Koper.

228 Law on Protection of Witnesses Under Threat and Vulnerable Witnesses, *Official Gazette of BiH* 21/03, 61/04, 55/05.

229 Law on Witness Protection Programme in BiH, *Official Gazette BiH nr. 29/04*. http://www.sudbih.gov.ba/files/docs/zakoni/ba/zakon_o_programu_zastite_svjedoka_29_04_-_bos.pdf.

and which is enforced exclusively at the national level.²³⁰ The State Investigation and Protection Agency (SIPA) which implements the Protection Programme is in charge of providing protection for witnesses only in cases before the BiH State Court. The SIPA Witness Protection Department (WPD)²³¹ has exclusive jurisdiction for the implementation of the Law on the Witness Protection Programme in BiH, and it provides appropriate support and specialized protection to *protected witnesses* before the BiH Court. From November 2004 until the end of 2011, the WPD provided protection and support for 560 persons with the status of protected witness, 95% of whom were in need of protection with relation to witnessing in cases of war crimes. In 2010, the WPD took care of 49 protected witnesses, and in 2011 it took care of 102 protected witnesses, in cases of war crimes.²³²

A great number of cases have been registered in BiH in which witnesses of war crimes are being threatened and often methods of intimidation are being used against them.²³³ Milojka Antić, who was detained in the Čelebići camp in the village of Čelebići, where she was raped, testified before the ICTY against a number of perpetrators.²³⁴ One of them, to wit, Hazim Delić, who had served his imprisonment sentence, called Milojka Antić on January 6th, 2009 and threatened her that she would “experience something worse than what she had experienced in 1992”. As of that moment, she has been living in constant fear. She reported the incident to the police in Višegrad. As of October 2011, she still had not received information from the police about the investigation undertaken, and she does not even know if any steps have in fact been taken. Delić has never been taken in for interrogation.²³⁵

The OSCE in its report on the practice of witness protection and support in cases of war crimes in BiH alleges that the errors in the provision of protection and support come down to a systemic failure in the provision of victims'/witnesses' protection, because of which victims/witnesses are not so willing to cooperate in criminal proceedings and believe less and less that trials can serve justice.²³⁶ The efficiency of the witness protection is frequently compromised because of lack of coordination. Witnesses who are granted pseudonyms in order to protect their identity have complained that they receive subpoenas via the regular postal service, which drastically reduces the efficacy of the protection measures. The local community may easily come into possession of the information that they are summoned to testify.²³⁷ The accused or their representatives reveal the identities of protected witnesses in public.²³⁸ By the end of 2011, only one indictment had been filed, because of the disclosure of identity of a protected witness before the state authorities in BiH.²³⁹

230 Representatives of the Republic of Srpska voted against the draft law which envisaged the jurisdiction of the Witness Protection Programme to be extended to entities as well.

231 The Witness Protection Department is a signatory of the Agreement on Cooperation and Understanding in Witness Protection Area with Serbia, Montenegro, Bulgaria, and Macedonia. This department has established a very good cooperation with the BiH Court Witness Support Department, in which they have daily and weekly communication aimed at the exchange of appropriate information, proper coordination in the area of mutual support and certain aspects of support for the Department, for the purpose of the operation on the territory of BiH.

232 Information received from SIPA; January 6th, 2012.

233 Doc. 12440 rev. Committee on Legal Affairs and Human Rights Report: The protection of witnesses as a cornerstone for justice and reconciliation in the Balkans - Rapporteur: Mr Jean-Charles GARDETTO, Monaco, Group of the European People's Party, 12 January 2011.

234 *Prosecutor vs. Mucić et al.* (IT-96-21), ICTY judgment, November 16th, 1998.

235 Taken from: Written information for the follow-up to the concluding observations of the Committee against Torture on Bosnia and Herzegovina's combined second to fifth periodic reports (CAT/C/BIH/CO/2-5). Submitted by TRIAL and 19 war-victims' organizations of Bosnia and Herzegovina (par. 75.) http://www2.ohchr.org/english/bodies/cat/docs/followup/ngos/TRIAL_1_BosniaHerzegovina45.pdf

236 OSCE Mission to BiH, *Witness Protection and Support in BiH Domestic War Crimes Trials: Obstacles and recommendations a year after adoption of the National Strategy for War Crimes Processing*, January 2010, page 8.

237 Doc. 12440 rev. Committee on Legal Affairs and Human Rights Report The protection of witnesses as a cornerstone for justice and reconciliation in the Balkans - Rapporteur: Mr Jean-Charles GARDETTO, Monaco, Group of the European People's Party, 12 January 2011. Par. 52.

238 Taken from: Written information for the follow-up to the concluding observations of the Committee against Torture on Bosnia and Herzegovina's combined second to fifth periodic reports (CAT/C/BIH/CO/2-5). Submitted by TRIAL and 19 war victim organizations of Bosnia and Herzegovina (par. 76.), http://www2.ohchr.org/english/bodies/cat/docs/followup/ngos/TRIAL_1_BosniaHerzegovina45.pdf

239 “State court in 2011: 31 judgments for war crimes”, *Radio Free Europe* web page, January 8th, 2011, http://www.slobodnaevropa.org/content/drzavni_sud_u_2011_33_presude_za_ratne_zlocine/24444988.html.

The entities do not have an adequate legal framework and have not established specialized police or other units for the provision of support and protection measures for witnesses when ordered by the court, as has been done at the state level in BiH.²⁴⁰

9.1.2. Support to Witnesses and Victims

Even though the law envisages support for victims in all courts and prosecutor's offices, only the BiH Court has a Department for support for witnesses of war crimes. The Department has a total of 7 employees, 4 of whom are psychologists, 1 a social worker, and 2 administrative assistants.²⁴¹ According to the statement by Alma Taso-Deljkić, this department is specific in comparison to other similar services in the region, because it is focused on the provision of psychological support.²⁴² It is focused on the provision of professional support and an individual approach to each of the witnesses, because they are people undergoing extremely difficult experiences.

The BiH Court Witness Support Department has provided support to 4,305 witnesses in cases in the jurisdiction of Department I in the period from May 2005, when it first began operating, until December 31st, 2011.²⁴³

During 2010 and 2011, three more departments have been established: the Sarajevo Cantonal Court and Sarajevo Cantonal Prosecutor's Office Witness Support Departments, and the departments in the District Court and the Prosecutor's Office in Banjaluka. The BiH Court Witness Support Department has the role of coordinator when it comes to the work of the newly established departments, and there is a plan for opening new departments.²⁴⁴

Because of the expected psychological reactions during testimonies in cases of war crimes and with the consent of the trial chamber, the Witness Support Department's psychologist is allowed to be present in the courtroom together with the witness in order to be able to react in a timely manner. The psychologist's role in the courtroom is to warn judges if a witness shows signs of psychological distress, because of which it would be necessary to make a recess.²⁴⁵ In practice, victims are often faced with open insults by the accused when they give testimonies. Hasna Čusto, a former detainee in the Kalinovik camp, was verbally assaulted when she was giving a statement before the BiH Court in the *Milan Perić et al.* Case. When she entered the courtroom, she was verbally assaulted and offended by the principle accused. While Čusto was asked to leave the courtroom without being given a chance to defend herself, Perić did not receive any sort of a warning. This case caused great psychological trauma to Ms. Čusto and she does not want to testify before courts anymore, because she does not trust institutions. The "Truth-Kalinovik '92" Association notified the authorities about this case, but it has never received any significant answer.²⁴⁶

Victims of wartime rape and sexual violence are not motivated to testify in public "because of the fear and the lack of trust in the judicial system and the witness protection system."²⁴⁷ The research conducted by Amnesty International showed that most of the victims would be willing to testify about their own experiences, no matter how traumatic they were, but only if the victims support system was more sensitive to their needs.²⁴⁸

240 National Strategy for War Crimes Processing, December 2008, page 29.

241 Information received from the BiH Court Witness Support Department, January 5th, 2012.

242 Email communication with Alma Taso-Deljkić, Head of the BiH Court Witness Support Department, January 12th and 13th, 2012.

243 *Ibid.*

244 Information received from the BiH Court Witness Protection Department, January 5th, 2012.

245 UNDP, *Assessment of needs in the area of witness/victims support*, January 2010, page 31-32.

246 Taken from: Written information for the follow-up to the concluding observations of the Committee against Torture on Bosnia and Herzegovina's combined second to fifth periodic reports (CAT/C/BIH/CO/2-5). Submitted by TRIAL and 19 war victim organizations of Bosnia and Herzegovina (par. 74.), http://www2.ohchr.org/english/bodies/cat/docs/followup/ngos/TRIAL_1_BosniaHerzegovina45.pdf

247 Interview with Jasmina Čaušević, a trial monitor within the ACIPS project "Introducing gender-sensitive monitoring of war crimes trials in cases of wartime sexual violence in the BiH Court", December 28th, 2012.

248 Amnesty International, *Whose justice? Bosnia and Herzegovina's women are still waiting*, September 2009, page 39.

9.2. Croatia

9.2.1. Witness protection

The disclosure of the identity of a protected or vulnerable witness is criminalized in Croatia.²⁴⁹ On the basis of the Law on Witness Protection (passed in 2004), the Protection Unit (which is part of the Ministry of the Interior Police Directorate) was established and is in charge of implementing the Protection Programme, and with it there is a Commission which is authorized to decide on the initiation and termination of the Protection Programme and execute other tasks designated by this Law. This Commission contains representatives of the Supreme Court of the Republic of Croatia, the Republic of Croatia State Attorney's Office, the prison system, the ministry in charge of the judiciary, the Police Directorate, and the Head of the Protection Unit.²⁵⁰

However, the witness protection system in the Republic of Croatia still contains some significant flaws. One of the burning issues is the question of the protection of the identity of victims and witnesses in the preliminary investigation and investigation stage of the proceedings.

In 2011, the Youth Initiative for Human Rights delivered a number of statements given by family members of victims of war crimes against the civilian population, committed in Vukovar in 1991 by Croat security forces, to the Republic of Croatia State Attorney's Office. In the statements, these persons presented their information about the killings and forced disappearances of their family members and about the circumstances of the disappearances, and also any information they had about the perpetrators. It was established on the basis of one of these statements that the then Chief of the Crisis HQ for East Slavonia and Baranja and present Vice-President of the Croatian Parliament, Vladimir Šeks, was aware of the killings and kidnappings of Serb civilians on the territory of Vukovar. Two days after these documents were delivered to the Republic of Croatia State Attorney's Office, Šeks gave his statement to investigators and was allowed access to the entire case file that had been delivered. After this, he made a public statement in a show on Croatian Radio Television in which he revealed the full name of one of the persons who gave the statements to the YIHR.

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This reveals the flaws of the mechanisms for witness protection (or protection of persons who have information about crimes) in the preliminary investigation or in the investigation stage of the proceedings. The mechanisms are flawed because they envisage protection only in the trial stage, at which witnesses, depending on the risks, may receive various levels of protection. This is a circumstance which greatly complicates the giving of statements about war crimes. In circumstances in which the suspect or the accused is granted access to the identity of witnesses before the trial, protection of witnesses' identities is senseless during the trial because their identities are already known. Hence, the accused Branimir Glavaš gave the full names of protected witnesses to journalists.

9.2.2. Witness support

Non-governmental organizations which monitor war crimes trials believe that victims and witnesses have been neglected for years in war crimes trials and think that the result of this is their lack of interest in testifying and their refusal to participate in trials.²⁵¹ They state that the support network has improved, but that it is necessary to broaden the extent of the support.²⁵²

The Ministry of Justice is responsible for victims'/witnesses' support, which is provided by the Department for

249 Criminal Code, Article 305, *Official Gazette of the Republic of Croatia*, 110/97, 27/98, 50/00, 129/00, 11/03, 190/03, 105/04, 84/05, 71/06, 110/07, 152/08, 57/11.

250 Law on Witness Protection, *Official Gazette of the Republic of Croatia*, 163/03, 18/11.

251 Centre for Peace, Non-Violence and Human Rights, Documenta, and Civic Committee for Human Rights, *Monitoring of War Crimes Trials – Report for 2011*.

252 *Ibid.*

Probation and Support for Victims/Witnesses; and there are also departments established in county courts.²⁵³ The Sector for Victims/Witnesses Support (SVWS) has been established within this Directorate and it has two departments: the Department for the organization of victims'/witnesses' support and the Department for the development and coordination of victims' and witnesses' support systems.

The Department for the organization of support for victims and witnesses organizes psychological and social support, provides general legal information about the rights of victims and witnesses, and facilitates the provision of physical protection when needed. The Department also provides logistics support in the organization of transportation and lodging of witnesses and victims. The Department for the development and coordination of the victims' and witnesses' support system participates in the creation of strategy documents for the protection and improvement of victims' and witnesses' rights, and monitors their implementation in the judicial field; it also participates in the offering of opinions about and definition of the provisions in the area of victims'/witnesses' support, creates recommendations for standardization of the practice in the treatment of victims/witnesses, gathers information, and creates reports and analyses of the victims'/witnesses' support system; and executes expert and administrative tasks for the Government Commission for Monitoring and Improving the Victims'/Witnesses' Support System. The Directorate coordinates and monitors the work of the departments for the organization and provision of support for victims/witnesses in the courts, and organizes and implements trainings and psychological monitoring of employees and volunteers in the departments.

Directorates for the organization and provision of support to witnesses and victims have been established in county courts.²⁵⁴ These directorates have the task to provide emotional support and practical information to the witnesses and victims who testify before these courts in the investigation and main trial stages of the proceedings.²⁵⁵ The support has been provided also to persons who come as the entourage of witnesses and victims. Every department has two employees, who provide support to witnesses with the help of volunteers before minor offences and municipality courts.

There are also 180 volunteers who have been engaged within the service for witness support in county courts; while the employees include psychologists, social workers, and bodyguards. The Service has a budget of 300,000 euros. It has 20 employees, and the number of employees is planned to increase during the year 2012; but this increase will be with respect to the new psychologists and social workers who will be hired, not to the administration.

9.3. Serbia

9.3.1. Witness protection

Witness protection in Serbia has been regulated since 2005 by the Law on the Protection Programme for Participants in Criminal Proceedings ("").²⁵⁶ The Law refers to all participants in criminal proceedings who are exposed to threats to life, health, physical integrity, freedom or property. In order to provide protection of these persons in accordance with the law, it is necessary to have a Protection Unit, which is part of the Ministry of the Interior and the Commission for the Implementation of the Protection Programme, which is comprised of three members from three institutions – from the Supreme Court of Serbia (also the President of the Commission), the Republic of Serbia Office of the Prosecutor, and the Ministry of the Interior (Unit Commander).

The Serbian Ministry of the Interior Witness Protection Unit [hereinafter referred to as the Unit] cooperates with police witness protection units in Croatia and BiH, and with the EULEX War Crimes Investigation Unit.

253 We have received information on victims'/witnesses' support in a document sent from the Department for Probation and Support for Victims/Witnesses in the Ministry of Justice.

254 In county courts in Zagreb, Zadar, Osijek, Sisak, Split, Rijeka and Vukovar.

255 They provide support to witnesses of all criminal offences, including cases of war crimes.

256 Law on Protection Programme for Participants in Criminal Proceedings, *Republic of Serbia Official Gazette*, nr. 85/05.

There are no objections to be raised with regard to the treatment of injured parties by the Unit. But the HLC has to point out that the treatment of protected witnesses, insider witnesses in particular, by the Unit and the Office of the War Crimes Prosecutor is a completely different story. Information that the HLC has obtained shows that in 2010 a protected witness in the *Podujevo II* Case abandoned the protection programme because of the abusive and disorienting measures that the Unit applied in his case. The Unit expelled one protected witness in the Case of the 37th Detachment of the Special Police Units in July 2010. Members of this Unit came to the apartment which he had occupied during the protection programme, and told him that the protection had been terminated, and sent him immediately back to his previous place of residence, together with his family.²⁵⁷ The OWCP stated on its web page that this witness²⁵⁸ had put pressure on the Prosecutor to hire him in the Office of the Prosecutor and start paying him a per diem allowance and that then “he began to express his dissatisfaction by launching false accusations”. The OWCP also made a statement about another witness, claiming that he “was blackmailing the acting prosecutor all the time because he did not want to testify unless the prosecutor provided him with a new employment in the Ministry of the Interior [...] This is why the witness failed to respond to the summons to testify sent by the investigative judge on several occasions in the course of the investigation, and in the end did not want to testify about anything.”²⁵⁹ The third protected witness, in the same case, filed 6 complaints with the highest state authorities in the Republic of Serbia because of the abuse by the OWCP and the Unit. In July 2011, he abandoned the protection programme in a very difficult psychological condition.²⁶⁰

The dramatic position of insider witnesses may also be seen in the Čuška/Qushk Case. In the main hearing held in December 2011, protected witness Zoran Rašković, a former member of the 177th Yugoslav Army Military Territorial Detachment, asked the trial chamber for protection, pointing out that his family members were exposed to pressures and abuse by the police and the OWCP, but he did not receive any help, except for verbal support.

After publishing the report of the Council of Europe Parliamentary Assembly Rapporteur, Jean-Charles Gardetto,²⁶¹ in which he strongly criticized the state authorities responsible for witness protection, the OWCP reacted by carrying out an analysis of the situation, and on the basis of these results it prepared an internal note in which it concluded that “certain weaknesses in the operation of the witness protection system have been noted”; but they also expressed their dissatisfaction with the fact that some of the witnesses had given public statements and “accused the Unit and the Office of the Prosecutor, which has created a negative public image of the work of the Prosecution”.²⁶²

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The measure which has been announced by the Ministry of Justice and the Office of the Prosecutor on several occasions, and which should improve the situation in this field, is the transfer of jurisdiction for witness protection from the jurisdiction of the Ministry of the Interior to the jurisdiction of the Ministry of Justice. The same recommendation was also mentioned as an “urgent need” in Gardetto’s report.

There were five witnesses of war crimes and seven persons close to them in the witness protection programme in 2010. In 2011, there were a total of five witnesses and eight other persons close to them, and currently there are four persons in the protection programme, along with five of their family members. Since the establishment of the Protection Unit there have been eight people in the protection programme, which is extended to include their 18 family.²⁶³

257 Humanitarian Law Center, Irregularities in the Prosecution of War Crimes in the Republic of Serbia, September 2011.

258 OWCP RS, Objections to the HLC reports, November 14th, 011, OWCP web page -http://www.tuzilastvorz.org.rs/html_trz/VESTI_SAOPSTENJA_2011/S_2011_11_14_CIR.pdf.

259 This was protected witness K-79, who testified in two ICTY trials: namely, Case IT-02-54, Prosecutor vs. Slobodan Milošević and Case IT-05-87/1, Prosecutor vs. Vlastimir Đorđević. In the judgment rendered in the case of Vlastimir Đorđević, the trial chamber referred to the testimony given by this witness, which it assessed as very reliable. In a statement given to the HLC, this witness claims that Prosecutor Stanković tried to talk him out of testifying.

260 In the meantime, the witness obtained political asylum in one of the European countries.

261 Jean Charles Gardetto, Report to the Council of Europe’s Parliamentary Assembly on Witness Protection and Support at the International Criminal Tribunal for the former Yugoslavia, report 12440 rev, published on January 12th, 2011.

262 Information received from the Office of the War Crimes Prosecutor, November 2011.

263 Information up to and including the year 2011. *Ibid.*

9.3.2. Witness support

The Service for Assistance and Support to Injured Parties and Witnesses has been established in the Higher Court in Belgrade Department for War Crimes (Court Service), pursuant to Article 11 of the Law on Organization and Competence of Government Authorities in War Crimes Proceedings (“Official Gazette of the RS”, 67/2003, 135/2004, 61/2005, 101/2007 and 104/2009). Even though it has been established and has been operational since 2006, this Court Service was not included in the job systematization in the Higher Court until the Law on the Organization of Courts came into power on January 1st, 2010. The Court Service does not have a statute, except for an internal book of rules and regulations which provides the basic rules of procedure. Furthermore, it does not have its own budget and must secure its funding through the Higher Court under the jurisdiction of which it is placed. The Service does not have any psychologists in its employment, but three officers (one of whom is a lawyer) went through a training programme for working with witnesses, including the ICTY training organized by the OSCE.

The Court Service is responsible for the witness from the moment she/he arrives in the building of the Higher Court in Belgrade until the witness leaves the courthouse after the completion of their testimony. This Service offers witnesses information related to the trial procedure (where a witness should stand while giving testimony, what is the sequence of actions), and it informs the witnesses of their right to ask to sit down, to ask for water, to interrupt the testimony, etc. Prior to the arrival of witnesses at the trial, the Service contacts them (if they are from Serbia) and informs them about the case in question and the procedure, and asks about the witness’s needs, from special needs to the logistics relating to travel, absence from work, and so on. The arrival of witnesses from Kosovo was organized for the first time in cooperation with EULEX, in the case of the war crime committed in the village of Qushka/Ćuška, which began in December 2010. Before this, the Humanitarian Law Center organized the complete logistics for a great number of witnesses/injured parties from the countries in the region involved in war crimes trials. In the case of protected witnesses, the Unit takes them “to the door” of the courthouse, and the Court Service “takes them over” inside the building and “hands them back” to the Unit once the testimony is over.

From its establishment, which was in June 2006, until December 21st, 2011, the Service has been engaged in 154 cases and provided support to 1,888 witnesses, 566 of whom were injured parties.

In 2010, they provided support to 348 witnesses (117 of whom were injured parties) in 49 cases. Until and including December 21st, 2011, the Service worked with 447 witnesses (199 witnesses were injured parties), and was engaged in 57 cases.²⁶⁴ The Service provides support to witnesses in investigation proceedings, in proceedings initiated on requests for assistance, preliminary investigations and in main trials.

9.4. Kosovo

9.4.1. Witness protection

EULEX has a Witness Protection Unit and a Protection Programme, which does not operate very well, according to the findings of the Council of Europe Parliamentary Assembly Rapporteur, Jean-Charles Gardetto. This is because of the lack of funding, insufficient recognition of Kosovo, which reduces the number of states willing to accept witnesses from Kosovo, and the customarily large size of witnesses’ families, which significantly increases the expenses of witness relocation, etc.²⁶⁵ Special Rapporteur Gardetto pointed out in his report that the relocation of witnesses and their families from Kosovo was the only efficient measure of their protection.

²⁶⁴ E-mail communication with Slavica Peković, an associate officer for witness protection in the Higher Court in Belgrade, December 21st, 2011.

²⁶⁵ Jean Charles Gardetto, Report to the Council of Europe’s Parliamentary Assembly on Witness Protection and Support at the International Criminal Tribunal for the former Yugoslavia, report 12440 rev, published on January 12th, 2011, para.155.

In July 2011, the Parliament of Kosovo passed the Law on Witness Protection, which envisages the establishment of the Witness Protection Committee, which will decide on the beginning, duration and termination of the protection programme. The Law prescribes physical protection, change of place of residence, change of identity, including plastic surgery, financial assistance, etc. Amnesty International has expressed its concerns relating to a provision which prescribes “a special regime for protected witnesses in prisons and penitentiaries”.

A very serious problem which comes with war crimes trials in Kosovo relates to those witnesses in the proceedings who feel unsafe and who often withdraw from appearing before the court or change their earlier statements.²⁶⁶ This also refers to protected witnesses in trials before Kosovo courts or before the ICTY, whose protection still represents one of the great challenges for EULEX, which has the mandate to carry out this task. The Special Rapporteur of the Council of Europe, Jean-Charles Gardetto, says in his report about the Balkans that the difficulties with witness protection are “especially acute in Kosovo, where there are instances of witnesses being killed.”²⁶⁷

The Head of the EULEX Mission, Xavier Bout de Marnhac, stated in an open letter addressed to the Kosovo media after the suicide of Agim Zogaj, a protected witness in a case of war crimes committed in the village of Klečka and conducted against Fatmir Limaj in Kosovo, that “the situation in Kosovo is not at a satisfactory level”, and that “the situation in this area should be improved, but it takes time.”²⁶⁸

Detailed information about the Witness Protection Programme implemented by the EULEX is confidential and it is not possible to receive any information about it.²⁶⁹ De Marnhac stated in his letter to the media that “officers with great experience” are participating in the work of the programme and that it is “very sensitive and important” for EULEX. EULEX stressed that the provision of witnesses for proceedings represents the key challenge for the prosecution of war crimes, because they are, in the absence of other evidence, essential for further progress in this area; but witnesses rarely agree to testify, especially not against perpetrators who are members of the same side in the conflict.²⁷⁰

Cooperation between the Republic of Kosovo Special Prosecutor’s Office and the Republic of Serbia Office of the War Crimes Prosecutor has finally been established. EULEX assesses this cooperation as “good”, but the fact is that this cooperation has been implemented only in the Čuška/Qushk Case, which is being conducted in Belgrade. EULEX organized the transport of the injured parties to give their statements during the investigation and then in the main hearing. There have been some regular follow-up meetings with Serbian prosecutors in the last three years for the purpose of exchange of information.²⁷¹

The Parliament of Kosovo passed the Witness Protection Law on July 29th, 2011, to come into force a year after its adoption. It was announced in the public debate about the Law that the programme will not be launched before the end of 2014 “because of the high costs,” since seven million euros are needed for its implementation each year.²⁷²

9.5. Montenegro

9.5.1. Witness protection

The Witness Protection Unit within the Montenegro Police Directorate Criminal Police Sector provides

266 Humanitarian Law Center Kosovo, *Trials for War Crimes and Ethnically and Politically Motivated Criminal Offences in Kosovo* in 2010, Priština, 2011, page 52.

267 Jean-Charles Gardetto, report 12440 rev, published on January 12th, 2011.

268 Open letter addressed by Xavier Bout de Marnhac, the Head of the EULEX Mission, to Kosovo media, on December 1st, 2011, <http://www.eulex-kosovo.eu/images/news/2011/november/open-letter.pdf>.

269 Interview with Anne Blanksma, EULEX spokesperson, Priština/Prishtina, January 5th, 2012,

270 *Ibid.*

271 *Ibid.*

272 “Witness Protection Law in 2014”, *Koha Ditore* web page, July 2nd, 2011, <http://www.koha.net/?page=1,13,60874>.

protection to witnesses, which according to the Rules on Internal Organization and Job Systematization has six employees.²⁷³ The Law on Witness Protection of Montenegro was passed in 2004, and the provisions relating to witness protection also exist in the Criminal Code, Criminal Procedure Code, Law on Police and Law on the National Security Agency. It is being applied in cases of war crimes and organized crime. According to the content and the manner in which it organizes the witness protection system, it is almost identical to the Law on Witness Protection which is applied in Serbia.

The protection of a witness or a person in close relation to him/her is provided by the application of the Witness Protection Programme. The Commission, the members of which are a judge from the Supreme Court of Montenegro, the Deputy Supreme Prosecutor and the Head of the Protection Unit, decide on its application.²⁷⁴ Witnesses have an opportunity to give statements with their voices and images distorted, and measures for excluding the public and giving statements under pseudonyms may also be applied. Witnesses may also give statements via video link and conference calls from the courthouse which is closest to their place of residence.²⁷⁵ The existence of this system of protection in Montenegro is very important also for the regional cooperation in the prosecution of war crimes.

In late 2010, the Commission handed down a ruling on imposing a protection programme in the case of Slobodan Pejović, a former police inspector from Herceg Novi, a prosecution witness in the *Deportation of Refugees* Case. Pejović was offered relocation from his place of residence, which he refused, but he did agree to have his family house under higher surveillance.²⁷⁶ The Council of Europe Rapporteur Jean-Charles Gardetto called on the Montenegrin authorities in his Report on witness protection to thoroughly investigate any possible assaults on Slobodan Pejović.²⁷⁷

The OSCE recommended in its report “Trial Monitoring Project (June 2009 – August 2010)” that video linkage be used in Montenegro, especially when witnesses are located outside the territory of Montenegro.²⁷⁸

9.5.2. Witness support

Both Higher Courts in Bijelo Polje and Podgorica, which are responsible for trying war crimes, have departments for witness support, and every court has one employee in these departments.²⁷⁹ In the Higher Court in Bijelo Polje, there is one person, a professional lawyer, who works in the witness support service, although witness support is not the exclusive task this person executes. There are no rules of procedure in the witness support departments, and there is no exact record of the number of witnesses who have requested support at trials. There is an assessment that this number is about 20 witnesses. The Service does not have a psychologist, although during sessions there is a doctor and police officers in the courtroom for the purpose of providing emergency medical assistance. The person employed in the support service stays with witnesses the entire time they are present in the courthouse, and witnesses also receive an information bulletin about the process of testifying. This employee communicates with doctors, police, and border police, and organizes transportation for witnesses to the courthouse, since there are many witnesses from Kosovo and Bosnia and Herzegovina.²⁸⁰

The OSCE Mission to Montenegro considers that the practice of witness support in cases of war crimes is good

273 Email communication with a representative of the Montenegro Police Directorate, accessed on January 17th, 2012.

274 Law on Witness Protection, *Official Gazette of Montenegro* 65/04.

275 Information bulletin for witnesses/injured parties, web page of the courts in Montenegro, <http://sudovi.me/osba/sluzba-za-podrsku/>.

276 Human Rights Action, Human Rights in Montenegro 2010-2011, Podgorica 2011, page 216.

277 Jean Charles Gardetto, Report to the Council of Europe's Parliamentary Assembly on Witness Protection and Support at the International Criminal Tribunal for the former Yugoslavia, report 12440 rev, published on January 12th, 2011.

278 Trial monitoring project (June 2009-August 2010); OSCE Mission to Montenegro, Podgorica 2011; <http://www.osce.org/me/montenegro/81979>.

279 Interview with Andrijana Bulatović, Witness Support Service, Higher Court in Bijelo Polje, January 13th, 2012

280 *Ibid.*

and recommends further implementation of such practice, such as the creation and dissemination of information bulletins for witnesses and injured parties in all relevant cases.²⁸¹

9.6. Macedonia

Witness protection is regulated by the Law on Witness Protection (2005). This Law regulates the procedure and measures of support to witnesses and the provision of support to witnesses, and it is applied to proceedings for all sorts of criminal acts when there are reasonable grounds to conclude that a person might be jeopardized during the proceedings.

This law has established the Witness Protection Council, comprising representatives of the Supreme Court, the Public Prosecutor's Office and the Ministry of the Interior, the Head of the Ministry of Justice Departments for Execution of Sanctions and for Witness Protection.²⁸² One of the available protection measures defined by the Law is identity change.²⁸³

With regard to war crimes, there are four persons who were possible witnesses in the *Construction Workers Case*, but this case was closed with the Act of Amnesty.²⁸⁴

10. Regional Cooperation in Prosecution of War Crimes

By the end of 2011, several bilateral agreements had been signed between prosecutions in BiH, Croatia, Serbia,²⁸⁵ and Montenegro, which related to cases of war crimes. These agreements have contributed greatly to the efficient resolution of requests for exchange of information and examination of witnesses outside the state borders,²⁸⁶ because they allow prosecutions to send and respond to requests for assistance without being obliged to use diplomatic channels.²⁸⁷

The cooperation between the prosecutions of Croatia and Serbia has contributed mainly to the increase in the number of trials for war crimes committed by Croats and the decrease of the number of *in absentia* trials in Croatia. The Agreement on Cooperation in Prosecuting Perpetrators of Criminal Offences of War Crimes, signed by the two states in 2006, has shown itself to be a good instrument for the removal of obstacles in the prosecution of the war crimes which piled up during the years after the war, when Serb perpetrators were mainly prosecuted in Croatia, while there were no war crimes trials in Serbia.

In February 2010, BiH and Croatia signed the Amended Agreement on the Mutual Execution of Court Judgments in Criminal Matters, which prevents the escape of convicted persons from one country to another. The Agreement has allowed Croatia to initiate the procedure to have the convicted Branimir Glavaš serve his sentence in BiH.²⁸⁸ Glavaš is serving his sentence in Zenica Penitentiary.

In 2011, the judicial authorities of Serbia and Croatia continued exchanging evidence and court cases in the deteriorated conditions caused first by the arrest in BiH of a Croatian citizen, Tihomir Purda, upon the Republic of Serbia's arrest warrant issued on the basis of his self-incriminating admission that he had killed Serbs, made

281 Trials monitoring project (June 2009-August 2010); OSCE Mission to Montenegro, Podgorica 2011.

282 Law on Witness Protection, Article 6, Official Gazette of the Republic of Macedonia no. 38/2005.

283 *Ibid.*, Article 10.

284 *Ibid.*

285 Agreement Memorandum on Realization and Enhancement of Cooperation in Fighting All Forms of Grave Crimes between the Republic of Serbia Office of the Prosecutor and the Office of the War Crimes Prosecutor and the Bosnia and Herzegovina Prosecutor's Office was signed on July 1st, 2005. The text of the Agreement is available at the Office of the War Crimes Prosecutor's web page.

286 Email communication with the OSCE Mission to BiH spokesperson, Aida Bešlić Delić, February 3rd, 2012.

287 *Ibid.*

288 Web page of the BiH Court, <http://www.sudbih.gov.ba/index.php?id=1787&jezik=b>.

while he was detained in a camp in Serbia; then by the refusal of the Republic of Serbia Office of the War Crimes Prosecutor to transfer the indictment and evidence incriminating a citizen of Croatia, Veljko Marić, to the Croatian judicial authorities; and then by the announcement of the indictment filed by the Court Martial Prosecutor of the former JNA against Vladimir Šeks and another 33 citizens of Croatia; and after that, by the passing of the Bill Declaring Null and Void Certain Legal Documents by the Croatian Parliament on November 21st, 2011.

The BiH Ministry of Interior arrested a citizen of Croatia, Tihomir Purda, on January 5th, 2011, against whom the Republic of Serbia Ministry of Justice issued an arrest warrant because of the war crimes for which he admitted guilt in a statement given to military bodies of the former JNA during his detention in a camp in Serbia. The accused Purda was examined on February 21st, 2011, in the BiH Prosecutor's Office in Sarajevo in the presence of the Deputy Prosecutor for War Crimes from the Republic of Serbia and the investigative judge from the Department of War Crimes of the Higher Court in Belgrade. The Republic of Serbia Office of the War Crimes Prosecutor charged Purda with the murder of a number of unidentified victims, which created an impression among the professional public that this was a political matter, rather than a legal matter. On March 3rd, 2011, the Office of the War Crimes Prosecutor rendered a ruling to withdraw from the criminal prosecution of Purda and two other suspected Croat soldiers because of the lack of evidence, which was evaluated among the professional public as a satisfactory legal solution of the matter, which may reoccur if the Office of the War Crimes Prosecutor does not carry out a careful overview of indictments filed, statements given by detainees and other evidence from the archive of the Court Martial Prosecutor's Office of the former JNA.

The Republic of Serbia again failed to respect the Agreement on Cooperation in the Prosecution of Perpetrators of War Crimes signed with Croatia in 2006 in the case of Croatian citizen Veljko Marić. He was prosecuted in Serbia for the murder of Petar Slijepčević, committed during the expulsion of Serbs from villages in the municipality of Požega, in October 1991²⁸⁹. The Republic of Croatia State Attorney's Office addressed the Republic of Serbia Office of the War Crimes Prosecutor with a request for evidence against the accused Marić, but the Office of the War Crimes Prosecutor dismissed this request, explaining that a new investigation against the convicted Marić was pending.

On August 10th, 2011, the Republic of Serbia Office of the War Crimes Prosecutor delivered to the Republic of Croatia Ministry of Justice the indictment filed by the former JNA Court Martial Prosecutor's Office against 44 members of the Croat armed forces on account of the criminal act of genocide and war crimes committed on the territory of Vukovar in 1991. The indictment charged, among others, the then Chief of the Republic of Croatia Crisis HQ for Slavonia and Baranja, Vladimir Šeks²⁹⁰, the wartime Minister of the Interior of Croatia, Ivan Vekić, the Chief of the Osijek Crisis HQ, Branimir Glavaš, and the wartime assistant to the Croatian Minister of the Interior, Tomislav Merčep. On September 14th, 2011 the Croatian Minister of the Interior forwarded the indictment to the County Court in Osijek.

Soon after the delivery of the indictment in the Šeks et al Case, and after the rendering of the first instance judgement in the case of Veljko Marić, the Government of Croatia presented the Draft Bill Declaring Null and Void Certain Legal Documents to the Parliament of Croatia for adoption. The Law was passed on November 21st, 2011. This Law declared futile all legal acts rendered by the judicial bodies of the former JNA, SFRY and Republic of Serbia, which suspect, charge, and/or convict a citizen of the Republic of Croatia for criminal offences against values protected by International Law, if they were committed on the territory of the Republic of Croatia. This Law also gives a list of exceptions from futility – "futility does not affect legal acts which the judicial bodies of the Republic of Croatia establish satisfy the legal standards of the criminal legislation of the Republic of Croatia". Pursuant to Article 3 of the Law, "Judicial bodies of the Republic of Croatia shall not act upon requests for assistance sent by judicial bodies of the Republic of Serbia in criminal proceedings if acting upon such requests

289 Veljko Marić was convicted by the first instance judgment on October 31st, 2011 to 12 years of imprisonment.

290 In October 2011, at the time when the indictment against 44 citizens of Croatia was announced, Šeks held the Vice-Presidencies of the governing Croatian Democratic Union and of the Croatian Parliament.

is in violation of the legal system of the Republic of Croatia and of its sovereignty and security. The decision to act upon such requests is made by the Minister of Justice of the Republic of Croatia.”²⁹¹

The President of the Republic of Croatia, Ivo Josipović, the Chief State Attorney of the Republic of Croatia, Mladen Bajić, opposition politicians and non-governmental organizations assessed that the Bill Declaring Null and Void Certain Legal Documents does not protect the citizens of the Republic of Croatia who are possibly charged without good grounds by the Republic of Serbia, because such indictments would exist regardless of whether or not they are recognized by the Croatian legal system. Still, the fact that the Republic of Serbia Office of the War Crimes Prosecutor called into question the good cooperation with the Republic of Croatia State Attorney’s Office, especially as regards the exchange of evidence in cases in which the accused are inaccessible to the judicial authorities of Croatia or Serbia, by its failure to respect the Agreement on Cooperation in the Prosecution of Perpetrators of War Crimes and its position that the Republic of Serbia’s Office of the War Crimes Prosecutor is solely responsible for the prosecution of crimes committed against Serb victims, should not be ignored.

The relations between Serbia and BiH have been visibly deteriorating anent the case of Ejup Ganić, a former member of the BiH Presidency, against whom Interpol issued an international arrest warrant on the basis of a Serbian Ministry of the Interior request. He was arrested at London Airport on March 1st, 2010. The City of Westminster Magistrates’ Court in London rendered a ruling in the extradition case of Ejup Ganić on July 27th, 2010, in which it stated that already on “the first day of the examination, there was *prima facie* evidence of an abuse of process”. In Item 39 of the judgment, the court stated that, “If indeed the Government was prepared not to pursue these extradition proceedings in return from (*sic*) Bosnian co-operation, that in itself must be capable of amounting to an abuse of the process of this court”. In Item 39 of the judgment, “The court came to the conclusion that this motion represents an abuse of the extradition process because, as the court concluded, the motive for the prosecution of Ejup Ganić lies in reasons of politics, race or religion.”²⁹²

Austrian police arrested in Vienna a retired General from the Army of BiH, Jovan Divjak, on March 3rd, 2011, on the basis of the arrest warrant issued against him by the Republic of Serbia in 2009, charging him with participating in the commission of a war crime on Dobrovoljačka Street in Sarajevo when the JNA convoy was retreating in May 1992. The Austrian Court dismissed the extradition request filed by the Republic of Serbia on July 29th, 2011, explaining that “a fair trial could not be expected in Belgrade”.

The signing of the Protocol between BiH and Serbia on cooperation in the prosecution of perpetrators of war crimes, which among other things includes joint efforts in the prevention of parallel investigations, and was scheduled for November 2011 in Brussels, was delayed a day prior to the signing.²⁹³ The President of the BiH Court, Meddžida Kreso, issued a statement opposing the signing of the Protocol: “The Protocol would not bring anything new relating to the outstanding issue that we still have with the Serbian Office of the Prosecutor, which has to do with the unconditional transfer to BiH of all investigations against our citizens for acts of war crimes committed on the territory of BiH, be they initiated on the basis of reports from the former JNA or subsequently filed by various associations from BiH.”²⁹⁴

The OSCE Mission to BiH believes that the “proceedings in cases of war crimes relating to the armed conflict in

291 A bill declaring null and void all legal documents of the former Yugoslav Peoples’ Army and the judicial bodies of the former Yugoslav Federation and the Republic of Serbia, *Republic of Croatia Official Gazette* 124/11; President Ivo Josipović, within his powers, demanded that the Republic of Croatia Constitutional Court assess the constitutionality of this law. The newly established Croatian Government made the same request in March 2012. The Constitutional Court of the Republic of Croatia has not yet rendered a ruling upon these requests.

292 Snežana Čongradin, “Forgery and Blackmail”, web page *Peščanik*, August 8th, 2010. <http://pescanik.net/2010/08/falsifikati-i-ucene/>.

293 “Komšić Blocked the Signing of Agreement”, *Radio Free Europe* web page, November 30th, 2011, http://www.slobodnaevropa.org/content/komsic_blokirao_sporazum_sa_srbijom_o_ratnim_zlocinima/24407425.html.

294 Milica Jovanović, Slowing Down of War Crimes Proceedings, *E-novine* web page, <http://www.e-novine.com/feed/srbija/srbija-tema/63636-Usporavanje-procesa-ratne-zloine.txt>.

BiH conducted by Serbian authorities were the reason for the increased tensions between BiH and Serbia, even though they are legitimate pursuant to International Law. These tensions without a doubt represent a risk that progress made in cooperation at the operational level, including the exchange of evidence and examination of witnesses, will deteriorate.”

In October 2010, Serbia and Montenegro signed the Extradition Treaty, which regulates extradition in cases of criminal acts against humanity and other values protected by International Law, including war crimes. In line with the agreement, members of the Serbian Ministry of the Interior arrested Predrag Strugar, an indictee in the *Kaluderski Laz* Case, on October 30th, 2010, and brought him before the investigative judge of the War Crimes Department of the Higher Court in Belgrade for the purpose of issuing a detention order until the extradition ruling is rendered. However, the investigative judge refused to order his detention, finding that, on the basis of the documents delivered to the court, there was no reasonable suspicion that he committed the criminal offence in question. By the end of the year 2011, Predrag Strugar, a Lieutenant-Colonel in the Yugoslav Army which committed the crime in *Kaluderski Laz*, had not been extradited to Montenegro.

Anent the agreement on the extradition of its own citizens, signed on October 1st, 2010, which does not cover the cases of war crimes, Montenegrin and Croatian human rights organizations expressed their concerns because of the limited character of the Extradition Treaty between Montenegro and Croatia, which does not allow for the extradition of their own citizens accused in cases of war crimes.

The Republic of Serbia Office of the War Crimes Prosecutor does not cooperate with Kosovo courts or their local prosecutors and judges. It has a good cooperation with the EULEX War Crimes Investigation Unit. Investigators from this Unit, with the support of the HLC and Kosovo Prime Minister Agim Čeku, made arrangement for 15 Albanian victims to participate in a case before the Belgrade War Crimes Department Trial Chamber initiated on account of the murder of 44 Albanians from the village of Čuška/Qushk on May 14th, 1999. In the second half of 2011, Albanian victims were not as willing to travel to Serbia, mainly as a result of the increased lack of trust of the Kosovo public in the Republic of Serbia's state institutions, caused by their failure to respect the agreement reached in the negotiations between Belgrade and Priština and repeated arbitrary arrests of Albanians once they cross the border into Serbia.

III The Institutional Reforms

1. Summary

In most of the post-Yugoslav states there are legal provisions preventing persons sentenced to imprisonment for longer than the prescribed minimum for any kind of crime, to hold the office of Member of Parliament; this includes persons sentenced for war crimes.

In BH, in the period of 2002 through 2004, police (certification) and judiciary (re-nomination) reform was implemented. However, the vetting process was not comprehensive, because certain persons who had been involved in war crimes or in other breaches of human rights still occupy positions in state organs. The applicable legal framework forbids the nomination, as well as both the active and passive electoral rights of persons against whom certified indictments have been raised and whose trial has been pending in certain war crimes cases, and of persons serving related prison sentences. However, the law does not apply to persons who have served a prison sentence for war crimes. The normative framework in Kosovo does not specify whether a person serving a sentence for war crimes or one who has served it may be nominated as an electoral candidate, while persons indicted for war crimes may be eligible candidates. There are cases of such persons holding prominent public offices.

The applicable Law on Responsibility for Breaches of Human Rights in Serbia is still not in use, but the Draft Law Amending the Law on Responsibility for Breaches of Human Rights has been tabled, providing for an extension of the applicability of the original law to 20 years. This draft is still being processed by the Assembly. In Croatia and Montenegro, there have been no requests for lustration to date.

Slovenia had implemented the institutional reform as early as the mid-nineties, whereby one of the criteria for the nomination of judges and prosecutors, or for the continuing in service of police officers, was the nonparticipation of such persons in breaches of human rights, which included war crimes. The law additionally prevents the re-election of judges who had pronounced verdicts which breached human rights.

By the Law Amending the Law Determining the Additional Condition for Holding a Public Office, the Commission for Verification of the Facts in Macedonia in 2001 extended the background check on collaboration with secret services to priests, journalists, NGO activists, lawyers and scientists. Later that year, the constitutionality of this legal provision on extending the investigation was challenged before the Constitutional Court. The Macedonian university professor and long time human rights activist, Vladimir Milčin, was proclaimed a collaborator with the communist secret service, which provoked a questioning of the independence of this Commission with respect to political pressures.

The political and public support of persons accused of war crimes is still strong in the countries in the region. Their role in times of armed conflict is being praised, and the sufferings of their own nation are being emphasized. Such an attitude was dominant in Croatia after the pronouncement of the first instance verdict on the Croatian generals in April 2011, while political representatives of Serbs in Bosnia and Herzegovina continued to emphasize the ordeal of their people, insisting on the balance between the victims, particularly in relation to the Srebrenica genocide. Serbian Members of Parliament launched the majority of remarks regarding the work of the BH institutions dealing with war crimes, attributing bias and double standards to them with respect to ethnic affiliation. The Assembly of Serbia adopted in 2010 the Declaration Condemning the Crime in Srebrenica, by which an important step had been made in the process of confronting the past. However, both the wording of the Declaration and its adoption were met with criticism, particularly in BH. The representatives of the Association of Srebrenica Victims criticized the Declaration for avoiding explicit mention of the word «genocide», while the representatives of the organizations of war veterans interpreted the adoption of the Declaration as an imposition of collective guilt on the Serbian people.

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War crimes related issues are very seldom mentioned in the media, while «patriotic» journalism, i.e. imposition of a nationalistic ideology, is still present in most post-Yugoslav countries. The question of the criminal responsibility of journalists for the instigation of war crimes during the armed conflicts of the nineties has been raised in Serbia. A similar request was made in Montenegro by human rights organizations. The media landscape of Croatia in 2011 was marked by the reaction to the first instance verdict on the generals. It was dominated by the attitude that it was unjust and that the sentences had been «draconic». No room was provided for the victims' reactions.

2. Lustration

2.1. Bosnia and Herzegovina

Only Bosnia of all the post-Yugoslav countries has taken real steps towards the development of a comprehensive state strategy for transitional justice. Supported by the United Nations Development Fund (UNDP), the BH Ministry of Justice and Ministry of Human Rights and Refugees were close to the completion of this strategy in late 2011. The Council of Ministers of BH in January 2010 decided to establish the Expert Working Group for the Creation of the Strategy, as a coordinating body tasked with the execution of the consultative process with all interested subjects of the civil society.²⁹⁵ The Working Group consisted of 15 members, 10 of whom were representatives

²⁹⁵ The BH Ministry for Human Rights and Refugees, the Strategy of Transitional Justice in Bosnia and Herzegovina, 2012-2016, p. 9.

of the government institutions, and 5 representatives of the civil society (three organisations of civil society and two independent experts). The Strategy includes extrajudicial mechanisms of transitional justice: establishing of facts and truth-telling, reparations and memorials, and institutional reforms. The criminal processing of those responsible for human rights breaches and war crimes was not included, because that component of transitional justice had been regulated by the State Strategy for Processing of War Crimes, adopted in December of 2008.²⁹⁶

Several bodies are still operating in BH tasked with the prevention of persons linked to the violation of human rights from assuming positions in government bodies or agencies.

The background security check of police officials, state officials and employees in relation to their employment, is performed by the State Investigation and Protection Agency (SIPA), on the grounds of Article 33, paragraph (2) of the Law on Protection of Classified Documents.²⁹⁷ In the course of 2010, the SIPA Department for Security Background Checks received 78 requests for the security check of a total of 2,461 police persons, state employees or contractors. In that period, 49 reports were submitted on security checking of 2,083 persons. In 100 of them, certain facts were discovered which would eventually be treated as a security obstacle in evaluations.²⁹⁸

According to the BH Law on Elections (Article 1.6), “Any person *serving* a sentence delivered by the International Criminal Tribunal for War Crimes, and any person *accused* by the ICTY who failed to obey the summons to appear before the Court, may neither register in the Central Register of Voters, nor become a candidate (the term ‘candidate’ in the sense of this Law covers persons of both genders), or hold any nominated, elected or other public office in the territory of Bosnia and Herzegovina.”²⁹⁹

Also, according to the Law on the Council of Ministers of BH, SIPA checks the activities during the war of all candidates for the President of the Council of Ministers of BH, and for deputies to the ministers at the Council of the Ministers.³⁰⁰ Upon obtaining [negative] information from SIPA on their wartime activities, the BH Presidency exercises its discretionary right to either continue the procedure of nomination to the Presidency of the BH Council of Ministers, or to abort it.³⁰¹ The President of the BH Council of Ministers applies the same procedure in the process of nomination of ministers and deputy ministers.³⁰² The Parliament of BH may reject or confirm the nomination of a candidate, on the grounds, among others, of the information concerning his/her activities during the armed conflict.³⁰³

However, SIPA in practice does not check the war activities of candidates for members of the State Parliament. This has enabled Šemsudin Mehmetović, one of the Vice-Presidents of the Party for Democratic Action [Stranka demokratske akcije (SDA)], to become a BH Member of Parliament, although the Ministry of Internal Affairs of the Republic of Srpska has charged him with crimes against humanity in Tešanj, where, in times of war, he was serving as the commander of a police outpost. Following the related court order, his case was transferred from the Office of the District Attorney of Doboj to the Office of the Prosecutor of BH.³⁰⁴ Mahudin Bašić served as the Chief of the Department for Organized Crime of the Intelligence-Security Agency of BH [Obaveštajno-sigurnosna agencija (OSA)] until the end of 2011, in spite of an indictment, issued by the Public Prosecutor of

296 *Ibid*, p. 6.

297 The Law on Protection of Classified Documents, *The Official Gazette of BH*, No. 54/05 and No. 12/09.

298 Information obtained from Željka Kujundžija, spokesperson of SIPA, 13 January 2012.

299 The Law on Elections in Bosnia and Herzegovina, *The Official Gazette of BH*, No. 37/08, The Latest Amendments No. 37/08, Articles 1.6 and 1.7.

300 The Law on the Elections in Bosnia and Herzegovina, *The Official Gazette of BH*, No. 23/01, The Latest Amendments No. 37/08, Article 10(d), paragraph 3, as related to Article 10(d), paragraph 1, section a(4).

301 *Ibid*, Article 10(e).

302 *Ibid*.

303 *Ibid*, Articles 10(g) and 10(h).

304 No subsequent information on this case.

BH³⁰⁵ and confirmed by the Court of Bosnia and Herzegovina on 7 December 2011, which charges him with war crime against a civilian population.³⁰⁶

The BH District Court of Brčko confirmed on 28 November the indictment issued against Asmir Tatarević and Amir Omazić for war crimes against a civilian population and prisoners of war.³⁰⁷ The indicted Asmir Tatarević is still employed by the Government of the District of Brčko at the Department of Public Security, in the position of chief of the demining team.³⁰⁸ Ermin Džindić, the Chief of the Department of Public Security of Brčko District, has declared that “there are no grounds for suspending Tatarević”. Džindić recalls the Law on Government Service in Brčko District, where Article 104 defines the grounds for dismissal from service: if there is a confirmed indictment for a crime committed in the course of duty, if a disciplinary procedure has been initiated and/or if detention has been ordered during the investigation.³⁰⁹ Džindić points out that he had held the relevant consultations with the legal officer and with the Office of the High Representative for BH, and has been advised that there are no grounds for suspending Tatarević.³¹⁰

There were nine persons suspected to have committed war crimes listed as candidates in the General Election in BH in October 2010.³¹¹

Simo Zarić, sentenced by the ICTY for crimes against humanity³¹², was elected in February 2010 to the post of the Deputy Chief of Šamac County, just where the crimes were committed for which he had been sentenced.³¹³ In 2011, he still held that position.

2.2. Serbia

As in previous years, the authorities did not implement the Law on the Responsibility for Human Rights Breaches adopted by the Assembly of Serbia in 2003. The League of the Social-Democrats of Vojvodina [Liga socijaldemokrata Vojvodine (LSV)] proposed on 10 November 2010 the Law Amending the Law on the Responsibility for Human Rights Breaches.³¹⁴ This Draft included an amendment extending the period of the applicability of this Law to 20 years from the existing 10 years.³¹⁵ The Law on the Responsibility for Human Rights Breaches was adopted in 2003 with the aim of removing possible obstacles and hurdles to the building of a democratic society in Serbia, which has been in the process of democratization since the changes on the political stage of Serbia introduced on 5 October 2000.

305 The indictment against Muhidin Bašić and Mirsad Šijak, the press release of the Office of the Public Prosecutor of BH, the Internet site of the BH Prosecutor's Office, 2nd December 2011. <http://www.tuzilastvobih.gov.ba/?id=1269&jezik=b>.

306 The indictment specifies that on the 25th of January 1994 the indicted Muhidin Bašić, as the Chief of the War Department of the State Security Service in Olovo, and the indicted Mirsad Šijak, as a Military Police officer, serving with the 122nd Light Brigade of the BH Army, together with two more unidentified members of military personnel of the BH Army, forced sex on a female person on her way to visit a person confined in Vareš. See: *Vjesti*, the Internet page of BH Court, 8 December 2011. <http://www.sudbih.gov.ba/?id=2289&jezik=b>.

307 “Tatarević and Omazić: Denying Responsibility”, the Internet page of *BIRN*, 11 January 2012. <http://www.bim.ba/bh/303/10/34204/>.

308 Telephone interview with Slavica Pavlović, the spokesperson of the Government of Brčko District of BH, held on 25 January 2012.

309 The Law on the Government Service with the Administrative Organs of Brčko District of BH, 25 January 2012, *The Official Gazette of Brčko District of BH*, Nos. 28/06 and 29/06, 19/07, 2/08, 9/08, 44/08, 25/09 and 26/09.

310 Telephone interview with Ermin Džindić, the Chief of the Department of Public Security of the Brčko District of BH, held on 25 January 2012.

311 “Victims Re-victimized”, Justice report, the Internet page of *BIRN*, 30 September 2010. <http://www.bim.ba/bh/238/10/30780/>.

312 The verdict in the case against Blagoje Simić, Miroslav Tadić and Simo Zarić, the communiqué of the ICTY, 17 October 2003, the Internet page of the ICTY, http://www.icty.org/x/cases/simic/tjug/bcs/031017bcs_summary.pdf

313 “The Better Part of BH: Convicted War Criminal Simo Zarić Elected as Deputy Chief of Šamac County”, the Internet page of *24sata.info*, 7. februar 2010. godine, <http://www.24sata.info/vijesti/politika/25846-Bolji-dio-BiH-Osudjeni-ratni-zlocinac-Simo-Zaric-izabran-zamjenika-nacelnika-Opstine-Samac.html#ixzz1pB8BQmsn>

314 The Draft Law Amending the Law on Responsibility for Human Rights Breaches, The National Assembly of Serbia, Laws in Procedure.

315 *Ibid*, Article 7.

In the reasoning, the Proposer pointed out the necessity to undertake immediately the organizational, financial, staffing and other measures for the implementation of this Law, and to initiate the election procedure for a new composition of the Commission.

In the explanation of the Proposer, the representative of the LSV, the lack of will for the implementation of the Law on the Responsibility for Human Rights Breaches has given way to doubts as regards the legal system of the state and the competence of its institutions, as well as to its readiness to discharge its obligations stemming from the international agreements, conventions and other instruments of International Law.

2.3. Kosovo

In 2011 there was a debate in the Parliament of Kosovo on the immunity of Members of Parliament in cases of investigations for grave crimes, including war crimes. The debate followed the letter of the EULEX Mission to the Parliament of Kosovo. It included an explanation of the procedure for revoking the immunity of Members of Parliament under investigation or indicted for crimes. The debate was concluded without the adoption of any conclusions. The President of the Parliament Jakup Krasniqi was of the opinion that the Parliament should not take position on the immunity, because “that matter has been regulated by the Constitution, and Parliament is not entitled to interpret the Constitution.”³¹⁶ Upon the conclusion of that debate, the Government of Kosovo requested the Constitutional Court to supply the interpretation of the conditions which needed to be fulfilled for the revoking of immunity, including that of the President, the Prime Minister, the Cabinet Members and the Parliament Members. The Constitutional Court of Kosovo delivered a decision which states that Members of Parliament do not enjoy immunity from prosecution for crimes. Two days after that decision of the Constitutional Court, on 22 September 2011, EULEX arrested Fatmir Limaj, Member of Parliament and the Vice-President of the Movement for a Democratic Kosovo [Partia Demokratike e Kosovës (PDK)], on suspicion that he had committed war crimes in the camp at Klečka village in 1999.³¹⁷

The Law on General Elections in Kosovo does not specify whether a person currently serving a sentence for war crimes, or a person who has already served such a sentence, may be an eligible candidate in elections. However, a person who has not been sentenced, but had been indicted for war crimes, may be an eligible candidate in the elections.

2.4. Montenegro

Although the opposition Liberal Party [Liberalna partija (LP)] proposed in 2007 the adoption of the Law on the Responsibility for Breaches of Human Rights, the draft was never tabled. The President of the Liberal Party Andrija Popović stated at conference “War for Peace, Twenty Years Later” Conference, held in Podgorica on 2 December 2011, that the introduction of lustration in Montenegro “does not originate from the wish for any kind of persecution, but from a wish to remove the collective or abstract responsibility for deeds done.”³¹⁸

Similarly, a member of the opposition Movement for Changes [Pokret za promjene (PZP)], Branko Radulović, stated that the lustration and the acceptance of criminal responsibility for crimes committed in the past are needed in order to “provide solid foundations for building the morally dignified homeland, our Montenegro.”³¹⁹

316 “The Government of Kosovo Requests an Interpretation of the Conditions for Revocation of Immunity”, the Internet page of *Blic*, 20 July 2011, <http://www.blic.rs/Vesti/Politika/267181/Vlada-Kosova-trazi-tumacenje-uslova-za-oduzimanje-imunitet>.

317 The ICTY had relieved Fatmir Limaj of criminal responsibility for other war crimes.

318 “The Discussion of the President of the LP, Andrija Popović, in the Conference on “War for Peace, Twenty Years Later”, in Podgorica on 12/02/2011”, the Internet page of the Liberal Party of Montenegro, 3 December 2011, http://www.lpcg.org/detail.php?module=2&news_id=1150.

319 “We Can Demote the DPS”, the Internet page *Monitor*, 10 September 2010, http://www.monitor.co.me/index.php?option=com_content&view=article&id=1985:moemo-smijeniti-dps&catid=1386:broj-1038&Itemid=2397.

2.5. Macedonia

The Amended Law on Determining the Additional Condition for Performing Public Service of 2011 introduced the extension of the applicability of this Law to priests, journalists, NGO activists, lawyers and scientists, obliging them to submit affidavits on their collaboration with security services to the Commission for the Verification of Facts, from 1 December 2011 through 31 January 2012.³²⁰ In the meantime, the procedure was initiated before the Constitutional Court for establishing the constitutionality of the new provision. By the end of 2011, the Court had not made any decision with regard to this issue.

Since its foundation until mid-July 2011, the Commission has received a total of 11,009 affidavits.³²¹ Public officials submitted 3,602 affidavits; persons who had served with public offices (and who are still alive) submitted 5,113 affidavits; and candidates for public office submitted 2,294 affidavits.³²² By the end of 2011, the Commission had verified around 6,000 affidavits. It established that around 40 persons had collaborated with security services.³²³ The responsibility of the Commission ceases as soon as it has established whether or not a person who had submitted an affidavit did or did not collaborate with security services. After that, the courts are required to confirm or deny someone's collaboration with security services, and eventually to sanction such persons, as well as to decide whether they are or are not eligible to hold public office.³²⁴

The two biggest Albanian parties, the Democratic Party of Albanians [Partia Demokratike Shqiptare (DPA)] and the Democratic Union for Integration [Bashkimi Demokratik për Integrim (DUI)], engaged in 2010 in an open political confrontation when Hisen Musliu, a former member of the State Security Service, was arrested. Musliu, who favored the DPA, was charged with creating files on DUI members (the party in power), which the Commission assessed as fabrication.³²⁵ Controversies also followed the case of Vladimir Milčin, a university professor and Director of the Open Society Fund. While deliberating on his case, three members of the Commission (inclined towards the opposition parties) left the session, arguing that "one security briefing is not strong enough evidence to label someone as a collaborator". Milčin appealed against the decision of the Commission to proclaim him a collaborator with the security service, in which he stated that he was not a collaborator of the secret service, but rather its victim.³²⁶

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2.6. Slovenia

Lustration has been proposed in Slovenia several times, but these proposals have never been supported by the parliamentary majority.³²⁷ The only legal provision related to lustration is the so-called "Pučnik Amendment". This amendment to Article 8 of the Law on Judges, adopted in 1994, prescribes that the judges who had tried or participated in trials and investigations which resulted in verdicts which had breached human rights, did not meet the criteria for re-election. Following the request for an assessment of the constitutionality of this amendment,

320 Communiqué of the Commission for the Verification of Facts, 10 November 2011, <http://www.kvf.org.mk/mk/soopstenija.html>.

321 By the end of 2009 the Commission had received 250 affidavits from state officials (the Humanitarian Law Center, Dokumenta and BIRN, *Transitional Justice in Post-Yugoslav Countries: the 2009 Report*, p.24). It means that in 2010 and 2011 the Commission had processed more than 10,700 affidavits.

322 The Report of the Commission for the Verification of Facts, 15 January 2011 – 15 July 2011, p.17.

323 The interview with Agim Mehmeti, Deputy President of the Commission for the Verification of Facts, 22 December 2011.

324 *Ibid.*

325 „Нова рунда во 'лустрациската војна' ДУИ – ДПА", the Internet page of Radio Slobodna Evropa, 23 November 2010 godine, <http://www.makdenes.org/content/article/2228635.html>.

326 "Комисија за лустрација: Милчин бил соработник на тајните служби", the Internet page of Dnevnik, 4 August 2011, <http://www.dnevnik.com.mk/default.asp?ItemID=0BFB6DA05A0AA94094DF461E82B8481C>.

327 The idea of introducing lustration in Slovenia did not include limiting the engagement of persons responsible for mass human rights breaches (e.g. in the case of the "erased"), nor for other major human rights breaches. The President of the Slovenian Christian Democratic Party [Slovenski krščanski demokrati (SKD)] Alojz Peterle, and the President of the Slovenian Democratic Party [Slovenska demokratska stranka (SDS)] Janez Janša had submitted to the Parliament a Draft Resolution on Illegal Activities of the Totalitarian Communist Regime and the Draft Law on Mending the Consequences of the Totalitarian Communist Regime. Both proposals failed. More on that on the Internet page of Slovenska tiskovna agencija, <http://www.sta.si/vest.php?s=s&id=307610>.

the Constitutional Court of Slovenia decided that the contested provision had complied with the Constitution.³²⁸

A comprehensive reform of the police and the judiciary was implemented in the first half of the nineties, whereby one of the criteria for the nomination of judicial officials, or for keeping in service of police officers, was the absence of the actual person's involvement in breaches of human rights, including war crimes.³²⁹

Slovenian legislation which regulates employment by the government prescribes the condition that the person concerned has not been sentenced, as well as the condition that such a person is not under criminal investigation until proven innocent.³³⁰

3. Support to the Persons Sentenced or Indicted for War Crimes

3.1. Bosnia and Herzegovina

At the end of November 2011 in Sarajevo, following the order of the Prosecutor's Office of BH, eight persons were arrested,³³¹ and charged with war crimes committed in the *Silos* camp at Tarčin, and in the incarceration facility at the *9 May* High School at Pazarić, and in the storage of the *Krupa* barracks.

The Assembly of Sarajevo Canton reacted to their arrest at its session of 29 November 2011 with a "unanimous" condemnation of "the manner and method of the arrest of suspected BH Army persons as if they were criminals who are hiding and escaping the laws of BH." Following the initiative of the Parliamentary Representative of the SDA Eldar Čomor, the Assembly extended its full support to the Ministry for Veterans' Affairs of Sarajevo Canton, requesting it to "assist the arrested persons by all means, within the framework of the funds earmarked in the budget of Sarajevo Canton for joint financing of the legal assistance of BH defenders." Several public persons reacted bitterly against setting aside the funds for the war crimes suspects. They reiterated that "such a move contributes to the prevailing relativistic view of the events of the nineties, as actualised in this manner of protecting of their 'own' criminals, while common and war crimes remain neglected",³³² and declared that they did "not wish to finance the defence of war crimes suspects."³³³

Rasim Delić, former Commander of the BH Army, sentenced to three years by the ICTY in 2008, died on April 2010 before the completion of the appeal procedure. The Presidency of BH held a commemorative session to mark his death. The Member of the Presidency Bakir Izetbegović, BH Defence Minister Selmo Cikotić, Deputy President of the House of Commons of the Parliamentary Assembly of BH Sulejman Tihić and numerous other officials and representatives of veteran organizations laid wreaths on his tomb on the anniversary of his death, as part of the commemoration organized for that occasion.³³⁴

Representatives of certain political parties, victims' associations and veterans' organizations criticized the adoption of the Declaration Condemning the Crime in Srebrenica in the Assembly of Serbia in late March 2010. Political representatives of the Republic of Srpska stated that by such action Serbia had "put the noose of collective guilt around the neck of the Republic of Srpska and stabbed it in the back".³³⁵ As was to be expected, the adoption of

328 The Constitutional Court of Slovenia, Decision No. U-I-83/94, 14 July 1994.

329 More on lustration in Slovenia in: Andraž Zidar, *Lustracija*, Nova Revija, Ljubljana 1996.

330 The Law on Government Employees, the Official Gazette of the Republic of Slovenia, No. 56/2002, Article 88.

331 The indicted persons were Mustafa Đelilović, Fadil Čović, Mirsad Šabić, Nezir Kazić, Bećir Hujić, Halid Čović, Šerif Mešanović and Nermin Kalember.

332 "Sarajevo Deprived of Soul and Morality", Justice Report, the Internet page of *BIRN*, <http://www.bim.ba/bh/301/10/34092/?tpid=47>.

333 "I Do not Wish to Finance the Defence of War Crimes Suspects", the Internet page of *Radio Sarajevo*, 30 November 2012, <http://www.radiosarajevo.ba/novost/68728/ne-zelim-finansirati-odbranu-osumnjicenih-za-ratne-zlocine>.

334 "The First Death Anniversary of General Rasima Delić Marked", the Internet page of *Vijesti*, 19. april 2011. godine, <http://beta.vijesti.ba/vijesti/svijet/37815-obiljezana-prva-godisnjica-smrti-general-a-rasima-delica.html>.

335 Srdan Puhalo, Nebojša Petrović, Neda Perišić: "Readiness for Reconciliation in Bosnia and Herzegovina, (Fridrich Ebert Stiftung, Sarajevo, 2010), p. 103.

the Declaration on Srebrenica provoked the strongest resentment among war victims' associations. The President of the Association of Former Camps Inmates of RS, Branislav Dukić, labelled the adoption of the Declaration as a hypocritical move. "By the adoption of the Declaration on Srebrenica, Serbia has once again demonstrated hypocrisy towards its brothers across Drina, by admitting in their name something in which Serbia did not even participate. They have thereby placed the noose around the neck of RS."³³⁶ A different opinion on this event was expressed by the President of the Party of Democratic Progress [Partija demokratskog progresa (PDP), Mladen Ivanić, who declared in April 2010 that he had always advocated "the adoption of a general declaration, where the major part would be dedicated to Srebrenica, as the biggest crime of the past war".³³⁷

Public reaction in the Republic of Srpska to the arrest of Ratko Mladić in May 2011 was stormier than the reaction to the arrest of Radovan Karadzic.³³⁸ The reaction of the representatives of veteran organizations was particularly sharp. The President of the Presidency of the *The Fighter of Ilidža* [Ilidžanski borac] Veterans' Organization Goran Šehovac pointed out that the arrest of General Mladić is «a shameful action by Mother Serbia and of its President Tadić». ³³⁹ The President of the Organization of the Families of War Prisoners, Killed Combatants and Missing Civilians, Nedeljko Mitrović, expressed deep disappointment with the arrest of General Ratko Mladić.³⁴⁰ At the same time, the President of the Alliance of the Camps Inmates of RS Branislav Dukić asked whether it was possible that Serbia could have sided with those who had caused the collapse of Yugoslavia and now arrest those who had stood up in protection of the Serbian people: "Boris [Tadić] and Serbia, listen: In the name of the fifty thousand Serbian Camp Inmates, let this be the feather in your cap, but posterity shall never forgive you!"³⁴¹

In the period 2010-11 the leading politicians of the Republic of Srpska denied the Srebrenica genocide more strongly than before. For the Prime Minister of RS Milorad Dodik, the Srebrenica event was provoked by the activities of Muslim forces before 1995: "Srebrenica was the retaliation for the ordeal of Serbs in Kravica village in 1993."³⁴² In addition, statements were heard that the confession of genocide entails presenting Serbs as 'a genocidal people' and the RS as a genocidal and criminal enterprise.³⁴³ This was particularly elaborated on by the President of the SDS Mladen Bosnić: "We shall not permit them to proclaim the Republic of Srpska a genocidal enterprise one day, so that our children will be ashamed of those who created the Republic of Srpska".³⁴⁴

3.2. Croatia

The pronouncement by the ICTY of the first instance verdict on the Croatian Generals Mladen Markač and Ante Gotovina in April 2011 had largely radicalized Croatian public through 2011.

For the President of Croatia Ivo Josipović and for the then Prime Minister Jadranka Kosor, the citing of the joint criminal enterprise in the verdict was unacceptable. President Josipović added that Croatia respects and shall

336 "The Proof of the Genocide Nature of the Republic of Srpska and of all Serbs: The Declaration on Srebrenica as backstabbing and a noose around the neck", the Internet page of *24sata.info*, 1 April 2010, <http://www.24sata.info/vijesti/dogadjaji/29539-Dokaz-genocidnosti-Srpske-svih-Srba-Deklaracija-Srebrenici-kao-noz-ledja-omca-oko-vrata.html#ixzz1fbWACe9z>.

337 Nada Diklić, "I would Support the Declaration on Srebrenica", *BH Dani*, 3 April 2010, (the interview with Mladen Ivanić, the President of PDP).

338 The interview with Tanja Topić, political analyst, Fridrich Ebert Stiftung Banja Luka, 17 November 2011.

339 „Protesti širom RS“ [“Protests all over RS”], the Internet page *B92*, 27 May 2011, http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=05&dd=27&nav_category=167&nav_id=515005.

340 "Reakcije na hapšenje Mladića podjeljene" [“The Reactions to the Arrest of Mladić are divided»], the Internet page *Deutsche Welle*, 26 May 2011, <http://www.dw.de/dw/article/0,,15109532,00.html>.

341 *Ibid.*

342 *Ibid.*

343 Interview with Tanja Topić, political analyst, Fridrich Ebert Stiftung Banjaluka, 17 November 2011.

344 Srđan Puhalo, Nebojša Petrović, Neda Perišić "Spremnost na pomirenje u Bosni i Hercegovini [Readiness for Reconciliation in Bosnia and Herzegovina], (Fridrich Ebert Stiftung, Sarajevo, 2010), p. 101.

continue to respect its heroes.³⁴⁵ The actual Prime Minister Zoran Milanović, who was the President of SDP at the time of the pronouncement of the verdict, declared that he had never accepted the idea of the joint criminal enterprise and that he never would.³⁴⁶ Other politicians in power or in the opposition reacted in a similar way to this first instance verdict. The nationalistic politicians questioned the entire cooperation with the ICTY. In addition, there were comments that the verdict was the result of the attempt of the International Criminal Court in The Hague to equalize the aggressor and the victim, i.e. the defeated and the winning party in that war.

4. The Debates in the Parliaments

4.1. Bosnia and Herzegovina

During 2010 there were several debates in the House of Representatives of the Parliamentary Assembly of BH (PSBiH) as regards the armed conflicts in the nineties and related war crimes. The Srebrenica genocide and the crimes in Sarajevo were discussed. The Draft Law on the Ban on Denying, Minimizing, Justifying or Approving the Holocaust, Genocide and Crimes against Humanity was also discussed. The armed conflicts were partly discussed in relation to the Draft Law on Census in BH in 2011. The debate on the Draft Law on the Census in Bosnia and Herzegovina in 2011 was marked by a fundamental disagreement between the Bosnian and the Serbian side. The representatives of the Serbian parties insisted in the debate on a clarification of the Declaration of Ethnic, National and Religious Affiliation, while the representatives of the Bosnian parties insisted on the absence of any legal obligation to answer such a question. A stormy polemics developed along ethnic lines as regards the return of refugees to their pre-war places of residence. The Bosnian representatives insisted particularly on that, requesting that the census should be executed only after the completion of the process of return. This issue provoked a debate on the responsibility for crimes committed in BH during the war. In opposing this Draft Law, Remzija Kadrić, the Party for BH [Partija za BiH] candidate from RS for the House of Representatives of PSBiH, reiterated that “this Law is an attempt to legalize ethnic cleansing”.³⁴⁷ He was supported by his party colleague Sadik Bašić (Party for BH).³⁴⁸

There was no agreement even on the number of the returnees in the Entities, in spite of the available official data on the number of so-called minority returnees to the territories of the Bosnian Federation and Republic of Srpska, in the custody of the Ministry for Human Rights and Refugees of BH.³⁴⁹ Slavko Jovičić, the RS representative at PSBH from the Alliance of Independent Social-Democrats [Savez nezavisnih socijaldemokrata (SNSD)] declared that he was proud because 25,000 Bosnians had returned to Prijedor, and 5,000 to Foča, while 96 percent of the Bosnian population had returned to Janja near Bijeljina. “Find me just one place in the Federation of BH where even 20 Serbs have returned. No, they are still moving out of Sarajevo. Let us see how many Serbs live in the territory of the Federation of BH”, said Jovičić.³⁵⁰ This statement provoked opposition from the Bosnian representatives.

In spite of disagreements, the Draft Law was adopted on the second reading without the approving of any amendment. It was sent for consideration to the House of the Nations. At the session of the House of the Nations of July 2011 it was unanimously decided to extend the amendment procedure until the end of 2011.³⁵¹

345 Milan Peh, “Josipović: Neprihvatljiva je teza o udruženom zločinačkom pothvatu” [“The Thesis on the Joint Criminal Enterprise is Unacceptable”], the Internet page of *Jutarnji list*, 15 April 2011, <http://www.jutarnji.hr/presuda-gotovini--predsjednik-josipovic-sokiran-odlukom-haskog-suda/939183/>

346 “Milanović: Gotovina i Markač su platili tuđi dug” [“Milanovic: Gotovina and Markač Have Repayed Someone Else's Debt”], the Internet page of *Index*, published on 15 april 2011, <http://www.index.hr/vijesti/clanak/milanovic-gotovina-i-markac-su-platili-tudji-dug/547341.aspx>

347 The transcript of the 70th Session of the House of Representatives of the Parliamentary Assembly of BH of 21 January 2010, p.27.

348 The transcript of the 79th Session of the House of Representatives of the Parliamentary Assembly of BH of 16 June 2010, p.53.

349 Information on Minorities Returns, the Ministry for Human Rights and Refugees of Bosnia and Herzegovina, <http://www.mhrr.gov.ba/PDF/Izbjeglice/INFORMACIJA%20O%20POVRATKU%20DO%202010.pdf>

350 The transcript of the 70th Session of the House of Representatives of the Parliamentary Assembly of BH of 21 January 2010, p.30.

351 The Law was adopted in the House of Representatives of the Parliamentary Assembly of BH on 3 February 2012. The Law on the Census of the Population, Households and Apartments in Bosnia and Herzegovina 2013, *The Official Gazette of BH*, No. 10/12.

Bosnian and Serbian representatives disagreed again in the debate on the Draft Resolution on the Importance of Condemnation of the Srebrenica Genocide and War Crimes in Bosnia for Building a Lasting Peace, proposed by the Club of Representatives of the Social-Democratic Party (SDP) and supported by the Joint Commission of both Houses for Human Rights in March 2010. According to the keynote speech of Denis Bećirović (SDP), the Resolution was an attempt essentially to condemn all war criminals and to honour all victims of war crimes.³⁵² Among other things, the Resolution calls on all responsible state organs to clearly condemn and sanction through their legal system any attempt at the relativization of the genocide in Srebrenica and of war crimes committed in BH. The Parliamentary Assembly of BH was requested to support unambiguously the wording of the Resolution on Srebrenica as adopted by the European Parliament in January 2009. The proposal was rejected by the representatives of the Bosnian Serbs.³⁵³ Bakir Izetbegović (SDA) supported the Resolution, but remarked that the repeating of the entire process would be unnecessary and in vain, and particularly painful for Bosnians, because “it is clear that this issue is not yet ripe to be passed.”³⁵⁴

Recognizing from the beginning of his address the size of the Srebrenica tragedy, Slavko Jovičić (SNSD) nevertheless continued to insist on the need to accord recognition to the crimes committed against Serbian people in the Srebrenica region: “Does anybody expect me to support this? If only someone were even to say that just five innocent Serbs were killed in the Srebrenica and Bratunac areas. Nobody ever has.” Reacting to Jovičić’s statement, Azra Hadžiahmetović (Party for BH) said that every side had its victims, so the selective counting of victims cannot nullify the fact that genocide was indeed committed.³⁵⁵ Continuing his address, Jovičić (SNSD) pointed out that he had understood that the Resolution condemns the sufferings of everybody, but the mere mention of Srebrenica overshadows the other victims because “as soon as you mention Srebrenica, all other stories evaporate.”³⁵⁶ He concluded that it is not possible to obtain the support of the representatives of the SNSD “because such is the situation both with the Serbian people and in the RS, the time is not right for this Resolution.”³⁵⁷ In April 2010 the House of Representatives of the Parliamentary Assembly of BH failed to approve the Draft Resolution on the Importance of the Condemnation of the Srebrenica Genocide and War Crimes in Bosnia for Building a Lasting Peace, and it was never resubmitted to parliamentary procedure.

In the course of 2011, the Draft Law on the Ban on Denying, Minimizing, Justifying or Approving the Holocaust, Genocide and Crimes against Humanity was discussed. The Parliamentary Assembly of BH had held similar discussions earlier.³⁵⁸ The proposers of the draft from the Party for BH, Beriz Belkić and Azra Hadžiahmetović, insisted on the debate, in spite of the negative opinion of the Joint Commission of Both Houses for Human Rights.³⁵⁹ The opponents of the adoption of this Law, primarily from the ranks of Serbian parties (the SNS and SDS), pointed out that there are several truths about the war, reiterating that the Law presents an attempt at political manipulation of the events from the period of armed conflicts. Representative Dušanka Majkić (SNSD) expressed her worries about the actual goal behind this law, calling into question the intentions of its proponents. Majkić commented on allegations related to the sufferings of Serbs in Sarajevo in the period of 1992 through 1995, and on the investigations which were never executed. He asked why the authorities in Sarajevo still refuse

352 The transcript of the 74th Session of the House of Representatives of the Parliamentary Assembly of BH of 24 March 2010, p.76.

353 *Ibid.*, p.76.

354 *Ibid.*, p.81.

355 The transcript of the 74th Session of the House of Representatives of the Parliamentary Assembly of BH of 24 March 2010, p.82.

356 The transcript of the 74th Session of the House of Representatives of the Parliamentary Assembly of BH of 24 March 2010, p.79.

357 The transcript of the 74th Session of the House of Representatives of the Parliamentary Assembly of BH of 24 March 2010, p.75.

358 In the course of 2010 there were several discussions on the proposals for the incrimination of the denial of the Holocaust and genocide. In the 70th session of the House of Representatives on 21 January 2010 the Report was put to the vote of the Collegiums’ Commission on the Conclusions of the meeting of the 69th Session of the House on 30 December 2009, as proposed by the Club of SDA Representatives. This Conclusion requests the Council of Ministers to submit to Parliament a draft law which unambiguously sanctions as crime any denial, diminishment or approval of the Holocaust, genocide or other crime against humanity. This initiative did not get the necessary support. In the second round of voting, with 23 votes “for” (21 from the BH Federation, 2 from the Republic of Srpska), 11 votes “against” and no abstentions, the House did not support the Conclusion of the Club of SDA Representatives.

359 A positive opinion on the compliance of the Draft with the Constitution and the legal system of BH was given by the Directorate for European Integrations and by the Council on Constitutional and Legal Matters of the Parliamentary Assembly of BH.

to establish a commission for investigating the crimes against Serbs.³⁶⁰ In his reaction to the Draft Law, Slavko Jovičić (SNSD) called on the Bosnian side to stop insisting on the adoption of this Law, because the Serbian representatives will never accept it.³⁶¹

The supporters of the adoption of the Law cited the need for prevention of the manipulation of the victims for political purposes, and also the need to secure the compliance of local legislation with the international obligations. In his attempt to justify the reasons of the proposers, Beriz Belkić pointed out that this Law is based on a response to the principal question of whether crimes are acceptable or not? At the end of the debate on this proposal, the Chairperson of the House of Representatives Denis Bećirović (SDP) emphasized the particular need for the adoption of such a law: “This Law is needed by the victims, all victims, irrespective whether they are Serbs, Croats, Bosnians, Jews or anybody else.”³⁶²

4.1.1. The Parliament of the Federation of Bosnia and Herzegovina

In its Third Regular Session in Sarajevo 14 July 2011, the House of Representatives of the Parliamentary Assembly of BH unanimously adopted the Resolution of the European Parliament on Srebrenica, following the proposal by the Chairperson of the House Denis Zvizdić. The arrest of General Mladić was also praised. Among other charges, he had been indicted for the genocide committed in July 1995 in Srebrenica. The recommendation was given, with 70 votes “for” and two abstentions, that the Parliamentary Assembly of BH and the National Assembly of the Republic of Srpska also adopt the Resolution on Srebrenica in its original wording.³⁶³ That same text was adopted in the House of Nations of the Federation of BH 18 July 2011. The members of the Club of Serbs in the Federal House of Nations, Peđa Kojić (Our Party [Naša Stranka]) and Mirjana Malić (SDP BH), had supported it. Kojić requested that, concurrently with the Resolution, the conclusion be put to the vote by which the House of Nations would insist on the adoption of the Law in the Federation of BH, which would provide for the criminal responsibility of anybody who denies that genocide had happened in Bosnia in the period of the past war. Drago Pužigaća, also a member of the Club of Serbs, was not present at the Session, but he had answered affirmatively the journalists’ related question.³⁶⁴

The House of Representatives of the Parliament of the Federation of BH, at its regular session of 28 September 2011, supported on the second reading, in form of a draft, the amendments to The Criminal Law Introducing the Persecution of the Denial of Genocide, Holocaust, War Crimes and Crimes against Humanity. Jasmin Duvnjak (SDA), in the name of the Proposer, requested the amendment of the Law by prescribing a prison sentence for those who deny such crimes. The House of Nations of the Parliament of BH Federation adopted in its Session of 10 November 2011 the Draft Law Amending the Criminal Code of FBH, which provides for the persecution of the denial of war crimes with imprisonment for three months to three years.³⁶⁵

4.1.2. The National Assembly of the Republic of Srpska

The representatives of the Assembly of the Republic of Srpska discussed war crimes on the occasion of the presentation of the Report on the Search for Missing Persons and the Investigation and the Processing of War Crimes. In the debates of 31 May and 1 June 2010, the Serbian representatives pointed out, while criticizing the work of the state institutions, that there is no political will to investigate and process the crimes committed against Serbs. Borislav Bojić (SDS) reminded those present that the Council of Ministers had adopted on 25 May 2006 the

360 Audio recording of the 15th Session of the House of Representatives of the Parliamentary Assembly of BH held on 15 December 2011.

361 *Ibid.*

362 *Ibid.*

363 The official page of the Parliament of the Federation of Bosnia and Herzegovina, 10 November 2011, http://www.parlamentfbih.gov.ba/predstavnicki_dom/hr/page.php?id=106.

364 The Federal Parliament adopted the Resolution on Srebrenica on 18 July 2011. <http://www.radiosarajevo.ba/novost/58871/Burek%20i%20dimije>

365 The official page of the Parliament of the Federation of Bosnia and Herzegovine, 10 November 2011. http://www.parlamentfbih.gov.ba/dom_naroda/bos/parlament/info/saopcenja.html

related proposal by the Parliament and established the Commission for Sarajevo, but that actually it had neither started operating, nor been officially abolished.³⁶⁶ Konstadin Vasić (SDS) also asked why the joint commission had never operated, as the Commission for Srebrenica had, and concluded: "It is clear that everything is being done here to the detriment of Serbs. I can freely say that the Court and the Prosecutor's Office of BH accuse and try on the grounds of hatred against Serbs, and not on the grounds of arguments and existing evidence."³⁶⁷

The Bosnian Representatives also had some reproaches while addressing the work of the institutions of the Republic of Srpska, particularly of the Operational Team of the Republic of Srpska tasked with the search for missing persons. They emphasized the unequal treatment of missing persons on the part of the RS institutions. In line with this, Mirsad Durutović (the Party for BH) challenged the data from the Report on the Search for Missing Persons, the Investigation and Judicial Processing of War Crimes:

„It is not correct that in RS in late 1995, only 5,280 missing persons were registered. At that time, around 22,000 missing persons were registered in the territory of RS. It is clear that the Report takes into the account exclusively persons of Serbian ethnicity, while it omits all non-Serbian citizens”.³⁶⁸ Muharem Murselović (the Party for BH) agreed with him, and stated that in the RS a total of 21,729 civilians had been missing, and added: "In Prijedor, where I come from, 120 kids and 388 women were killed. These are very reliable data and I would like, as would all of us here, at least all Bosnians, to see this Report on Missing Persons covering all citizens, both those who live and those who had lived in this territory, this so-called Entity."³⁶⁹ In response to this, Representative Nenad Kesić (SNSD) stated that the registering of the missing persons had been difficult, because the families in RS reported their missing members there, while Bosnian families reported them to federal organs.³⁷⁰

In March 2011, the authorities of the Republic of Srpska used the case of the arrest of General Jovan Divjak, following the request for assistance of the Prosecutor's Office for War Crimes of Serbia, to raise once again the issue of the work of the judicial institutions of BH. A particular session of the Assembly was held on 13 April 2011 with only one item on the agenda – the work of the Prosecutor's Office and the Court of BH. Prime Minister Milorad Dodik presented the Report on the Investigation and Processing of War Crimes, compiled following the related request by the Government of the Republic of Srpska. In his introductory address, Dodik stated that the very foundation of the Court of BH is contrary to the Constitution and there is no justification for the existence of the Prosecutor's Office and of the Court of BH. In addition, Dodik said that the Prosecutor's Office has "the aim to create a judicial truth that Serbs are criminal, which is designed to be used as a fact in favour of the political interests of Bosnians".³⁷¹ "There are no Bosnians indicted on the grounds of command responsibility, none of them was ever indicted for an organized joint criminal enterprise and for systematic attack. Such legal qualifications are reserved for Serbs only!"³⁷²

Slobodan Popović (SDP) pointed to the futility of the debate on this issue: "The Report of the Prosecutor's Office and the Court of BH for 2009 was adopted by the State Parliament, so I wonder, are there in the Parliament any representatives from the Republic of Srpska whose presence grants the legality and the legitimacy of it and the fairness of all its decisions? If all this was adopted, and it was, what are we talking about?"³⁷³ Ramiz Salkić (SDA) pointed out that in the Bosnian community they are not «particularly happy», because «instead of processing those who had committed the crime of genocide in the UN Safety Zone, the Court in Bijeljina is processing six Bosnians who had wandered through the forest for several months and then surrendered to SFOR at the Base in Memići».³⁷⁴

366 The transcript of the 37th Session of the National Assembly of the Republic of Srpska held on 31 May 2010, p.119.

367 *Ibid.*, p. 102.

368 *Ibid.*, p. 106.

369 *Ibid.*, p. 110.

370 *Ibid.*, p. 114.

371 The transcript of the 4th Special Session of the National Assembly of the Republic of Srpska, 13 April 2011, p. 16.

372 *Ibid.*, p. 17.

373 *Ibid.*, p. 60.

374 *Ibid.*, p. 64.

After the related debate, the National Assembly of the Republic of Srpska supported Dodik's initiative to organize, in view of such an unacceptable attitude of the Court and the Prosecutor's Office of BH, a referendum in the RS in which the citizens could take a position on the laws imposed (one of them being the Law on the Court of BH) and on the breach of the Conventions on Human Rights by the High Representative for BH. The Conclusion following the decision of the Assembly states that "by its selective approach to investigation and processing of war crimes, the Court and the Prosecutor's Office of BH were detrimental to the Serbian people. They demonstrated the clearly political tendency to create an image of the events of the times of the war in BH negative for Serbs".³⁷⁵ The Conclusions also reject the efforts to establish the Supreme Court of BH. They insist on amendments to the Law on the High Court and Prosecutor's Council and the establishment of separate bodies for both entities.³⁷⁶ After the intervention of Catherine Ashton, the High Representative of the EU for Foreign Policy and Security, Dodik announced that he will require the Assembly to revoke the decision on the referendum, based on the promise of the EU that, together with the judicial institutions of BH, they will start a "structural dialogue" on the reform of the judiciary in BH. In the sessions held in late May and early June 2011, the National Assembly of RS, following the debate, adopted the Draft Decision on Revoking the Decision on Organizing a Republic-wide Referendum.

4.2. Croatia

In the Croatian Parliament during 2010 and at the beginning of 2011, discussions on the relation towards the events of the period of the armed conflict in Croatia from 1991 through 1995 were rare. They occurred in the parliamentary debates during the process of approval of the Law on Voidance of Certain Legal Acts of the Judicial Bodies of the Former JNA, former FRY and the Republic of Serbia.³⁷⁷

This Law was proposed by the Government, but it was the initiative of the Croatian Democratic Union [Hrvatska demokratska zajednica (HDZ)] and it is known as "Šeks's Law". The Vice-President of the Parliament and of the HDZ, Vladimir Šeks, who was at the helm of the campaign for the approval of the Law, is one of those indicted by the Prosecutor's Office for War Crimes of Serbia. Besides Šeks, Ivan Vekic, Branimir Glavaš, Tomislav Merčep and 40 more persons were also indicted for war crimes and genocide. The Assembly debate on the Draft Law had radicalized the electoral campaign which was in full swing. The opposition parties participated only at the beginning of the debate, except for the Democratic Alliance of Slavonia and Baranja [Hrvatski demokratski savez Slavonije i Baranje (HDSSB)] which participated in the entire debate, except for the casting of votes.

On the occasion of the presentation of the Draft Law, the Minister of the Administration, Davorin Mlakar, pointed out that "the Republic of Serbia had extended its jurisdiction by its internal legislation to the territory of the sovereign, self-governed and independent Republic of Croatia", and that this constitutes the reason for passing the proposed legislation. He emphasized that by this Law the RC was not jeopardizing the implementation of the Constitutional Law on Cooperation of the RC with the International Criminal Tribunal in The Hague and the fulfilment of the obligations stemming from it, but that it was limited to being a move by the RC to protect its own legislation through its judiciary.³⁷⁸

The representative of the HDZ and the Vice-President of the Parliament Vladimir Šeks pointed out that the indictment against him, and against the former Minister of Internal Affairs Ivan Vekić, the Deputy Minister of Internal affairs Tomislav Merčep and the Defence Secretary of Osijek Branimir Glavaš, was issued in order to equalize the responsibility in operational terms between Croatian and Serb forces.³⁷⁹ For some HDZ

375 The Assembly of the RS supported the referendum on the Court and the Prosecutor's Office of BH, the Internet page of *Radio Free Europe*, 14 April 2011, http://www.slobodnaevropa.org/content/republika_srpska_ce_odrzati_referendum/3556606.html.

376 *Ibid.*

377 The transcript of the debate on the Final Proposal of the Law on the Voidance of Certain Legal Acts of the Judicial Bodies of the Former JNA, former FRY and the Republic of Serbia, urgent procedure, first and second readings, P. Z. No. 889, held on 6 and 21 August 2011.

378 *Ibid.*, p. 1-2.

379 *Ibid.*, p. 28.

representatives, like Andrija Hebrang, the indictment of the Prosecutor's Office of Serbia represents the second stage of Serbian aggression against the RC.³⁸⁰

The HDSSB Representative Danko Burić pointed out that this Law would not be effective in providing protection to Croatian defenders from prosecution by the judicial organs of the RS. He stated that it had been already been enabled, by the Law on the Implementation of the Statute of the International Criminal Tribunal, to extradite its own citizens, irrespective of whether they had committed a crime in the territory of the RC. "The indictments against Croatian defenders which come from Serbia, the aggressor country against Croatia, should really be stopped. But an equally big and often bigger danger for the Homeland War and for Croatian defenders comes from Croatian judicial bodies and institutions. In this respect, the Attorney of the State of Croatia [Državno odvjetništvo Republike Hrvatske (DORH)] and Croatian Courts stand out in particular». He labelled as «shameful» the trial of Generals Mirko Norac and Rahim Ademi, where the District Attorney of Zagreb proposed Savo Štrbac as a witness. He also mentioned the death of Đuro Brodarac in pre-trial detention. Eighty percent of his indictment was based on information supplied by the NGO *Veritas*.³⁸¹

Several opposition representatives concluded that the adoption of this Law was some kind of a theatre performance and that it would not provide any effective protection to the citizens of Croatia when they leave the RC, but would only worsen the relations with Serbia and contribute to the weakening and aggravation of the cooperation between DORH and the Office of the Prosecutor for War Crimes of the RS. The representative of the Independent Democratic Serbian Party [Samostalna demokratska srpska stranka (SDSS)] Milorad Pupovac pointed out that this Law had become redundant, because some of these indictments/warrants were void anyway: according to the Agreement of 2006 between DORH and the Office of the Prosecutor of Serbia, cases would not be processed if there was no valid evidence, as was the issue with the cases of Purdo and Bosanac.³⁸²

On the other hand, the Representative and the President of the Croatian Party of Legal Rights [Hrvatska stranka prava (HSP)], Daniel Srb, said that he would support the Draft Law, "because I see in it the hope that there will be a change in the politics of cooperation between the bodies of the RC and the RS, which is particularly useful to the Republic of Croatia in the realization of its national interests, including by reacting to such indictments."³⁸³

The Law was approved without the participation of the opposition parties, so that a quorum in the Parliament was barely reached.³⁸⁴ It was approved by 72 votes "for" and 5 abstentions.

4.3. Serbia

The National Assembly of Serbia discussed the Draft Declaration Condemning the Crime Committed in Srebrenica by applying the urgent procedure of 30 March 2010. Representative Nada Kolundžija explained in the name of the Proposer, The Coalition For European Serbia [Za evropsku Srbiju (ZES)], that the Declaration had been drawn up by proceeding from the decision of the International Criminal Court of Justice in the case of the lawsuit initiated by Bosnia for genocide committed in Srebrenica, as well as from the fact that Serbia is an equal member of the United Nations and had signed the International Conventions on Human Rights, whereby it had undertaken the obligation to comply with them. «By condemning the appalling crime in Srebrenica against the Bosnian population, by honouring the innocent victims, by expressing the deepest compassion for their families, today we take the responsibility of removing off the backs of the future generations the heavy burden legated to us by certain individuals», said Kolundžija.³⁸⁵

380 *Ibid*, p. 33-34.

381 *Ibid*, p. 2-4.

382 *Ibid*, p. 10-11.

383 *Ibid*, p. 19-20.

384 The minimal quorum for the approval of a law is 76 representatives. Voting was attended by 77 of them.

385 The Second and the Third Session of the First Regular Sitting of the National Assembly of the Republic of Serbia, 25 and 30 March 2010; ISSN 0582-6926, Skupština Srbije, Beograd [The National Assembly of the Republic of Serbia] 2011, p. 102-103.

The Representatives of the opposition from the nationalist parties delivered a whole series of criticisms at the expense of the Proposer, but also against some states and nations in the region, particularly against Bosnians. The urgency of the procedure was also criticized, as well as the content of the Declaration for referring to Srebrenica victims only, and not to the other crimes and to Serbian victims. Many Representatives expressed the opinion that the Declaration was part of an agreement with the international community, and that its main aim was to weaken the position of the Republic of Srpska. “The proposed text divides the victims of the civil war in the territory of former Yugoslavia and provokes hostile feelings between nations by failing to condemn the crimes against the Serbian people who suffered most in those wars. By its content and the timing of its proposal, such a Declaration is contrary to the interests of Serbia, of the Serbian people and of the Republic of Srpska”, stated the Representative of the Democratic Party of Serbia (DSS), Jovan Palalić.

Similar attitudes were presented by the representatives of New Serbia [Nova Srbija (NS)] and of the Serbian Radical Party [Srpska radikalna stranka (SRS, the party of Vojislav Šešelj, currently on trial before the ICTY).

The Representative of the Liberal Democratic Party [Liberalno demokratska partija (LDP)] Čedomir Jovanović stated that Serbia has had a hypocritical relation towards Serbian people in BH, “because it pushed them into the war and then sacrificed them when it decided to escape its responsibility”, and added that “the most shameless manipulation and lie” is that the Declaration offends Serbian victims.³⁸⁶

The representative of the Socialist Party of Serbia [Socijalistička partija Srbije (SPS)] Branko Ružić explained that the request of the Assembly Group SPS-JS (United Serbia [Jedinstvena Srbija]) had been “not to include a legal qualification of the level of the crime”, and to “be brave enough” to reach “the largest possible consensus on a comprehensive political condemnation of the crime which happened in Srebrenica, and, of course, against members of the Serbian people as well.”³⁸⁷

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The leader of the strongest opposition party, the Serbian Progressive Party [Srpska napredna stranka (SNS)], Tomislav Nikolić, presented the text of the Declaration prepared by this party as follows: «In the name of the SNS party I most strongly condemn all the crimes committed in the civil war in the territory of former Yugoslavia, the crimes against the Serbian people as well as the crimes committed by members of the Serbian people against the members of other peoples, and particularly the crime committed against the Muslims in Srebrenica in July 1995 and described in the verdict of the International Court of Justice».³⁸⁸ However, this party did not support the document proposed by the ruling coalition. Its representatives left the hall before the casting of the votes.

The Parliament Member Esad Džudžević, the Representative of the Bosnian minority, proposed that the Assembly designates 11 July as the Day of Remembrance of the Victims of Srebrenica, which is part of the obligation originating from the Resolution of the European Council on the Genocide in Srebrenica. A large group of representatives reacted negatively and noisily to his address.³⁸⁹

The Declaration on Srebrenica was adopted on 31 March 2010 with a minimal majority of 127 votes “for” (out of 250 Parliamentary Representatives). The Declaration “most strongly condemns the crime committed against Bosnian people in Srebrenica as established in the verdict by the International Court of justice”, whereby the mentioning of the word “genocide” in the text of the Declaration was avoided. In addition to that, condolences and apologies were expressed to the families of the victims for the failure to do everything practicable to prevent such a tragedy.³⁹⁰ The Declaration calls on all former warring parties in Bosnia and Herzegovina and in other countries of the territory of former Yugoslavia to continue the process of reconciliation and strengthening of the

386 *Ibid*, p. 118-123.

387 *Ibid*, p. 124.

388 *Ibid*, p. 128.

389 *Ibid*, p. 111.

390 The text of the Declaration on Srebrenica, the Internet page of the National Assembly of the Republic of Serbia, <http://www.parlament.gov.rs/narodna-skupstina-.872.html>.

conditions for cohabitation, based on the equality of nations and on full recognition of human and minority rights and freedom, so that the crimes committed never reoccur. The hope was also expressed that the highest organs of the other states in the territory of former Yugoslavia would condemn in this same way the crimes committed against the persons of Serbian ethnicity, and that they would apologize and express condolences to the families of Serbian victims.³⁹¹

On 14 October the debate was held on the Draft Declaration of the National Assembly of the Republic of Serbia Condemning the Crimes against Serbian nationals and the citizens of Serbia. The proposal was submitted by a group of 123 representatives. In the name of the Proposer, the Chief of the Parliamentary Group ZES Nada Kolundžija explained the Draft Declaration, stating that the two Declarations had been the result of the resolve of the Assembly “to somehow take a position on the past and the tragic events of the nineties, to equalize in an adequate way all victims of the wars on the territory of former Yugoslavia and to extend institutional support to all state bodies in charge of bringing to justice the perpetrators of those crimes.”³⁹²

Slobodan Samardžić (DSS) accused the ruling coalition of treating the Declaration on Srebrenica as «needed for external use, while the Declaration on Serbs is for internal use», as well as of creating, with the content of the two Declarations, «a division of victims into several different categories», among which the Serbian victims are of the lowest rank - with an even lower rank accorded to the victims of the NATO bombardment, since the Declaration did not use the word «crime» in reference to the NATO intervention.³⁹³

Most of the reproaches by the largest opposition party, the SNS, were related to the omission of the qualification “crime” when citing the victims of the NATO bombardment. Tomislav Nikolic accused the ruling majority of just buying time by this Declaration and of not being sincerely interested in the crimes committed against Serbs. “After the Declaration on Srebrenica, no declaration deserves any attention” concluded Nikolić.³⁹⁴

The Representative of the Serbian Radical Party [Srpska radikalna stranka (SRS)] Aleksandar Martinović said that this Declaration “represents a political washing-machine which should help wash the consciences of those Parliamentary Representatives who had stated by their votes several months ago that something had happened in Srebrenica which did not happen at all.”³⁹⁵

The Representative of the LDP Zoran Ostojić reminded those present that, instead of this, the LDP party had proposed the adoption of the Resolution of the European Parliament on Genocide in Srebrenica, condemning all the crimes and singling out one of them, because it was the crime of genocide.³⁹⁶

The Declaration was adopted by the 133 votes of the ruling coalition and the Representatives of the LDP, while the representatives of the opposition parties had left the Assembly Hall before the voting. The Declaration most strongly condemns the crimes against persons of Serbian ethnicity and the citizens of Serbia during the armed conflicts in former Yugoslavia, and calls on the parliaments, firstly of the states in the territory of former Yugoslavia, to condemn such crimes and to extend their full support to their state organs and to the organs of the international community in processing the perpetrators, as well as to express their respects for the Serbian victims, on the basis of the recognition of the equal value of every human life.³⁹⁷

391 *Ibid.*

392 The Second and the Third Session of the Second Regular Sitting of the National Assembly of the Republic of Serbia, 14 and 19 October 2010; ISSN 0582-6926, Skupština Srbije, Beograd [The National Assembly of the Republic of Serbia] 2011, p. 12.

393 *Ibid.*, p. 19-21

394 *Ibid.*, p. 28-30.

395 *Ibid.*, p. 38.

396 *Ibid.*, p. 49.

397 The text of the Declaration Condemning the Crimes against Serbian Nationals and Citizens of Serbia, the Internet page of the National Assembly of the Republic of Serbia, <http://www.parlament.gov.rs/narodna-skupstina-.872.html>.

4.4. Kosovo

An extraordinary plenary session was held by the Parliament of Kosovo in late March 2011, prompted by the partial retrial of Ramush Haradinaj, Idriz Balaj and Lahi Ibrahimaj.³⁹⁸ The request for an extraordinary session was made by Ahmet Isufi of the Alliance for the Future of Kosovo [Aleanca për Ardhmërinë e Kosovës (AAK)], supported by 40 representatives of different political parties. The recommendations by the Alliance for the Future of Kosovo were adopted in the session, including the request to the ICTY to secure “a transparent, fair and quick” trial of Haradinaj and others, and to the state institutions to urgently secure legal and material support to the accused in this process.

The text of the adopted recommendations says: “Convinced of the innocence of Mr. Haradinaj and his companions and praising the struggle of the Kosovo Liberation Army (KLA) [Ushtria Çlirimtare e Kosovës (UÇK)], the Parliament of the Republic of Kosovo requests the Tribunal to secure a transparent, fair and quick trial against the former Prime Minister of Kosovo Mr. Haradinaj, in order to cause the early return of Mr. Haradinaj and his companions to Kosovo.”³⁹⁹

The Prime Minister of Kosovo Hashim Thaçi attended this session and expressed in reference to this matter the readiness of the Government of Kosovo and his personal to offer assistance, and that they were waiting for the necessary circumstances to extend the adequate legal and judicial assistance to the full extent of the legislation and the Constitution of the Republic of Kosovo. The Prime Minister pointed out that the Government believed in the complete innocence of the accused and believes that the trial of Haradinaj would be a fair and transparent one.⁴⁰⁰

In the course of the debate, the representatives of the opposition parties expressed doubts about the Government’s assistance to the accused in this process, and stated that “unlike Serbia, Kosovo did not submit enough evidence to prove that the struggle of the KLA was a just one.”⁴⁰¹ “If there was enough dedication to the defence of the values inherent to our struggle, we would not be facing such challenges and UNMIK or EULEX would not be arresting our liberators”, said Rexep Selimi from the Self-Determination Movement [Vetëvendosje].⁴⁰² The only Serbian political party in the current composition of the Parliament, the Independent Liberal Party [Samostalna liberalna stranka (SLS)], did not participate in the debate, nor did its representatives support the recommendations.⁴⁰³

4.5. Montenegro

In the course of 2010 there were debates in the Assembly of Montenegro on confronting the conflicts from the times of the wars in the nineties, on the occasion of the discussion on the Report on the Work of the Courts for 2009, and in the process of the adoption of the Draft Law on the Confirmation of the European Convention on the Inapplicability of the Statutory Limitations to Crimes against Humanity and War Crimes, 24 October 2010.⁴⁰⁴

398 Ramush Haradinaj was arrested on 20 July 2010 and transferred to the detention center of the ICTY in The Hague, when the Appeal council of the Tribunal abolished the acquittal verdict of the first instance and ordered a retrial related to several items of the indictment.

399 The Republic of Kosovo – The Assembly, “Recommendations”, 31 May 2011, the Internet page of the Assembly of the Republic of Kosovo, http://www.kuvendikosoves.org/common/docs/2011_05_31_Preporuke.pdf.

400 The transcript of the Extraordinary Plenary Session of the Assembly of the Republic of Kosovo, 31 May 2011. The transcript was obtained following a request to the Assembly of Kosovo, 27 January 2012.

401 “The Assembly Requires The Hague to Accelerate the Trial of Haradinaj”, the Internet page *Radio Free Europe*, 31 May 2011, http://www.slobodnaevropa.org/content/skupstina_trazi_od_haga_ubrzanje_procesa_haradnaju/24211131.html.

402 *Ibid.*

403 In the new composition of the Assembly, constituted after the elections of December 2010, the Democratic Movement of Kosovo of Hashim Thaçi has the majority with its 37 representatives, the Self-Determination Movement has 12 mandates, the League for Democratic Kosovo 27 mandates, the Alliance for the Future of Kosovo 11 mandates, and the Serbian Liberal Party 8 mandates.

404 The transcript of the 2nd Session of the 2nd Regular General Sitting, 14 October 2010, p.75, 2 Part. http://www.skupstina.me/cms/site_data/SKUPSTINA_CRNE_GORE/AUTORIZOVANI%20FONOGRAFSKI%20ZAPISI%20SA%20SJEDNICA/2-1%20DIO.pdf.

During the debate on the Report on the Work of the Courts for 2009, the Representative of the pro-Serbian opposition Socialist National Party [Socijalistička narodna partija (SNP)] Aleksandar Damjanović declared that in the trials of war crimes cases he wanted to see «the full autonomy and independence of the courts» and courts which are immune to any kind of pressure. He labelled the deportation of Bosnian refugees during the armed conflict in BH as «so-called», and made known that he did not want «to see the verdicts for so-called crimes in the service of future reports by certain foreign commissions which are going to make their own positive or negative evaluations on the grounds of such verdicts».⁴⁰⁵ The Justice Minister at that time, Miraš Radović, emphasized that Montenegro “as a democratic society and a responsible state” had made an effort to secure that the cases of the breaches of the norms prescribed by the humanitarian law and law of war, dating from the period of the armed conflicts in former Yugoslavia, “be granted quality processing either before our courts or before the Court in The Hague, with which Montenegro has cooperated closely since its founding”. Radović also stated that the institutions of Montenegro had made an ample contribution in order to prevent it happening that “any case be neglected or excused, that any perpetrator remains outside the reach of justice, that any victim be deprived of compassion and satisfaction - and not only of moral satisfaction”.⁴⁰⁶

In the course of the debate on the Draft Law on the Confirmation of the European Convention on the Inapplicability of the Statutory Limitations to the Crimes against Humanity and War Crimes, the issue was addressed of attention being paid only to the crimes committed against one nation. During the debate on the adoption of the Resolution of the European Parliament on Srebrenica this issue was raised again.

Ervin Spahić (SDP) supported the adoption of this Law, announcing that it represents “a deterrent and the guarantee that war crimes shall not go unpunished, on whichever side they have occurred”.⁴⁰⁷

Slaven Radunović of the New Serbian Democracy [Nova srpska demokratija (NOVA)] accused Spahić of recalling only “the crimes against one people”. “If not, why did you not mention Bratunac? We should do so, because people here talk about the inapplicability of the statutory limitations”, said Radunović. He asked why he did not mention the Ustasha crimes in Jasenovac, because “there were many more killed there than in Srebrenica”.⁴⁰⁸

Predrag Bulatović (SNP) asked if there are documents with the institutions related to the so-called deportation of Muslims’ in May 1992, and if some of these documents are classified as public, and if anyone from the Office of the Prosecutor or from the court ever requested the delivery of such documents. According to him, it was a possibility not to be excluded that some individual had some document which the government did not have, some relevant one, even if classified as secret.⁴⁰⁹ The Deputy Prime Minister Svetozar Marović confirmed that certain documents did exist and that some of them had been classified as secret, and also that there were several requests by the judiciary organs which the Government failed to answer.⁴¹⁰ Predrag Bulatović reacted to that by saying that the public in Montenegro should be informed that the Assembly had revoked the classification as secret in reference to this case. The trial for deportation does not affect only the accused individuals, but also Montenegro, because it was his opinion that it concerns “high officials in the Police, some of whom were in important positions as state officials, Parliamentary Representatives, federal officials – as late as until 2004”.⁴¹¹

In the same way, most discussions on war crimes in 2011 at the Assembly of Montenegro occurred following the presentation of annual reports on the work of the courts and the Office of the Prosecutor. In such discussions,

405 The transcript of the 8th Session of the 1st Regular General Sitting, 15 June 2010, p.187, <http://www.skupstina.me/index.php?strana=sjednice&tipS=0&sjednicaid=664>.

406 The transcript of the 9th Session of the 1st Regular General Sitting, 16 June 2010, p.87, <http://www.skupstina.me/index.php?strana=sjednice&tipS=0&sjednicaid=663>.

407 The transcript of the 2nd Session of the 2nd Regular General Sitting, 13 October 2010, p. 58-59; <http://www.skupstina.me/index.php?strana=sjednice&tipS=0&sjednicaid=754>.

408 *Ibid*, p. 60.

409 The transcript of the 3rd Session of the 2nd Regular General Sitting, 27 October 2010, p. 23-24; <http://www.skupstina.me/index.php?strana=sjednice&tipS=0&sjednicaid=784>.

410 *Ibid*, p. 24-25.

411 *Ibid*, p. 25-26.

in addition to the Parliamentary representatives, the representatives of the judiciary participated as well. Some opposition representative criticized the work of the courts and of the Office of the Prosecutor, and there was also a condemnation of the construction of the monument to the civilian victims of the war in former Yugoslavia in Pobrežje Park in Podgorica. The representatives and ministers from the ruling Democratic Socialist Party [Demokratska partija socijalista (DPS)] emphasized the positive role of Montenegro on the matter of war issues and in the process of confronting the past.

In the debate on the Report of the Supreme State Prosecutor of Montenegro on the work of the State Prosecutor's Office for 2010, Suljo Mustavić from the Bosnian Party [Bošnjačka stranka] expressed interest in the engagement of the Office of the Prosecutor in collecting the evidence for initiating court procedures in cases of war crimes. He wished to challenge the acquittal verdicts, one of the district Court in Bijelo Polje in the Bukovica Case, and another of the District Court in Podgorica in the case of the deportations of Bosnian refugees. Mustafić pointed out that these acquittal verdicts "seriously put in doubt the results of the work and the credibility of our Prosecutor's Office". The verdict of the District Court in Bijelo Polje, on the grounds of the evidence presented by the Prosecutor's Office, he viewed as the epilogue of a "farcical process", in the course of which sufficient evidence failed to be presented. According to him, the Prosecutor's Office did not properly collect the evidence of deportations, which he described as "a manhunt and sending to the scaffold", and he emphasized that it was necessary to tackle the issue of command and political responsibility too.⁴¹²

In the debate on the Annual Report on the Work of the Courts for 2010, Ervin Spahić (SDP) stated that he considered the court verdicts in the case of the deportations of Muslims as "really founded on untrue, incorrect and even false statements".⁴¹³

The case of the abduction of passengers from the Belgrade-Bar train in 1993 at the station of Štrpce was reopened in 2011. Koča Pavlović, from the Movement for Change [Pokret za promene (PZP)], asked if the police and the Office of the Prosecutor of Montenegro had closed the investigation of the crime in Štrpci, and whether the monument opened by Prime Minister Lukšić on 11 July 2011 in Pobrežje Park in Podgorica was also dedicated to those who were abducted 20 years ago in Štrpci.⁴¹⁴ Pavlović stated that the Club of Representatives of the Movement for Change had been approached by the Committee of the Jurists of Montenegro [Komitet pravnika Crne Gore za ljudska prava]. They informed the Representatives of the PZP of the long continuing efforts of the families of the abductees of Štrpci to erect a monument somewhere. "They are not satisfied with this joint monument in Pobrežje", said Pavlović, and added that "a monument which records a crime must have inscribed the name of the crime, to make clear which crime it is related to". He presented his opinion that the monument in Pobrežje "becomes an anti-monument, because a monument must testify to our children that crime does not pay, and it does not pay only if the criminals are clearly recognized and punished".⁴¹⁵

Obrad Stanišić, from the DPS, sharply criticized the opinion of Pavlović, declaring that he had thereby "insulted not only those for whom the monument was erected, but also their families and the citizens of Montenegro".⁴¹⁶

4.6. Macedonia

The two biggest Macedonian political parties, the Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity [Внатрешна македонска револуционерна организација – Демократска партија са македонско национално единство (VMRO-DPMNE)] and the Social-Democratic Alliance of

412 The transcript of the 9th Session of the 1st Regular General Sitting, 22 June 2010, p. 14; <http://www.skupstina.me/index.php?strana=sjednice&tipS=0&sjednicaid=1110>.

413 *Ibid*, p. 67.

414 The transcript of the 12th Special Session of the 1st Regular General Sitting, 26 July 2011, p. 41; <http://www.skupstina.me/index.php?strana=sjednice&tipS=0&sjednicaid=1160>.

415 *Ibid*, p. 42.

416 *Ibid*, p. 43.

Macedonia [Социјалдемократски сојуз на македонија (SDSM)] had mutually opposing attitudes on the decision of the Assembly of Macedonia on “the authentic interpretation of the Law on Amnesty”. The VMRO-DPMNE strongly supported the process of extending the amnesty to the cases transferred to the local judiciary following Rule 11*bis* of the Statute of the ICTY, considering it a positive precondition for the reconciliation process in Macedonia.⁴¹⁷ The SDSM, as the opposition party, opposed this, and considered the amnesty totally unacceptable, with the perpetrators being thereby rewarded, instead of punished.⁴¹⁸

Only several hours before the adoption of the Draft Law which will enable the broader implementation of the amnesty, one of the SDSM representatives, Andrej Petrov, declared that this was endangering the legal state of Macedonia, and that it would leave an indelible stain on the history of Macedonia.⁴¹⁹

The Assembly debates on war crimes committed in Macedonia intensified after the adoption of the authentic interpretation of the Law on Amnesty in July 2011. The representatives of the opposition used that opportunity for criticism of the amnesty for war crimes.

The SDSM representatives Vesna Bendevska and Marjančo Nikolov expressed the attitude that we are dealing here with a previous agreement between Nikola Gruevski, the Prime Minister of Macedonia and leader of the VMRO-DPMNE, and Ali Ahmetaj, the leader of the Democratic Union for Integration [Bashkimi Demokratik për Integrim (DUI), the leading Albanian party]⁴²⁰; and Nikolov went a step further, by saying that such an agreement suspended the institutions of the republic of Macedonia and that politics had been placed above the judiciary⁴²¹. Jani Markaduli, also from SDSM, accused the government that by its positive attitude towards the amnesty (which preceded the voting in the Assembly) it had nullified the law and had extended the amnesty to the persons responsible for the abductions and killings of Macedonian citizens in 2001.⁴²²

The Albanian representatives, particularly those from the DUI, the coalition partner of the VMRO-DPMNE in the Government, made an energetic attempt to explain why the amnesty was necessary in the cases transferred from the ICTY to the Macedonian judiciary. Suzana Saliu (DUI) even stated that “The Hague Tribunal completed its work, estimated that in the files which we had delivered to them there had been no elements for prosecution of grave crimes against humanity, and made the decision which is known to both the local and international public.”⁴²³

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4.7. Slovenia

In 2010 and 2011, there have not been any debates in the Parliament of Slovenia expressly devoted to the events from the period of the armed conflict in Slovenia.

On the other hand, a frequently addressed issue in the Parliament of Slovenia was the relation to the ‘erased’. In late 2008, after the information broke out that the President of the Parliamentary Committee for Foreign Affairs Ivo Vajgl had declared in Belgrade that the ‘erased’ were going to be issued with documents or else reimbursed, the Slovenian Democratic Party [Slovenska demokratska stranka (SDS)], in opposition at that time, labelled Vajgl’s move as “an attempt to increase the support of the voters on the transition-shaken left, to the detriment of the taxpayers”. This was the reason for calling an Extraordinary Session of Parliament, in which the opposition parties once again sharply attacked any attempt to repair the injustice done to persons covered by the category of the ‘erased’.⁴²⁴

417 See the first chapter of this Report and find the explained amnesty process and the specifics of the so called The Hague issues.

418 The interview with Dane Taleski, the political analyst, 27 December 2011.

419 The stenographic record of the 4th Session of the Assembly of the Republic of Macedonia, 19 July 2011, p. 9.

420 The stenographic record of the 8th Session of the Assembly of the Republic of Macedonia, 29 August 2011, p. 8.

421 The stenographic record of the 12th Session of the Assembly of the Republic of Macedonia, 15 October 2011, p. 30.

422 The stenographic record of the 15th Session of the Assembly of the Republic of Macedonia, 25 November 2011, p. 2.

423 The stenographic recording of the 4th Session of the Assembly of the Republic of Macedonia, 19 July 2011, p. 11.

424 The request for an Extraordinary Session of the Slovenian Parliament, the Internet page of the Slovenian Democratic Party: www.sds.si/media/sklic.izredne.seje.dz-vajglova.izjava.doc.

The representatives of the parties on the right political wing with the SDS at its helm opposed also the new data of the number of the 'erased', which was established by the Slovenian Ministry of Internal Affairs in 2009. The representatives of these parties were convinced that the actual number was approximately or even less than 18,305 persons, as opposed to the new number of 25,671 persons. In 2011, these parties repeated similar arguments and pointed to the Minister of Internal Affairs Katarina Kresal as responsible for the allegedly wrongly established and increased number of the 'erased'. However, the Parliamentary Committee in charge of the issue of the 'erased' confirmed by a majority vote of the members of the ruling coalition the increased number of the 'erased'.

In addition to that, an often raised issue was reparations to the 'erased', particularly at the time the verdict of the European Court for Human rights in the case of several 'erased' citizens of Slovenia was being expected. Milan Pobjbić (SDS), for instance, told the representatives of the ruling coalition that "in this mandate they have managed to impose a long-term burden on the Slovenian State with the reparations to the 'erased'", while the representative of the Slovenian National Party [Slovenska nacionalna stranka (SNS)] Srećko Prijatelj protested against paying any attention to "the 'erased', Gypsies and homosexuals" by the Parliament.⁴²⁵

5. The Media and the Reporting on War Crimes

5.1. Bosnia and Herzegovina

As regards the issues related to war crimes, there is still some "patriotic journalism" in the media and the nationalistic ideology is dominant.⁴²⁶ This manner of operation has not changed since the end of the armed conflict.

There are drastic differences in reporting depending on the administrative location of the headquarters of the given medium. In an analysis of media reporting on war crimes trials, *The Media and the National Ideologies*, published by Mediacentar from Sarajevo 2011, the media reporting in BH on the arrest of Radovan Karadžić in July 2008 was analysed. The printed media from Sarajevo paid most attention to the arrest of Karadzic. They carried the highest number of articles percentagewise, more first page announcements than anywhere else and a high percentage of texts which included photographs. In the printed media in Banja Luka, all these indicators scored considerably lower than in Sarajevo. In the Croatian media in Mostar this subject was least present. The differences in media reporting match the differences in ethnic/national attitudes of the political elites in BH. The newspapers from Sarajevo emphasized Karadzic's role in war crimes, while those from Banja Luka did so less often. The Mostar daily *Dnevni list* kept mostly neutral, with an insignificant number of negative interpretations.

The publication, "Readiness for Reconciliation in Bosnia and Herzegovina" also dealt with media reporting on the Karadžić Case by analyzing how much attention the media paid to the beginning of the trial of Karadžić and in what manner they did so, pointing to the different approaches and styles of reporting as related to the particular media headquarters' administrative location, i.e. which part of the BH audience they were addressing.⁴²⁷ According to their findings, a journalist on *Dnevni Avaz*, Almasa Hadžić, took the lead, with 14 contributions related to the trial of Karadzic, to whom she most often referred as "the bloodsucker of Pale".⁴²⁸ In *Dnevni list* of Mostar no comments were published, but rather reports on the occasion of the introductory address of the Prosecutor of the ICTY and the cross-examination of the witnesses. The press in Banja Luka, on the other hand, avoided mentioning the crimes with which Karadžić had been charged. They were mentioned in just one out of three published articles in Banja Luka.⁴²⁹

425 The recording of the 14th Session of the Slovenian Parliament, 2 March 2010, the Internet page of the Slovenian Parliament: <http://www.dzrs.si/wps/portal/Home/deloDZ/seje/evidenca?mandat=V&type=mag&uid=D76129EBCBD177D8C12576DA0032162B>.

426 "Media and National Ideologies: Analysis of the Reporting on the War Crimes Trials", Media centar, Sarajevo, 2011, http://www.media.ba/mcsonline/files/shared/MEDIJI_I_NACIONALNE_IDEOLOGIJE_-_za_web__2_.pdf, str. 10.

427 Srdan Puhalo, Nebojsa Petrović, Neda Perišić: Readiness for Reconciliation in Bosnia and Herzegovina (Fridrich Ebert Stiftung, Sarajevo, 2010).

428 *Ibid*, p. 130.

429 *Ibid*, p. 131.

As regards the war reporting and the negative role which the media played during the armed conflicts, there have been no institutional sanctions in BH. In BH, no indictments were ever issued against warmongers, or against any media house or individual journalist.

5.2. Croatia

Investigative journalism on war crimes in Croatia has been neglected and serious texts on this subject are rather rare.⁴³⁰ The media silence is interrupted mostly only in cases of apprehensions, arrests or trials.⁴³¹ After the publication of the rare texts that disclose the facts of war crimes, threats to journalist occur very often, particularly when there are politicians related to war crimes.⁴³²

In July 2011, the journalists of *Aktual* published that the apprehended General Mladen Kruljac had admitted that the Deputy Chief of the Main Headquarters of the Armed Forces of the Republic of Croatia, Slavko Barić, had asked him to help with the assassination of the journalist Drago Hedl. Hedl learned that information as early as in June 2010, and he had suspected that the threat was related to his writing about the role of General Barić in the Homeland War (the *Požega Villages Case*), and on his contested status of war-disabled person.⁴³³

The Vice-President of the Croatian Assembly, Vladimir Šeks, in an interview with *Hrvatski list* in January 2011, referred to journalists and editors as the “political underground”, some of whom “seek to draw attention with their anti-Croatian point of view”, and who then “collaborate” with Amnesty International and with the Youth Initiative for Human Rights, with Savo Štrbac and NGO *Veritas*. He called such journalists “media killers and piranhas”.⁴³⁴ Šeks also sent, in August 2011, a letter to the editors of the media, in which he stated that in Croatia the fundamental rules of objective and impartial reporting had been disobeyed, that «ideologically dubious» articles had been published, and that «journalists and editors prone to invention continue doing their dirty job». In that letter, he called on the Croatian Association of Journalists [Hrvatsko novinarsko društvo] to react, and accused it of failing to perform to the utmost extent its important duty of protecting the media space from contamination by lies, insinuations, political trickery and unprofessional ‘journalism’.⁴³⁵

Several journalists prepared and published “The White Book: A Chronicle of Threats and Attacks on Journalists 1990-2011 [Bijela knjiga – Kronika prijetnji i napada na novinare 1990-2011]”, which presents a comprehensive overview of 70 cases of death threats, systematic intimidation and physical attacks against Croatian journalists in that period.⁴³⁶ Twelve of those were attacks or pressures against the journalists and the editors who had been writing or reporting on the problems of war crimes and Transitional Justice.⁴³⁷ The attacks on Drago Hedl lasted

430 The interview with the journalist of *Jutarnji list* Slavica Lukić and with the journalist of the Croatian RTV Saša Kosanović, December 2011.

431 Slavica Lukić wrote about Merčep's crimes only when he was apprehended, and again when the indictment was issued against him. About the crimes in Sisak also, she wrote only when the indictment was issued, and about the ultimate responsibility of Vladimir Šeks only after the publication of the Amnesty International Report.

432 Interview with Slavica Lukić: she received a whole series of letters addressed to “That Chetnik Whore Slavica Lukić” and “That MEGASERB Slavica Lukić”.

433 “Hedl: General Slavko Barić Threatened to kill me! Barić: I shall sue the slanderers”, 12 July 2011, the Internet page of *Novi List*. <http://www.novolist.hr/Vijesti/Crna-kronika/Hedl-General-Slavko-Baric-prijetio-je-da-ce-me-likvidirati!-Baric-Tuzit-cu-klevetnike>.

434 This interview and the subsequent reactions developed as a response to the singling out of the Croatian Government by Amnesty International and the Youth Initiative for Human Rights in relation to the judicial processing of Vladimir Šeks for his potential responsibility for certain war crimes. In addition to publication of that news, the journalists also wrote texts which had questioned the ultimate responsibility of Vladimir Šeks.

435 The researcher in Croatia had access to the letter of Vladimir Šeks to the editorial boards of the Croatian media. The letter was sent to the media in August 2011.

436 The editor of the “White Book”, Renata Ivanović, stated that “out of the 70 cases included here, 50 were reported, 11 were resolved, but not all of them favourably for the journalists. Six cases are still subject to judicial procedure, and in 28 cases the perpetrator has not been detected. Actually, there were more cases - 105 - but around 30 of them were not taken into account, because some of the colleagues involved had left journalism, and some did not want to participate, in accordance with the theory that attacks against them constitute a part of their profession”. „Bijela knjiga - Kronika prijetnji i napada na novinare 1990– 2011“, Zagreb, 2011.

437 Which makes for around 17% of all attacks and pressures being brought to account.

from 1992 through 2009. They were related to his reporting on the *Glavaš* Case and on the crimes in the Osijek area. He was served death threats from Branimir Glavaš as early as 1992 through the Parliamentary Member Ivan Vrkić. Glavaš sent a message to Hedl that he would turn him into “dust and ashes” if Hedl failed to stop writing on the crimes mentioned. In the opinion of numerous journalists, there is almost no possibility of lustration with the journalists who had fuelled the war propaganda and hate speech in Croatia in the nineties. In fact, there is a general consensus that the journalists did an excellent job and that their role was morally justified.⁴³⁸

The verdict on Croatian Generals Gotovina, Markač and Čermak pronounced on 15 April 2011 occupied a large portion of media space in those days.⁴³⁹ The media mostly did not report on the verdict objectively, but tried to convince the public that such a verdict constituted the criminalisation of the entire corps of Croatian military units participating in the war of 1991-1995. Clear examples of this were the front pages of *Večernji list* of 15 and 16 April. On the first, a stylized portrait of Gotovina was published in front of the Croatian tricolored flag, with the title “Hero”. The other displayed at the top of the page the words: “We published yesterday that Ante Gotovina is a hero. We still think so today”.

In HRT reporting, what prevailed were the reactions of common citizens, the defenders, fellow combatants, the legal defence team of the accused, family members and personal friends of the accused, politicians and public persons who had fully expressed dissatisfaction, anger and sorrow against such verdict. The statements of the victims and their public advocates were almost altogether missing. The verdict was labelled draconic and unjust by journalists and reporters. A large majority of them stated that this represented a verdict against the Homeland War and the Republic of Croatia as such. The reporters published some obviously untrue statements, and they were strongly biased.⁴⁴⁰ There was a whole mass of articles from throughout Croatia about citizens shocked by the verdict. In one such statement, a citizen of Pakoštan responded to a question in a poll, “Who did we fight for? For them?” (Voice from the background: “They should be expelled, many more of them, and they are protected like the bears from Lika.”) “We are not supposed to utter a single word, and look what they are doing to our people.”⁴⁴¹

The NGO *Documenta* analyzed the content of 16 principal news broadcasts of *Dnevnik* on HRT, 15-30 April 2011. It established that the principal evening news broadcast on the day of the pronouncement of the verdict was entirely devoted to the verdict on the Croatian generals, while on the next day the issue consumed 72 percent of the broadcast time of this, the most important informative programme in the country. In the first *Dnevnik* researched, that of 15 April, only three persons (all of them in Belgrade) expressed an attitude contrary to that of the majority, i.e. they did not express shock in relation to the verdict. In all the other *Dnevnik* broadcasts researched, out of the 184 messages conveyed, only three were from the victims or the members of an association of victims.

5.3. Serbia

On 8 July 2009, the Independent Association of Journalists of Serbia [Nezavisno udruženje novinara Srbije (NUNS)] filed criminal charges against unspecified persons among the individuals and journalists responsible for Radio-Television of Belgrade [Radio-televizija Beograd (RTB)], Radio-Television Novi Sad (RTNS), and the dailies *Politika*, *Večernje novosti* and others, for the crime of instigating and organizing genocide and war crimes, on the

438 The interview with the journalist of *Jutrnji list* Slavica Lukić and with the journalist of Croatian RTV Saša Kosanović, December 2011.

439 According to the research conducted by Documenta on the reporting by public television on the verdict of the ICTY in the case of Gotovina and others, the first principal news programme of Croatian Radio and Television [Hrvatski radio i televizija (HRT)], *Dnevnik*, lasted 41.07 min and was devoted entirely to the verdict against the generals. The Research into the Content of the Principal News Programme of Croatian Radio and Television, *Dnevnik*, in the Wake of the Verdict on Generals Gotovina, Markač and Čermak 15-30 April 2011, the Internet page of Documenta. http://www.documenta.hr/documenta/attachments/460_Istrazivanje%20sadrzaja%20Dnevnika%20javne%20televizije%2015%2004%20-%2030%2004%202011.pdf.

440 The Research of the Content of the Principal News Programme of Croatian Radio and Television, *Dnevnik*, in the Wake of the Verdict on Generals Gotovina, Markač and Čermak, 15-30 April 2011, the Internet page of Documenta. http://www.documenta.hr/documenta/attachments/460_Istrazivanje%20sadrzaja%20Dnevnika%20javne%20televizije%2015%2004%20-%2030%2004%202011.pdf

441 *Ibid*, p. 8.

basis of Article 145 of the Criminal Code of the Federal Republic of Yugoslavia. The reasoning for the charges stated that by hate speech and by spreading misinformation, the media carried out political propaganda aimed at creating the belief that the war had been justified, including the gross breach of the norms of humanitarian law. That had strongly affected the broader public, particularly the members of the paramilitary formations who had demonstrated such vindictiveness during the conflict. Such intentional media manipulation “both at the subjective and at the objective levels constitutes the act of calling for and instigating war crime, which is the crime of organizing and instigating genocide and war crimes as defined by Article 145 of the CC of FRY.”⁴⁴²

In December 2011 the Office of the Prosecutor for War Crimes of Serbia promoted the publication “Words and Misdeeds: Calling for and Instigating War Crimes in the Serbian Media 1991-1992”, which presents the material collected in the pre-investigation phase of the *Media* Case. The Office of the Prosecutor explained this by the need to include the expert and professional public into the search for answers to numerous dilemmas relating to the criminal responsibility of the Serbian judiciary as regards the media.⁴⁴³ The representatives of the Office of the Public Prosecutor for War Crimes stated that the responsibility of the media for war crimes should be fully investigated, although the Office of the Prosecutor did not have a clearly defined position on the issue; it was clear only that it did not want to announce any eventual judicial procedure.⁴⁴⁴

One of the media mentioned in the criminal filing of NUNS, Radio-Television of Serbia, apologized on 18 April 2011 to “those citizens of Serbia and the citizens of the neighbouring region who were subjected to insults, slanders and contents which would fit the current legal description of hate speech, and which had been broadcast in the programmes of Radio-Television Belgrade and RTS in the nineties.”⁴⁴⁵

5.4. Kosovo

The Human Rights Watch documented the threats to Vehbi Kajtazi, a journalist of the daily newspaper *Koha Ditore*, delivered in 2010 by Sabit Geci, a former Kosovo Liberation Army member. The threats to Kajtazi followed the publication of his text critical of the amnesty extended to a group of prisoners who included Alban, the son of Geci.⁴⁴⁶ According to Kajtazi, reporting on war crimes was not a problem, but research into the crimes had been very difficult, and all journalists “who write on war crimes committed by the KLA risk being proclaimed traitors.”⁴⁴⁷

5.5. Montenegro

The Centre for Civil Education [Centar za gradansko obrazovanje (CGO)] on 12 June 2009 called on the Supreme State Prosecutorial Office to pay attention to the issue of “the responsibility of journalists who eagerly promoted hate speech in the war period in the nineties, which had significantly influenced the attitude and engagement of Montenegro in the war developments of that period in the territory of former Yugoslavia.”⁴⁴⁸ The President of the Supreme Court of Montenegro, Vesna Medenica, responded shortly after with her statement those journalists

442 The charges filed by NUNS were published in “Words and Misdeeds: Calling for and Instigating War Crimes in the Serbian Media 1991-1992”, Centar za tranzicione procese, Belgrade 2011, p. 384.

443 *Ibid*, p. 13.

444 “The Role of the Media in War Crimes Must Bee Investigated”, *Politika*, 3 December 2012.

445 A Programme Policy-Related Statement of the Steering Board of RTS, 23 May 2011, the Internet page of *Radio-Television of Serbia*, <http://www.rts.rs/upload/storyBoxFileData/2011/05/23/1379756/Programska%20izjava%20UO%20RTS.pdf>.

446 Human Rights Watch World Report 2011, Country Report Kosovo, the Internet page of *Human Rights Watch*, <http://www.hrw.org/en/world-report-2011/serbia#kosovo>.

447 Electronic communication with Vehbi Kajtazi, journalist of *Koha Ditore*, 1 February 2012.

448 “To Establish the Commission for Investigating the Role of Journalists”, communiqué of the Center for Civil Education, the internet page of CGO, 12 June 2009. <http://cgo-cce.org/saopstenja/CGO%20Oformiti%20komisiju%20za%20ispitivanje%20uloge%20novinara%2020062009.pdf>.

should also be held responsible if they had fuelled the war developments in the territory of former Yugoslavia.⁴⁴⁹ As of the end of 2011, the Supreme State Prosecutorial Office did not open any investigation into the responsibility of journalists.⁴⁵⁰

5.6. Macedonia

In Macedonia there were no cases linking journalists to the instigation of hatred on ethnic grounds and/or to the denial of war crimes.⁴⁵¹ Articles related to war crimes and conflicts in Macedonia are very rare. When some report on this topic occurs, the media regularly place it in the context of matters of political interest.⁴⁵² A mild increase of media interest in war crimes was noticeable in the second half of 2011 in relation to the authentic interpretation of the Law on Amnesty, by which all judicial and investigative processes regarding war crimes were discontinued.

5.7. Slovenia

Although the media opened the issue of several events from the time of the armed conflict in Slovenia in 1991, they have not been investigated or processed as of yet. This category includes the incidents at the border crossing at Holmec and the Škofije Case, which the media had mentioned as possible breaches of humanitarian law.⁴⁵³

IV. Fact-finding and truth-telling

1. Summary

During 2010 and 2011, there were no official initiatives to establish at state (national) level a truth commission in the region.

During that period, an Expert Work-group developing a Transitional Justice Strategy for BiH was conducting consultations on the model and draft proposals for the establishment of an extra-judicial body to be tasked with fact-finding and truth-telling at a national level. Despite numerous court rulings, a significant number of BiH citizens still believe that relevant conflict-related facts have not yet been established. Many fact-finding and truth-telling initiatives had been undertaken in BiH since the signing of the Dayton Peace Accords, mostly within the civil sector. Most of them, however, were primarily aimed at urban centers, and lacked coordination with each other.

After many years of intensive consultations within the RECOM process framework, the RECOM Statute Draft was finally adopted in March of 2011. It was presented to all heads of state in the former Yugoslavia, along with more than half a million signatures gathered from citizens across the region. Towards the end of 2011, the RECOM Process entered its institutionalization phase, defined by the initiative's shift from the civilian to the political levels.

449 "Medenica: 70 Percent of all Cases Resolved", the Internet page of *Pobjeda*, 15 July 2009; <http://www.pobjeda.me/arhiva/?datum=2009-07-15&id=167652>.

450 The electronic response of Mirela Rebronja, the Programme Coordinator of CCE, the Internet page of *CGO*, 10 January 2011.

451 Interview with Katarina Neškowska, journalist of *Nova Makedonija*, 13 December 2011.

452 Interview with Katarina Neškowska, journalist of *Nova Makedonija*, 20 February 2012.

453 The Court of Honour of the Association of Journalists of Slovenia condemned journalist Bojan Buđa for an article on Holmec and the alleged shooting at JNA soldiers during their surrender, as a breach of the Code of Honour. *Mladina* wrote a lot on the events at Škofije, where, after the ceasefire, Slovenian policemen on 29 June 1991 allegedly killed members of the JNA who were on a truck. "Ali smo nedolžni? Neraziskane temne strani herojske osamosvojitve", *Mladina*, 14 May 2006, the Internet page: <http://www.mladina.si/92583/ali-smo-nedolzni/>.

The Croatian State Memorial-Documentation Center of the Homeland War continued to document facts about the conflict in Croatia, and expanded its activities in order to include the conflict in BiH as well. In 2011, the Republic of Kosovo formed an official War Crimes Institute charged with conducting, monitoring and coordinating all war crimes investigations. In Serbia, Croatia and Kosovo, human rights organizations engaged in documenting war crimes (HLC, HLC Kosovo and Documenta) continued their work of creating a comprehensive registry of human losses suffered in the armed conflicts of the nineties. In Slovenia, the Peace Institute in Ljubljana continued its investigation into the facts concerning “the erased”.

The process of regional coordination and the linking of associations of families of the disappeared in the former Yugoslavia began in 2011, under the auspices of the International Commission for Missing Persons (ICMP). The aim was to increase pressure on the region’s governments to investigate effectively and shed light on the fates of those who went missing during the conflict. According to the ICRC, as of December 31, 2011, the fates of ~13,500 people who disappeared in connection with the conflict between 1991 and 2001 were still unresolved. Leading the efforts on locating and identifying the mortal remains of the disappeared were the State Commissions on Missing Persons in Montenegro, Croatia and Serbia, and the Institute for Missing Persons in BiH. In Kosovo, efforts aimed at discovering the fates of the disappeared were being conducted by the Government Commission on Missing Persons, and the departments of forensic medicine within EULEX and Kosovo’s Justice Ministry.

Most textbooks used in elementary and high schools in 2010 and 2011 in BiH, Croatia, Serbia, Kosovo, Montenegro and Slovenia exhibit a quite evident ethnic bias. Most of them assign responsibility for war crimes or the breakup of Yugoslavia to the “other” side, while being noticeably silent on their “own” side’s involvement; while textbooks used in Macedonian elementary and high schools fail to mention the 2001 conflict.

2. Truth commissions

2.1. Bosnia and Herzegovina

At the beginning of 2010, the recently formed Expert work group (EWG) charged with developing a strategy for transitional justice in BiH, was divided into three thematic subgroups, the fact-finding and truth-telling subgroup being one of them. It was comprised of state institutions and civil society representatives, and, in particular, representatives of the victims’ associations which hosted and took part in the subject-oriented consultations, and submitted their own reports to the subgroup. As stated in the summary, by the end of 2011, the development of a Strategy for Transitional Justice in BiH was in its final stages.

2.2. Slovenia

Ever since it declared independence, Slovenia has been taking steps to resolve past-related issues with its neighbor to the west, Italy.

At Italy’s initiative, the Foreign Ministries of both states jointly created a Slovene-Italian Historical and Cultural Commission in 1993. The Commission was tasked with establishing historical facts about the state of relations that existed between the two peoples from 1880 to 1956.⁴⁵⁴ Comprised of seven Slovene and seven Italian historians, the Commission went on to publish its joint report in 2000. The report analyzed and tried to resolve contentious Slovenian-Italian historical issues, including the responsibility for the start of the war, the murder of Slovene civilians at the hands of Italian occupying forces, the mass murder of Italians by Partisan forces in Istria, and, finally, the Italian exodus from Istria and Dalmatia after the war.

454 Poročilo slovensko - talijanske zgodovinsko - kulturne komisije – Ministry of Foreign Affairs, Republic of Slovenia, see link: http://www.mzz.gov.si/fileadmin/pageuploads/Zakonodaja_in_dokumenti/dokumenti/Porocilo_SIZKK.pdf

There were no initiatives in Slovenia calling for the establishment an official truth commission to deal with the armed conflicts that followed the breakup of Yugoslavia.

2.3. Regional level

2.3.1. The RECOM Process

In 2010, the regional coalition of NGOs and victims' associations advocating for the establishment of a Regional Commission to determine all of the facts about war crimes perpetrated during the nineties (RECOM)⁴⁵⁵, reached the final stage of consultations on the Commission's mandate, goals and tasks. In 2010, the Coalition was joined by NGOs and victims' associations from Macedonia and Slovenia, which strengthened it even further.⁴⁵⁶

From May 2010 until March 2011, the debate on transitional justice taking place during consultative meetings and regional forums revolved primarily around RECOM's Draft Statute, its goals, tasks, work scope, membership, powers and procedure for the appointment of new members.⁴⁵⁷

At the beginning of 2010, the Coalition for RECOM formed an expert workgroup to analyze all of the suggestions and recommendations that have been voiced over the course of the four-year-long consultations.⁴⁵⁸ Provisions on RECOM's powers and the prospect of the Commission being empowered to qualify war crimes legally, stirred the most debate. Nevertheless, the participants' shared belief that only by establishing such a body could we hope to put an end to the practice of manipulating the numbers of victims and selectively interpreting past facts, finally led to the adoption of the RECOM Draft Statute by the Coalition Assembly in March of 2011.

During May and June of 2011, the Coalition for RECOM gathered 543,870 signatures in support of RECOM's establishment. The petition was signed by citizens from all parts of the region.⁴⁵⁹ Towards the end of June 2011, the Draft Statute and the petition for the establishment of RECOM were presented to the Presidents of Croatia, Montenegro and Slovenia, and to the BiH Presidency Member Željko Komšić.

Over that period, many high level state officials and representatives of political elites in post-Yugoslav countries have expressed their support for the initiative to establish RECOM, including, among others, Croatian President Ivo Josipović, Boris Tadić, then Serbian President, Danilo Türk, President of Slovenia, and Hashim Thaçi, Kosovo's

455 As of December 31st, 2011, the Coalition for RECOM had 1,820 members: 348 NGOs, 59 victims' and victims' families' associations, 12 war veterans' associations, 24 media outlets, 8 religious organizations, and 11 other organizations (political parties, their local and central boards, local autonomy organizations, etc.), along with 1,358 individuals, including victims, members of religious communities and congregations, artists, writers, film and theater directors, etc. As of December 31, 2011, the Coalition was comprised of 360 members from B&H, 156 member from Montenegro, 174 members from Croatia, 402 members from Kosovo, 37 members from Macedonia, 22 members from Slovenia, and 669 members from Serbia. The RECOM Process: May 2006 – October 2011 report, see link: http://zarekom.org/documents/Izvestaj-o-Procesu-REKOM-za-period-od-maja-2006-do-avgusta-2011_sr.html.

456 Mid-way through 2010, the consultation process was joined by Macedonian NGOs and associations of victims and war veterans. In September of 2010, the Association of "the Erased" followed suit, along with some other NGOs from Slovenia. *Ibid.*

457 A Total of 55 consultative meetings were hosted in 2010 and 2011. Of those, 16 local, 17 national and 15 regional meetings were held in 2010. Five consultative meetings were held in 2011 (three national, two regional), involving diverse participants. Also hosted in 2010 were two regional forums on transitional justice, one in Novi Sad (March 2010), the other in Zagreb (October 2010). In June of 2011, an international transitional justice forum was organized in Sarajevo.

458 Along with the suggestions and recommendations voiced by those taking part in the consultations, also analyzed were the statutes of other commissions and the legislation of all post-Yugoslav states, along with various sources of international humanitarian and criminal law and other international legal documents. The RECOM Process, May 2006 – October 2011 report, see link: http://zarekom.org/documents/Izvestaj-o-Procesu-REKOM-za-period-od-maja-2006-do-avgusta-2011_sr.html

459 122,540 signatures were gathered in B&H, 19,674 in Croatia, 31,060 in Montenegro, 254,625 in Serbia, 100,566 in Kosovo, 5,346 in Slovenia and 10,059 in Macedonia. See: the Coalition for RECOM webpage: http://zarekom.org/documents/Kampanja-prikupljanja-potpisa-izvestaj-april-jun-2011_sr.html

Prime Minister.⁴⁶⁰ Many others, including heads of political parties in the region, assemblymen, government ministers, artists, writers, etc. signed the petition personally.⁴⁶¹

Significant support for the establishment of RECOM was also received from 146 artists, intellectuals and university professors from all the post-Yugoslav states. They presented the Presidents of BiH, Montenegro, Croatia, Kosovo, Macedonia, Slovenia and Serbia with a public letter demanding the establishment of RECOM.⁴⁶²

RECOM also received support from some EU institutions. The EU Parliament's Human Rights Sub-committee expressed full support for the establishment of RECOM during its session of September 30, 2010. The European Parliament, in a resolution adopted in January of 2011, called on the governments of Serbia and other states in the region to back the establishment of such a regional commission.

At the beginning of 2011, the OSCE Parliamentary Assembly adopted a report by its Foreign Affairs Committee, which called on "all of the region's states to take part in the establishment of RECOM, irrespective of their status, in order for the commission to achieve its primary function and bring about full reconciliation and the acknowledgement of all victims". It then adopted Resolution 1786 (2011), giving full support to this civic initiative.⁴⁶³ In addition, in 2011, the European Commission began including RECOM in its Expansion Strategy and its reports dealing with Western Balkan states. The Commission welcomed the states' support for the establishment of RECOM, describing it as an important element in the process of the EU integration of candidate states.⁴⁶⁴

In the second half of 2011, the RECOM process entered a new phase, defined by its gradual shift from the civilian to political levels.⁴⁶⁵ Soon after, the Regional Team of Public Advocates, created in October of 2011, met with Montenegro's President Filip Vujanović.⁴⁶⁶ Following the meeting, President Vujanović sent a personal letter

460 "President Josipović backs the RECOM Initiative", RECOM Coalition press release, August 30, 2010, see link: <http://zarekom.org/vesti/Predsednik-Josipovic-podrzao-Inicijativu-za-REKOM.sr.html> "President Tadić backs the RECOM Initiative", RECOM Coalition press release, August 30, 2010, see link <http://zarekom.org/vesti/Predsednik-Tadic-podrzao-Inicijativu-za-REKOM.sr.html> The "1,000,000 signatures for RECOM" report, The Serbian and Croatian Youth Initiative for Human Rights, see link: http://www.zarekom.org/uploads/documents/2011/07/i_1534/f_2/f_2091_sr.pdf

461 In B&H, the petition for the establishment of RECOM was signed by: BiH Federation Vice President Mirsad Kebo, SDA president Sulejman Tihić, Sarajevo's Mayor Alija Behmen, BiH Minister of Culture Salmir Kaplan, BiH Federation President and Vice-President Živko Budimir and Svetozar Pudarić, BiH Safety Minister Sadik Ahmetović, Council President of the Borough of Sarajevo Center Slaven Kovačević, man of letters Ivan Lovrenović, film and theater directors Dino Mustafić, Danis Tanović and Haris Pašović, author and poet Ferida Duraković, actor Ermin Bravo, and many others. In Croatia, the establishment of RECOM was backed by, among others, the Mayor of Vukovar and SDP member Željko Sabo, the Mayors of Poreč and Karlovac Edi Štifić and Damir Jelić, former Croatian President Stjepan Mesić, writer Slobodan Šnajder. In Serbia, the petition was signed by Vojvodina Assembly speaker Šandor Egeršić, Serbian National Assembly Vice-President Judita Popović, Bujanovac Mayor Šaip Kamberi, LDP head Čedomir Jovanović, Vojvodina's Social-Democrat League President Nenad Čanak, Head of the Democratic Action Party Riza Halimi, Serbian United Regions President Mladan Dinkić, DS Vice - President Jelena Trivan, Rodoljub Šabić, the Commissioner for Information of Public Importance and Personal Data Protection, and many others. In Kosovo, the petition was signed by former Health Minister Ferid Agani, Kosovo Assembly woman Rada Trajković, Head of the Kosovo Democratic Alliance (DSK, Kosovo's largest opposition party) Isa Mustafa, Vice-President of the Alliance for Kosovo's Future (AAK) Ardi January Gjini. In Montenegro, the petition was signed by parliamentary caucus groups representing the Social-Democrat party, the Bosniak Party, the People's Socialist Party, the New Serbian Democracy, the Democratic Socialist Party and Montenegro's Albanian parties. In Macedonia, the establishment of RECOM received backing from VMRO DPMNE Assemblyman Vlatko Gojcev, while, in Slovenia, the Initiative was backed by National Assembly Speaker Pavel Gantar, Ombudswoman Zdenka Čebašek Travnik and EU MPs Jelko Kacin and Tanja Fajon. Also *Ibid.*

462 Artists' and intellectuals' letter of support for the establishment of RECOM, see link: <http://www.zarekom.org/documents/Pismo-podrske-intelektualaca-i-umetnika-osnivanju-REKOM-a.sr.html>

463 Resolution 1786 (2011): Reconciliation and political dialogue between the countries of the former Yugoslavia, see OSCE Parliamentary Assembly web page: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/ERES1786.htm>

464 "The RECOM Initiative has been included in the EU Commission's Expansion Strategy", RECOM Coalition press release, October 20, 2011, see link: <http://zarekom.org/vesti/Inicijativa-za-REKOM-ukljucena-u-Strategiju-prosirenja-i-izvestaje-Evropske-komisije.sr.html>

465 As described by Nataša Kandić during her meeting with Montenegro's President Filip Vujanović, meeting excerpt, the RECOM Initiative Voice, issue #2/2011, page 20, see link: <http://zarekom.org/Glas-Inicijative-za-REKOM/Glas-Inicijative-za-REKOM-2/2011.sr.html>

466 RTPA members: University Professor Zdravko Grebo and Film Director Dino Mustafić (Sarajevo), University Professor Žarko Puhovski (Zagreb), HLC Founder Nataša Kandić (Belgrade), journalists Dinko Gruhonjić (Novi Sad), Duško Vuković (Podgorica) and Igor Mekina (Ljubljana), and University of Skopje Professor Biljana Vankovska.

addressed to all heads of state in the region, inviting them to substantiate their support for RECOM by initiating procedures to explore the legal possibilities for the establishment of RECOM.

2.3.2. Women's Court

Towards the end of 2010, women's rights and peace activists from Serbia, BiH, Montenegro, Croatia and Kosovo launched an initiative to establish a women's court in the former Yugoslavia, where women from all parts of the region could testify about their tragic experiences during the last war. The aim was to create "an alternative court" which would rely on the testimonies of victims and witnesses to deliver comprehensive justice for female victims of the conflict – the kind of justice which, according to the people behind the initiative, differs from the one being delivered by traditional courts, which primarily focus on the perpetrators and leave very little room for the voices of the victims to be heard.⁴⁶⁷ The initiative was started by, among others, the Center for Women's Studies and the Women in Black.

3. State research and documentation centers

3.1. Croatia

During 2010 and 2011, the Croatian State Memorial-Documentation Center of the Homeland War (HMDCDR) continued its work of gathering, systematizing, archiving and publishing historical material about the armed conflict in Croatia, including further work on organizing material dealing with "the Republic of Srpska Krajina (RSK)", and work on selecting and preparing documents for "The Republic of Croatia and the Homeland War 1990 – 1995 - Documents" series of publications. Over that period, the HMDCDR was also engaged in compiling autobiographical material gathered from interviews conducted with former unit commanders and members of the armed forces, as well as with other participants in certain wartime events.⁴⁶⁸

Further work on gathering documents later used in defence of the ICTY-indicted Croatian Generals A. Gotovina, I. Čermaka, M. Markač and S. Praljak, was another of the Center's important activities carried over from the previous period. The "Direct Demographic Losses Suffered by the Republic of Croatia During the Homeland War" project was also continued during 2010 and 2011. By the end of last year, the Center's database contained records on 5,182 individuals who had been killed and 1,202 individuals who had died of natural causes (most of them ethnic Serbs) in occupied areas of Croatia (RSK) during the homeland war.⁴⁶⁹

In 2010, the Center expanded its publishing work and started printing books on the Croatian armed conflict in English.⁴⁷⁰ In 2011, in addition to gathering and organizing records on ethnic Croat and Serb casualties of the Croatian war, the Center expanded its activities to include gathering records on the war in BiH. It published a collection of works entitled, "Historical contributions on the history of Rama during the Homeland war of 1990 – 1995 (contributions on ethnic Croats' struggle for survival in their fatherland)". According to the Center's activity report for 2011, it decided to expand its work because "parts of the Bosniak-Muslim propaganda machine were attempting to portray the events that occurred in Prozorin October of 1992 as the start of 'Croatia's aggression against B&H', which was untrue".⁴⁷¹

467 "Women, the war's biggest victims" Deutsche Welle, November 6, 2011, see link: http://www.dw.de/dw/article/0,,15513968,00.html?maca=ser-serbian_all-2277-rdf

468 The Croatian State Memorial-Documentation Center of the Homeland War activity report for 2011, August 2011, page 5. HMDCDR webpage: http://www.centardomovinskograta.hr/pdf/Izvjesce_rad_Centra_2010.pdf

469 The Croatian State Memorial-Documentation Center of the Homeland War activity report for 2011, April 2011, page 5. HMDCDR webpage: http://www.centardomovinskograta.hr/pdf/Izvjesce_rad_Centra_2011_opsirna_verzija_konacno%20.pdf

470 The Croatian State Memorial-Documentation Center of the Homeland War activity report for 2011, August 2011, page 8. HMDCDR webpage: http://www.centardomovinskograta.hr/pdf/Izvjesce_rad_Centra_2010.pdf

471 The Croatian State Memorial-Documentation Center of the Homeland War activity report for 2011, August 2011, page 11. HMDCDR webpage: http://www.centardomovinskograta.hr/pdf/Izvjesce_rad_Centra_2010.pdf

3.2. Kosovo

In April of 2011, the Government of Kosovo established a war crimes investigation body within the Justice Ministry (Kosovo War Crimes Research Institute), tasked with coordinating, monitoring and investigating war crimes, crimes against peace, crimes of genocide and other gross violations of international law.⁴⁷² The Institute's mission is to collect, process, classify and archive items related to war crimes, crimes against humanity and the values protected by international law, including items related to other events that occurred in Kosovo between 1990 and 1999. In addition, the Institute is to analyze and process data on war crimes and other relevant events, verify their accuracy, create its own database, provide notes and other items for use in criminal prosecutions, and prepare statistical and other data on the results of investigative and research work conducted by local and international experts.⁴⁷³

In its work, The Institute will rely on records contained in the databases of the Council for Human Rights and Freedoms Protection and the Islamic Community, and all other organizations working on documenting human rights violations and war crimes. Also, Kosovo NGOs will be asked to provide the Institute with all relevant documents in their possession, in order for them to be compiled and made accessible in one place.⁴⁷⁴

3.3. Montenegro

In 2007, Montenegro's National Assembly adopted a resolution on "Meeting Obligations under the Stabilization and Association Agreement", inviting the Government to "establish a special research and documentation center in order to create the formal legal and other conditions necessary to establish the truth about those events that occurred between 1991 and 2001 which may have involved criminal acts and are in some way directly related to the State of Montenegro".⁴⁷⁵ As of December 31, 2011, the center had yet to be established.

4. Civil society organizations' contribution to the establishment and documentation of facts about war crimes

4.1. Bosnia and Herzegovina

During 2010 and 2011, the Research and Documentation Center in Sarajevo continued its work on digitizing material evidence as part of its "Human Losses in Bosnia and Herzegovina, 1991 – 1995" project. In September of 2010, the Center published a book titled "Signals of the heart", which marked the completion of its "Oral History – Positive Stories" project. The project's aim was to help rebuild trust between the citizens of BiH and help strengthened the restoration of good relations that had been damaged by the war - by documenting and safeguarding such stories.⁴⁷⁶

The creation of a Map of Genocide Sites as part of the "Srebrenica – Mapping the Genocide" project by the BiH Youth Initiative for Human Rights was the single most important non-governmental initiative undertaken in 2010 and 2011. The Srebrenica map is an interactive map created in the form of an animated documentary. It contains 17 documented and animated maps that have been created using a method of connecting and reconstructing the facts (contained in documents obtained from relevant Institutions) according to the progressive phases of

⁴⁷² Kosovo War Crimes Research Institute, Government of the Republic of Kosovo, see webpage: <http://www.mfa-ks.net/?page=3,108,716&offset=5>

⁴⁷³ Zejnullah Grude, Kosovo War Crimes Research Institute Director, interview given to "Made in KS" magazine, issue 6, October 2011.

⁴⁷⁴ *Ibid.*

⁴⁷⁵ Resolution on Meeting the Obligations under the Stabilization and Association Agreement, December 27, 2007, Montenegro Official Gazette, issue 02/08.

⁴⁷⁶ The book contains 42 personal accounts based on interviews conducted with 69 individuals. RDC's webpage: http://www.idc.org.ba/index.php?option=com_content&view=article&id=269%3Aknjiga-signal-srca&catid=1%3Alatest-news&Itemid=50&lang=bs

the genocide in Srebrenica. Each map is linked to documents containing textual and visual evidence and video recordings. The aim of the project was to provide a universal model for the interpretation and understanding of genocide mechanisms, one that could also be applied to education, particularly among young people attending high-school and other educational programmes.⁴⁷⁷

Also notable was the work of the BiH Association of Former Camp Detainees on creating its own database. The project was funded by the UNDP for two years, until the second half of 2010. By then, the Association had input some 10% of its data. However, since the BiH state institutions had not shown any interest in funding the initiative, further work was discontinued.⁴⁷⁸

4.2. Croatia

Croatian NGO *Documenta* continued its work on documenting the fates of those who died or disappeared during the 1991 – 1995 armed conflict in Croatia, as part of its “Human Losses in Croatia, 1991 – 1995” project (the project began in December of 2008).⁴⁷⁹ To date, *Documenta* has created an individual registry containing the names of some 6,800 victims. Each person’s name is accompanied by records of the circumstances of his/her death or disappearance. Its research team has conducted more than 2,600 interviews with representatives of victims’ associations and families, as well as with numerous witnesses and partner organizations, in more than 130 cities, towns, villages and hamlets located in western Slavonia and Sisačko-Moslavačka county. The interviews provided them with information on ~3,100 victims. In addition, 2,000 new victims were successfully documented between May and December of 2011.⁴⁸⁰

In 2011, the *Women in the Homeland War* NGO started an initiative calling for the prosecution of those responsible for acts of rape perpetrated during the 1991 – 1995 Croatian war. In collaboration with the Association of Former Camp Detainees in Serbian Concentration Camps, and as part of the same project, it published *Sunčica*, a book by Marija Slišković containing the testimonies of 14 women and one man (an ethnic Croat) who had been raped by members of the JNA and SVK (the Serbian Army of Krajina). The book was presented to the public in September of 2011. Two of the women, both of whom had been raped in Vukovar, gave their accounts during the presentation.⁴⁸¹

4.3. Serbia

In September of 2011, the HLC (Humanitarian Law Center) and HLC Kosovo jointly published the first volume of the *Kosovo Memory Book*. The book contains the names of 2,046 victims, accompanied by narratives on the life of each victim and the circumstances of his/her death or disappearance in Kosovo during 1998.⁴⁸² The promotion of the book was held on September 8, 2011 in Belgrade. It was attended by victims’ families, members of the press and the Norwegian Ambassador to Serbia.

The HLC’s individual victim registry is based on the testimonies of witnesses and victims’ family members, documents obtained from the archives of the ICTY and local courts in Serbia and Kosovo, reports by the media and various domestic and international NGOs, official reports and lists, photographs and other relevant sources. The list of victims’ names contained in the first volume is publicly accessible over the internet on the KMB website.⁴⁸³

477 Interview with Alma Mašić, B&H Youth Initiative for Human Rights Director, December 27, 2011.

478 The B&H Association of Former Camp Detainees’ webpage: <http://logorasibih.ba>

479 Additional information on the project can be found at: www.ljudskigubici.info

480 E-mail correspondence with Igor Roginek, August 1, 2012.

481 Women – victims of sexual abuse during the war – a presentation on *Sunčica: rape in the maelstrom of humiliation*, September 16, 2011, see link: http://hrsvijet.net/index.php?option=com_content&view=article&id=16872:ene-rtve-seksualnih-ivljavanja-u-ratu-predstavljena-knjiga-sunica-silovane-u-vrtlogu-poniavanja-videofoto&catid=28:povijesni-identitet&Itemid=112

482 For more information on the project see link: <http://www.kosovskaknjigapamcenja.org>

483 List of persons killed or disappeared during the war in Kosovo, KMB website: <http://www.hlc-rdc.org/db/kkp/index.html>

As of December 31, 2011, the deaths and disappearances that occurred in Kosovo between January of 1998 and December of 2000 had been documented for a total of 13,196 individuals. ~80% of them were ethnic Albanians, the rest being ethnic Serbs and other non-Albanians.

Since 2009, the HLC has been working on creating an individual register of Serbia and Montenegro nationals killed or disappeared during the armed conflicts in Slovenia, Croatia and Bosnia and Herzegovina.⁴⁸⁴ As of December 2011, a total of 1,945 SiM nationals (members of regular armed forces and paramilitaries) were documented as having been killed in connection with the war.

4.4. Kosovo

The first volume of the Kosovo Memory Book, a joint long-term project by the HLC and HLC Kosovo, was published in June of 2011. The book was first presented on September 7, 2011, in Prishtina. The promotion was attended by more than 250 members of victims' families, NGO representatives, journalists and Kosovo state officials.⁴⁸⁵

4.5. Montenegro

On April 12, 2011 in Podgorica, the HLC presented its report on human losses suffered by Montenegro from 1991 to 1995. A total of 302 Montenegro nationals were killed during the armed conflicts in Slovenia, Croatia and BiH, while 62 of them are still listed as missing. The event was not attended by representatives of those state institutions which played a significant official role during the nineties, such as Montenegro's Defence Ministry.

4.6. Slovenia

From 2007 to 2009, the Peace Institute in Slovenia was working on the "A Young State's Challenge - 'The Erased' in Slovenia" project in collaboration with Amnesty International Slovenia, the Legal Information Center for NGOs and Italy's Forensic Association for Human Rights Protection. The aim was to link the efforts of various civil society organizations working on the issue of the 'erasure' of Slovenian nationals and residents in 1992, and develop a comprehensive approach to resolving this problem. The project involved different kinds of activities – provision of legal aid to victims, public advocacy for the rights of the erased directed at state institutions, the raising of public awareness by organizing public debates and conducting research into the erasure, etc. Part of the research involved interviewing the erased living in Slovenia, B&H, Serbia and Montenegro.⁴⁸⁶ Over that period, real life accounts of 80 erased individuals were recorded for the purpose of documenting human rights violations, and facts were established about the erasure and its long term effects, ensuring that the victims would never be forgotten.

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5. Discovering the fates of the disappeared

5.1. The Regional level

To date, cooperation between the region's states has stemmed from the Neum Accords of June 18, 2004. The agreement, signed by BiH, Croatia and Serbia, officially formalized operational cooperation between the three states.⁴⁸⁷ Serbia and BiH have yet to sign a cooperative inter-state agreement concerning the location of missing persons. A regional meeting of the Serbian, Croatian, Montenegrin, Macedonian, BiH and Albanian state missing

484 Individual list of killed or missing SiM nationals, HLC's webpage: <http://www.hlc-rdc.org/?cat=279>

485 Interview with HLC Kosovo Executive Director Bekim Blakaj, December 6, 2011.

486 Neža Kogovšek et al, *The Scars of the Erasure: a contribution to the crucial understanding of the erasure of people from the register of permanent residents of the Republic of Slovenia*, Ljubljana: Peace Institute, 2010, page 13.

487 E-mail correspondence with Lejla Čengić, spokesperson to the Institute for Missing Persons, January 20, 2012.

persons investigative services was held in Sarajevo on October 13, 2011. The aim was to reach an agreement on cooperation in locating the missing after the ICRC had opened its missing persons database to their respective state investigative services.⁴⁸⁸

Towards the end of 2011, representatives of the International Commission for Missing Persons (ICMP), the BiH Institute for Missing Persons (INO), the Croatian Government Commission for Detainees and Missing Persons and the Serbian Commission on Missing Persons met to discuss how best to address the remaining missing persons cases. Among other things, the meeting reached agreement on the exchange of mortal remains that had been identified during a joint identification project undertaken in collaboration with the ICMP.⁴⁸⁹ In addition, an agreement was reached on joint reconnaissance, exchange of information on locations, exhumation and identification monitoring and other issues concerning the missing in all three states.⁴⁹⁰

5.1.1. Regional coordination of efforts undertaken by victims' families' associations in the former Yugoslavia

This regional initiative began in June of 2011 under the auspices of the International Commission for Missing Persons (ICMP). It was built around the idea of establishing a regional body to advocate for the effective resolution of all open missing persons cases dating back to the conflicts of the nineties.⁴⁹¹ The goal of the initiative is to establish mechanisms to exert pressure on the region's states to "urgently undertake concrete steps within their jurisdiction to meet the political and other conditions necessary to speed up the location of the missing", as well as to speed up the delivery of justice and enhance the protection of victims' and their families' rights.⁴⁹² The Regional Coordination of Associations includes some 30 Western Balkans associations and alliances working on the issue of the missing.

5.2. Bosnia and Herzegovina

To date, approximately two thirds of a total of ~30,000 individuals disappeared during or in connection with the armed conflict in BiH have been accounted for.⁴⁹³ According to the ICRC, as of December 31, 2011, there were 9,309 unresolved missing persons cases in the entire B&H. 759 missing persons cases in BiH were resolved in 2010, and 853 in 2011.⁴⁹⁴

As of December 31, 2011, the Central Evidence Unit within the Institute for Missing Persons was still not fully operational, which caused considerable delays in the process of verifying the victims' identities, the completion

488 Regional meeting of state missing persons investigative services, October 13, 2011, B&H Red Cross webpage: <http://www.rcsbh.org/index.php/galerije?start=5>

489 ICMP reports two thirds of missing persons accounted for, ICMP's webpage: <http://www.ic-mp.org/BA/press-releases/two-thirds-of-the-missing-accounted-forpronadeno-dvije-trecine-nestalih/#more-1476>

490 ICMP reports two thirds of missing persons accounted for, ICMP's webpage: <http://www.ic-mp.org/BA/press-releases/two-thirds-of-the-missing-accounted-forpronadeno-dvije-trecine-nestalih/#more-1476>

491 The Regional Coordination of Associations includes some 30 western Balkans associations and alliances engaged in addressing the issue of missing persons. "Representatives of missing persons' families meet in Sarajevo", ICMP press release, July 22, 2011, ICMP's webpage: <http://www.ic-mp.org/BA/press-releases/representatives-of-families-of-the-missing-from-the-western-balkans-gather-in-sarajevo-predstavnici-porodica-nestalih-iz-zapadnog-balkana-okupili-su-se-u-sarajevu/>

492 Regional Coordination of Associations' electronic press release, December 1, 2011.

493 E-mail correspondence with Samira Krehić (ICMP program coordinator), response to questions by the HLC and RCTP, December 21, 2011.

494 ICRC Regional Director Dragana Kojić's memo dated January 24, 2012.

of which is essential in determining the exact number of missing persons.⁴⁹⁵ The Central Evidence Unit has yet to verify records concerning 34,965 individuals. Only then will it be able to determine the exact total number of missing persons in BiH. In this process, the Missing Persons Institute is collaborating with the BiH International Committee of the Red Cross (ICRC), the BiH Red Cross Society, the International Commission on Missing Persons (ICMP) and the Identifying Documents Agency (IDEA), and has been given full access to their databases under Article 6 of the Missing Persons Law.⁴⁹⁶ By the end of 2011, the IMP's Central Evidence Unit had already verified ~10,000 items, and identified a total of over 19,000 missing persons.⁴⁹⁷

The Institute has assessed the margin of error to be ~0.4% (percentage of incorrect identifications performed to date). This has prompted the IMP to establish a Workgroup to deal with unidentified mortal remains being kept in mortuaries and memorial grave sites. Its primary task is to examine and review all unidentified mortal remains stored in such facilities. According to its records, 263 potential mass and individual grave sites were located during 2010, and a total of 203 exhumations performed, enabling the identification of 926 missing persons and leading to the recovery of 818 mortal remains of individuals killed in the last war. Preliminary reports indicate that there were 230 possible grave sites located during 2011. The mortal remains of ~400 individuals were recovered over the course of 195 exhumations performed in 2011⁴⁹⁸, bringing the total number of missing persons identified in B&H during 2011 to 875.⁴⁹⁹

On January 1, 2011, the BiH State Prosecution assumed oversight of all exhumations in Bosnia and Herzegovina. Prior to that, oversight had been provided by the prosecutors in each federal entity, with the RS prosecutors in charge of recovering the mortal remains of ethnic Serbs, and the BiH Federation Prosecution in charge of exhuming ethnic Bosniaks and Croats, irrespective of the location (i.e. whether the site was located in the RS or the Federation). However, in June of 2010, the B&H Collegium of Prosecutors found such a practice to be against the law. Soon afterwards, an agreement was reached on the BiH Federal Prosecution assuming oversight of all exhumations in BiH.⁵⁰⁰

The processes of exhumation, identification, preservation and burial of missing persons' mortal remains are funded in full from the BiH budget. The allocated amount was set at 1 million KM annually, and the IMP has deemed it sufficient for effective performance of these tasks.⁵⁰¹ However, in October of 2011, the BiH Federal Prosecution notified the public that it had not received any money for the exhumations already performed, and that it had outstanding debts towards many of those involved in the exhumation process.⁵⁰² The IMP claimed that, in addition to financial problems, there were also administrative problems leading to delays in the exhumation process, impeding cooperation between the Institute, the Prosecution (charged with issuing exhumation warrants) and the BiH Court (in charge of ruling on any future exhumations). According to IMP's Marko Jurišić, as of September 2011, the Institute had already sent 185 exhumation requests, receiving not a single reply.⁵⁰³

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495 The Central Evidence Unit's verification of missing persons entails status and identity checks for each person listed as missing in one of the databases since April 30, 1991, as the BiH Institute for Missing Persons' database contains records obtained from all institutions and commissions presently or formerly engaged in documenting missing persons cases – most notably the State Missing Persons and Prisoner Exchange Commission, the State Commission on Missing Persons, former federal entities' commissions/offices (the Federal Commission on Missing Persons Location and the RS Office for the Search for Missing Persons), as well as the International Commission for Missing Persons and the BiH ICRC. Once the verification process is completed, a hardcopy case file will be opened for each missing person, containing basic personal and identifying documents and records on the circumstances of his/her disappearance (primarily missing person reports, DNA analysis reports and identification records).

496 Email correspondence with IMP spokesperson Lejla Čengić, January 20, 2012.

497 Email correspondence with IMP spokesperson Lejla Čengić, January 16, 2012.

498 Email correspondence with IMP spokesperson Lejla Čengić, January 16, 2012.

499 Email correspondence with IMP spokesperson Lejla Čengić, January 16, 2012.

500 Achieving justice in Bosnia and Herzegovina: processing war crimes, 2005 – 2010, OSCE BiH, for yr. 2011, page 36.

501 Email correspondence with IMP spokesperson Lejla Čengić, January 16, 2012.

502 The lack of funds delays the search for the missing, October 12, 2011, *BIRN* webpage: <http://www.bim.ba/bh/291/10/33552/>

503 According to Marko Jurišić, a member of the IMP's administrative board, since 2009, the Institute has sent 185 exhumation requests to the BiH Federal Prosecution. It had received no reply by September 2011. *Who doesn't want the missing to be found?*, B&H, September 1, 2011, Radio Free Europe, see link: http://www.slobodnaevropa.org/content/bih_nestali_identifikacija_grobnice_icmp/24315114.html.

Some objections to the IMP's work have also been raised in Republika Srpska. In 2010, the RS government prepared a "Report on the Search for Missing Persons and War Crimes Processing", amending it in 2011. In 2010 and 2011, the amended report was debated on the floor of the RS National Assembly. Objections were raised about the slow progress of the IMP's work, as well as the low number of identified victims of Serbian ethnicity.⁵⁰⁴ According to the RS Missing Persons Search Operations Team, 3,454 missing persons had already been found and identified in Republika Srpska by the time the BiH IMP was created (January 1, 2008), while 3,075 victims were identified between 2008 and 2010. According to RS Operations Team Coordinator Goran Krčmar, just 75 of those were identified as ethnic Serbs.⁵⁰⁵ As of December 31, 2011, there were 1,710 persons still listed as missing in Republika Srpska. 625 of them are believed to be buried in memorial grave sites in eastern Sarajevo, Nevesinje and Banja Luka.⁵⁰⁶

5.3. Croatia

As of December 31, 2011, the Republic of Croatia was still actively searching for 1,776 Croatian nationals who disappeared during the 1991 – 1995 Croatian armed conflict.⁵⁰⁷ 991 of them are listed as having disappeared during 1991 and 1992, while the remaining 785 are presumed to have disappeared in 1995.⁵⁰⁸

During 2010 and 2011, the Croatian Prisoner and Missing Persons Administration (UZN) continued its work on exhuming and identifying the missing at much the same pace as in 2009. There were 72 persons identified in 2010, and 90 in 2011.⁵⁰⁹ Unlike its BiH counterpart, the UZN does not keep records on the ethnicity of those exhumed and identified, and is in addition prohibited from disclosing such information in this report by the Personal Data Protection Act.

Records on those missing in connection with the conflict are still being kept as part of two separate programs, dealing with disappearances that occurred in 1991/1992 and in 1995, respectively. According to UZN's records, 87% of those listed by the 1992/1992 program are of Croatian ethnicity, while 90 – 95% of persons listed as missing by the 1995 programme are ethnic Serbs. In 2010, the mortal remains of 10 Croatian nationals were handed over to the UZN (6 bodies had been sent from Serbia, the other 4 from BiH⁵¹⁰). No identified mortal remains were delivered from other states during 2010 and 2011 (the mortal remains that were handed over, have yet to be identified). Towards the end of 2011, the bodies of four persons from BiH, all of them exhumed in Croatia, were successfully identified. The hand-over is still in progress.⁵¹¹

There are evident problems in Croatia concerning the exhumation and identification of ethnic Serb victims, most of whom died or disappeared during or immediately following the *Bljesak* and *Oluja* military operations. Although most burial sites have been marked and documented since 1995, many of the locations have yet to be exhumed. Documents exist detailing the exact total number of victims and the precise location of graves/burial sites, considering it was the Croatian army itself that created the so-called shared mass graves (mostly within existing civilian cemeteries) during field sanitation activities undertaken as part of the said military operations. There are 43 such shared/mass graves in Croatia, with 393 bodies presumed buried there, still waiting to be exhumed and identified.⁵¹² Only 10 such sites have seen exhumations performed - although even those have yet to be completed fully, presenting additional delays in the exhumation and identification process in these areas.

504 RS National Assembly session #37 of May 31, 2010 and RS National Assembly session #14 of December 13, 2011.

505 Interview with RS Operations Team Coordinator Goran Krčmar, December 27, 2011.

506 *Ibid.*

507 Prisoner and Missing Persons Administration, in response to a request made by the Youth Initiative for Human Rights, January 9, 2012.

508 *Ibid.*

509 *Ibid.*

510 *Ibid.*

511 *Ibid.*

512 Records obtained from the Serbian Government Commission on Missing Persons, November 2011, mostly confirmed by the Prisoner and Missing Persons Administration (excepting minor disagreement concerning the total number of persons buried).

According to the UZN, the slow progress of exhumations at these sites has been brought about by overcrowding in the mortuaries where bodies were being stored throughout the identification process. The UZN also claims to be conducting exhumations in a certain order, that is, region by region (i.e. after having completed its work in one region, it moves on to the next region presumed or known to contain mass graves).⁵¹³ According to the UZN, there are 57 pending exhumations of bodies belonging to persons who died or disappeared during and immediately following *Operation Flash*, and 235 pending exhumations of bodies belonging to persons who died or disappeared during and immediately following *Operation Storm*.⁵¹⁴

Discrepancies concerning the number of ethnic Serbs who disappeared during and immediately following *Operations Flash* and *Storm* still exist between the UZN's records and those of the Serbian Government Commission on Missing Persons.

According to the UZN records, shared mass graves in the areas of Banovina, Kordun, Lika, northern Dalmacija and western Slavonija contain the mortal remains of 957 ethnic Serbs. 826 of them have been exhumed to date at just nine sites.⁵¹⁵ However, almost all of the shared mass graves exhumed to date have been found to contain more bodies than initially expected. The number of bodies found at these sites (not taking into account the shared mass grave in Vrbovljani, which has yet to be exhumed fully) has exceeded the UZN's initial estimate by a total of 206.⁵¹⁶ The UZN estimates that there are 292 bodies waiting to be unearthed from shared mass graves at 43 different locations, making it safe to assume that the actual number is even higher.⁵¹⁷

The records of the Serbian Government Commission on Missing Persons (CMP) indicate that there are 1,206 persons of Serbian ethnicity buried in these shared graves – 259 more than estimated by the UZN.⁵¹⁸ Also, there were more bodies exhumed from some shared mass graves than even the CMP had estimated - such as at the Knin Location, where 301 bodies were exhumed, instead of the 258 estimated by the CMP. Other than the shared grave in Knin, especially problematic are the sites in Petrinja (an additional 32 bodies are presumed buried there), in Dvor na Uni (64 additional bodies), and in Gornje Selište (73 additional bodies).⁵¹⁹ Discrepancies exist not only between the records of these two state institutions, but also in relation to the Veritas Documentation-Information Center's records, which list a total of 1,049 ethnic Serbs exhumed to date, 656 of whom have since been positively identified. According to their records, there are 2,015 persons of Serbian ethnicity still listed as missing. Most of them disappeared during *Operations Storm* and *Flash*.⁵²⁰

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As of December of 2011, the UZN had 2,188 open missing persons files and pending search requests.

5.4. Serbia

Since the start of the Yugoslav conflict, there have been 1,298 bodies found in Serbia (848 of which date back to the Kosovo conflict, the remaining 450 being of persons killed in other parts of the former Yugoslavia). Out of that total, 727 bodies were actually exhumed, while 425 had been carried downriver and then fished out in Serbia between 1991 and 1995. A total of 1,077 mortal remains have since been identified – 818 Kosovo Albanians (exhumed from mass graves in Batajnica and Petrovo Selo), 96 ethnic Croats, 125 individuals from the B&H

513 Interview conducted with UZN Deputy Chief Višnja Bilić, December 23, 2011.

514 UZN's response to a request by the Youth Initiative for Human Rights, February 9, 2012.

515 Records on the number of exhumed bodies date back to June of 2011. Exhumation sites: Knin, Žitnik, Vrbovljani, Okučani, Petrinja, Dvor na Uni, Medari, Gračac and Korenica.

516 The UZN initially estimated that a total of 624 individuals had been buried at these sites.

517 Interview with UZN deputy chief Višnja Bilić, December 23, 2011.

518 Figure disclosed by the Serbian Government Commission for Missing Persons, November 2011.

519 This shared mass grave has yet to be exhumed.

520 Ethnic Serbs who died/disappeared in Croatia and the former RSK between 1990 to 1998, Veritas webpage: <http://www.veritas.org.rs/srpski/spiskovi1.htm>.

Federation, 26 from Republika Srpska, 15 from Serbia and one individual from Montenegro.⁵²¹ The remaining unidentified mortal remains were of individuals from Kosovo, which have since been handed over to the Kosovo authorities.

The Serbian Government Commission on Missing Persons (CMP), charged with addressing the issue of missing persons, continues to search for Serbian nationals who disappeared during the armed conflicts in Croatia, BiH and Kosovo, as well as for individuals whose families had moved to Serbia and filed missing person search requests with the relevant Serbian state services. With respect to those the CMP is searching for in other countries, no significant changes have been observed in the number of mortal remains located, or in the number of identified bodies exhumed. In Croatia, Serbia is still looking for 403 of its missing citizens, as well as for 1,200 missing non-Serbs whose families now reside in Serbia. Serbian sources list 1,803 persons as having disappeared in Kosovo, while the number of non-Serbian nationals reported missing by their families in Serbia stands at 521.⁵²² Over the past two years, the mortal remains of 30 individuals on Serbia's missing persons list have been handed over at the Merdare border crossing between Serbia and Kosovo. All of the bodies have since been identified and handed over to their families.

During 2010 and 2011, at Kosovo's request, the Serbian authorities performed multiple searches for possible mass graves at sites in the Raška area and at the Sijerina site in Medveđa. The most recent investigation was conducted in October of 2011 at a site near Raška, with observers present from both Kosovo and international institutions. However, the investigation failed to uncover any mass graves at the site.

There are currently four open requests filed with the relevant Kosovo institutions by the Serbian authorities. Although most of them have in some way been acted upon, Serbia still considers them unresolved. The four requests concern: Belačevac, a site that still has not been fully searched, the investigation of which has been discontinued; Košare, where at least six soldiers are presumed buried, but inaccessible because of land mines; Livačko Jezero, searched in the past by forensic divers, but no longer accessible by such methods due to changes in the lake's natural state; and a site near Suva Reka, where nothing was uncovered during past searches.

Serbia has met all of its obligations and currently has no outstanding requests filed by other states.⁵²³ In addition, during President Tadić's visit to Vukovar on November 4, 2010, the Serbian delegation handed the Croatian authorities long sought-after Serbian Armed Forces' documents concerning those who disappeared from Vukovar Hospital in November of 1991, as well as documents on detainees in camps that existed in Serbia during 1991 and 1992.⁵²⁴

During 2010 and 2011, families of the missing continued to demand the adoption of a missing persons law. However, as of December 31, 2011, Serbia's institutions had given no indication that such a law would be passed. One of the problems the law would need to address is the unification of all issues concerning the missing, as the disappearances occurred over the course of more than one armed conflict.⁵²⁵ Another problem stems from the introduction of additional categories and classifications of missing persons, most notably in cases involving naturalized families with citizenships different from the one held by their missing relative at the time of his/her disappearance, leading to him/her being listed as a missing citizen of another state.⁵²⁶

521 Interviews with Veljko Odalović (August 2011; November 3, 2011), Chairman of the Serbian Government Commission on Missing Persons.

522 *Ibid.*

523 Interviews with Veljko Odalović (August 2011; November 3, 2011), Chairman of the Serbian Government Commission for Missing Persons.

524 Serbian Armed Forces' documents list 1,276 disappeared from Vukovar Hospital, and 2,876 detained in the Begejci and Stajićevo camps. There is a discrepancy of some 50 individuals between the two states' records.

525 *Ibid.*

526 *Ibid.*

During repairs to the “Bajina Bašta” hydro power plant in summer of 2010, the flow of water to Perućac (an artificial lake) had to be cut off, causing the water level to drop below 18 m. The BiH Missing Persons Institute filed a request with the Serbian Government Commission on Missing Persons for the lake bed to be searched for mortal remains of individuals missing since the BiH armed conflict. Numerous war crimes trials in the region have established that a huge number of bodies had been dumped into the River Drina, giving rise to expectations that most of them would have been carried down river into Lake Perućac. In 2001, the bodies of several Kosovo Albanians missing since 1999 were found in the lake.

The search was focused on the lower part of the Drina riverbed, where Lake Perućac is located. Members of both the Serbian and the BiH Commission took part in the search, assisted by representatives of international institutions. Members of Kosovo’s commission were also present. During the search, 14 bodies were found on the Serbian side of the lake shore. Among them were the bodies of two passengers kidnapped from a train in Štrpci in 1993, identified as Rasim Ćorić from Prijepolje and Jusuf Rastoder from Berane.⁵²⁷ Also found was an axle of a freezer truck which surfaced in 2001, loaded with bodies of murdered Kosovo Albanians. Despite expectations to the contrary, no new bodies were found nearby. On the Bosnian side of the lake, the BiH Missing Persons Institute found 396 sets of complete and partial mortal remains. According to Amor Mašović of the BiH Peace Institute, forensics estimated the mortal remains belonged to at least 97 individuals.⁵²⁸

5.5. Kosovo

As of December 31, 2011, 1,797 individuals who went missing during the conflict were still being searched for in Kosovo. 2010 saw 57 bodies found and identified, and the mortal remains of 103 individuals handed over to their families for re-burial. The mortal remains of 72 individuals were handed over to their families in 2011. Prior to 2006, Serbia had handed over the mortal remains of some 840 individuals to the Kosovo authorities (most of them had been exhumed in Serbia). No mortal remains have been handed over to the Kosovo authorities by Serbia since, as no new bodies or mass graves have since been discovered, despite multiple searches having been conducted in the areas of Raška and Medveđa. The identified mortal remains of ethnic Serbs and other non-Albanians exhumed in Kosovo are still being handed over to their families or the Serbian Commission on Missing Persons at the Kosovo-Serbia border.⁵²⁹

In August of 2011, Kosovo’s National Assembly adopted its Missing Persons Law. The law regulates the rights and interests of the missing and their families in Kosovo, and establishes the jurisdiction and responsibilities of the Government Commission on Missing Persons. It also provides a framework for the establishment of the Central Missing Persons Registry, run by the Commission and home to the centralized archive on the missing, linked to records from all accessible sources. Its purpose is to contribute to the process of discovering the identities of the missing, and to help establish the location and the circumstances of their death/disappearance.⁵³⁰ The law defines a missing person as “a person whose location remains unknown to his/her family, and who, according to reliable information, disappeared between January 1, 1998 and December 31 2000 in connection with the 1998 - 1999 war in Kosovo.”⁵³¹ For the families, one of the most important aspects of this law is that it establishes their right to use the property of their missing relatives without having them declared dead first⁵³², as such a provision contributes to the improvement of their lives.⁵³³ Local authorities, empowered by the new legislation, can now begin to deal with

527 “Two of the passengers kidnapped in Štrpci identified among the mortal remains from Lake Perućac”, February 26, 2011, *Blic* webpage: <http://www.blic.rs/Vesti/Hronika/237973/Medju-posmrtnim-ostacima-u-Peruccu-tela-dva-putnika-oteta-u-Strpcima>

528 Phone interview with BiH Institute for Missing Persons Director Amor Mašović, January 18, 2012.

529 Email correspondence with Suzana Novoberdaliju, Chairwoman of the Commission on Human Rights, Gender Equality, Missing Persons and Petitions, Kosovo National Assembly, December 23, 2011.

530 Law #04/L-23 on Missing Persons, August 31, 2011, article 13.

531 Law #04/L-23 on Missing Persons, August 31, 2011, article 2, line 1.

532 Law #04/L-23 on Missing Persons, August 31, 2011, article 6, line 3.

533 In addition, Law #04/L-054 concerning the status and rights of killed soldiers, disabled persons, war veterans, former KLA members, civilian victims and their families, adopted on December 8, 2011, has established the families’ right to administrative reparations.

the fates of the missing in a comprehensive manner, treating it as a social issue, unlike international organizations, whose mandate is purely technical in nature.⁵³⁴

The Kosovo Workgroup on those still missing in connection with the conflict in Kosovo, coordinated by the ICRC, continued its efforts during 2010 and 2011. The group is comprised of representatives of families of the missing in Kosovo and Serbia, alongside representatives of both states and the ICRC. It was created as a “formal mechanism by which the authorities in control of those areas where the disappearances had occurred, could exchange information and plan further activities aimed at locating the missing and satisfying the needs and rights of their families.”⁵³⁵

Towards the beginning of December of 2011, the families of the missing in Kosovo petitioned the Kosovo authorities to include the issue of missing persons in status negotiations with Serbia. However, the EU representatives in Kosovo denied their request, citing the already existing and operational Missing Persons Workgroup.⁵³⁶

EULEX's Department of Forensic Medicine (DFM) is the body in charge of conducting investigations and exhumations at sites believed to contain the mortal remains of the missing, a fact of particular importance when searching for the missing across state borders. The DFM has announced its plans to search some 35 locations identified in 2012 as possible mass grave sites.⁵³⁷

In addressing the issue of the missing in Kosovo, EULEX cooperates with both Montenegro and Serbia. To date, several searches of terrain (prompted by tips) have been conducted in collaboration with Serbia (most recently in the areas of Medveđa and Raška), while, in 2010, a site in the borough of Andrijevica was searched as part of a joint effort with the state of Montenegro.⁵³⁸ So far, EULEX has received no cooperation from Albania and Macedonia concerning its requests for terrain searches within their borders.⁵³⁹

More than 70% of the DMF's exhumations performed in the past three years were conducted at burial sites in Kosovo, where most of the identified missing were found.⁵⁴⁰

In its 2010 report on the problems it faced while addressing the issue of missing persons in Kosovo, the International Commission on Missing Persons (ICMP) cited the numerous delays arising since 2005.⁵⁴¹ According to the ICMP, there were no mortal remains of Kosovar victims unearthed in Serbia during any of the exhumations conducted there in 2001 and 2002, while most of the mortal remains found in Kosovo were recovered by the ICTY teams (later replaced by UNMIK) between 1999 and 2003, during the initial stages of the process. The ICMP has noticed a decrease in the number of new graves discovered since 2005. It is still searching for ~2,000 missing individuals.⁵⁴²

534 Report: the situation in Kosovo, prelude; Sarajevo, September 14, 2010, ICMP webpage: <http://www.ic-mp.org/wp-content/uploads/2007/11/icmp-dg-264-4-bos-doc-general.pdf>

535 According to ICRC Regional Delegation Director Dragana Kojić, December 26, 2011.

536 Families insist that Brussels discuss the issue of missing persons, December 8, 2011, *Kohaditore* webpage: http://www.koha.net/index.php/force_download/repository/caricatures/repository/docs/ProgramiFestivKTV.pdf?page=1,13,79983

537 Email correspondence with Suzanne Noverdaliau, Chairwoman of the Commission on Human Rights, Gender Equality, Missing Persons and Petitions, Kosovo National Assembly, December 23, 2011.

538 DFM 2010 report on efforts undertaken concerning the missing, EULEX webpage: http://www.eulex-kosovo.eu/docs/justice/ompf/DFM%202011%20MP%20REPORT1_SERB.PDF

539 Interview with EULEX Police spokeswoman Anne Blanksma, January 12, 2012.

540 DMF's annual activity report, December 2010 – December 2011, pages 10 - 11, EULEX webpage: http://www.eulex-kosovo.eu/docs/justice/ompf/ANNUAL%20REPORT%20DFM%202011_Serb.pdf

541 Report: the situation in Kosovo, prelude, September 14, 2010, Sarajevo, ICMP webpage: <http://www.ic-mp.org/wp-content/uploads/2007/11/icmp-dg-264-4-bos-doc-general.pdf>

542 Report: the situation in Kosovo, prelude, page 4, September 14, 2010, Sarajevo, ICMP webpage: <http://www.ic-mp.org/wp-content/uploads/2007/11/icmp-dg-264-4-bos-doc-general.pdf>

Another problem stems from the high number of false positives obtained through identification procedures conducted between 1999 and 2003, as they tended to rely on traditional methods of visual recognition, rather than DNA analysis.⁵⁴³ The problem pervades the entire region, although it is most pronounced in Kosovo.⁵⁴⁴

There are currently 414 sets of unidentified mortal remains being stored in mortuaries across Kosovo. Some have been kept there for more than 10 years.⁵⁴⁵ In 2010, the ICMP assessed that some exhumations would need to be conducted again in order to rectify the errors and omissions which had plagued previous attempts at identification, and that reference samples would need to be collected from those bodies that had been identified by traditional methods only before being returned to their families.⁵⁴⁶

One can, however, point to the agreement on cooperation in conducting investigations of these cases as a sign of progress. The agreement was signed by the relevant departments within EULEX and the ICMP on November 10 and 11 in Sarajevo.⁵⁴⁷

5.6. Montenegro

In June of 2011, the Government of Montenegro elected Ministry of Labor and Social Care Representative Dragan Đukanović to serve as the new Chairman of its Commission on Missing Persons, alongside six other state officials, appointed as Commission Members.

There were no new bodies discovered in 2010, nor was any progress made in the identification of 66 individuals from a list initially compiled by the Red Cross in Belgrade (the list was referred to its Montenegro office in 2008). Three individuals were successfully identified in 2011.⁵⁴⁸ In February of 2011, the Commission received information that the partial mortal remains of Jusuf Rastoder, born in 1939 and kidnapped from a train in Štrpci on February 27, 1993, had been found in Lake Perućac. The identification was performed by the Institute for Forensic Medicine in Belgrade, and the body was returned to the family on March 23, 2011, in Bijelo Polje.⁵⁴⁹ In September of 2011, the mortal remains of two Serbian nationals (both of whom had been kidnapped and murdered in Kosovo in 1999) were successfully identified in Belgrade.⁵⁵⁰ In May of 2010, the partial mortal remains of three members of the former JNA „Nikšičko-šavnička” reserve group were returned to their families.⁵⁵¹ Another member of the group is being actively searched for.⁵⁵²

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543 Report: the situation in Kosovo, prelude, pages 4 and 5, September 14, 2010, Sarajevo, ICMP webpage: <http://www.ic-mp.org/wp-content/uploads/2007/11/icmp-dg-264-4-bos-doc-general.pdf>

544 Multiple interviews conducted with ICMP experts between August 2011 and January 2012.

545 As per Dragana Kojić, Head of the ICRC Regional Delegation, December 26, 2011. According to the ICRC records, the mortal remains of at least 413 persons lie stored in Prishtina's main morgue. Report: the situation in Kosovo, prelude, page 6, September 14, 2010, Sarajevo, ICMP webpage: <http://www.ic-mp.org/wp-content/uploads/2007/11/icmp-dg-264-4-bos-doc-general.pdf>

546 Report: the situation in Kosovo, prelude, pages 5 through 16, September 14, 2010, Sarajevo, ICMP's webpage: <http://www.ic-mp.org/wp-content/uploads/2007/11/icmp-dg-264-4-bos-doc-general.pdf>

547 Multiple interviews with ICMP experts, conducted between August 2011 and January 2012.

548 Email correspondence with Dragan Đukanović, Chairman of Montenegro's Commission on Missing Persons, December 15, 2011.

549 *Ibid.*

550 *Ibid.* Those in question were Bogdan Radević from Peć and Redža Šalja from Đakovica, whose families currently reside in Montenegro.

551 *Ibid.*

552 Information on the Nikšičko-šavnička group, Radan Nikolić, author; the Association of War Veterans of the 90s, Montenegro, <http://www.ubr.co.me/projekti>

In 2010 and 2011, no new bodies of foreign nationals missing since the Yugoslav wars were discovered in Montenegro.⁵⁵³ Towards the end of July of 2010, investigators from Montenegro and Kosovo, along with EULEX forensics, conducted a search of the mill in Andrijevica, suspected of hiding a mass grave containing the mortal remains of missing Kosovo Albanians. The search, however, yielded no new discoveries.⁵⁵⁴

Although the protocols on cooperation with foreign Commissions on Missing Persons have yet to be signed, Montenegro's Commission has announced its intention to place a greater emphasis on bilateral agreements and protocols on cooperation in the future.⁵⁵⁵

5.7. Macedonia

As regards discovering the fates of those missing in Macedonia, the situation has not officially changed from the one described in the 2009 report on *Transitional Justice in post-Yugoslav States*, made jointly by the HLC, Documenta and BIRN.

The uncertain fate of the missing in Macedonia is closely tied to the extension of amnesties for those suspected/convicted of criminal acts, derived in 2011 from a creative interpretation of the Amnesty Law. The Macedonian MUP claimed that the search for the missing would continue, despite the fact that those amnestied had also been given the right not to testify about their own criminal involvement.⁵⁵⁶

According to ICRC records, 14 (out of a total of 22) individuals who disappeared in connection with the 2001 conflict in Macedonia are still listed as missing⁵⁵⁷, while the MUP records set the number of those still missing at 16.⁵⁵⁸ To date, the mortal remains of four ethnic Macedonians⁵⁵⁹, three ethnic Albanians⁵⁶⁰ and one Bulgarian national⁵⁶¹ have been successfully identified.

The Commission on the Fates of Those Kidnapped and Missing in the Republic of Macedonia since 2001 was established in 2003. Although formally the Commission still exists, Macedonian officials have been unwilling to confirm or deny such a claim.⁵⁶²

5.8. Slovenia

According to the General Police Administration (GPA) within the Ministry of Internal Affairs, Slovene authorities are still actively searching for some 260 missing individuals.⁵⁶³ Since the Slovene Police do not keep records on those who disappeared in other parts of the former Yugoslavia, and since all victims of the 1991 conflict in Slovenia have already been identified, there are currently no persons officially listed as missing in connection with

553 Email correspondence with Dragan Đukanović, Chairman of Montenegro's Commission on Missing Persons, December 15, 2011.

554 "No Albanian mass graves found in Andrijevica", *Portal Analitika*, July 27, 2010; <http://www.portalanalitika.me/drustvo/vijesti/8766-nema-masovne-grobnice-albanaca-u-andrijevici-.html>

555 Email correspondence with Dragan Đukanović, Chairman of Montenegro's Commission on Missing Persons, December 15, 2011.

556 Information obtained from the Ministry of Internal Affairs, January 23, 2012.

557 Information contained in the ICRC Annual Report for 2009. The 2010 report contained no new information. The 2011 report has yet to be published.

558 Information obtained from the Ministry of Internal Affairs, January 23, 2012.

559 Identified as Krsto Gogovski and Vasko Mihajlovski from the village of Neprošteno, and Simeon Jakimovski and Dimitrije Dimovski from Tetovo. All four were exhumed in 2001 in the area surrounding Tetovo.

560 Identified as Islam Veliju, Hajredin Halimi and Ibrahim Veliju. All three were exhumed in 2004 from a pit on Mount Bistra.

561 Identified as Radoslav Ginov, exhumed from a pit on Mount Bistra in 2004.

562 Собраниската комисија ќе ја утврдува судбината на киднапираните, Утрински весник June 28, 2003. <http://star.utrinski.com.mk/?pBroj=1205&stID=5499&pR=2>, accessed September 1, 2012.

563 The figure includes all of the missing in Slovenia; information provided by the GPA on January 23, 2012.

the conflict. Some Slovenes, however, did disappear during the BiH conflict.⁵⁶⁴

6. Education and wartime events

6.1. Bosnia and Herzegovina

The textbooks used in elementary and high schools in BiH have not changed much over the last two years, and history books in particular exhibit signs of ethnic bias.⁵⁶⁵

At the initiative of the Council of Europe, a revision process was conducted in 2007. The aim was to have all references to the 1992 – 1995 war removed from textbooks used in schools across the country. However, that seemed not to include the ninth grade history book in use in Republika Srpska, which has retained a unilateral and biased view of the break-up of Yugoslavia and the ensuing conflicts in Croatia and Kosovo, including NATO's air campaign over FRY.⁵⁶⁶ While textbooks in the Federation (intended for Bosniak students) still adhere to the moratorium on references to the 1992 – 1995 period, textbooks intended for ethnic Croat or Serb students retain a biased interpretation of the recent past.

Schools in the Federation allow students to choose between alternative history textbooks, unlike schools in Republika Srpska, which teach the same textbook to all students in a given grade. High schools in Republika Srpska have a shared curriculum, while elementary schools allow students to elect courses from the national curricula of one of the Federation's cantons. A total of 2,804 students (the majority of them being from the Tuzla canton) have chosen to avail themselves of this opportunity.⁵⁶⁷ Elementary schools in RS also allow for special classes, created in order to simplify the teaching process.

As part of the civic education curriculum, BiH high schools now teach two non-elective courses – *The Basics of Democracy* and *Democracy and Human Rights*.⁵⁶⁸ Both courses were developed by the CIVITAS educational network in collaboration with the Council of Europe. CIVITAS is now working on developing other curricula, and conducts the certification of all BiH teachers and professors. The *Democracy and Human Rights* course deals with the wider aspect of human rights, but also touches on transitional justice (e.g. topics dealing with the idea of justice, individual rights and the role of humanitarian and non-governmental organizations).⁵⁶⁹ The CIVITAS curriculum also includes the *Humanitarian Law Research* (HLR) course. It was created by the ICRC and EDC (Education Development Center) after the war, and is being taught in some parts of BiH. The course, intended for teenagers aged 13 – 18, aims to convey the basic principles and rules of international humanitarian law, and encourages students to engage in peaceful conflict resolution and charity work in their communities.⁵⁷⁰ The HLR course has been integrated into school curricula in all three parts of BiH (the Federation, RS and the district of Brčko).⁵⁷¹

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564 In 2007, the mortal remains of an ethnic Serb, exhumed from a mass grave in BiH, were identified as those of Dragomir Petronjić, a resident of Celje (originally from Prijedor). Having erased him from the citizens' registry, the Slovene Police deported him to BiH in 1992, where he was later killed. "Petronjić's fate unites 'the erased'", October 9, 2007, *Politika* webpage: <http://www.politika.rs/rubrike/Svet/t43553.lt.html> According to unofficial sources, Alojz Krivograd, a Slovene photographer, disappeared in BiH after having been arrested by Serb forces during the summer of 1992. According to witness statements, he was being led to a prisoner exchange when all trace of him vanished. His mortal remains were discovered in 2001 in a mass grave near Foča. "Alojz Krivograd – Futy", June 18, 2001, *Mladina's* webpage: <http://www.mladina.si/93691/alojz-krivograd-futy/>

565 The HLC, Documenta & BIRN 2009 Report on Transitional Justice in post-Yugoslav countries, pages 48 - 49.

566 *Ibid.*

567 Interview with Ivan Idžan, Senior Expert Associate for Elementary Curricula, RS Ministry of Education and Culture, Banja Luka, November 11, 2011.

568 The two courses were made mandatory in all high schools in 2001. In 2009, they were introduced into all elementary schools in BiH.

569 *Democracy and Human Rights*, high school textbook, CIVITAS, Sarajevo, 2009, pages 84 through 92.

570 Information obtained from Dragana Kojić, Head of the ICRC Regional Delegation, January 25, 2012.

571 Not including the Middle Bosnia Canton, which started its own integration process towards the end of 2011.

Schools in the district of Brčko began teaching the HLR course in 2000. It has since been integrated into the homeroom period. Schools in the Federation have been teaching it since 2006. The course is also being taught to Bosniak students as part of the Democracy and Human Rights course (10 lectures each year). Schools teaching the Croatian curriculum have integrated the HLR into the *Politics and Economy* course (also 10 lectures per annum). Schools in RS use the same model as those in the district of Brčko.⁵⁷²

6.2. Croatia

There have been no changes as regards the description of the war in Croatian textbooks since 2009. Teachers still have five alternative history textbooks to choose from – two 8th grade and three 12th Grade textbooks, all of them written by the same author.⁵⁷³ The books often refer to Serbian units as aggressors and portray *Operation Storm* as legitimate and justified, while dismissing crimes perpetrated during the operation as individual incidents motivated by revenge or greed. One of the textbooks not analyzed in previous reports on the progress of transitional justice in post-Yugoslav countries is a 12th Grade textbook written by Mira Kolar-Dimitrijević, Hrvoje Petrić and Jakša Raguž – however, their interpretation of wartime events does not differ much from that of other authors.⁵⁷⁴ They claim that Croatia's victory in the war had marked the end of the idea of "a greater Serbia"⁵⁷⁵, which had aimed at building a "greater Serbia"⁵⁷⁶ by "amputating 70% of Croatia's territory".⁵⁷⁷ The book also refers to Serbian units as "the aggressor"⁵⁷⁸, while the operation in Medak Pocket is described as the liberation of Croatian land. Also cited are UNPROFOR's opposition to occupation by force and its demands that the issue be resolved peacefully.⁵⁷⁹ The exodus in the aftermath of *Operation Storm* is described as an organized departure of 150,000 individuals from Croatia, motivated by their unwillingness to accept Croatian authority.⁵⁸⁰ In the chapter dealing with war crimes in Croatia, only those perpetrated against ethnic Croats are mentioned.⁵⁸¹

The textbook also deals with events from the war in BiH, emphasizing the Serbs' intention to carry out genocide against ethnic Bosniaks and Croats.⁵⁸² The book defines the conflict between ethnic Croats and Bosniaks as a dispute which grew into a short-lived armed conflict⁵⁸³, and plays down Herzeg-Bosnia's involvement in war crimes against ethnic Bosniaks, and denying any ties to Zagreb.⁵⁸⁴

Despite having been integrated into the high school curriculum, the ICRC's HLR course, intended for teenagers aged 13 – 19, has not seen much use, and is not well-known to the wider public.

In its introductory letter dating back to September 2010, the ICTY's liaison office in Zagreb asked the Ministry of Science, Education and Sports to give all high school students in Croatia a presentation on the Tribunal and its work. After several months of consideration, the Ministry notified the Tribunal's liaison office that the project had been rejected by the cabinet.⁵⁸⁵

572 Email correspondence with ICRC-Sarajevo spokeswoman Sanela Bajrambašić, January 25, 2012.

573 HLC, Documenta and BIRN: 2009 Report on Transitional Justice in Post-Yugoslav states, page 49.

574 Mira Kolar-Dimitrijević, Hrvoje Petrić and Jakša Raguž, *History 4*, (published by Meridijani, Zagreb, 2004).

575 *Ibid*, pages 230-231, 237.

576 *Ibid*, page 233.

577 *Ibid*.

578 *Ibid*, page 236.

579 *Ibid*, page 241.

580 *Ibid*, page 242.

581 *Ibid*, pages 242-243.

582 *Ibid*, page 240.

583 *Ibid*.

584 E.g. a photo of the destroyed bridge in Mostar is accompanied by a text describing it as having been bombarded during the war – without identifying the unit responsible.

585 Information obtained for the ICTY's liaison office.

6.3. Serbia

Since 2010, the Serbian Ministry of Education has approved and published five new 8th Grade history textbooks and two new teaching aids, as well as one new 11th Grade textbook (to be used in sixth-form colleges of natural sciences and mathematics), setting a new regional record.⁵⁸⁶ For years, the 8th Grade history textbook has been attracting the most interest among Serbia's publishers. All history textbooks currently in use address the history of Yugoslavia, its break-up and the ensuing conflicts, including the circumstances surrounding the emergence of the post-Yugoslav states.

The textbooks published by the Institute for Textbook Publishing and Teaching Aids are the most used in Serbia's schools.⁵⁸⁷ Its 8th Grade history textbook describes the breakup of Yugoslavia as a consequence of nationalism promoted from the top of the Communist Party and state pyramid.⁵⁸⁸ As examples of such "nationalism", the book lists only Albanian and Croatian nationalism, while Serbia's leadership is described as "having resisted longest the introduction of a multi-party system and democracy". It also claims that the political option presented and headed by Milošević was characterized by "regime-sanctioned oppression, lack of democracy and political tolerance, the persecution and arrest of political opponents".⁵⁸⁹

The war in BiH is addressed separately and is described as a civil war which began as a "limited, local conflict in Croatia, subsequently spilling over into Bosnia after its declaration of independence on April 6, 1992". The part dealing with the war in Croatia contains no mention of the role and responsibility of the former JNA.⁵⁹⁰ It is, however, noted that the war ended after "Croatian military operations against the Serbian population", which led to 99% of all ethnic Serbs resident in the Republic of Srpska Krajina being driven out and 80% of their houses being burned down - a claim supported by quotes of findings made by the Croatian Helsinki Committee.⁵⁹¹ There is not a single reference to the suffering of ethnic Croats during the conflict. The textbook does mention the "massacre in Srebrenica", describing it as "a war crime and a crime against humanity, perpetrated against Bosniak soldiers and civilians by RS armed forces and paramilitaries".⁵⁹² The book refers to the total number of victims as "disputable", citing those who set the number at around 8,000, and those who claim that figure is exaggerated.⁵⁹³ The authors also note that, although the International Court of Justice "did qualify the crime as genocide" in its February 26, 2007 ruling on the lawsuit filed by BiH against FRY, "it failed to establish Serbia's involvement".⁵⁹⁴ The greater part of this chapter deals with the situation in Kosovo, describing it not as an armed conflict, but as "a clash between an Albanian terrorist organization and the forces of law and order" during "NATO's aggression on Serbia". There is no mention of Albanian civilian casualties. A table of "civilian casualties in NATO's airstrikes" lists "220,000 ethnic Serbs and other non-Albanians" as having "fled Kosovo", and "1,500 - 2,500 civilians" as having "died during the aggression".⁵⁹⁵ And, finally, although the textbook does name some ethnic Serbs indicted by the ICTY, it does not say what they were accused of. The parts dealing with ethnic Serb victims name those responsible, while victims of other ethnicities (with the exception of those who died in Srebrenica) are spoken of in abstract terms, referred to only within the context of "all the victims of war", without specifying their ethnicity or that of the perpetrators, and failing to identify the forces responsible.⁵⁹⁶

586 For a complete list of textbooks currently in use in Serbia's schools, visit the Education Ministry's webpage: <http://www.mpn.gov.rs/prosveta/page.php?page=80>

587 While teachers are usually able to choose which textbook to use, in some schools the decision lies with the Head. Students and parents hold no sway over the decision. Information gathered from interviews with six teachers from elementary and high schools in Belgrade, Niš and Leskovac, all of which were conducted in February of 2012.

588 Đorđe Đurić and Momčilo Pavlović, *History 8* (published by the Institute for Textbook Publishing and Teaching Aids), page 184.

589 *Ibid.*

590 JNA units are shown in just one photograph, titled "Croatian nationalists trying to pull a JNA soldier from his tank in the streets of Split".

591 *Ibid.*, page 186.

592 *Ibid.*, page 185.

593 *Ibid.*

594 *Ibid.*, pages 185-186.

595 *Ibid.*, page 187.

596 *Ibid.*, pages 184 through 188.

Another textbook, written by Radoš Ljušić and Ljubodrag Dimić, describes the war in Croatia as “having elements of both religious and secular (national) conflict”, while referring to Croatia’s armed forces as “paramilitaries”, despite having noted its independence and recognition by other states.⁵⁹⁷ *Operations Flash* and *Storm* are described as “premeditated ethnic cleansing of Serbs”.⁵⁹⁸ With respect to the war in BiH, the authors claim that “military operations conducted by all sides party to the conflict were accompanied by mass crimes, among which stands out the massacre in Srebrenica” – without detailing what actually happened there, or who the victims were.⁵⁹⁹

The part analyzing the recent events in Kosovo fails to describe the harm suffered by ethnic Albanians, in much the same way that other parts of the book, namely those dealing with the social and political climate that existed in the former Yugoslavia after WWII, ignore the causes that led to the Albanian rebellion in Kosovo, or the real reasons behind their unwillingness to live in Serbia. According to the authors, the “crisis” in Kosovo began with “provocations by the terrorist Kosovo Liberation Army”, which enjoyed the support of the “international community” (for some reason, the book’s authors chose to put this term in quotes).⁶⁰⁰ The book lists “2,000 civilians and 462 soldiers and policemen as having died during the NATO aggression”, and claims that the arrival of NATO troops in Kosovo was accompanied by “widespread crimes against civilians”, which resulted in “more than 200,000 ethnic Serbs and other non-Albanians leaving Kosovo”.

The authors describe the Milošević regime as “having overcome numerous challenges” during the nineties, “the most significant of which were opposition rallies, disputes with the RS and RSK leadership, international sanctions, a high inflation rate and the NATO air campaign”, all of which “had contributed to the decrease in the regime’s popularity”, and finally led to its election defeat.⁶⁰¹ The authors then go on to conclude that “Milošević’s legacy of lawlessness, ruined state institutions and widespread crime sealed the fate of Prime Minister Zoran Đinđić”.⁶⁰²

The Education Ministry has recommended that the ICRC’s HLR course be integrated into high school civic education, but the implementation has been delayed because of pending high school reform. The programme was accredited with the Ministry’s Department for Teacher Specialization, and some 350 high schools teachers have since completed the training.⁶⁰³

6.4. Kosovo

There have been no notable changes in Kosovo’s policy on education concerning the conflict period. Schools are still using the textbooks that have been introduced over the past few years. Their content has not been changed, and they only show contentious events from the perspective of ethnic Albanians, failing to mention any of the crimes perpetrated between 1998 and 2000 against ethnic Serbs and other non-Albanians.⁶⁰⁴

Schools in Kosovo teach the curriculum of the Kosovo Education Ministry, with the exception of those schools where ethnic Serbs and Gorani make up the majority of students. In these schools, located exclusively in areas populated by majority Serbs or in Gora (Dragaš and neighboring villages), students are being taught, in Serbian, the curriculum of the Serbian Education Ministry. Gorans from Dragaš usually prefer to send their children to such schools, as the majority of them speak Serbian. This applies to both primary and secondary schools in

597 Radoš Ljušić and Ljubodrag Dimić, *8th Grade history textbook*, (published by Freska, Belgrade, 2010), pages 238 – 239.

598 *Ibid.*

599 *Ibid.*, page 240.

600 *Ibid.*

601 *Ibid.*, page 241.

602 *Ibid.*

603 Information obtained from Dragana Kojić, Head of the ICRC’s Regional Delegation, January 25, 2012.

604 HLC, Documenta and BIRN, 2009 Report on Transitional Justice in post-Yugoslav states, page 53.

Dragaš. Gorans are integrated into the Kosovo education system in the boroughs of Peć and Prishtina, as very few of them live in these areas.⁶⁰⁵

6.5. Montenegro

During 2010 and 2011, students attending primary and secondary schools in Montenegro were able to use only those textbooks published by the Institute for Textbooks and Teaching Aids in Podgorica.

Lessons on the break-up of Yugoslavia and the ensuing conflict were still being taught to 9th Grade students from a textbook written by Slavko Burzanović and Jasmina Đorđević⁶⁰⁶, while 12th Grade sixth-form college students had two textbooks to choose from – one written by Šerbo Rastoder, Radoje Pajović and Zvezdan Folić in 2003, the other by Šerbo Rastoder, Dragutin Papović and Sait Šabotić in 2009.⁶⁰⁷

The 9th Grade history textbook addresses the Yugoslav conflict in just one lesson – and it fails to mention any of the crimes that occurred in Montenegro (Kaluderski Laz, Bukovica, Morinj and numerous instances of forced deportation of Bosniak refugees).⁶⁰⁸ The lesson is similar in content to the one included in the 12th Grade textbook by Rastoder, Pajović and Folić.⁶⁰⁹

Since school year 2009 – 2010, students attending sixth-form colleges in Montenegro have been using the new edition of the 12th Grade history textbook, written by Rastoder, Papović and Šabotić.⁶¹⁰ Because of its markedly negative view of the role played by Metropolitan Amfilohije, the JNA and the Montenegro Government during the shelling of Dubrovnik, and the fact that it contained references to the crimes perpetrated in the village of Bukovica (near Pljevlje) and the Morin Camp, the textbook received widespread condemnation from Montenegro's political parties and associations⁶¹¹, prompting the Science and Education Ministry to instruct the General Education Council to review some of its content. In its session of January 26, 2010, the Council decided to extend the use of the old textbook until the end of school year 2010.⁶¹² It also suggested that a review board be established to evaluate the contentious history textbook.⁶¹³ The Institute for Textbooks and Teaching Aids has since announced an open competition for a new textbook. No such competition had been organized by December 31, 2011.⁶¹⁴

Since 2006, the ICRC's Humanitarian Law Research course was designated non-elective for all 8th and 9th Grade elementary students in Montenegro. The General Education Council has since decided to introduce it as an elective course available to students of earlier grades. A total of 813 students attended HLR classes during school year 2009/2010.⁶¹⁵

605 Information obtained from HLC Kosovo.

606 Phone interview with Biljana Miranović, Editor in charge of history textbooks at the Institute for Textbooks and Teaching Aids. December 8, 2011.

607 Phone interview with Radovan Popović, History Department Supervisor at the Institute for Schools, December 8, 2001.

608 Slavko Burzanović and Jasmina Đorđević, *9th Grade History* (published by the Institute for Textbooks and Teaching Aids, Podgorica, 2009). For detailed analysis of the textbook, see the 2009 Report on Transitional Justice in post-Yugoslav States by the HLC, Documenta & BIRN, pages 54 – 55.

609 Šerbo Rastoder, Radoje Pajović and Zvezdan Folić, *12th Grade History* (published by the Institute for Textbooks and Teaching Aids, Podgorica, 2003).

610 Šerbo Rastoder, Dragutin Papović and Sait Šabotić, *12th Grade History for Gymnasiums* (published by the Institute for Textbooks and Teaching Aids, Podgorica, 2009). For detailed analysis of the textbook, see the 2009 Report on Transitional Justice in post-Yugoslav States by the HLC, Documenta & BIRN, pages 55 – 56.

611 The HLC, Documenta & BIRN - 2009 Report on Transitional Justice in Post-Yugoslav States, page 56.

612 "A Debate on History Textbooks", *Educational Work 1-2*, February 2009, see webpage: http://www.prosvjetnirad.co.me/broj17-18_09g/10.htm

613 "Both 'histories' to be taught until the end of the year", January 26, 2010, *Portal Analitika's* website: <http://www.portalanalitika.me/politika/vijesti/1664-sa-dvije-istorije-do-kraja-kolske-godine.html>

614 Over-the-phone interview with Nada Durković, Chief Editor at the Institute for Textbooks and Teaching Aids, December 9, 2011.

615 "The introduction of HLR into the education system", Montenegro's School Institute's webpage: http://www.zzs.gov.me/rubrike/projekti/projekti/humanitarno_pravo/

6.6. Macedonia

As of December 31, 2011, none of the textbooks used in primary and secondary schools in Macedonia contained any references to the 2001 armed conflict⁶¹⁶ owing to divisions within Macedonian society on what really happened during the conflict.⁶¹⁷

6.7 Slovenia

Textbooks used in primary, secondary and tertiary schools in Slovenia describe the majority of events dating back to Slovenia's declaration of independence accurately. However, a certain amount of one-sidedness is noticeable in the interpretation of the breakup of Yugoslavia and the ensuing armed conflicts.

The Yugoslav crisis of the eighties, the secession of Slovenia and the downfall of socialism are dealt with in 9th Grade history textbooks. A textbook entitled "Our Century" describes how Ante Marković, the last Yugoslav Prime Minister, "had very little real political power, and had to give in to the demands of the Republics all the time (primarily those of Serbia and the JNA)"; which was demonstrated when, in January 1991, "Serbia used its people in the National Bank of Yugoslavia to appropriate some 1.4 billion dollars in order to cover pensions owed and losses incurred by its banks". The 1991 rallies in Kosovo are described as "social and national", while Kosovo's majority Albanian population is said to "have demanded that Kosovo become a republic with the right to self-determination, and thus the right to enter into a union with Albania", resulting in the Yugoslav authorities "using the army and the police to quell the protests". The textbook deals with the wars in Croatia and BiH in just one page,⁶¹⁸ describing the BiH conflict as a "clash of three peoples - the Muslims, the Serbs and the Croats", which used to live "in harmony with each other". The book goes on to describe the effects of the war and ethnic cleansing as "a flood of refugees, numbering more than 2.5 million – more than half the Republic's entire population", claiming that the European states' "reaction to the war was weak". The authors of another textbook, titled "The 20th Century", note that the Serbian President Slobodan Milošević and his cronies, having been opposed to the idea of a confederate Yugoslavia, "used the JNA to arm ethnic Serbs living outside of Serbia's borders and incite conflicts", which, in turn, led to "wars that lasted many years, which Slovenia managed to escape".⁶¹⁹

The 9th Grade textbook entitled "My Research Into The Past" offers a detailed interpretation of the conflict between Slovenia and Serbia.⁶²⁰ Its authors make no distinction between the views of the leadership and the views of their ethnic constituencies, claiming that "the tensions between the Slovenes and the Serbs first appeared in the eighties, when it became clear that two opposing economic and political systems were being introduced in Slovenia and Serbia respectively; the Slovenes", they claim, "supported democracy and cooperation with western Europe, while the Serbs wanted an isolated Yugoslavia and basked in their past glory".

The 12th Grade textbooks used in sixth-form colleges give a more precise account of Slovenia's secession and the breakup of Yugoslavia.⁶²¹ At the beginning of the chapter on the breakup of Yugoslavia, the authors claim that the ongoing crisis of the eighties gave birth to two diverging concepts, "one Slovene, the other Serbian", with the Serbian Communist leadership "adopting the idea of a Greater Serbia" shaped as a national programme by SANU (the Serbian Academy of Sciences and Arts), and seeking to "abolish the (con)federate principles of the Yugoslav constitution of 1974", claiming that "the Serbian people, spread out across several Republics, were its greatest victim".⁶²² Such views persist in all of the later editions, even those written by other authors.⁶²³ The

616 Interview conducted with Ljupčo Spasovskim, Head of the Science and Education Ministry's pedagogical service, January 18, 2012.

617 *Ibid.*

618 Ana Nuša Kern, Dušan Nećak, Božo Repe – *Our Century* (published by Modrijan, Ljubljana, 2005), pages 211 – 226.

619 Ervin Dolenc, Aleš Gabrič and Marjan Rode, *20th Century* (published by DZS, Ljubljana, 2008), page 164.

620 Jelka Razpotnik, Damjan Snoj – *Raziskujem preteklost 9* (published by Roksu, Ljubljana, 2005), page 169.

621 Ervin Dolenc, Aleš Gabrič, *Zgodovina 4* (published by DZS, Ljubljana, 2002), pages 242 – 247.

622 *Ibid.*

623 Aleš Gabrič, Mateja Režek, *Zgodovina 4* (published by DZS, Ljubljana, 2011), page 208.

book then goes on to say that such a policy was backed by the JNA, “the majority of which was comprised of ethnic Serbs and Montenegrins”. It also states that Serbia “raised the issue of borders between the Republics” by adopting the “all Serbs in a single state” slogan, and that the Serbian political leadership aimed to achieve supremacy for Yugoslavia’s most populous ethnic group by “organizing massive warmongering rallies in support of Slobodan Milošević”. It was for this reason that “the Serbian political leadership, unlike those of the rest of Eastern Europe which had seen the complete collapse of Communism, chose to defend the system and attempted to use it to further its own interests within Yugoslavia.” The chapter on Slovenia’s independence describes how “armour deployed in Krakov forest was easy pickings for the Slovene Territorial Defence, forcing the JNA to withdraw from Slovenia”.⁶²⁴ The war that raged in other parts of the former Yugoslavia is not described at all, with the exception of a single sentence, to be found beneath a photo of a refugee, describing the war as “one of the bloodiest in modern history”. “History 2”, a textbook used in technical and other specialized schools, speaks of a “JNA intervention which began immediately after Slovenia’s declaration of independence”; however, it does not state the aim of such an intervention or describe it in detail. Also not mentioned is the fact that the JNA acted on orders from the Federal Government. The authors assess that the Slovene Territorial Defence “disabled the Yugoslav army”, and that the conflict with the JNA would have been ended by EU mediation anyway - that is, “after the Brioni negotiations between Slovenia, Croatia and Serbia”.⁶²⁵

None of the textbooks contain any mention of “the erasure” in Slovenia and related events.

V. Reparations

1. Summary

The post-Yugoslav states, for the most part, have not modified the previous laws prescribing the status and the rights of the civilian victims of war, and this segment of transitional justice leaves much to be desired. Most of these states still grant the right to administrative reparations only to civilians and military personnel who sustained bodily harm, but to become beneficiaries of these rights they need to produce proof of ill-treatment. Victims who do not meet these conditions, that is did not suffer bodily harm due to ill-treatment during the armed conflicts, do not enjoy the status of civilian victims of war in the majority of post-Yugoslav states. The only exception is BiH, where the law prescribes that victims of rape and sexual assault are entitled to compensation without having to prove any bodily harm.

During the preceding period, persons who had been detained in camps also had to prove bodily injury in the majority of these states, Croatia being the exception, and detention did not suffice to become eligible for reparations. With regard to individuals detained in camps, progress can be expected in Kosovo, which in late 2011 adopted a law regulating the status, rights and benefits of the civilian and military victims of war. It prescribes that detention in a camp suffices for the acquisition of the status of civilian victim and/or prisoner of war.

Kosovo has made a step forward with regard to reparations for the victims of human rights violations outside the armed conflict but in relation to it. In 2010 it adopted the Law on the Rights of Former Political Prisoners and Persecuted, regulating the legal status, rights and benefits of this large category of victims.

The legal provisions on the status, rights and benefits of the victims of war continue to be in force in all post-Yugoslav states. They are discriminatory in terms of the conditions required to get the status of war invalid, the amount of compensation and the scope of the benefits, as they still give preference to combatants over civilians.

⁶²⁴ Ervin Dolenc, Aleš Gabrič, *Zgodovina 4* (published by DZS, Ljubljana, 2002), page 246.

⁶²⁵ Stane Berzelak, *Zgodovina 2* (published by Modrijan, Ljubljana, 2003), pages 186-203.

Regardless of the huge number of compensation claims filed with courts of law across the region, very few victims manage to get compensation for the damage suffered during the armed conflicts, due to the protracted proceedings, interpretations of the legal provisions on the status of limitations relative to claims going against the victims, the application of the exceptionally high standards of evidence, inappropriate treatment of the victims and because courts declare that such cases are beyond their jurisdiction. Victims thus increasingly seek protection of their rights before international institutions. In 2010, in its first-instance judgment in the case of ten “erased” citizens, the European Court of Human Rights found Slovenia responsible, stating that in this case Slovenia had acted in breach of the European Convention on Human Rights. The judgment created room for the regulation of these persons’ status in the future.

Almost all post-Yugoslav countries, as before, erect memorials only in honour of the victims who are members of the ethnic majority. Montenegro is the only country which has dedicated a monument to all civilian victims who perished in the armed conflicts of 1991-2001. A small number of such monuments are the result of private initiative or the effort of the victims’ families, without any involvement of the authorities and often without the necessary authorisation. In several cases the authorities have prohibited or removed such memorials.

2. Material reparations

2.1. Bosnia and Herzegovina

2.1.1. Administrative material reparations

The initiative launched in 2006 to adopt a national law on the rights of the civilian victims of war and torture had not produced concrete results by the end of 2011. The bill drafted by a working group of the Ministry for Human Rights had not been approved by the governments of the two entities by the end of 2011.⁶²⁶ It is envisaged to adopt this law regulating the status of the civilian victims of war in the country as a whole and finally to remedy the status of the victims of torture suffered in prisoner detention camps not later than next year.⁶²⁷

With the exception of the families of the missing, monetary benefits for all categories of victims in Bosnia and Herzegovina are regulated only at entity rather than national level. As a result, the amounts received by individual categories of civilian victims differ significantly as they depend on the entity in which the victims reside.⁶²⁸

In Bosnia and Herzegovina, the Law on Missing Persons is still the only act regulating administrative material reparations for a specific category of the victims of war which is applied at state level.⁶²⁹ The monthly monetary support for the families of the missing totals 25 percent of the average salary in Bosnia and Herzegovina during the previous quarter and is calculated individually for every beneficiary. According to the Statistics Bureau of Bosnia and Herzegovina, the average salary in BiH was KM 798 (ca € 400)⁶³⁰; the basis for the monthly payments to members of the missing persons’ families was therefore about KM 200 (c. € 102).

The Law on Missing Persons was adopted in Bosnia and Herzegovina as early as 2004, but the Fund for the Support of the Families of the Missing in Bosnia and Herzegovina has not been set up yet and this jeopardises further the status of these families.

626 E-mail communication with Ruzmira Gačo, expert associate, Ministry for Human Rights and Refugees BiH, 18 January 2012..

627 „Nebriga države BiH: u ratu žrtve torture, danas žrtve politike“ *BiH State Cares Not: Victims of Torture in War, Victims of Politics Today*), web site *Radio Free Europe*, 20 May 2012, <http://www.slobodnaevropa.org/content/u-ratu-zrtve-torture-danas-zrtve-politike/24586988.html>.

628 Humanitarian Law Centre, Documenta & BIRN, *Tranziciona pravda u post-jugoslovenskim zemljama: Izveštaj za 2009. godinu* (*Transitional Justice in the Post-Yugoslav Countries: Report for 2009*), p. 58.

629 Zakon o nestalim osobama (Law on Missing Persons), *Službeni glasnik BiH (Official Gazette BiH)*, No. 50/04.

630 Statistics Bureau of Bosnia and Herzegovina, at Agencija za statistiku Bosne i Hercegovine, web site [http://www.bhas.ba/saopstenja/NPL_2000_2010_bh.pdf](http://www.bhas.ba/saopštenja/NPL_2000_2010_bh.pdf).

2.1.1.1. *Federation of BiH*

The entitlement to monthly payments in the Federation of BiH is still determined according to the degree of disability which a person suffers, and which needs to be proved equally in the case of civilian victims of war and in the case of the defenders. As before, there are significant discrepancies between the disability bonuses for the military and civilian victims of war.⁶³¹ Moreover, the civilian victims can lose the right to the disability bonus after their recovery from the injuries suffered due to the war operations.

The status and the rights of the victims of wartime rape and sexual assault are still prescribed by the Law on the Grounds for Social Welfare, Welfare of Civilian Victims of War and Welfare of Families with Children, as a special category of the civilian victims of war.⁶³² The monthly compensation for rape victims in the Federation continues to be about € 280⁶³³, but they still have to prove their status of civilian victims and show that they have contacted an organisation or institution for psychosocial assistance, without, however, needing to submit medical documentation.

Questionable legal solutions will remain in force until the adoption of a new state law relative to the status of persons who have suffered torture and inhumane treatment in detention camps during the war. They are still entitled to monthly compensation and other benefits provided from cantonal, municipal or entity budgets, provided their degree of health impairment is not less than 60 percent.⁶³⁴ All the others may seek their rights only through courts.⁶³⁵

In 2010 5,157 individuals in the Federation of Bosnia and Herzegovina enjoyed disability rights as civilian victims of war; in 2011 there were 5,143 such persons. In 2010 and 2011 the payments to the civilian victims of war did not change as against 2009. The funds are provided on a participatory basis, i.e. 70 percent come from the budget of the Federation of BiH and 30 percent from the cantonal budgets. They range from KM 101.51 to KM 563.95. For the sake of comparison, according to the Federal Bureau of Statistics, in October 2011 the average net monthly salary in the Federation of Bosnia and Herzegovina was KM 817.67 (€ 419).⁶³⁶ In 2010, 5,746 persons, family members of killed civilians, enjoyed the right to this bonus, and 5,581 persons received it in 2011.⁶³⁷

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2.1.1.2. *Republika Srpska*

In Republika Srpska, the disability bonuses for war invalids are regulated by the Law on the Rights of the Veterans, War Invalids and Families of Killed Combatants in the Defensive-Patriotic War of Republika Srpska.⁶³⁸ The status of the military war invalids and combatants' families is still much better than the status of the civilian victims of war, particularly in terms of the amount of monthly payments and the injury percentage serving as a basis for the assessment of the disability. The compensation received by civilian war invalids ranged from KM 112 to KM 1,125 (€ 57-575). The military war invalids received from KM 25 to KM 1,825 (€ 13- € 933). The funds are provided from the budget of Republika Srpska, i.e. the Ministry of Labour and Veteran and Invalid Welfare.⁶³⁹ The Law on the Welfare of the Civilian Victims of War regulates the rights and benefits of the civilian victims of war and members

631 Humanitarian Law Centre, Documenta & BIRN, Tranziciona pravda u post-jugoslovenskim zemljama: Izveštaj za 2009. godinu (Transitional Justice in the Post-Yugoslav Countries: Report for 2009), p. 57.

632 Službene novine Federacije BiH (Official Gazette of the Federation of BiH), 36/99; 54/04; 39/ 06; 14/ 09.

633 Letter of the Federal Ministry of Labour and Social Policy of BiH, 10 January 2012.

634 The amendments to the Law on the Grounds for Social Welfare, Welfare of Civilian Victims of War and Welfare of Families with Children of 2006 lay down that the injury can also be mental and not only physical.

635 "Žrtve rata u BiH i dalje traže kompenzaciju" (War victims in BiH still seek compensation), web site Centar za pravdu i pomirenje (Centre for Justice and Reconciliation), <http://cjr.ba/bs/page.php?id=74>.

636 Web site of the Federal Bureau of Statistics, Federation of BiH, www.fzs.ba.

637 Information received from the Ministry of Labour and Social Policy of the Federation of BiH, 10 January 2012.

638 Službeni glasnik Republike Srpske (Official Gazette of Republika Srpska), 134/11.

639 The answer received by e-mail from Maja Radetić, Public Relations Office, Ministry of Labour and Veteran-Invalid Welfare of Republika Srpska, 25 January 2012.

of the families of the killed - those killed in combat, or dead or missing civilian war victims.⁶⁴⁰ Under the Law on the Welfare of the Civilian Victims of War, a person is a civilian victim of war if he/she suffered a 60 per cent bodily injury due to a wound, injury or impairment. In the case of the military invalids of war, the injury may be as low as 20 percent.⁶⁴¹

In 2010 there were 1,725 beneficiaries of the monthly compensation for civilian invalids of war, and in 2011, 1,654 beneficiaries⁶⁴². The number of the military invalids of war is higher, totalling 36,452 persons in 2010 and 35,629 in 2011⁶⁴³. Towards the end of 2010, 2,051 beneficiaries were receiving a family allowance as members of families of civilians killed in Republika Srpska. In December 2011, there were 2,005 such beneficiaries. In 2010, there were 30,717 beneficiaries of the family allowance awarded to members of the families of persons who had the status of soldiers in Republika Srpska, and in 2011 there were 29,224 of them.⁶⁴⁴ The family disability bonus includes the family disability bonuses for missing persons.

The status of the victims of rape in Republika Srpska is still worse than in the Federation of Bosnia and Herzegovina. The monthly allowance is still significantly lower (in the Federation it is about € 280, whilst in Republika Srpska rape victims receive between € 50 and €150 per month). Moreover, to prove that they are civilian victims of war the rape victims in Republika Srpska still have to submit medical documentation proving the injury sustained to be not less than 60 percent.⁶⁴⁵

2.1.2. Material reparations awarded by courts

By the end of 2011, the courts in BiH had pronounced some 20 judgments in these cases, but the money was never paid.⁶⁴⁶ Representatives of courts and victim associations point out that some plaintiffs were allotted KM 20 some as much as KM 200 or even KM 500 for every day spent in a detention camp⁶⁴⁷.

Suits against the Federation of Bosnia and Herzegovina were filed mostly through the associations of survivors of inhumane treatment and torture in detention camps across Bosnia and Herzegovina⁶⁴⁸. Members of the Union of Camp Inmates of Bosnia and Herzegovina have filed so far more than 15,000 claims with local courts; the majority of them, some 12,000, against Republika Srpska⁶⁴⁹. In 2010 and 2011, suits against Republika Srpska

640 The Law on the Welfare of the Civilian Victims of War (Zakon o zaštiti civilnih žrtava rata), Art 2, Službeni glasnik Republike Srpske (Official Gazette of Republika Srpska), No. 24/10.

641 The Law on the Welfare of the Civilian Victims of War (Zakon o zaštiti civilnih žrtava rata), Art. 2, Službeni glasnik Republike Srpske (Official Gazette of Republika Srpska), No. 24/10; the Law on the Rights of the Veterans, the War Invalids and the Families of the Killed Combatants in the Defensive-Patriotic War of Republika Srpska (Zakon o pravima boraca, vojnih invalida i porodica poginulih boraca Odbrambeno-otadžbinskog rata Republike Srpske), Art. 5, Službeni glasnik Republike Srpske (Official Gazette of Republika Srpska), No. 134/11.

642 The answer received from Ivanica Španjić-Rakić, Ministry of Labour and Veteran-Invalid Welfare of Republika Srpska, 11 January 2012.

643 *Ibid.*

644 E-mail from Ivanica Španjić-Rakić, Ministry of Labour and Veteran-Invalid Welfare of Republika Srpska, 11 January 2012.

645 The Law on the Welfare of the Civilian Victims of War, Službeni glasnik Republike Srpske (Official Gazette of Republika Srpska), No. 25/93, latest amendments 10/24, 2.

646 „Žrtve rata u BiH i dalje traže kompenzaciju“ (Victims of War in BiH Still Seek Compensation), web site IWPR, <http://iwpr.net/sr/report-news/%C5%Bertve-rata-u-bih-i-dalje-tra%C5%BEe-kompenzaciju>.

647 „Bivši logoraši podneli 56 tužbi protiv Federacije BiH“ (Former Inmates File 56 Suits against the Federation of BiH), web site *Press-online Republika Srpska*, 22 February 2012. godine, http://pressrs.ba/sr/vesti/vesti_dana/story/10465/Biv%C5%A1i-logora%C5%A1i-podneli+56+tu%C5%BEbi+protiv+Federacije+BiH.html.

648 Pursuant to the provisions of the Law on the Grounds for of Social Welfare, Welfare of the Civilian Victims of War and Welfare of the Families with Children, only the persons who survived torture and inhumane treatment in the wartime camps and sustained injuries of 60 per cent are entitled, as the second category of the civilian victims of war, to a monthly allowance payable from cantonal, municipal or entity budgets. All the others may seek their rights in the Federation of Bosnia and Herzegovina only through courts. The Law on the Grounds for Social Welfare, Welfare of the Civilian Victims of War and Welfare of the Families with Children (Zakon o osnovama socijalne zaštite, zaštite civilnih žrtava rata i zaštite porodice sa djecom), Službene novine Federacije Bosne i Hercegovine 36/99 (Official Gazette of the Federation of Bosnia and Herzegovina); 54/04; 39/ 06; 14/ 09, Art.54.

649 „Žrtve rata u BiH i dalje traže kompenzaciju“ (Victims of War in BiH Still Seek Compensation), web site IWPR, <http://iwpr.net/sr/report-news/%C5%Bertve-rata-u-bih-i-dalje-tra%C5%BEe-kompenzaciju>

were withdrawn and submitted instead to courts in the Federation of BiH⁶⁵⁰. The Federation courts deferred a large number of claims to courts in Republika Srpska. According to the Prosecutor of Republika Srpska, by the end of 2011 they received about 4,000 claims from the Federation of BiH.⁶⁵¹ Members of the Federation of Camp Inmates of BiH do not file claims against Republika Srpska only: 4,000 claims were filed against the Federation and some were filed against Serbia also. In 2009, members of the Association of Croatian Camp Inmates of the Patriotic War started to file claims mostly against the Federation of BiH and by the end of 2011 filed about 4,000 claims. Since 2008, members of the Association of Camp Inmates in RS have filed 536 claims for every camp in which, according to their information, Serbs had been detained. By the end of 2011, Bosniaks filed 56 claims with the Livno Cantonal Court for the time they spent in HVO camps in 1993 and 1994.⁶⁵²

The first judgments in these cases were pronounced in 2011. In October 2011, the Basic Court in Trebinje passed a first-instance judgment ordering the Federation of BiH to pay a former camp inmate in Dretelj near Čapljina KM 100,000 for the torture she suffered during her detention as claimed in the case submitted by the Federation of Camp Inmates of Republika Srpska on behalf of the Association of Camp Inmates of the Trebinje Region.⁶⁵³ This was the first judgment in favour of the Federation of Camp Inmates of Republika Srpska; five more are still pending before the Basic Court in Trebinje. Shortly afterwards three more judgments followed against the Federation of BiH on the same grounds.⁶⁵⁴ Towards the end of 2011, on 29th November 2011, the Cantonal Court in Travnik ruled in the first final judgment following an individual claim filed against the Federation of BiH for the torture suffered, that a former camp inmate from Zenica detained in Kaonik camp (controlled by the HVO) should be paid KM 200 for every day spent in the camp.⁶⁵⁵

In 2010, the Office of the Prosecutor of Republika Srpska had in its records 25,086 cases of war damages worth over KM 845 million. A settlement was reached in 4,272 cases and in 3,186 cases the proceedings were stayed, but in 349 cases the plaintiffs filed motions.⁶⁵⁶

In 2005, when the Law on the Right to Compensation for Material and Non-Material Damage Suffered during War Operations from 20 May 1992 to 19 June 1996 was passed, the Office of the Prosecutor of Republika Srpska was put in charge of settlements; the courts declared that such matters were outside their field of competence and transferred the bulk of the cases filed with them to the Office of the Prosecutor of Republika Srpska.⁶⁵⁷ However, a large number of cases soon ended up at the Constitutional Court of Bosnia and Herzegovina as appeals against the rulings of the Office of the Prosecutor of Republika Srpska. The appeals were the result of a large number of decisions of the Office of the Prosecutor of Republika Srpska in which the indiscriminately calculated amounts of the damages were frequently smaller than those adjudicated by courts in some other cases.

650 According to Murat Tahirović, Chairman of the Federation of Camp Inmates of Bosnia and Herzegovina, it happened because of the obstruction of these claims by the courts in Republika Srpska. "Logoraši iz BiH izgubili spor protiv Srbije" (*Camp Inmates in BiH lose the case against Serbia*), web site *Politika*, 5 November 2011, <http://www.politika.rs/rubrike/region/Logorasi-iz-BiH-izgubili-spor-protiv-Srbije.lt.html>.

651 "RS: BiH manipuliše pričom o ratnoj odšteti" (*RS: BiH Spins a Story about War Damages*), web site *Večernje novosti*, 26 January 2012, <http://www.novosti.rs/vesti/planeta.300.html:363546-RS-BiH-manipulise-pricom-o-ratnoj-odsteti>

652 „Bivši logoraši podneli 56 tužbi protiv Federacije BiH" (*Former camp Inmates File 56 Claims against the Federation of BiH*), web site *Press-online Republika Srpska*, 22 February 2012, http://pressrs.ba/sr/vesti/vesti_dana/story/10465/Biv%C5%A1i-logora%C5%A1i-podneli+56+tu%C5%BEbi+protiv+Federacije+BiH.html.

653 "Lokalno pravosuđe – Trebinje: Presuda zbog logoraške torture" (*Local Judiciary – Trebinje: A New Judgment for Inmate Torture*), web site *BIRN*, 7 October 2011, <http://www.bim.ba/bh/290/10/33518/>.

654 "Trebinje: presude za logoraše" (*Trebinje: Judgments for Camp Inmates*), web site *BIRN*, 7 October 2011, <http://www.bim.ba/bh/303/10/34182/>; and "Lokalno pravosuđe – Trebinje: Nova presuda za logorovanje" (*Local Judiciary – Trebinje: A New Judgment for Inmate Torture*), web site *BIRN*, 9 January 2012, <http://www.bim.ba/bh/303/10/34183/>.

655 "Potvrđena prva presuda po pojedinačnoj tužbi jednog bivšeg logoraša" (*The First Judgment in the Individual Case of a Camp Inmate Confirmed*), web site *TV1*, <http://www.tv1.ba/vijesti/bosna-i-hercegovina/dogadjaji/4274-video-potvrdjena-prva-presuda-po-pojedinacnoj-tuzbi-jednog-bivseg-logorasa.html>.

656 Report on the Work of the Office of the Prosecutor of Republika Srpska in 2010, p. 12.

657 The Law on the Right to the Compensation of Material and Non-Material Damage Sustained during War Operations from 20 May 1992 until 19 June 1996, *Službeni glasnik RS (Official Gazette)*, No. 103/05, 1/09 and 49/09, Art.4.

The appellants claimed that this violated their right to property and the right to a fair trial. The Constitutional Court of Bosnia and Herzegovina stated that the right to property, the right of access to a court of law and the right to independent judiciary were all violated.⁶⁵⁸ On 15 December 2008, the People's Assembly of Republika Srpska adopted the amendments to the Law on the Compensation of Material and Non-Material Damage, which prescribed that as a result of the disappearance of a close relative during the war physical persons were entitled to compensation of non-material damage by means of a settlement to be concluded before the Office of the Prosecutor of Republika Srpska. In October 2009, the Constitutional Court of Republika Srpska decided that some articles of the new law were not in line with the Constitution. The law was found to be unconstitutional because "an act of the legislative authority may not postpone the enforcement of final and executive court decisions and may not determine the fixed amounts of the damages significantly below the amounts adjudicated on the same grounds in court proceedings."⁶⁵⁹ On 23 December 2009, the People's Assembly of Republika Srpska adopted a new law amending the Law on the Right to the Compensation of Material and Non-Material Damage during War Operations. According to this law, the cases for which there are decisions of the Constitutional Court of BiH with precise deadlines shall be accorded priority by the Office of the Prosecutor. There are about 26,000 such cases.⁶⁶⁰

In November 2011, the People's Assembly of Republika Srpska passed the Law on the Internal Debt of Republika Srpska recognising the right to compensation for material and non-material damage sustained during the war operations from 20 May 1992 to 19 June 1996, of legal and physical persons whose right to damages is recognised by court rulings or out-of-court settlements, and persons covered by the Law on the Right to the Compensation for Material and Non-Material Damage Sustained during War Operations from 20 May 1992 to 19 June 1996.⁶⁶¹ The law recognises the right to compensation when the respondent is Republika Srpska or local governments. The damages are payable in Republika Srpska bonds maturing in 13 years in the case of compensation for the damage occurred during war operations.⁶⁶² This law was passed as it was feared that because "citizens are filing requests daily, macroeconomic stability and fiscal sustainability might be disrupted". On the other hand, the victims' associations hold that the law runs counter to international standards.⁶⁶³

In 2010, members of the Union of the Civilian Victims of War of the Canton of Sarajevo filed with the Basic Court in Sarajevo 4,200 claims against Republika Srpska on behalf of 4,200 individuals for compensation of the non-material damage during the shelling of Sarajevo.⁶⁶⁴ The Office of the Prosecutor of Republika Srpska disputes these claims invoking the statute of limitations and because the claims submitted so far exceed KM 600 million. Slobodan Rakulj, the Prosecutor of Republika Srpska, holds that the claims fall within the category of

658 Report on the Work of the Office of the Prosecutor of Republika Srpska in 2010, p. 13.

659 The decision of the Constitutional Court of RS of 14 October 2009, web site of the Constitutional Court of Republika Srpska, <http://www.ustavnisud.org/Odluke.aspx?cat=13&subcat=39&lang=hrv&odluka=186&odldet=503>.

660 Report on the Work of the Office of the Prosecutor of Republika Srpska, p. 15. <http://www.ustavnisud.org/Odluke.aspx?cat=13&subcat=39&lang=hrv&odluka=186&odldet=503>.

661 The Law on the Internal Debt of Republika Srpska, *Službeni glasnik Republike Srpske (Official Gazette of Republika Srpska)*, No. 115/11, Art. 11, para. 1.

662 An almost identical Law on the Internal Debt of Republika Srpska was passed in 2009 but the Constitutional Court of RS (CCRS) found that some of its provisions were unconstitutional. The new law included amendments as recommended by the CCRS: the general bonds were to mature in 14 rather than 15 years and the bonds issued for the material and non-material damage sustained during the war operations were to mature in 13 rather than 14 years. Reasoning of the Law on the Internal Debt, *Official Gazette of Republika Srpska*, No. 115/11.

663 "Žrtve rata: zločin se ne može isplatiti obveznicama" (*Victims of war: the crime cannot be compensated with bonds*), web site *Radio Free Europe*, 13 December 2011, http://www.slobodnaevropa.org/content/zrtve_rata_zlocin_se_ne_moze_platiti_obveznicama/24420914.html.

664 The claims were first filed with the Basic Court in Banjaluka in 2007 and stayed there for two years without any move. They were then withdrawn and filed with the court in Sarajevo with reference to the jurisdiction of the court in a place where the action happened. Interview with Muzafer Teskeredžić, secretary of the Union of the Civilian Victims of War of the Canton of Sarajevo, 10 January 2012.

war reparations and disputes the jurisdiction of the Basic Court in Sarajevo.⁶⁶⁵ In September 2011 the Cantonal Court in Sarajevo ruled in favour of R.Š. and ordered Republika Srpska to compensate him for the non-material damage totalling KM 35,000. The damage claimed concerns the mental pain caused by the death of R.Š.'s parents who disappeared on Grbavica and were pronounced dead from the day of their disappearance in July 1992 by the Municipal Court in Sarajevo.⁶⁶⁶

2.2. Croatia

2.2.1. Administrative material reparations

In 2010, 2,459 persons received compensation for civilian disabilities caused during the war of 1991-1995.⁶⁶⁷ According to January 2012 data, 58,099 combatants were beneficiaries of the disability pension.⁶⁶⁸

Croatia is different from other countries which have emerged from the former Yugoslavia as regards the conditions for the recognition of the status of a civilian victim of war. In Croatia a civilian war invalid is a person who has suffered not less than 20 per cent disability due to a wound or injury.⁶⁶⁹ However, not all invalids enjoy the same rights under the Croatian legal framework. The categories of invalids with bodily injury of less than 80 per cent are not entitled to allowances for the care and assistance of another person.⁶⁷⁰ Moreover, the civilian invalid definition not distinguishing between categories by the cause of disability, that is between the kind of ill-treatment a person has suffered, is still in use.⁶⁷¹ Consequently, the victims of rape, for instance, still have to produce proof of their physical or psychological injury. Amnesty International sees this as a request which the victims cannot meet.⁶⁷² The combatants of the Croatian forces who spent not less than three days in an enemy camp or prison are automatically considered as 20 percent invalids but this rule does not apply to civilians detained in a camp who need to prove the damage or injury by submitting a certificate about the causes and circumstances under which the damage or injury occurred.⁶⁷³ Due to such discriminatory regulation, a large number of civilians have failed to realise their right to the personal disability bonus.

The Law on the Welfare of the Civilian and Military War Invalids, Art. 9, explicitly denies the rights regulated by this law to persons injured in their capacity of "members or aiders of or collaborators with enemy military and paramilitary formations".⁶⁷⁴

The rights laid down by this law include, in addition to monetary compensation, professional rehabilitation and treatment, that is to say help with the treatment costs.⁶⁷⁵ Members of the families of those killed, died or missing

665 "Počinju ročišta za tužbe sarajevskih civilnih žrtava" (*Hearings begin on the claims of the civilian victims in Sarajevo*), web site *Radio Free Europe*, Maja Bjelajac, 3 May 2011, http://www.slobodnaevropa.org/content/sarajevske_civilne_zrtve_rocista/16798625.html.

666 Edina Kamenica, "Odšteta za roditelje" (*Damages for Parents*), *Oslobodjenje*, 17 October 2011, p. 4.

667 The Ministry of Health Care and Social Welfare of the Republic of Croatia – Administration for the Welfare of the Victims and Participants in the War, *Godišnji prikaz broja korisnika iz sustava zaštite vojnih i civilnih invalida rata* (Annual statistics of the number of beneficiaries in the system of welfare of the military and civilian war invalids), 31 November 2010, web site of the Ministry of Health Care and Social Welfare, http://www.mzss.hr/zdravstvo_i_socijalna_skrb/socijalna_skrb/uprava_zastitu_zrtava_i_sudionika_rata_.

668 Overview of the number of the pension beneficiaries by category and average pension amount, web site of the Croatian Pension Insurance Administration, <http://www.mirovinsko.hr/UserDocsImages/korisnici%20mirovine%202012/km1za12.pdf>.

669 The Law on the Welfare of the Military and Civilian War Invalids, *Narodne novine Republike Hrvatske* (*People's Gazette of the Republic of Croatia*), No.33/92 and 103/03, Art.8.

670 *Ibid.* Art.17.

671 *Ibid.* Art.8.

672 Amnesty International, *Briefing to the European Commission on the ongoing concerns over impunity for war crimes in Croatia*, October 2011, web site Amnesty International, <http://www.amnesty.org/en/library/asset/EUR64/011/2011/en/fe82e4d9-3272-48f7-aaad-467e61fe65f3/eur640112011en.pdf>.

673 Humanitarian Law Centre, Documenta & BIRN, *Tranziciona pravda u post-jugoslovenskim zemljama: Izveštaj za 2009. godinu* (*Transitional Justice in the Post-Yugoslav Countries: Report for 2009*), p. 62.

674 The Law on the Welfare of the Military and Civilian War Invalids, *Narodne novine Republike Hrvatske* (*People's Gazette of the Republic of Croatia*), No. 33/92 and 103/03, Art. 9.

675 *Ibid.* Art. 14.

under the circumstances prescribed by the Law on the Welfare of the Civilian and Military War Invalids may enjoy the right to compensation, i.e. the disability bonus.

In 2010, the personal disability bonus for civilian invalids amounted to 3,326 kuna (ca € 450)⁶⁷⁶ for the highest category; while the average disability pension for war veterans was 5,285 kuna (ca € 715).⁶⁷⁷ As for the family members of killed civilians and deceased civilian war invalids, according to the information of the Ministry of Health Care and Social Welfare of 31 December 2010, there were 349 beneficiaries of family disability allowances.⁶⁷⁸ The majority of members of the Croatian armed forces killed and missing during the war are accorded the status of killed and missing defenders and in January 2012 the State paid to their families 11,954 pensions.⁶⁷⁹ The average pension for the families of the defenders was 6, 977 kuna (€ 922).⁶⁸⁰ Moreover, these categories are also entitled to a large number of other rights, some of which are quite considerable such as *opskrbrnina* (social welfare allowance) which in January 2010 amounted to 1,098 kuna (€ 149).⁶⁸¹

2.2.2. Material reparations awarded by courts

No progress was recorded in the way the State treated the civilian victims of war in 2011 nor were there any changes in the jurisprudence.⁶⁸² In Croatia the compensation is regulated by two laws: the Law on the Responsibility of the Republic of Croatia for the Damage Inflicted by the Members of the Croatian Armed and Police Forces during the Patriotic War⁶⁸³ and the Law on the Responsibility for the Damage Incurred due to Terrorist Acts and Public Demonstrations.⁶⁸⁴

The victims, human rights organisations and international institutions have been warning for years against the practice preventing the close relatives of the killed from achieving justice through the determination of the criminal liability of the perpetrators (many crimes are not prosecuted), precluding the possibility of obtaining compensation for the death of a close relative.⁶⁸⁵

As is also the case with war crimes, the statistics regarding the court proceedings for the compensation of damage due to war is not easily accessible in Croatia. In 2010, the Centre for Peace, Non-Violence and Human Rights in Osijek, Documenta – the Centre for Dealing with the Past and the Civil Committee for Human Rights prepared 105 cases concerning compensation for non-material damage caused by the death of a close relative. The cases are

676 Ministry of Health Care and Social Welfare of the Republic of Croatia – Administration for the Welfare of the Victims and Participants of the War, *Annual statistics of the number of beneficiaries in the welfare system of the military and civilian war invalids*, 31 December 2010, web site of the Ministry of Health Care and Social Welfare, http://www.mzss.hr/zdravstvo_i_socijalna_skrb/socijalna_skrb/uprava_zastitu_zrtava_i_sudionika_rata.

677 In December 2009, the average net salary was 5,362 kuna (ca € 735).

678 Ministry of Health Care and Social Welfare of the Republic of Croatia – Administration for the Welfare of the Victims and Participants of the War, *Annual statistics of the number of beneficiaries in the welfare system of the military and civilian war invalids*, 31 December 2010, web site of the Ministry of Health Care and Social Welfare, http://www.mzss.hr/zdravstvo_i_socijalna_skrb/socijalna_skrb/uprava_zastitu_zrtava_i_sudionika_rata.

679 Overview of the number of pension beneficiaries by category and average pension amounts, web site of the Croatian Pension Insurance Administration, <http://www.mirovinsko.hr/UserDocsImages/korisnici%20mirovine%202012/km1za12.pdf>.

680 Overview of the number of pension beneficiaries by category and average pension amounts, web site of the Croatian Pension Insurance Administration, <http://www.mirovinsko.hr/UserDocsImages/korisnici%20mirovine%202012/km1za12.pdf>.

681 Ministry of Health Care and Social Welfare of the Republic of Croatia – Administration for the Welfare of the Victims and Participants of War, *Annual statistics of the number of beneficiaries in the welfare system of the military and civilian war invalids*, 31 December 2010, web site of the Ministry of Health care and Social Welfare, http://www.mzss.hr/zdravstvo_i_socijalna_skrb/socijalna_skrb/uprava_zastitu_zrtava_i_sudionika_rata.

682 Centre for Peace, Non-Violence and Human Rights, Osijek, Documenta – Centre for Dealing with the Past, Civil Committee for Human Rights, *Monitoring the war crime trials: Report for 2011*, Zagreb, 2012.

683 Law on the Responsibility of the Republic of Croatia for the Damage Inflicted by the Members of the Croatian Armed and Police Forces during the Patriotic War, *Narodne novine Republike Hrvatske (People's Gazette of the Republic of Croatia)*, No. 117/03.

684 Law on the Responsibility for the Damage Incurred due to Terrorist Acts and Public Demonstrations, *Narodne novine Republike Hrvatske (People's Gazette of the Republic of Croatia)*, No. 117/03.

685 Centre for Peace, Non-Violence and Human Rights, Osijek, Documenta – Centre for Dealing with the Past, Civil Committee for Human Rights, *Monitoring the war crime trials: Report for 2010*, Zagreb, 2011, p. 36.

being heard by different courts in Croatia and have reached different stages. In the majority of documented cases, the claims of the plaintiffs/victims have been dismissed. The courts have invoked the general statute of limitations (five years) counting from the date of the harmful incident and the cause: the death of a civilian by commission of a crime was not taken into consideration in the absence of a final sentencing judgment.⁶⁸⁶ There are however a few cases when the court invoked the Law on the Obligations of the Republic of Croatia. It envisages a longer period for the statute of limitations if the damage was caused by a criminal act. Although this provision may be applied only when the judgment determines that the damage was due to a crime, the law prescribes the exception according to which the civil court has the right to determine whether the damage was caused by a crime even if there is no judgment sentencing the responsible person. In several cases civil courts have decided to examine if the damage which gave rise to a civil suit, was incurred through actions containing elements of a crime. Having found that that was the case, these courts have awarded compensation to several victims/plaintiffs.⁶⁸⁷

In 74 percent of the closed cases, the claims were rejected either because the civil suits were started too late, because motions referring to war reparations had been submitted and accepted, because evidence produced was inadequate to show that the damage (by the commission of the crime of murder or war crime) was inflicted by members of the Croatian military or police forces or because the Republic of Croatia could not bear the responsibility in an area which was not under the control of the authorities of the Republic of Croatia at the time of the crime. In only 12 percent of the cases did the courts approve the claims by finding the Republic of Croatia responsible and awarding compensation to the claimants for non-material damage.⁶⁸⁸ The Centre for Peace, Non-Violence and Human Rights in Osijek, Documenta – Centre for Dealing with the Past and the Civil Committee for Human Rights monitoring the war crime trials in Croatia did not record any progress during 2011 concerning the write-offs for the trial costs of the plaintiffs who lost their cases against the Republic of Croatia claiming compensation for the death of a close relative and/or the property destroyed by individuals under the jurisdiction of the Republic of Croatia.⁶⁸⁹ The alleged reason is the fact that in the majority of these cases the criminal responsibility of the perpetrator of the crime resulting in the death of a close relative or the destruction of the claimant's property had not been established previously.⁶⁹⁰

The situation is further exacerbated by the fact that in a vast number of cases (as many as 61.4 percent) the unsuccessful claimants were ordered to pay the trial costs and this is a huge burden for the victims. Civil society organisations have called upon the Government of Croatia to take the decision urgently whereby the Republic of Croatia would desist from collecting the costs from the plaintiffs who had failed in their claims to receive compensation for the death of a close relative and prepare without delay legal solutions allowing the citizens of Croatia an adequate access to reparation rights in line with the principles of international humanitarian law.⁶⁹¹

Such jurisprudence in cases of compensation for non-material damage was condemned in the two judgments of the European Court of Human Rights in *Jularić v. Republic of Croatia*⁶⁹² and *Skendžić and Krznarić v. Republic of Croatia*⁶⁹³. Croatia was ordered to pay fair compensation to the claimants because it had failed to conduct an efficient and appropriate investigation of the committed crimes.

686 *Ibid*, p. 35.

687 *Ibid*, p. 36.

688 *Ibid*, p. 35.

689 Centre for Peace, Non-Violence and Human Rights Osijek, Documenta – Centre for Dealing with the Past, Civil Committee for Human Rights, *Praćenje suđenja za ratne zločine: izvješće za 2010. godinu (Monitoring war crime trials: Report for 2010)*, Zagreb, 2011, p. 10.

690 *Ibid*, p. 10.

691 *Ibid*, p. 11.

692 *Jularić v. Croatia* (petition No. 20106/06), Judgment, 20 January 2011.

693 *Skendžić and Krznarić v. Croatia* (petition No.16212/08), Judgment, 20 January 2011.

2.3. Serbia

2.3.1. Administrative material administrative reparations

The status and rights of the civilian victims of war and the families of the victims did not change between the beginning of 2010 and the end of 2011 as compared with the preceding period. The administrative reparations are regulated by the Law on the Rights of Civilian Invalids of War defining the rights and procedures for the civilian war invalids, family members of the deceased civilian war invalids (if they shared the household before the death) and family members of the civilian victims of war.⁶⁹⁴

Pursuant to this law, persons whose rights were gravely violated during Slobodan Milošević's rule but did not suffer serious bodily harm and persons who did suffer serious bodily harm owing to the actions of the armed forces of the Republic of Serbia still cannot join the ranks of the beneficiaries of the material and other assistance guaranteed by the State.

As elsewhere in the region, the status of the disabled war veterans is better than the status of the civilian victims of war.⁶⁹⁵ The members of the families of combatants killed in the armed conflict or deceased as a result of wounds/injuries still receive monthly payments regardless of the economic standing of the family whereas the family members of the killed civilians may enjoy this right only if their monthly income is below the legal census. The family members of missing combatants or civilians still may not enjoy in Serbia the rights under the social welfare system except when their missing close relatives are pronounced dead. The status of a civilian war invalid is determined upon the submission of written evidence dating from the time when the alleged incident happened.

The funds for this purpose are provided from Serbia's budget; there were 1,972 active beneficiaries towards the end of 2011.⁶⁹⁶ In addition to the personal disability allowance determined on the basis of the degree of the injury, these beneficiaries may also be entitled to the care bonus; there are 336 such beneficiaries. Furthermore, the right to the orthopaedic bonus is enjoyed by 800 beneficiaries and the right to the monthly payment by 455 members of the families of civilian war victims.⁶⁹⁷ The above figures include all civilian war invalids, that is to say members of civilian war victim families from World War II, the wars of the 1990s, the NATO intervention in 1999 and the peacetime victims.

No distinction is made between the monthly payments to the civilian war invalids and the military invalids, ranging from RSD 10,270 to RSD 78,997 (€ 89 to € 684) for disability categories VII to I. Both categories of beneficiaries enjoy the same possibilities also with regard to material assistance and the right to orthopaedic aids. The military invalids, however, have more disability categories (even for less than 60 percent of physical disability) and more possibilities for additional benefits (unemployed invalids and the like). The same discrepancy concerning the possibility to obtain supplementary assistance (in addition to the regular monthly disability bonus) relates also to the families of the civilian war victims/military invalids and the category of beneficiaries from the families of the deceased civilian war invalids, families of deceased military invalids and the deceased combatants. The family disability bonus can range between RSD 23,699 and RSD 90,846 (from € 205 to € 787).⁶⁹⁸

694 Law on the Rights of the Civilian Victims of War, *Službeni glasnik Republike Srbije (Official Gazette of the Republic of Serbia)*, No. 52/96.

695 Humanitarian Law Centre, Documenta & BIRN, *Tranziciona pravda u post-jugoslovenskim zemljama: Izveštaj za 2009. godinu* (Transitional Justice in the Post-Yugoslav Countries: Report for 2009, p. 64.

696 Presentation of Ljubiša Veličković, Head of the Department for Administrative Proceedings, Sector for Veteran-Invalid Affairs, Ministry of Labour and Social Policy of the Republic of Serbia, at the conference organised by the Humanitarian Law Centre *Pravo žrtava kršenja ljudskih prava tokom 90-tih na materijalne reparacije u Srbiji* (The Right of the Victims of Human Rights Violations in the 1990s to material reparations in Serbia), transcript, web site HLC, <http://www.hlc-rdc.org/?cat=248>.

697 *Ibid.*

698 The indicated amounts are from January 2012. The information received from the Sector for Veteran-Invalid Affairs, Ministry of Labour and Social Policy of the Republic of Serbia, 21 February 2012.

2.3.2. Material reparations awarded by courts

In Serbia, victims of war seldom opt to seek autonomously their right to reparations through courts of law, mostly because they fear and mistrust the judicial authorities of the Republic of Serbia, shy away from the expenses involved in hiring a defence counsel and the potentially enormous cost of the judicial proceedings that they would have to bear if they lost the case. As before, the claims are filed by human rights organisations on behalf of the victims.⁶⁹⁹

Since the beginning of 2010, all material reparations cases are heard by the First Basic Court in Belgrade, i.e. the Higher Court in Belgrade.

The Humanitarian Law Centre has analysed the jurisprudence in Serbia with regard to material reparations in its report *Material Reparations for Human Rights Violations in the Past: Judicial Practice in the Republic of Serbia*. The victims and their representatives often face degrading treatment by representatives of the Republic Office (official name) of the Public Prosecutor as well as improper and offensive behaviour by some judges.⁷⁰⁰ In some instances judges have made inappropriate comments about victims' allegations, relativised their suffering⁷⁰¹, urged them on during their testimonies or made conspicuous mistakes when pronouncing the victims' names, notably in cases with victims of Albanian ethnicity.⁷⁰² Victims have been requested to produce final criminal judgments establishing the responsibility of certain members of the Ministry of the Interior, JNA or VJ (the Army of Yugoslavia), medical certificates about the injuries suffered dating from the time when they were subjected to the violence or other evidence corroborating their allegations about injuries inflicted on them.⁷⁰³ In some instances, the crimes committed were not found to be "directed against the constitutional order of the State."⁷⁰⁴ In the case of forcibly mobilised refugees from Croatia, the representatives of the Republic Office of the Public Prosecutor questioned even the commission of the crime.⁷⁰⁵ According to the HLC, the compensation amounts which the victims of war crimes and human rights violations have been awarded so far before the courts in Serbia are highly inadequate and not commensurable with the suffering and injuries sustained by the victims.⁷⁰⁶ These problems have been further compounded by the length of the court proceedings. According to the HLC, these take around five years on the average but there are also cases which have been dragging on for 13 years and there are victims who did not live to see the end of their case.⁷⁰⁷ One should also add that, since the security forces, notably the police, have not been reformed, many victims, primarily in Sandjak, dare not file their claims because many perpetrators are still in active police service in their towns.⁷⁰⁸ Another major problem is the statute of limitations applicable to claims for material reparations as the courts in Serbia still refer to the Legal Opinion of the Supreme Court of Serbia (VSS) according to which compensation claims need to be filed within three years.⁷⁰⁹

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699 Humanitarian Law Centre, *Materijalne reparacije za povrede ljudskih prava u prošlosti: Praksa sudova u Republici Srbiji* (Material reparations for human rights violations in the past: Judicial practice in Serbia), Belgrade, 2011, p. 3.

700 *Ibid.*, p. 8-10.

701 In the cases in which the HLC represented camp inmates from Šljivovica and Mitrovo Polje, the judges asserted that the witnesses were not telling the truth and that "the situation in Serbia was very bad". *Ibid.* p. 8.

702 *Ibid.*

703 *Ibid.*

704 This is how the Republic Office of the Public Prosecutor assessed the crime in Podujevo when members of the Scorpios killed 14 women and children, and wounded and permanently injured five Albanian children. *Ibid.* p. 9.

705 In its answer to HLC the Republic Office of the Public Prosecutor stated that it doubted that anything bad could happen to forcibly mobilised refugees from Croatia turned over to Serbian authorities and paramilitary formations. *Ibid.* p. 9.

706 *Ibid.*, p. 10.

707 Hazbija Smajović from Tutin and Sabit Bibić from Sjenica, both victims of police torture, died during the proceedings. *Ibid.* p. 10, footnote 18.

708 *Ibid.*, p. 11

709 Legal Opinion of the Civil Department of the Supreme Court of Serbia, adopted at the session of 10 February 2004.

In 2010, the Humanitarian Law Centre filed 14 claims on behalf of 46 Albanians who were unlawfully detained by the Serbian security forces before and during the NATO bombing.⁷¹⁰ By the end of 2011, medical expert testimony had been ordered in several cases.⁷¹¹ Nine judgments were pronounced in 2011.⁷¹²

2.4. Kosovo

2.4.1. Administrative material reparations

According to the Ministry of Labour and Social Welfare, by the end of 2011 13,109 beneficiaries in Kosovo were receiving benefits for suffering to which they were subjected during the armed conflict in 1998-99.⁷¹³

According to the Ministry of Labour and Social Welfare of Kosovo, in 2010, of the total number of 12,994 beneficiaries receiving bonuses awarded for the suffering during the armed conflict in 1998-1999, the largest number - 7,666, were the families of the victims. As to the categories of beneficiaries, the number of families of civilian victims of war (5,188) exceeds by far all the others. In 2010, 3,132 military and 2,084 civilian war invalids received monthly payments and special disability benefits.⁷¹⁴

Of the 13,109 beneficiaries of pensions for suffering caused by the war in Kosovo, registered during 2011, 5,494 persons received disability bonuses and 7,501 received compensation for the death or disappearance of their family members.⁷¹⁵

Between 2006 and 2012 the status and the rights of the war veterans, invalids, members of the Kosovo Liberation Army (KLA), civilian victims and their families were laid down by a law passed in 2006.⁷¹⁶ During this period a new law was under preparation; it was passed in December 2011 and went into force on 1 January 2012. It defines the legal status and regulates the rights and benefits of all categories listed in the definition of the law as well as those of the prisoners of war and their families, missing civilians and missing KLA combatants.⁷¹⁷

The purpose of the law is “determination of the status and of the financial support in the form of pensions and special benefits of the categories that have emerged from the KLA war, whose commitment and contribution were the decisive factors in the freedom and liberation of the country”.⁷¹⁸ It lays down the procedure necessary to obtain the status of the fallen KLA combatants, missing KLA members, KLA veterans, war invalids, prisoners of war and close family members of these categories. The law covers the following categories of the civilian victims: missing persons and members of their families, civilian war invalids who incurred not less than 40 percent of bodily injury (including those injured by mines and other explosive devices left over after the armed conflict), civilian victims of war, persons killed or wounded by enemy forces between 27 February 1998 and 20 June 1999 and civilian camp inmates as well as the next of kin of the above categories.⁷¹⁹

⁷¹⁰ Information received from the Humanitarian Law Centre in 2012

⁷¹¹ *Ibid.*

⁷¹² HLC press releases relating to concrete cases during the hearings and after the pronouncement of judgments, web site HLC, <http://www.hlc-rdc.org/?cat=242>.

⁷¹³ Information received by the Humanitarian Law Centre of Kosovo from the Ministry of Labour and Social Welfare of the Republic of Kosovo, 4 July 2012.

⁷¹⁴ *Ibid.*

⁷¹⁵ 104 persons received benefits for the care rendered to civilian and military war invalids. *Ibid.*

⁷¹⁶ The Law 02/L-2 on the Status and the Rights of the Family Members of the Fallen KLA Combatants, Invalids, Veterans and Participants and the Families of the Civilian Victims of War, 23 February 2006.

⁷¹⁷ The Law No. 04/L-054 on the Status and the Rights of Fallen Combatants, Invalids, Veterans and Members of the Kosovo Liberation Army, and the Civilian Victims and Their Families, January 2012.

⁷¹⁸ *Ibid.*, Art. 1

⁷¹⁹ *Ibid.*, Art. 3.

For the purpose of this law, a “civilian war invalid” is a person “whose body was injured not less than 40 percent as a result of wounds inflicted by weapons, or illnesses caused by imprisonment or detention in a camp during the recent war in Kosovo from 27 February 1998 until 20 June 1999 as well as any other person who suffered bodily harm to a degree of not less than 40 percent caused by explosive devices left over after the end of the war”.⁷²⁰ On the other hand, the KLA war invalids need to prove the bodily harm to an extent of not less than 20 percent caused by wounding, injury or illness as the after-effect of the war and/or arrest or internment in enemy prisons or camps.⁷²¹

Persons who do not meet the physical injury condition but whose mental health is impaired are not recognised as invalids. This means that the victims of sexual assault will not become the beneficiaries of compensation unless their bodily disability is at least 40 percent. The close relatives of the missing persons are entitled to financial assistance if their family members disappeared between 1 January 1998 and 31 December 2000 and their disappearance resulted from the fighting in Kosovo in 1998-1999.⁷²²

In the definition of the KLA war invalids, civilians war victims (killed or wounded or killed/ injured by mines) the legislator uses the term “enemy camps” or “enemy forces” excluding thereby the civilian victims detained in KLA camps who did not survive their injuries and the civilians who were killed or who were wounded and then died of the wounds.⁷²³ Another questionable provision in this law says that access to some benefits, such as the right to medical and physical rehabilitation⁷²⁴, access to primary, secondary and tertiary medical care⁷²⁵, priority in employment⁷²⁶, the right to exemption from import duties for special-purpose vehicles and to reduced electric energy expenses⁷²⁷, the priority and right to free education⁷²⁸, does not include the members of the families of killed civilians (except the families of the missing).⁷²⁹

For the categories covered by the new law, the expenditures envisaged for the groups of civilian victims are significantly below those envisaged for the KLA combatants⁷³⁰ and members of their families. The civilian war invalids receive pensions ranging between € 96 and € 122 per month whilst the families of the civilian victims receive a monthly allowance of € 135 identical with the allowance awarded to the families of the missing civilians.⁷³¹ On the other hand, the families of the fallen and missing KLA combatants receive allowances ranging from € 239 to € 356 per month, depending on how many members of the families were killed or are missing.⁷³² Military invalids of war also benefit from higher bonuses: € 120 – € 239.⁷³³ The Decision of the Kosovo Government No. 02/152 of January 2011 envisages a 50 percent increase of bonuses for all categories of military victims (invalids of war, those nursing them, families of the war invalids after their demise, families of fallen combatants and families of the missing combatants) but not for the civilian victim categories.⁷³⁴ According to this decision, the beneficiaries of family pensions - € 534 for more than four fallen KLA combatants in a family – will continue to

720 *Ibid*, Art. 3

721 *Ibid*, Art.3, para.1.7.

722 *Ibid*, Art.3, para. 1.14.

723 *Ibid*, Art.3, paras.1.8, 1.10, 1.12.

724 *Ibid*, Art.6, para.1.2

725 *Ibid*, Art..6, para.1.3.

726 *Ibid*, Art.6, 1.8

727 *Ibid*, Art.6, paras. 2 and 3.

728 *Ibid*, Art.6, paras. 7 and 8.

729 *Ibid*.

730 The percentage of disabling injuries goes also in favour of KLA combatants as against the civilians. The lowest degree of injury entitling the combatants to pension and other benefits is 20-30 percent.

731 Information received by the Humanitarian Law Centre from the Ministry of Labour and Social Welfare of the Republic of Kosovo, 4 July 2012

732 *Ibid*.

733 *Ibid*.

734 Activities of the Ministry of Labour and Social Welfare in 2011, Public Relations Bureau, web site, Ministry of Labour and Social Welfare of the Republic of Kosovo, http://mpms.rks-gov.net/Portals/0/Librat/Broshura_sr_2011.pdf

receive the highest family allowances.⁷³⁵ According to the Humanitarian Law Centre of Kosovo, this decision of the Government had not been put into practice by the end of 2011.⁷³⁶

On 28 October 2010 the Assembly of the Republic of Kosovo adopted the Law on the Rights of the Former Political Prisoners and the Persecuted.⁷³⁷ It defines the legal status and regulates the rights and benefits of former political convicts, former political prisoners and the former politically persecuted.⁷³⁸ Pursuant to this law, a former political convict is a Kosovo citizen convicted by military or general courts for incriminatory political-ideological and patriotic acts during the totalitarian regimes in the former Yugoslavia⁷³⁹; a former political prisoner is a person who was detained, kept in isolation at a specific place and imprisoned for political motives, objectives and interests for more than seventy-two (72) hours on the premises of prosecution agencies, that is of competent bodies of the official security institutions (police, armed forces and secret service).⁷⁴⁰ The law defines also the status of former politically persecuted persons – Kosovo citizens against whom, as a result of of the legal action of a competent agency, were undertaken political-legal measures and procedures which directly or indirectly affected the suspension or end of employment, or education, or the deprivation of a licence, i.e. prohibition to engage in a self-employed activity, because of their beliefs, attitudes or direct and indirect connections with persons punished and prosecuted for reasons of probably political origin.⁷⁴¹ The time framework defined by this law is 1 March 1913 to 12 June 1999 covering the period of the “totalitarian regimes”⁷⁴², that is to say since the time when the Kingdom of Serbia conquered Kosovo in the Second Balkan War. The law lays down the right to gradual material compensation for two specified categories: former political prisoners and the former politically persecuted.⁷⁴³ The right to pension and disability insurance is enjoyed by all categories of persons covered by this law⁷⁴⁴ and the right to rehabilitation, health and social care is enjoyed by all persons with lasting mental and/or physical consequences of detention.⁷⁴⁵ Furthermore, all persons covered by this law are accorded priority when seeking job; they are awarded scholarships, accommodation, reimbursement of funeral costs and similar benefits if they are in a precarious economic and health situation.⁷⁴⁶

The law also envisages the setting up of the Governmental Commission for the Realisation of the Rights of the Former Political Prisoners and Persecuted.⁷⁴⁷ It also envisages the establishment of an institute for the integration of former political prisoners and the persecuted, which is to consider, research and publish the truth on behalf of the former convicts, prisoners and persons persecuted for political reasons so that they can be integrated in the society.⁷⁴⁸

2.4.2. Material reparations awarded by courts

There is still no progress with regard to material reparations awarded by court rulings in Kosovo.

A large number of compensation claims filed by Kosovo Albanians are still pending before Kosovo courts. Since 1999, Kosovo Serbs and other non-Albanians have also filed a large number of suits with municipal courts claiming compensation for the destruction of their property in the wake of the war in 1999. These courts, by and large, pronounced that such cases fell outside their field of jurisdiction. According to the information which the

⁷³⁵ *Ibid.*

⁷³⁶ E-mail correspondence with Bekim Blakaj, Director, Humanitarian Law Centre of Kosovo, 3 July 2012.

⁷³⁷ Law No. 03/L-95 on the Rights of Former Political Prisoners and Persecuted, of 28 October 2010.

⁷³⁸ *Ibid.*, Art. 1.

⁷³⁹ *Ibid.*, Art.3, para.2

⁷⁴⁰ *Ibid.*, Art.3, para.3

⁷⁴¹ *Ibid.*, Art.3, para. 4.

⁷⁴² *Ibid.*, Art.4.

⁷⁴³ *Ibid.*, Art.7, para.1.

⁷⁴⁴ *Ibid.*, Art.9.

⁷⁴⁵ *Ibid.*, Art.8.

⁷⁴⁶ *Ibid.*, Art.12, para.1.

⁷⁴⁷ *Ibid.*, Art.19.

⁷⁴⁸ *Ibid.*, Art.20.

Humanitarian Law Centre of Kosovo received from the Judicial Council of Kosovo, by the end of 2011 the Kosovo courts did not once rule in favour of the civilian victims of war in Kosovo.⁷⁴⁹

2.5. Montenegro

2.5.1. Administrative material reparations

According to the records of the Ministry of Labour and Social Welfare, at the end of 2010 there were in Montenegro 250 war invalids, four civilian war invalids and 185 families of the combatants killed in relation to the armed conflicts.⁷⁵⁰ In 2011, there were 245 military war invalids, four civilian war invalids and 180 families of combatants fallen in the conflicts of the 1990s.⁷⁵¹

The Law on Veteran and Invalid Welfare⁷⁵², last amended in 2008⁷⁵³, had not been changed by the end of 2011. It requires bodily injury to a degree of not less than 20 percent for the recognition of the military invalid status and 50 per cent for that of civilian war invalid.

Monthly payments are adjusted every semester to match the cost of living and the average salary in Montenegro.⁷⁵⁴ Between 1 July 2010 and 1 January 2011 the military invalids received € 32.71 to € 545.14 per month; the pension of the civilian war invalids ranged from € 70 to € 545.14.⁷⁵⁵ The outlays for both categories have remained the same, except that the civilian invalids (with disability less than 50 percent) are still not entitled to the right enjoyed by the three last categories.⁷⁵⁶ The right to allowance for external care and help was enjoyed by military and civilian invalids of the first category with the disability of 100 percent and the military and civilian war invalids “with overall damage to the body which, with the disability, equals the bodily injury of a military invalid of the first group, which is to say, of a civilian war invalid of the first group”.⁷⁵⁷ The bonus for the external care and help in 2010 totalled € 272.57. Both categories enjoy the same rights with regard to orthopaedic aids. The same ratios apply to the bonuses awarded to family members. The increased family disability allowance at the end of 2010 was € 190.80.⁷⁵⁸

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At the end of 2010, the monetary compensation totalled € 109.03 and was 20 percent higher for co-beneficiaries. The compensation was awarded to invalids without any income of their own, the children of fallen combatants included in regular schooling and those without any other income.⁷⁵⁹ The families of the missing and the families of killed combatants receive an identical family disability bonus and monetary compensation for material damage. At the end of 2011, one still had to submit the death certificate or the decision of the relevant agency pronouncing the missing person dead. The families of the missing civilians had not won the right to a monthly monetary allowance in Montenegro by the end of 2011.⁷⁶⁰

749 E-mail correspondence with Bekim Blakaj, Director, Humanitarian Law Centre of Kosovo, 3 July 2012.

750 E-mail answer of Veselinka Đuretić, Senior Advisor for veteran-invalid welfare, Ministry of Labour and Social Welfare, 22 December 2011.

751 *Ibid.*

752 *Ibid.*

753 Law on Veteran and Invalid Welfare, *Službeni list Republike Crne Gore (Official Gazette of the Republic of Montenegro)*, No. 69/03, No. 21/08.

754 E-mail answer of Veselinka Đuretić, Senior Advisor for veteran-invalid welfare, Ministry of Labour and Social Welfare, 22 December 2011.

755 *Ibid.*

756 Law on Veteran and Invalid Welfare, *Službeni list Republike Crne Gore (Official Gazette of the Republic of Montenegro)*, No. 69/03, Art. 22.

757 *Ibid.*, Art.29.

758 E-mail answer of Veselinka Đuretić, Senior Advisor for veteran-invalid welfare, Ministry of Labour and Social Welfare, 22 December 2011.

759 *Ibid.*

760 *Ibid.*

During 2011, the material assistance to civilian and military war invalids in Montenegro was increased slightly, that is to say by not more than € 20 for the gravest disability categories.

2.5.2. Material reparations awarded by courts

By the end of 2011, 12 cases had been filed against Montenegro before the Basic Court in Podgorica for the compensation of non-material damage caused by state authorities. The suits were filed against the armed forces as the alleged perpetrator of the crimes and the Ministry of the Interior as the institution responsible for the protection of people and property.⁷⁶¹ The claimants were the families of the victims of war crimes or the victims in person acting through their lawyers. The Action for Human Rights, the non-governmental organisation monitoring these hearings, notes that the trials are characteristic of attempts to avoid linking the killings with the armed forces and reduce them instead to extraordinary incidents for which Montenegro is responsible as the legal successor of the FRY, pointing out that such a position is useful for the victims because the claimants do not need to prove the fact of the incident, but that it is also less than truthful as it conceals the fact that the military arbitrarily killed innocent citizens of the same state as themselves.⁷⁶²

The only final judgment for the compensation of non-material damage was pronounced in the case of Hadži Ahmeti from Novo Selo near Peć, who sued Montenegro for the mental pain he suffered as a victim of a war crime perpetrated in April 1999 in the village of Kaluđerski Laz. Ahmeti claimed € 45,000 and was awarded € 12,000⁷⁶³. The representatives of victims of crimes against other Albanian refugees in that village filed about 20 compensation claims before the Basic Court in Podgorica. Other compensation proceedings are under way. By the end of 2011, the Government of Montenegro did not respond to the proposal made in March 2009 to compensate the victims of the crime in Kaluđerski Laz in the same way as the victims of the deportation were compensated in December 2008.⁷⁶⁴

130 The Humanitarian Law Centre represented a number of victims in relation to the crimes committed in Bukovica. On 7 April 2010, the Basic Court in Podgorica ruled in the first instance that the State of Montenegro was bound to pay Šaban Rizvanović and Arifa Rizvanović, the victims of torture in the Bukovica village of Čerjenci € 10,000 each in compensation for the damage. Nevertheless, the Higher Court annulled the first-instance judgment and ordered a retrial. Šaban and Arifa Rizvanović had been tortured by members of the reserve unit of the Army of Yugoslavia (VJ) in February 1993. The Humanitarian Law Centre filed the suit on their behalf on 30 October 2006. The Centre stated that it would not appeal the decision “in spite of the defects in the judgment” because “for Šaban and Arifa Rizvanović who will shortly turn 90, the second-instance proceedings would mean that they would probably not live long enough to see the justice for which they have been waiting for over 17 years.”⁷⁶⁵

The Higher Court annulled also the judgment of the Basic Court in Kolašin of 11 May 2010, ordering that Zlatija Stovrag from the Bukovica village of Vukšići be paid the compensation of € 15,000 for the mental pain past and future, because of the death of her husband Himzo who committed suicide fearing the repetition of torture by the police. Another annulled judgment was the one awarding compensation to Osman Ramović from the village of Vitina for his destroyed property in the suit filed by the Humanitarian Law Centre as far back as 2007.⁷⁶⁶ On 8 April 2010, the Basic Court in Podgorica started the compensation proceedings claimed by Zlatija, Alema and Amela Bungur and Sevdal Bungur for unlawful imprisonment and transfer to the Bosnian territory controlled by Bosnian Serbs.⁷⁶⁷

761 Action for Human Rights, *Suđenja za ratne zločine u Crnoj Gori* (War Crime Trials in Montenegro), Podgorica, 2011, p. 27.

762 *Ibid.*

763 *Ibid.*

764 E-mail answer of the defence counsel representing the family of the victim Velija Murić, 12 December 2011

765 Press release of the Humanitarian Law Centre, 12 June 2010, web site HLC, <http://www.hlc-rdc.org/index.php/sr/informisanje/saoptenja/262-obeteenje-zbog-torture-nad-abanom-i-arifom-rizvanovi-1993-godine-u-bukovici>

766 Action for Human Rights, *Suđenja za ratne zločine u Crnoj Gori* (War Crime Trials in Montenegro), Podgorica, 2011, p.15.

767 Bukovičani traže odštetu zbog duševnih bolova” (*Bukovica villagers seek compensation for mental pain*), web site *Pobjeda*, 9 April 2010, <http://www.pobjeda.me/arhiva/?datum=2010-04-09&id=182897>

Towards the end of 2011, the compensation proceedings for the victims of the NATO bombing in the village of Murino were drawing to a close. The first-instance judgments went in favour of several claimants although in one case the claim was rejected.⁷⁶⁸ In September 2010, the Basic Court in Podgorica ordered that the family of the killed Manojlo Komatina be paid € 69,000 in compensation but the State appealed.⁷⁶⁹ In November 2010, the court ordered the Ministry of the Interior and Public Administration and the Ministry of Defence, that is the Armed Forces of Montenegro, to pay jointly to the family of Vukić Vuletić who died of sustained wounds in the hospital in Berane the sum of € 82,000.⁷⁷⁰

In December 2008, the representatives of victims achieved an in-court settlement with the Government of Montenegro in 42 civil cases in which they represented the families of the victims deported from Montenegro and subsequently killed in the territory of Bosnia and Herzegovina. The awarded compensation totalled € 4,100,000. The children of the victims received € 30,000 each, parents and spouses € 25,000 each, siblings who were members of families of camp inmates € 10,000 each and the survivors € 7,000 each for every month spent in a camp.⁷⁷¹

2.6. Macedonia

Information about the welfare of the civilian war victims of war Macedonia is still not accessible and there are no laws to address this matter. In the conflict of 2001, 43 members of the Macedonian armed forces were killed and 119 members of the Army of the Republic of Macedonia (ARM) sustained injuries; 15 members of the Ministry of the Interior were also killed and 150 of them injured.⁷⁷²

The payment of compensation to the wounded ARM members and the families of the killed ARM members entered the final stage in 2010-2011.

The Law on the Special Rights of the Members of the Security Forces and Members of Their Families which entered into force in 2002 prescribes that they are all entitled to the rights pertaining to social welfare, health care and education.⁷⁷³

The injured ARM members were compensated relative to the disability percentage⁷⁷⁴ and the families of the killed were each awarded 250,000 denars (ca € 4,000). The Union of the Defenders of Macedonia criticised the procedure awarding compensation to the families of the killed because compensation contracts between the families and the ARM were sometimes signed immediately after the deaths of these army members occurred.⁷⁷⁵ In the light of this, several families tried to have these decisions re-examined in court but with little success. Some of them won but not all the cases ended in favour of the claimants. Some wounded ARM members never sought compensation from the State.⁷⁷⁶

The compensation process in the case of police members was not organised as systematically as in the case of ARM members. The injured police members and the families of the killed policemen had to seek compensation

⁷⁶⁸ E-mail answer of the lawyer representing the family of the victim Velija Murić, 12 December 2011.

⁷⁶⁹ „Vreda žalba države” (*The State's appeal is insulting*), web site *Večernje novosti*, 17 September 2010, <http://www.novosti.rs/vesti/planeta.70.html:300463-Vredja-zalba-drzave>

⁷⁷⁰ „MUP i Vojska da isplate 82.000” (*MI and Army to pay 82,000*), web site *Montenews*, 25 November 2010, <http://www.montenews.me/vijesti/drustvo/92412.html>

⁷⁷¹ „Deportacija izbjeglica 1992” (*Deportation of refugees*), web site Advokatska kancelarija Prelević, http://www.prelevic.com/human_rights_deportacija.htm.

⁷⁷² Ministry of the Interior, „Bela Knjiga” (*The White Paper*), Skopje, pp.137-146.

⁷⁷³ Law on the Special Rights of the Members of the Security Forces and the Members of Their Families, *Službeni glasnik Republike Makedonije* (*Official Gazette of the Republic of Macedonia*), No.2/2002 and No.17/2003.

⁷⁷⁴ The damages were up to 1,500,000 denars (ca € 24,000).

⁷⁷⁵ Interview with Aca Stojanovski, President, Union of the Defenders of Macedonia, 20 January 2012.

⁷⁷⁶ *Ibid.*

through the courts.⁷⁷⁷ There are still unsolved or disputable compensation claims for 9 killed and 46 injured members of the police forces.⁷⁷⁸

One of the outstanding issues is the uncertain number of victims among the members of the People's Liberation Army (ONA) - *Ushtria Çlirimtare Kombëtare* (UÇK) and the civilian victims. There is also uncertainty regarding the material damage suffered by citizens of Albanian ethnicity. The ONA veterans are still trying to obtain the state pension and other social benefits but at the moment for the time being their problem is being addressed through the social policy mechanisms rather than through the pension system.

2.7. Slovenia

2.7.1. Administrative material reparations

The administrative material reparations in Slovenia are regulated by the Law on Defence and Protection⁷⁷⁹, the Law on the Partial Restitution of the Damage Caused by the Military Aggression against the Republic of Slovenia⁷⁸⁰, the Law on the Welfare of the Victims of the Military Aggression against the Republic of Slovenia in 1991⁷⁸¹ and the Law on the Special Rights of the Victims in the War for Slovenia in 1991.⁷⁸²

Pursuant to the Law on the Partial Restitution of the Damage, the legal and physical persons could also claim the damages under the Law on Contractual Relations and according to general regulations. On the basis of these regulations, the Office of the State Prosecutor reached out-of-court settlements in cases of the wounding or death of the members of the Slovenian Territorial Defence (TD) or the police.⁷⁸³

The Victims of Wartime Violence Law of 1995 addresses the problems of the victims of World War II and so the victims of other conflicts receive less attention. The victims of the conflict in 1991 received compensation pursuant to the laws in effect (the most recent one is the Law on the War Invalids in Slovenia) determining the compensation for disability. The Law on the War Invalids in Slovenia⁷⁸⁴ regulates the rights formerly regulated by the Law on the Welfare of the Victims of the Military Aggression against the Republic of Slovenia in 1991⁷⁸⁵ along with the laws laying down the fundamental rights of military invalids, the families of killed combatants and civilian war invalids who enjoyed their rights pursuant to the Law on the Civilian War Invalids.⁷⁸⁶ Military invalids with the physical disability from 10 to 100 percent are entitled to a disability bonus. The basis for the calculation of the disability (from 30 percent to 100 percent) is 35 percent of the average net income in Slovenia and the maximum amount is € 414.

Persons who were disabled as members of the Slovenian TD or the Slovenian law enforcement agencies are ensured the status of war invalids by the Law on the Special Rights of the Victims in the War for Slovenia in 1991.⁷⁸⁷ Nevertheless, the victims still cannot enjoy all the rights, e.g. war damages, because the Slovenian Parliament has not passed a special law on the payment of war damages.

777 *Ibid.* See also, Humanitarian Law Centre, Documenta & BIRN, *Tranziciona pravda u post-jugoslovenskim zemljama: Izveštaj za 2009. godinu* (Transitional Justice in the Post-Yugoslav Countries: Report for 2009), pp. 80-81.

778 Ministry of the Interior, "Bela Knjiga" (*The White Paper*), Skopje, pp.137-146.

779 Službeni list Republike Slovenije (Official Gazette of the Republic of Slovenia), No.15/1991.

780 Službeni list Republike Slovenije (Official Gazette of the Republic of Slovenia), No. 11/1991.

781 Službeni list Republike Slovenije (Official Gazette of the Republic of Slovenia), No. 12/1991.

782 Službeni list Republike Slovenije (Official Gazette of the Republic of Slovenia), No., 49/1997.

783 Letter from the Office of the State Prosecutor of the Republic of Slovenia to the researcher Igor Mekina, 30 January 2012.

784 The Military Invalids Law, Službeni list Republike Slovenije (Official Gazette of the Republic of Slovenia), No. 63/1995.

785 Službeni list Republike Slovenije (Official Gazette of the Republic of Slovenia), No. 12/1991.

786 The Civilian War Invalids Law, Službeni list Republike Slovenije (Official Gazette of the Republic of Slovenia), No. 56/1992.

787 Službeni list Republike Slovenije (Official Gazette of the Republic of Slovenia), No.49/1997.

Slovenia repaired the damages caused to its infrastructure by the conflict of 1991 through its own efforts and did not claim war reparations from other states-successors of the SFRY. Therefore, the Office of the State Prosecutor of the Republic of Slovenia does not have any information about the extent of the infrastructural damage or whether Slovenia has in any way requested the restitution of the damage from other states.⁷⁸⁸

After almost twenty years, Slovenia has begun to tackle the problem of the “erased” relative to the status of 25,671 persons whom the Slovenian state agencies struck off by an administrative act from the register of permanent residents following independence on 26 February 1992.⁷⁸⁹

The Constitutional Court ruled twice in four years (1999 and 2003) that the “erasing” of persons was an unlawful act by the State of Slovenia.

The Law on the Regulation of the Status of the Citizens of Other Successor-States of the SFRY in the Republic of Slovenia, passed as early as 1999, addresses the specific situation of the “erased”.⁷⁹⁰ The law was adopted after the Constitutional Court of the Republic of Slovenia decided that the erasure from the register of permanent residents was unlawful and that the Aliens Law was anti-constitutional as it did not regulate the legal status of the persons who were subsequently erased.

The law prescribes that applications for permanent residence need to be submitted within three months, requiring however a proof that the applicants lived in Slovenia after being erased from the register of permanent residents. This provision prevented all the “erased” who had been forcibly expelled from Slovenia or who had left it temporarily and been unable to return because of the closed borders or who had been absent for other reasons, from regulating their status. The provision stipulating the three-month deadline for application was rescinded by a decision of the Constitutional Court of 2003 which ordered the Parliament to amend the law accordingly.

The Law on the Amendments to the Law on the Regulation of the Status of the Citizens of Other Successor- States of the SFRY in the Republic of Slovenia was adopted as late as 2010.⁷⁹¹ The amendments now include the “erased” who had left Slovenia for justifiable reasons. The deadline for the submission of applications for permanent residence has been extended from three months to three years.

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Because of the problem of the “erased”, Slovenia appeared before the Human Rights Council in Geneva in February 2010. In July 2010, after the suit filed by 10 erased inhabitants of Slovenia, the European Court of Human Rights in Strasbourg ruled that the State had violated the European Convention on Human Rights.⁷⁹² Slovenia appealed but the matter had not been closed by the end of the period covered by this report, i.e. the end of 2011.⁷⁹³

In August 2011, Slovenia’s Commission for the Elimination of Racial Discrimination recommended to the authorities in Ljubljana to ensure full reparation, satisfaction, compensation and guarantees of non-repetition of

⁷⁸⁸ Letter of the Office of the State Prosecutor of the Republic of Slovenia to the researcher Igor Mekina, 30 January 2012.

⁷⁸⁹ The information about the newly established number of the „erased“ was announced by the then State Secretary in the Ministry of the Interior Goran Klemenčič in a programme on the Slovenian state television. The news was also carried by the STA, the Slovenian state news agency. “Klemenčič: V Sloveniji je bilo izbrisanih 25.671 oseb (krajše)” (*Klemenčič: 25,671 persons were erased in Slovenia*), web site *Slovenska tiskovna agencija*, 27 January 2009, <http://www.sta.si/vest.php?s=s&t=0&id=1358382>.

⁷⁹⁰ *Official Gazette of the Republic of Slovenia*, No.61/1999.

⁷⁹¹ *Official Gazette of the Republic of Slovenia*, No.50/2010.

⁷⁹² There were 11 plaintiffs at the outset, but one of them died before the end of the proceedings. *The Kurić and others v. Slovenia Case* (petition No. 26828/06), judgment, 13 July 2010.

⁷⁹³ The case closed in mid-2012 when the judgment of the Grand Chamber of the European Court of Human Rights confirmed that the Republic of Slovenia had violated the rights of the „erased“, to wit Art. 8 (the right to respect for private and family life) and Art. 13 (the right to an effective remedy) of the European Convention on Human Rights. The court thereby confirmed the first-instance judgment and found that Art. 14 of the European Convention of Human Rights (prohibition of discrimination) had been violated because the erased, as former citizens of SFRY, were treated worse than persons who enjoyed the status of aliens at the time.

the violation of the rights of the persons affected by the deprivation of the status of permanent residents.⁷⁹⁴ By the end of 2011, Slovenia had not acted in line with these recommendations; the payment of damages was officially rejected and the “erased” were instructed to turn to the regular courts (which routinely dismiss their claims). The President of the State did not offer any apology either although the “erased” expected and requested it. The apologies of the (former) President of the Parliament Pavel Gantar and of the Minister of the Interior Katarina Kresal signify a certain progress.⁷⁹⁵

2.7.2. Material reparations awarded by courts

The “erased” citizens in Slovenia were not awarded material reparations by courts either in 2010 or in 2011 although several cases are under way. The claimants cannot be indemnified by courts for several reasons but mostly because of the high cost of judicial proceedings as well as the heavy burden of proof, the statute of limitations and lengthy proceedings. One of the rare instances when a member of the “erased” citizens category was awarded compensation was the case of Aleksandar Todorović to whom the court in Ptuj awarded the damages of € 17,000 - but for the unlawful denial of his work permit rather than for his erasure from the register of permanent residents.⁷⁹⁶

In 2010, the Slovenian Office of the State Prosecutor received 27 damages claims in which the claimants requested compensation for unlawful acts of the agencies of the Republic of Slovenia relative to their erasure from the register of permanent residents.⁷⁹⁷ Of them, 18 cases were settled out of court and in nine instances suits were filed against the Republic of Slovenia⁷⁹⁸; 48 claims were carried over from the previous period into 2010 and out of these, ten were settled out of court while in 38 instances suits were filed.⁷⁹⁹

In 2010, 35 cases were closed; 16 in court and 19 by out-of-court settlement; none of the 16 judgments was in favour of the claimants. Three suits were withdrawn and 13 ended in favour of the State. As regards the out-of-court settlements, 18 claims were rejected by the Slovenian Office of the State Prosecutor and one case was solved in another manner.⁸⁰⁰ By the end of 2010, 41 reparation claims were still pending; of them, 31 cases were heard by the court and 10 cases were awaiting out-of-court settlement. The majority of the claims were rejected on the grounds of the statute of limitations.

In 2011, the Office of the State Prosecutor received four compensation claims which were directed for out-of-court settlement and in six cases the claimants filed suits against the State. In the same year, the Office of the State Prosecutor concluded 22 cases. Five claims were decided in favour of Slovenia and in three cases the suits were withdrawn. An out-of-court settlement was reached in 14 cases and all compensation claims were rejected as lacking ground. By the end of 2011, 29 compensation claims were before courts.⁸⁰¹ The Office of the State Prosecutor mostly invokes in these cases the objective five-year period prescribed by the statute of limitations. Namely, the decision of the Constitutional Court on the anti-constitutional character of the provisions in the

794 Web site Amnesty International, <http://arhiv.amnesty.si/sl/node/3062>.

795 “Prvo opravičilo izbrisanim in zmaga človekovih pravic” (*First Apology to the Erased and a Victory of Human Rights*), *Večer*, 16 June 2010.

796 “Prva pobeda ‘izbrisanih’ u Sloveniji” (*The first victory of the „erased“ in Slovenia*), web site *Politika*, 21 February 2009, <http://www.politika.rs/rubrike/Svet/Prva-pobeda-izbrisanih-u-Sloveniji.lt.html>.

797 The Office of the State Prosecutor of the Republic of Slovenia, *Annual Report of the Office of the State Prosecutor for 2010*.

798 By statute, a suit against the State is first filed with the Office of the State Prosecutor. The Law on the Office of the State Prosecutor (Official Gazette of the Republic of Slovenia, No. 94/2007 and 77/2009), Article 14 lays down that the person wishing to conduct a case against a subject represented by the Office of the State Prosecutor, needs first to propose to the latter to resolve the dispute by an out-of-court settlement. The Office of the State Prosecutor needs to respond within 30 days and notify the proposer if the out-of-court settlement is possible. The Office of the State Prosecutor of the Republic of Slovenia, *Annual Report of the Office of the State Prosecutor for 2010*, p. 44.

799 *Ibid*, p.44.

800 *Ibid*, p.45.

801 Letter of the Office of the State Prosecutor of the Republic of Slovenia to the researcher Igor Mekina, 25 January 2012.

disputable Slovenian Aliens Law of 1991⁸⁰² was issued in 1999 so that the suits filed after the expiration of the 5-year deadline were rejected pursuant to the statute of limitations.

Slovenian courts also heard several compensation cases for the damage caused by the “ten-day” war in June 1991.⁸⁰³ In one case Slovenia was found responsible for the damage inflicted on foreign citizens whose vehicles the members of the Slovenian Territorial Defence used to make barricades against the JNA forces when six drivers were killed, twelve wounded and twenty trucks destroyed. In the first court case in 1999 the court found Slovenia responsible for the wounding of a citizen of Bosnia and Herzegovina for 80 per cent of the total damage and ordered the state to pay 11 million tolar (ca € 46,000) in damages.⁸⁰⁴

According to the Office of the State Prosecutor of the Republic of Slovenia, the Slovenian courts ordered compensation in several more cases related to the armed conflict in Slovenia when the responsibility of the Republic of Slovenia was also found.⁸⁰⁵

3. Return of the Refugees and Displaced Persons and Property Restitution

3.1. Bosnia and Herzegovina

From the end of the war until the end of 2010, Bosnia and Herzegovina registered over a million returnees; of them, almost one half are the so-called minority returnees (members of an ethnic community which is a minority in the territory they return to). Of the total number of 1,048,498 registered returns some 600,000 or 67 percent, relate to the return of displaced persons and the remaining 43 percent (ca 450,000) to the return of refugees. The Federation of BiH registered the return of some 750,000 persons, i.e. 71.5 percent of the total number of returns to BiH and Republika Srpska registered about 275,000 returns or 26.2 percent. The remaining 2.3 per cent (ca 22,600) of the total returns were to the territory of the Brčko District. As regards the ethnic structure, 650,000 Bosniaks, 135,000 Croats, 256,000 Serbs and about 8,000 members of other ethnicities returned to BiH.

The Ministry for Human Rights and Refugees estimates on the basis of the hypothesised number of persons who left their pre-war residences, that the rate of “minority” returns and the number of returnees was 32 percent (ethnic Serbs) in the Federation of BiH and 30 percent in Republika Srpska; of them, the rate of Bosniak returns is 36.6 percent and Croats 9.6 percent. According to the latest information of the relevant entity ministries and the government of the Brčko District, by the end of 2011, 38,654 families, that is to say 117,561 people, had the status of displaced persons in the territory of Bosnia and Herzegovina⁸⁰⁶.

According to the Statistics Administration of the Federation of Bosnia and Herzegovina, at the beginning of 2011, 739,639 refugees and displaced persons returned to the Federation of BiH; of them, 388,058 returned from abroad and 351,581 were returning displaced persons. The total number of returned refugees and displaced persons – members of ethnic minorities returning to their places of origin in FBiH was 275,247, of whom 128 persons returned in 2010. At the start of the same year, there were 156 refugees who returned to the FBiH territory; of them, 139 returned from Serbia (including Kosovo); 29 of them are in collective centres. Seventeen refugees returned from other countries and six of them are in collective centres. The total number of displaced persons was 48,637.⁸⁰⁷

802 Službeni list Republike Slovenije (Official Gazette of the Republic of Slovenia), No. 14/1999.

803 Peter Petrovčič, „Slovenija je odgovorna“ (Slovenia Is Responsible), web site Mladina, 13 July 2006, <http://www.mladina.si/94992/slovenija-je-odgovorna/>.

804 The Office of the State Prosecutor of the Republic of Slovenia, Annual Report of the Office of the State Prosecutor for 2004.

805 Letter of the Office of the State Prosecutor of the Republic of Slovenia to the researcher Igor Mekina, 30 January 2012.

806 Ministry for Refugees and Human Rights, *Returns in 2011*, December 2011, p.3.

807 Federal Statistics Administration at www.fzs.ba.

Table 1. Return of refugees and displaced persons in BiH as of 31 December 2010⁸⁰⁸

<i>Federation of BiH</i>			<i>Republika Srpska</i>		
Refugees	Displaced persons	Total	Refugees	Displaced persons	Total
388.442	361.146	749.588	58.441	216.208	274.649

<i>Brčko District BiH</i>			<i>Bosnia and Herzegovina</i>		
Refugees	Displaced persons	Total	Refugees	Displaced persons	Total
2.306	21.955	24.261	449.189	599.309	1.048.498

Many municipalities do not have information about the real number of returns nor do they keep that kind of statistics and moreover, a large number of registered returns end up with the sale of property and final departure from the pre-war place of residence. It will be possible to analyse the true results only after the population census.⁸⁰⁹ The Ministry for Refugees and Displaced Persons in Republika Srpska still has on record 19,536 families (61,776 individuals) with the status of displaced persons and 2,856 refugee families (9,002 individuals).⁸¹⁰

In June 2010 the Parliament of BiH adopted the Revised Strategy for the Implementation of Annex 7 of the Dayton Peace Accords which addresses possible lasting solutions for refugees and displaced persons.⁸¹¹ The strategy envisages the reconstruction and renewal of pre-war property and the solution of housing problems in present places of residence as well as compensation ("fair indemnity") for the property which cannot be returned.

The revised strategy stipulates that the shutting down of collective centres is the unquestionable priority. Some of the measures accorded priority in the strategy are aimed at the final closure of this type of accommodation in line with the real needs of their current occupants. Particular attention will be paid to vulnerable categories.⁸¹² It is also planned to devise new legal solutions in order to prevent possible violations of the rights of the persons involved in this process, including the prevention of the consequences of forcible evictions.⁸¹³ It is expected that the process will be completed in 2014.⁸¹⁴

808 Ministry for Human Rights and Refugees, Information on the Returns, at <http://www.mhrr.gov.ba/PDF/Izbjeglice/INFORMACIJA%20O%20POVRATKU%20DO%202010.pdf>.

809 Information on the Returns, web site of the Ministry for Human Rights and Refugees, <http://www.mhrr.gov.ba/PDF/Izbjeglice/INFORMACIJA%20O%20POVRATKU%20DO%202010.pdf>

810 Information received from the Ministry for Refugees and Displaced Persons of Republika Srpska, 11 January 2012.

811 *The Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Accords* adopted towards the end of 2002, was the first joint tentative document at the level of Bosnia and Herzegovina defining the goals and planning the actions and reforms needed to finally enforce the provisions of Annex VII of the General Framework Agreement for Peace in BiH, the so-called Dayton Accords, defining the return of refugees and displaced persons. The particular importance of this document rests with the fact that it was accepted both by the relevant state and entity institutions and the international community structures in BiH. *The Revised Strategy for the Implementation of Annex VII of the Dayton Peace Accords*, April 2010.

812 Ministry for Human Rights and Refugees, *The Second Periodical Report of Bosnia and Herzegovina on the Implementation of the International Covenant on Civil and Political Rights*, 2010.

813 *The Revised Strategy for the Implementation of Annex 7 of the Dayton Peace Accords*, 2011.

814 Information received from the Ministry for Refugees and Displaced Persons of Republika Srpska, 11 January 2012.

3.1.1. Property restitution

According to the latest statistical data published by PLIP agencies 211,791 claims for the restitution of property and tenancy rights were submitted in BiH.⁸¹⁵ There were 197,815 favourable and 12,642 adverse decisions. The closed cases number 197,688 which is more than 99 percent of all claims and this effort is coming to a close in BiH. In view of the results achieved with regard to property restitution and reinstatement of tenancy rights, Bosnia and Herzegovina is considered as a good example in the region and beyond. However, as true closure means that the pre-war owners/occupants have taken possession of their property/tenancy rights, in the remaining cases administrative and civil proceedings are still under way because of uncertain factual and legal status and in some instances civil suits have been filed with relevant courts.⁸¹⁶

Destroyed housing units, housing solution for persons who were accommodated in collective centres and their sustainable return still present a problem. In BiH there are still some 160 refugee shelters providing accommodation for 2,865 families, i.e. 7,490 individuals. Within the context of the Revised Strategy for the Implementation of Annex 7 placing the long-term solution for the accommodation of these persons at the top of the list of priorities in BiH, in 2010 BiH initiated negotiations with the Council of Europe Development Bank (CEB) in order to secure the necessary funds. It is envisaged to reconstruct the existing housing belonging to the occupants of refugee shelters and to construct of new housing and new facilities to be shared by certain categories of citizens (geriatric and the like).⁸¹⁷ The Ministry for Human Rights and Refugees of BiH has a data base about some 45,000 families, i.e. ca 150,000 individuals, who need help in the reconstruction of housing units so that they can voluntarily return to BiH.⁸¹⁸

In May 2010, the European Court of Human Rights in Strasbourg ruled in the Đokić v. Bosnia and Herzegovina Case that the plaintiff should receive € 60,000 in damages and € 5,000 as non-material compensation relative to the violation of Protocol I of the European Convention on Human Rights, i.e. property restitution. The case had to do with the unsuccessful attempts of the claimant, irrespective of a legally valid sale contract, to regain possession of his pre-war apartment and register it in his name.⁸¹⁹ After the Government of Bosnia and Herzegovina had paid this amount, 14 new claims were submitted against the Federation of BiH before the European Court of Human Rights, requesting compensation for the military apartments of former JNA members.⁸²⁰

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3.2. Croatia

The return of the refugees to Croatia becomes ever less intensive from one year to the next as more than 16 years have passed since the end of the war. The return statistics in RC is kept by the Ministry of Regional Development and EU Funds as it is the legal successor of the Office for Refugees, Returnees and Expelled Persons. The records have been kept since 1995 which the institutions see as the start of the return although a minor number of refugees returned before then.

According to its data, 347,405 persons had returned by the beginning of 2010. In 2010 and 2011, 6,844 persons returned, again according to this ministry. During that period, the returnees included 248 expelled persons⁸²¹ and 6,596 refugees from Bosnia and Herzegovina, Montenegro and Serbia. Statistical records are also kept by

815 In 2000, the international community in BiH adopted the so-called PLIP (Property Law Implementation Plan) to monitor and implement the relevant regulations, with the collaboration of 4 leading organisations of the international community in BiH: OHR, OSCE, UNHCR and CRPC. PLIP representatives publish monthly statistical indicators from municipal to BiH levels, and analyse and compare the indicators.

816 The Revised Strategy for the Implementation of Annex 7 of the Dayton Peace Accords, 2011, p. 27.

817 Ministry for Human Rights and Refugees, The Second Periodical Report of Bosnia and Herzegovina on the Implementation of the International Covenant on Civil and Political Rights, 2010.

818 Ministry for Refugees and Human Rights: Returns in 2011. December 2011, p. 4.

819 Đokić v. Bosnia and Herzegovina, (petition No. 6518/04), 27 May 2010.

820 "Protiv federacije BiH pokrenuto 14 novih tužbi" (*Fourteen more claims against the Federation BiH*), at portal Bitno <http://www.bitno.ba/vijesti/bosna-i-hercegovina/protiv-federacije-pokrenuto-14-tuzbi>.

821 Croatia uses the term 'forced migrants' (*prognanici*) to denote displaced persons as defined under international humanitarian law.

the United Nations High Commissioner for Refugees (UNHCR). The UNHCR figures and those of the relevant ministry are somewhat discrepant. The UNHCR records show that in 2010 and 2011 843 refugees from Bosnia and Herzegovina, Montenegro and Serbia (of those, 538 persons in 2010 and 305 in 2011) and 4,187 internally displaced persons (of those 2,128 in 2010 and 2,059 in 2011) returned to Croatia.⁸²²

The realisation of the returnees' rights at the local level and their integration largely vary from community to community. Integration has moved forward better in places where the majority of the population is made up of members of national minorities or returnees.⁸²³

A new UNHCR study done in Croatia, based on the information collected from a sample of 1,400 registered returnees, shows that over 33 per cent of the returnees are permanent residents in Croatia which is less than in 2007 (38.3 %). The poll also showed that there are three times more beneficiaries of the government housing programme who continue to live in Croatia than other returnees. The study mentions that 43 percent of the houses "which look empty, are maintained regularly" and infers from this that there are "individual returnees' transnational strategies on the basis of which the persons who have formally returned to Croatia seek solutions elsewhere within the region in the expectation of better and sustainable solutions for themselves and their families."⁸²⁴

3.2.1. Restitution and reconstruction of property

The restitution of property is practically drawing to its final stage. The owners were returned 19,267 houses, mostly by 2005; at the moment there are still 13 restitution proceedings under way before courts because their temporary occupants have still to be moved out. Of these 13 cases, 3 are also being conducted because of unauthorised investments.⁸²⁵

The chief problem that property restitution has faced has been the solution of tenancy issues of the so-called former holders of the tenancy rights.⁸²⁶ The restitution of the property of the so-called former holders of the tenancy rights is regulated by the Law on Areas of Special State Concern and the decisions of the Government of the Republic of Croatia.⁸²⁷ The government sets the deadline by which the returnees may submit their claims for property restitution to the relevant state administrative agencies and this deadline has been extended several times over the past years. In addition to the legal provisions and by-laws there is also the Aliens Law addressing the cases of claimants who are not Croatian citizens or who lost Croatia's citizenship after having abandoned their property because of the war. They are, by and large, ethnic Serbs who have been leaving Croatia ever since 1991 and who have not applied for Croatian citizenship so that they were still registered as aliens (at the time of application) although they held Croatian IDs. According to the Ministry of Regional Development and EU Funds, in 2010 and 2011 the process of care for the former holders of tenancy rights within and outside the areas of special state concern (PPDS) was expedited so that 1,891 families were taken care of during this period.⁸²⁸

822 See web site of UNHCR in Croatia: http://unhcr.hr/images/stories/news/stats/docs/2_2012/unhcr_statistical_report_december_2011.pdf.

823 In this sense, the integration is visibly better also in places where the returnees come from different ethnic groups but share the destiny of returnees or those who left war-affected areas and are resettling (e.g. Vojnić).

824 „Manjinski povratak u Hrvatsku - studija otvorenog procesa“ (*Minority return to Croatia – A study of an open process*), web site Udruga Mi, 29 February 2009, <http://www.udruga-mi.hr/item/165-manjinski-povratak-u-hrvatsku-studija-otvorenog-procesa.html>. The study was not available on the internet at the time of this report.

825 Information received from the Ministry of Regional Development and Funds of the European Union, 16 February 2012.

826 Humanitarian Law Centre, Documenta & BIRN, *Tranziciona pravda u post-jugoslovenskim zemljama: Izveštaj za 2009. godinu* (*Transitional Justice in the Post-Yugoslav Countries: Report for 2009*), pp. 68-69.

827 Law on Areas of Special State Concern, *Narodne novine Republike Hrvatske* (*People's Gazette of the Republic of Croatia*), No. 86/08 and No.57/11; Decision on the Housing of the Returnees – Former Holders of Tenancy Rights in Areas outside the Areas of Special State Concern (*Narodne novine Republike Hrvatske*, Nos. 29/11 and 139/11); Decision on the Housing of Returnees – Former Holders of Tenancy Rights over Apartments outside PPDS (*Narodne novine Republike Hrvatske* (*People's Gazette of the Republic of Croatia*), No.63/08); Conclusion on the manner of housing of the returnees who did not own a house or an apartment and lived in socially-owned apartments in the areas of RC outside PPDS.

828 Of them, 1,391 in the areas of special state concern and 500 outside them.

One of the problems besetting some groups of the returnees are the provisions ordering a different approach as regards access to rights, dependent on the regions they return from to Croatia. For instance, the Croats returning from Bosnia and Herzegovina are entitled to donated apartments but this right is not enjoyed by returnees from other areas (e.g. Serbia).⁸²⁹

With regard to the reconstruction of property, the number of claims began to drop drastically as the negotiations about the accession to the European Union advanced. The priority in the realisation of the right to reconstruction is accorded to Croatian defenders and ethnic Croats. The priority is regulated by statute equally for the reconstruction and the solution of the housing problem.⁸³⁰ The laws prescribe a system of points to determine the priority reconstruction cases. As most of the claims have been resolved, the chief problem is the provision contained in Art. 5, para. 12 of the Law on Areas of Special State Concern, stating that the “beneficiary of the right to reconstruction who realised this right pursuant to the Reconstruction Law shall be bound to move into the reconstructed family house within 30 days of the completed technical inspection and reside in it not less than 10 years during which period he may not sell, donate or alienate the house in any other way without the consent of the Ministry”. In 2010 and 2011, the organisations offering free legal aid to the beneficiaries of these rights, mostly ethnic Serbs, recorded several instances when a relevant ministry requested from the Ministry of the Interior to conduct operational inspections and if it was found that the owners of the houses did not live in them, started proceedings for the return of the funds invested.⁸³¹

3.3. Serbia

In 2008, the UNHCR put the Republic of Serbia on the list of the five countries of the world with a perpetuating refugee crisis and the country with the largest number of refugees and displaced persons in Europe. This status has not changed to this day.

In 2010, 86,000 persons with refugee status lived in the Republic of Serbia; by 2011, their number was reduced to 74,487 persons. The number of the internally displaced did not change as against 2010 and totals 210,148 persons.⁸³² Almost one half of the refugees are over the age of 50 and among the internally displaced persons the largest number (over 26%) are aged between 15 and 29 years.

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Towards the end of 2010, there were 54 collective centres accommodating 4,256 persons (898 refugees and 3,358 internally displaced). Thirteen collective centres were closed down in 2011 and lasting housing was provided for 753 persons, their former beneficiaries. There are still 41 collective centres, 13 of which are in the territory of Kosovo. The collective centres provide accommodation for 3,503 persons (667 refugees and 2,836 internally displaced).

Permanent integration (support to the solution of the housing problem) was ensured for 1,705 families of refugees and internally displaced persons in 2010 and for 1,469 families in 2011. During those two years 2,754 families were economically empowered.⁸³³

829 The Serb Democratic Forum is preparing to file suits with the Constitutional Court because of the above-mentioned discriminatory provisions on the enjoyment of the right to property restitution.

830 See, The Law on Areas of Special State Concern, Narodne novine Republike Hrvatske (People's Gazette of the Republic of Croatia No. 86/08 and No.57/11 and the Reconstruction Law, Narodne novine Republike Hrvatske (People's Gazette of the Republic of Croatia), No. 24/96, No. 54/96, No.87/96, No. 57/00, No. 38/09, No. 45/11.

831 Several interviews with representatives of the Serb National Council and the Serb Democratic Forum. Interview with Tatjana Vukobratović Spasojević, legal adviser of the Serb People's Council, February 2012.

832 Of them, 157,437 are of Serb ethnicity and 22,823 of Roma ethnicity. Information received from the Commissariat for Refugees of the Republic of Serbia, 30 December 2011.

833 A part of the funds came from the budget of the Republic of Serbia but a vast proportion was ensured through donor projects of the Council of Europe Development Bank, the Government of the Federal Republic of Germany, UNHCR, the European Union, INTERSOS, the Bureau of Population, Refugees and Migration (BPRM) and other sources..

3.3.1. Property restitution

The restitution of property and the provision of conditions for its unobstructed use with access to all the other rights needed for normal life are the obligations of the country of origin. As Serbia has the largest number of individuals with open status of all the countries in the region, the restitution of property is indeed its obligation, but it believes that the access to rights for persons whose residence in Serbia is funded by the budget (persons having the status of refugees and displaced persons) should be resolved by international agreements. After the process of the regional approach to a lasting solution of the issues relative to the refugees and displaced persons was renewed, representatives of Croatia and Serbia held nine bilateral meetings in 2010 and 2011. Alongside these negotiations, the presidents of Croatia and Serbia also discussed during their meetings the restitution of property to the refugees from Croatia presently in Serbia.⁸³⁴ As a result of these specific negotiations the refugee policy has changed helping also to house other persons in need of housing (including those who did not realise their property and tenancy rights).⁸³⁵ These measures were further supported by the Conclusion of the Government of Serbia to accept the Proposed Measures for the Solution of the Refugee Problem in the Republic of Serbia, as defined by the Commissariat for Refugees of the Republic of Serbia.⁸³⁶ It was decided thereby that Serbia should focus on the programmes for the lasting integration of the present and former refugees who opted to be integrated in Serbia.

3.4. Kosovo

According to the Kosovo Ministry for Communities and Return, the refugees and displaced persons who returned to Kosovo between 2000 and 2011 totalled 9,766 Serbs, 3,241 Roma, 6,193 Egyptians and Ashkali, 1,691 Bosnians, 1, 321 Gorani, two members of the Turkish minority, 1 Croat and 11 Montenegrins. Between January and December 2010, a total number of 2,214 minority members returned to Kosovo voluntarily, which is the largest figure in the last six years.⁸³⁷

The returnees include 898 Serbs, 371 Roma, 711 Egyptians and Ashkali, 49 Bosnians, 182 Gorani, one Turk, one Croat and two Montenegrins. In 2011, 1,004 members of minorities returned, to wit 419 Serbs, 110 Roma, 311 Egyptians and Ashkali, 50 Bosnians, 104 Gorani, one Turk and nine Montenegrins.⁸³⁸

The government budget in support of the return was significantly reduced and has been decreasing further in the recent years.⁸³⁹ The municipal authorities meet with difficulties when providing community flats for returnees without their own property and are still unable to respond to the immediate and long-term needs of the internally displaced persons and returnees as they lack funds for this purpose.⁸⁴⁰ It is therefore still impossible to talk about the long-term strategies for the integration of the returnees even if some efforts are being made. The strategy of the Ministry for Communities and Return was adopted on 12 February 2010. It envisages full-time jobs for municipal employees responsible for the organisation of the return. It also sets aside the land which is now given to the returnees for long-term use (99 years) with a view to ensuring a sustainable return process.⁸⁴¹

834 "Josipović u poseti Srbiji" (*Josipović Visits Serbia*), *Vreme* No. 1020, 22 July 2010.

835 Information received from the Commissariat for Refugees of the Republic of Serbia, 30 December 2011.

836 Conclusion of the Government of Serbia 05. No: 019-9265/2010, 9 December 2010.

837 The Progress Report of the European Commission in Kosovo in 2010 offers somewhat different figures. According to this report, some 1,600 persons returned to Kosovo between January and November 2010, p.19. European Commission Kosovo* 2010 Progress Report, http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ks_rapport_2010_en.pdf.

838 Information received from the Ministry for Communities and Return, December 2011.

839 The ministry's budget was € 9,118,553 in 2008, € 8,743,889 in 2010 and € 7,160,317 in 2011; Ministry for Communities and Return, Budget and Finances Office, web site of the Ministry, <http://www.mkk-ks.org/?page=3,93>.

840 European Commission Kosovo* 2010 Progress Report, pp. 19-20.

841 *Ibid*, p. 21.

3.4.1. Property restitution

The Kosovo Property Agency (KPA) deals with claims relative to the war in Kosovo, i.e. the private real estate, including agricultural land and commercial businesses. It has inherited a part of the mandate of the Housing and Property Claims Commission (HPCC) and the Housing and Property Directorate (HPD) which had closed down in the meantime (after the establishment of the KPA). The part of the mandate the KPA took over concerns the execution of decisions about property law relations the management of the property placed under the HPD control. The KPA also has the executive powers to ensure, in cooperation with the Kosovo Police, evictions and the reinstatement of legal owners.⁸⁴² So far, since it was established in 2006, the KPA has received a total number of 41,471 property claims. It has also solved 23,908 claims which were formerly within the jurisdiction of the HPCC. It is planned to resolve all the remaining claims, whose number is unknown, by the end of 2012.⁸⁴³

In this sense, as a vast number of these claims concern the rights of the minorities within the majority community, the claims are very difficult to realise. The signing of a memorandum between the KPA and KP (2009) is therefore of the utmost significance as it has expedited and simplified the procedure concerning the eviction of persons who had unlawfully moved into other persons' homes. So far the cooperation based on this memorandum has been satisfactory, except for its implementation in the northern part of Kosovo.⁸⁴⁴

3.5. Montenegro

Persons originating from Bosnia and Herzegovina still have the status of displaced persons in Montenegro whereas the persons from Kosovo are considered as internally displaced persons. They are the responsibility of the Administration for Refugee Welfare (ZZZI), the legal successor of the Commissariat for Displaced Persons which existed until 2006.⁸⁴⁵ ZZZI is responsible for the database of the persons displaced from Kosovo whilst the Ministry of the Interior keeps the database of the persons displaced from Croatia and Bosnia and Herzegovina. The refugees and displaced persons in Montenegro face a number of problems, related primarily to the acquisition of citizenship. The Law on the Citizenship of Montenegro, Art. 4, prescribes that Montenegrin citizenship is acquired by birth in the territory of Montenegro. The children of the displaced and internally displaced persons in the municipalities of Bar, Cetinje, Rožaje and Bijelo Polje were automatically included in the register of citizens because they were born in Montenegro.⁸⁴⁶ However, after the birth registers were transferred from the municipalities to the Ministry of the Interior on 1 January 2010, these children were struck out from the register of citizens.⁸⁴⁷

The Association of Displaced Persons, Refugees and Expelled Persons holds that this means the discrimination against almost 18,000 displaced and internally displaced persons who want to acquire Montenegrin citizenship.

In December 2011, the Constitutional Court of Montenegro rejected the request of the Association of the Displaced Persons, Refugees and Expelled Persons to re-examine the Decision of the Government of Montenegro of 2008 preventing those who came to Montenegro because of the war, from acquiring its citizenship.⁸⁴⁸ The current legal provisions permit those displaced from Kosovo, Croatia and Bosnia and Herzegovina to acquire the status of aliens with permanent residence as a "transitional solution" prior to acquiring the status of citizens

842 Kosovo Property Agency, on the mandate, <http://www.kpaonline.org/sr/about.asp>.

843 E-mail communication with Arian Krasiqi, KAI spokesperson, 9 December 2011.

844 E-mail communication with Arian Krasiqi, KAI spokesperson, 7 December 2011.

845 Web site of the Refugee Welfare Administration, www.zzzi.co.me

846 Strategy for a Lasting Solution of Issues concerning Displaced and Internally Dispersed Persons, with special reference to the area of Konik, Podgorica, 2011, p.14.

847 *Ibid*, p. 15.

848 Overview of the work of the Constitutional Court in 2011, web site of the Constitutional Court of Montenegro, <http://www.ustavnisudcg.co.me/Pregled%20rada%20Ustavnog%20suda%20za%202011.godinu.pdf>

of Montenegro. New legal provisions of November 2011 make it possible to apply for the status of alien with permanent residence up to 31 December 2012.⁸⁴⁹

By mid-July 2011, the Ministry of the Interior of Montenegro had issued 2,180 permits for permanent residence out of a total number of 4,190 applications, which is 30 percent of the total number of the displaced and internally displaced persons who could apply for the alien status at the latest by 7 November 2011.⁸⁵⁰

The displaced and internally displaced persons who have acquired the status of aliens with permanent residence in Montenegro may apply for Montenegrin citizenship after ten years of lawful residence as permanently resident persons or if they have been married to a Montenegrin citizen for not less than three years and have resided in Montenegro lawfully and permanently for not less than five years before applying for Montenegrin citizenship.⁸⁵¹ Between May 2008 and July 2011 about 600 persons displaced from Bosnia and Croatia acquired the citizenship of Montenegro, mostly by marriage to Montenegrin citizens. All persons who applied for Montenegrin citizenship, with the exception of persons whose spouses are Montenegrin citizens, had to produce evidence that they had renounced their former citizenship.⁸⁵² However, the amended Aliens Law of September 2011 lays down that the citizens of the countries of the former Yugoslavia permanently residing in Montenegro for not less than five years before the referendum, can apply for Montenegrin citizenship no later than 31 January 2012 and acquire citizenship without being discharged from the former citizenship.⁸⁵³

In December 2011, 9,300 internally displaced persons from Kosovo (the re-registration was carried out between 14 September 2009 and 14 February 2010) were registered with ZZZI and 3,800 persons displaced from Croatia and Bosnia and Herzegovina were registered with the Ministry of the Interior. A programme of voluntary return of the internally displaced to Kosovo is being implemented in Montenegro as of 2005. The total number of those who have returned is 2,692 persons. In 2011, according to ZZZI, 19 persons returned to Kosovo.⁸⁵⁴

According to the information from July 2011, only 7.7 percent of the internally displaced persons live in rented accommodation; 11.1 percent live in collective centres, and the majority – 61.2 percent – live in their own accommodation facilities without legal ownership. Only 19.4 of them claim that they have accommodation with settled legal ownership.⁸⁵⁵

In April 2005 the Government of Montenegro adopted the National Strategy for the Lasting Solution of the Problems of Refugees and Internally Displaced Persons in Montenegro. However, its goals have not been attained because the question of the status of the displaced and internally displaced persons is not yet resolved on account of, among other things, the lack of funds.⁸⁵⁶ In cooperation with the UNHCR and the EU Delegation in Montenegro, the Government of Montenegro adopted in 2009 the Action Plan for the lasting solution of the status of displaced persons from the former Yugoslav republics and internally displaced persons from Kosovo residing in Montenegro, and in July 2011 the Ministry of Labour and Social Welfare adopted the Strategy for the Lasting Solution of the Issue of Displaced and Internally Displaced Persons with special reference to the area of

849 Web site of the Refugee Welfare Administration, www.zzzi.co.me

850 Strategy for a Lasting Solution of the Issue of Displaced and Internally Displaced Persons, with special reference to the area of Konik, Podgorica, 2011, p.17.

851 The Montenegrin Citizenship Law, Art. 8 and Art. 11, *Službeni list Crne Gore (Official Gazette of Montenegro)*, No. 13/2008..

852 Strategy for a Lasting Solution of the Issue of Displaced and Internally Displaced Persons, with special reference to the area of Konik, Podgorica, 2011, p.23.

853 „Izmjene zakona donose značaj broj novih državljana” (*Amendments to the Law mean a significant number of new citizens*), web site *Radio Free Europe*, 8 September 2011, http://www.slobodnaevropa.org/content/crna_gora_drzavljanstvo/24322365.html

854 http://www.zzzi.co.me/index_files/Statistika.htm, accessed 20-1-2012.

855 Strategy for the Lasting Solution of the Question of the Displaced and Internally Displaced Persons, with special reference to the area of Konik, Podgorica, 2011, p.25.

856 E-mail answer from Veljko Tomić, Senior Advisor, Refugee Welfare Administration, 20 January 2012.

Konik, which rendered null the Action Plan of 2009.⁸⁵⁷ The new strategy defines two possible solutions for the problem of the displaced and internally displaced persons: local integration and voluntary return.⁸⁵⁸ It envisages the setting up of a commission by the ZZZI, Ministry of the Interior and the UNHCR to consider the cases of persons whose applications were rejected at the time of re-registration of internally displaced persons between September 2009 and February 2010.⁸⁵⁹

On 22 September 2011 the Government of Montenegro took the decision to set up a coordinating committee to monitor the implementation of the Strategy for the Lasting Solution of the Issue of the Displaced and Internally Displaced Persons with special reference to the area of Konik. Duško Marković, the Deputy Prime Minister was elected as its chairman.

3.5.1. Property restitution

The Government of Montenegro Commission for the Reconstruction of Bukovica set up in 2007, continued to engage in the construction of houses, road infrastructure and a low-voltage grid with a view to ensuring the return of Montenegrin citizens who had to leave the area when their lives were in danger and their property under the attack by the police and military forces.⁸⁶⁰ In November 2010 the inhabitants of Bukovica were handed over the keys of 32 housing facilities. About 2 million euros in total were invested in the reconstruction of Bukovica in 2010.⁸⁶¹ In November 2011, the Direction of Public Works of the Government of Montenegro announced that 33 housing and 27 auxiliary facilities in Bukovica had been constructed or reconstructed in 2009-2010.

According to the Youth Initiative for Human Rights in Montenegro, by the end of the third quarter of 2011, 33 houses had been built and ten more should be completed by the end of 2011.⁸⁶² By the end of 2011, 13 families had returned to Bukovica and the construction of 43 residential houses with access roads, auxiliary facilities and an electric grid was completed.⁸⁶³ According to the Bukovica Association, the dynamics of the reconstruction of Bukovica were not satisfactory in 2010-2011 and only two families with members of advanced age returned; 30 houses are still without returnees. They claim that during the design stage of the reconstruction of their houses the representatives of their association and the owners of the houses were not consulted and that there were instances when somebody was built a house on another person's land.⁸⁶⁴

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3.6. Macedonia

Some 360,000 people from Kosovo sought refuge in Macedonia in 1999. In March 1999, the Government of Macedonia decided to provide them with temporary humanitarian care. About 65 percent of them were lodged with families and about 35 percent in collective centres built for this purpose.⁸⁶⁵ By the end of 1999, about 8,103 persons from Kosovo (mostly Roma) were still in Macedonia but by the end of 2002 this figure had dropped to 2,750 individuals.

857 Strategy for the Lasting Solution of the Issue of the Displaced and Internally Displaced Persons, with special reference to the area of Konik, Podgorica, 2011, p. 5.

858 *Ibid.*

859 *Ibid.*, p.9.

860 The Commission for the Reconstruction of Bukovica is chaired by the President of Montenegro Filip Vujanović. The planned budget for Bukovica reconstruction is € 4.5 million.

861 Bulletin of the Ministry of Labour and Social Welfare, Podgorica, December 2010, p. 16, <http://www.minradiss.gov.me/vodic/info/102635/BILTAN-MINISTARSTVA-RADA-I-SOCIJALNOG-STARANJA-1.html>.

862 Report on the State of Human Rights in the Third Quarter of 2011, Youth Human Rights Initiative of Montenegro, <http://gamn.org/files/YIHR%20-%20treći%20kvartalni%20izvještaj%202011.pdf>.

863 U Bukovicu se u 43 nove kuće vratilo 13 porodica“ (13 families return to 43 new houses in Bukovica), *web site PVPortal – Pljevlja information portal*, <http://pvportal.me/2011/12/u-bukovicu-se-u-43-nove-kuce-vratilo-13-porodica/>.

864 E-mail answer of Jakub Durgut, President of Bukovica Association, 20 December 2011.

865 Migration profile 2008, Government of Macedonia, 2009, p. 34.

In 2003 the Government discontinued the temporary humanitarian assistance for refugees and in July that year the Macedonian Parliament adopted the Law on Asylum and Temporary Welfare.⁸⁶⁶ It recognised the relevant rights pursuant to the provisions of the Convention relating to the Status of Refugees and the relevant Protocol: accommodation, financial assistance, health care, pension and invalid insurance as well as the transfer of the property, invested capital and profits. In 2008, the Strategy for the Integration of the Refugees and Aliens in Macedonia was adopted for the period 2008-2015. The strategy aims at helping and supporting the social integration of these categories of people by offering them asylum and assistance with respect to their return to their country of origin. According to the latest UNHCR figures, there were 1,398 refugees in Macedonia in 2011.⁸⁶⁷

Macedonia also has 473 persons (135 families) who are internally displaced.⁸⁶⁸ Some of them are accommodated in collective centres and for some the Government has provided funds for the rent for housing.⁸⁶⁹ The majority of the displaced do not want to return to their places of origin for safety reasons although ten years have elapsed since the end of the conflict.⁸⁷⁰

3.7. Slovenia

Slovenia refuses to pay pensions to a small group of retired JNA officers who live with their families in Slovenia. Among them there are Slovenians as well as individuals from different parts of the former SFRY.⁸⁷¹ Some of them have been a long time without pension and health insurance between seven and ten years. In February 2009, they wrote to the President of Slovenia Danilo Turk, to Borut Pahor, the Prime Minister, Pavel Gantar, the President of the Parliament, Franc Testen, the President of the Supreme Court of Slovenia and Zdenka Čebašek-Travnik, the Ombudsman, but without avail. The pensions for this group of former JNA officers should have been paid under the Succession Agreement of 2001. The Slovenian state agencies rejected these requests stating that before they could be paid, special agreements should be concluded with other successor-states of the SFRY.⁸⁷²

4. Memorials

4.1. Bosnia and Herzegovina

Most of the memorials erected in Bosnia and Herzegovina are dedicated to members of one of the constituent ethnicities in BiH. As a consequence, they often carry messages which cause tensions among different groups of citizens.⁸⁷³ Experts point out in particular that religious symbols and messages are integrated in many monuments contributing to the instigation of hatred.⁸⁷⁴

At the national level the sites of mass and individual graves are defined by the Rules on the Marking of Places of Exhumation and Burial of Missing Persons, proposed by the Working Group on the Implementation of the

866 *Ibid.*

867 Web site UNHCR, <http://www.unhcr.org/pages/49e48d8f6.html>

868 Information received from the Ministry of Labour and Social Policy, 30 January 2012.

869 *Ibid.*

870 "Раселени доживотно" (*Forever Displaced*), web site Вечер, 9 June 2010, <http://www.vecer.com.mk/?ItemID=6312BB8579E5F14FA3C69367636D63B5>

871 Igor Mekina, »Kaj so sploh hoteli častniki JLA?« (*What did the JNA officers want*), Mladina, 5 February 2009, at: <http://www.mladina.si/46147/kaj-so-sploh-hoteli-castniki-jla/>

872 Pursuant to the provisions of the Agreement on Succession (Annex E, Art. 2), the states assume the responsibility for the regular payment of the pensions they owe their citizens who were civilian or military employees of the SFRY irrespective of the place in which they live or reside if these pensions were paid from the federal budget or other federal assets of the SFRY. However, Annex E of the Agreement on Succession, Art. 3 says that, if necessary, the States may conclude bilateral agreements to ensure the payment of pensions and make provisional arrangements to ensure the payment of pensions in line with the Law on the Confirmation of the Agreement on Succession Issues, *Službeni list SRJ*, (*Official Gazette of the FRY*), 06/02.

873 ICMP, Conference report: Promoting an integrated approach to the issue of memorials and remembrance, Sarajevo, 8-10 December 2010.

874 "Manipulacija mjesta sjećanja" (*Manipulating memorial sites*), web site BIRN, <http://www.bim.ba/bh/230/10/29819/?tpl=30>.

Missing Persons Law in agreement with the advisory committee made of representatives of the missing persons associations.⁸⁷⁵ The Council of Ministers adopted the rules in October 2006 and they have not been changed since. They define the appearance of the memorials and plaques, the funding and other procedures relating to the burial of individuals found or still missing. The memorial plaques accompanying individual graves are to have a uniform inscription with personal particulars, time of disappearance and time of exhumation of the grave. According to the rules, a master design for the sites where more bodies have been exhumed has to be adopted by the Commission for the Selection of Master Designs. The inscription contains the official information of the Missing Persons Institute such as the date of the exhumation, the found number of mortal remains, ethnicity and circumstances of the disappearance. It is also prescribed that the text on the plaque may in no way offend the religious sentiments of the members of other ethnicities and minorities living in BiH. The procedural problem relative to the implementation of this set of rules rests with the fact that it applies to the monuments which are financed, under the Missing Persons Law of 2004, from the Assistance to the Families of the Missing Persons Fund (the Fund) which was never set up. According to the rules, the Fund would be entitled to order the removal and replacement of existing monuments with offensive contents upon receiving a report to that effect.

Because the mechanism for the maintenance and marking of these sites and the mechanism whereby the perpetrators would be punished are not implemented, the sites of mass crimes are often vandalised. An example of this is the Bunarevi mass grave in Republika Srpska, from which 27 bodies of Bosniaks from nearby camps were exhumed: in late 2011, when they visited the place, the former inmates of the Manjača camp found discarded carcasses of diseased sheep there and therefore called upon the institutions to protect the sites of large-scale crimes.⁸⁷⁶

Many sites of grave crimes are not marked because the authorities are reluctant to grant permission; earlier, it struck the eye in Republika Srpska particularly, but several new initiatives in the Federation of Bosnia and Herzegovina to erect a memorial to the fallen of the Serb ethnicity come (they still do) across similar obstacles. On 3 May 2010 a peaceful walk marked for the first time the killing of soldiers in Dobrovoljačka Street in Sarajevo; it was organised by the Board of the Republika Srpska Government for the Fostering of the Tradition of the Wars of Liberation. Alija Behmen, the mayor of Sarajevo and the City Council of Sarajevo requested that the commemoration in honour of JNA soldiers killed in Sarajevo be prohibited.⁸⁷⁷ Nevertheless, the anniversary was marked without any incidents both in 2010 and 2011 even if the authorities in Republika Srpska thought it would be a provocation of a kind. Veteran organisations in Republika Srpska launched the initiative, subject to previous authorisation, to put up a memorial plaque for the JNA members killed in the conflict with the Territorial Defence of BiH in Dobrovoljačka (now Hamdija Kreševljaković) Street.

Svetozar Pudarić, the Deputy Prime Minister of the BiH Federation proposed in October 2011 the erection of a memorial to the victims of war crimes committed by members of the Army of Bosnia and Herzegovina against ethnic Serbs at Kazani on Trebević during the siege of Sarajevo. Nobody has been convicted by the BiH courts for these crimes and the official number of victims has not been established.⁸⁷⁸

After the adoption of the Law on the Monuments and Memorials of the Wars of Liberation in RS⁸⁷⁹, the caucuses of Bosniak and Croatian members of the National Assembly submitted to the Constitutional Court of RS a request

⁸⁷⁵ Rules on the Marking of the Places of Exhumation and Burial of Missing Persons, *Službeni glasnik BiH (Official Gazette of BiH)*, No. 83/06.

⁸⁷⁶ „Savez logoraša u BiH: Zaštititi mjesta masovnih zločina“ (*Federation of camp inmates in BiH: Protect the sites of mass crimes*), web site *Moje vijesti*, 14 November 201., <http://www.mojevijesti.ba/novost/104179/Zastititi-mjesta-masovnih-zlocina>.

⁸⁷⁷ „Sarajevo: Sutra obilježavanje stradanja vojnika JNA u Dobrovoljačkoj“ (*Sarajevo: The killing of JNA soldiers in Dobrovoljačka to be marked tomorrow*), web site *Depo*, 2 May 2010, <http://www.depo.ba/vijest/6108>.

⁸⁷⁸ „Sarajevo bez duše i morala“ (*Sarajevo has neither soul nor ethics*), web site *Radio Sarajevo*, 22 December 2011, <http://www.radiosarajevo.ba/novost/70195/sarajevo-bez-duse-i-morala>.

⁸⁷⁹ The Law on the Monuments and Memorials of the Wars of Liberation was passed by the National Assembly of Republika Srpska on 3 November 2011.

for the assessment of its constitutionality.⁸⁸⁰ As the recently adopted law contained a number of disputable provisions, they also raised the question of the protection of the vital national interest, noting primarily that the law left no possibility to erect, maintain and legally define the memorials to the civilian war victims and members of the Army of RBiH and the Croatian Defence Council (HVO).⁸⁸¹ In view of the veto of the Bosniak and Croatian members of the National Chamber of Republika Srpska, there is also an initiative to establish a register of all monuments and memorials in Republika Srpska.

A monument with the names of 1,226 killed citizens of Kozarac, for which the foundation was laid in 2009, was completed in July 2010. It has the shape of a big grey stone dome in the interior of which are inscribed the names of 1,226 Bosniaks from Kozarac killed during the war. The exterior of the dome is covered with electric candles – one for each victim – which burn throughout the night.

In 2011, there were several events commemorating the victims of the armed conflicts. The Peace March, which took place from 7 to 10 July 2011, was an international event involving many more participants than in the previous years. This commemorative march has been taking place since 2005 to mark the anniversary of the genocide committed against the Bosniaks by the Army of Republika Srpska in Srebrenica. During the three-day event book presentations, documentary films and history lessons where one can hear also the testimonies of survivors from Srebrenica involved in the *Death March* of 1995, are held at different venues.⁸⁸²

For a number of years, the Association of Camp Inmates Prijedor 92, in cooperation with other associations, including the Kozarac Association of Inmates, *Mostovi prijateljstva* (Bridges of Friendship) Association in Rizvanovići near Prijedor and *Srcem do mira* (With Heart to Peace) Association in Kozarac, has been organising various annual events on the battle-fields and former camp locations commemorating the sufferings of Bosniaks and Croats in the municipality of Prijedor during the war in BiH.⁸⁸³ A forum is also held on 5 August in the theatre in Prijedor, in honour of Sadiković, a doctor who was killed. These events include exhibitions, artistic performances and the like. Representatives of the Association of Camp Inmates Prijedor 92 point out that they have serious problems regarding the memorial plaques they want to put up at the sites of suffering and detention. Most of these places are now privately owned and the owners do not allow them to mark these sites of suffering and often even prohibit visits when they want to pay tribute to the victims.⁸⁸⁴

Although the Law on the Monuments and Symbols of the Brčko District was adopted as far back as 2003, in 2007 the Supervisor of the High Representative for Brčko prohibited temporarily the erection of any monuments in the district because of disagreements about its implementation.⁸⁸⁵ Nonetheless, two and a half years later the political parties, organisations of veterans and associations of victims reached an understanding and on 21 December 2009, Raffi Gregorian, the Supervisor for Brčko, issued the Order on Monuments announcing the erection of memorials to the civilian victims of the wars in 1992-1995 and 1939-1945.⁸⁸⁶ The memorial had not yet been completed by the end of 2011.

880 Decision to Initiate Proceedings to Protect the Vital National Interest of the Bosniak People, 14 November 2011, National Chamber, http://vijecenarodars.net/index.php?option=com_content&view=article&id=164%3A2011-12-08-10-24-28&catid=1%3A2011-02-24-07-34-05&.

881 "Ustavni sud RS odlučuje o spornom zakonu o spomenicima" (Constitutional Court of RS to rule on the disputable Monuments Law), web site *Vijesti*, 21 December 2011, <http://www.mojevijesti.ba/novost/108238/Ustavni-sud-RS-odlucuje-o-spornom-Zakonu-o-spomenicima>.

882 The Death March is a six-day long breakout in July 1995 across the RS territory towards the territory controlled by the BiH Army, involving several thousand Srebrenica men when a large number of them were captured and killed by the Army of RS.

883 The commemorative events in the territory of the Municipality of Prijedor include events marking the attack on Kozarac, atrocities on the left bank of the Sana, crimes committed in the camps at Keraterm, Omarska and Manjača, the crime on Hrastova Glavica, crimes at Korićanske Stijene on Mount Vlašić.

884 E-mail answer of Edin Ramulić, Prijedorčanski Izvor Association, 23 November 2011.

885 Monuments and Symbols Law, Službeni glasnik Brčko distrikta BiH (Official Gazette of Brčko District BiH), No.22/03.

886 Office of the High Representative, Order of the Supervisor on Monuments, 21 December 2009, web site OHR, http://www.ohr.int/print/?content_id=44319.

On the premises of the Luka Brčko Public Enterprise the Association of Camp Inmates of the District inaugurated on 7 May 2011 a memorial room displaying photographs with scenes of civilian suffering in the town.⁸⁸⁷ It was pointed out on that occasion that this memorial room was the first to commemorate in this manner the sufferings of the civilians in the camps. As Chairman of the Federation of Camp Inmates of BiH Murat Tahirović said, “the inauguration of the memorial room will also show in a certain way the number of people who perished here and the fact that there was indeed a camp here where people perished.”⁸⁸⁸

4.2. Croatia

During his visit to the Parliament of Bosnia and Herzegovina the President of Croatia Ivo Josipović apologised for the crimes and the suffering of innocent people in Bosnia and Herzegovina caused by Croatia’s policy in 1990s. After that, Josipović paid a visit to the village of Ahmići where members of the Croatian Defence Council (HVO) had killed 116 Bosniak civilians, including women and children.⁸⁸⁹

In 2011, more attention was paid to commemorations of the victims of the crimes of 1991 as it was their 20th anniversary. The central place was taken by the 20th anniversary of the sufferings in Vukovar. On 18 November 2011, more than 30,000 citizens across Croatia, including President Josipović and the then Prime Minister Jadranka Kosor, took part in the procession of remembrance which visited the sites of suffering in Vukovar. Likewise, on town squares and streets all over Croatia people lit thousands of candles for the victims of Vukovar.

In August 2011, on the eve of the anniversary of Operation Storm, a monument to victory was unveiled in Knin. The monument, shaped like the letter V which symbolises victory, occupies a large part of Dr Franjo Tuđman Square in Knin. A small shrine, a cross and a triumphal arch are incorporated in the monument. Nevertheless, the celebration of the 16th anniversary of Operation Storm was overshadowed by the first-instance ICTY judgment against the Croatian generals for crimes committed during that operation. In her speech in Knin the then Prime Minister Jadranka Kosor greeted “all Croatian defenders, all Croatian generals and especially the Croatian generals Ante Gotovina and Mladen Markač”.

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Associations of families of the killed or non-governmental organisations tried several times in 2010 and 2011 to erect memorials to the Serbs killed during the war in Croatia, but most of these attempts failed.

On the 15th anniversary of the Operation Storm the activists of the Youth Initiative for Human Rights (the Initiative) put up in Knin a memorial plaque with an inscription which read “5-8-1995 – 5-8-2010, On the 15th anniversary of the Croatian Army’s Operation Storm this plaque is installed next to this road which saw thousands of refugees, by citizens of the RC, offering to the victims their apology in the absence of the apology of those responsible”. Although the Initiative had applied for permission to put up this memorial plaque, it never received an answer from the authorities of the town of Knin; the plaque was removed less than 24 hours after its inauguration by the decision of the Mayor of Knin Josipa Rimac and was never returned.

In October 2010 a monument dedicated to nine civilians of Serb ethnicity who were killed by Croatian forces in 1995 was unveiled in Varivode. The names of the nine civilians are inscribed in the Latin and Cyrillic alphabets. Alongside the representatives of the Serb National Council and the Municipality of Kistanje, the inauguration was attended by President Josipović and representatives of the government Radovan Fuchs and Slobodan Uzelac. On

887 “Otvorena spomen soba” (*Memorial room inaugurated*), web site, portal *eBrčko*, 7 May 2011, http://ebrcko.net/index.php?option=com_content&view=article&id=2838:otvorena-spomen-soba&catid=16:vijesti1&Itemid=180.

888 „Tahirović: Brčko živi u neriješenom stanju” (Tahirović: Brčko is at stalemate? – no idea what he meant), web site *Nezavisni BiH informativni portal Otisak*, 7 May 2012, http://www.otisak.ba/index.php?option=com_content&view=article&id=11049:tahirovi-brko-ivi-u-neriješenom-stanju-foto&catid=23:brko-distrikt&Itemid=138.

889 Amnesty International, *Behind the wall of silence: Prosecution of war crimes in Croatia*, p. 59, web site Amnesty International, <http://www.amnesty.org/en/library/asset/EUR64/003/2010/en/81544213-9880-4a5e-acea-d5269d0bc8ad/eur640032010en.pdf>.

that occasion President Josipović stated clearly that these were civilian victims and that it was a crime which had disgraced Croatia.

In October 2011, a group of inhabitants of Golubić near Knin (mostly returnees) erected a monument to the members of their families killed in the 1991-1995 war.⁸⁹⁰ The names of 34 persons of Serb ethnicity, most of whom were killed in 1995 with a significantly smaller number killed in 1991 were initially inscribed on the monument. Yet, this monument was not unveiled then since Tomislav Karamarko, the then Minister of the Interior, forbade it alleging that it might upset the citizens and disturb public law and order.⁸⁹¹ The victims' families were even forbidden to hold a memorial service. This ministerial decision was taken after the protest by defenders' associations from the broader area of Zadar and Knin claiming that the list of the inscribed names included also "a large number of individuals wearing chetnik uniforms who were killed during fighting with HV (Croatian Army) members".⁸⁹² Moreover, the inspectors of the Ministry of Environment, Land Use and Construction concluded that the monument had been built without relevant permits and on land which was mostly owned by the State. The monument was altered and eventually unveiled in November 2011. It no longer features the names of the killed and instead says only "In memory of the inhabitants of Golubić killed in the wars".⁸⁹³

4.3. Serbia

A plaque commemorating the Serb victims of the wars in the former Yugoslav territory in 1991-2000 was unveiled in Tašmajdan Park on 30 August 2010, the Day of the Missing. It was initiated by the Coordination of the Serbian Associations of Families of the Missing in the Territory of the Former Yugoslavia and authorised by the Assembly of the City of Belgrade, which also helped financially. The ceremony was attended, among others, by the Deputy Mayor of the City of Belgrade Zoran Alimpić.⁸⁹⁴

In November 2010 a plaque was unveiled in memory of Srđan Aleksić in the centre of Pančevo, in the passage which now bears his name.⁸⁹⁵ The event was attended by Srđan's father Rade Aleksić, the Mayor of Pančevo Vesna Martinović, the BiH Ambassador to Serbia Boriša Arnaut and representatives of the Town Assembly and the civilian sector in the region. The initiative to put up the memorial plaque and name the passage after Srđan Aleksić was taken up by the Assembly of the Town of Pančevo at the proposal of Civil Action, non-governmental organisation acting on behalf of *Građanska Vojvodina* (Civil Vojvodina), a coalition of non-governmental organisations.

In December 2010, on the anniversary of the day when the Special Anti-Terrorist Unit (SAJ) was set up, Serbia's President Boris Tadić and the Minister of the Interior Ivica Dačić unveiled the plaque commemorating the Unit's members killed in the line of duty in the defence of the country; the plaque was consecrated by Atanasije Rakita, aide to the Patriarch of the Serb Orthodox Church.⁸⁹⁶ On that occasion Minister Dačić said: "Sixteen

890 The monument is at the entrance of St Stephen's Orthodox Church in Golubić.

891 "Karamarko zabranio otkrivanje spomenika srpskim žrtvama u Golubiću" (*Karamarko forbids the unveiling of the monument to the Serb victims in Golubić*), web site *Slobodna Dalmacija*, 1 October 2011, <http://www.slobodnadalmacija.hr/Hrvatska/tabid/66/articleType/ArticleView/articleId/150702/Default.aspx>.

892 "Karamarko zabranio otkrivanje spomenika srpskim žrtvama u Golubiću zbog opasnosti od incidenata" (*Fearing incidents, Karamarko forbids the unveiling of the monument to the Serb victims in Golubić*), web site *Jutarnji list*, 1 October 2011 godine, <http://www.jutarnji.hr/template/article/article-print.jsp?id=977984>.

893 "Opet burno u Golubiću: Unatoč zabrani Srbi mijenjali spomenik - sada se odaje počast "stradalim u ratovima" (*Golubić boiling again: Defying the prohibition, Serbs have altered the monument – now the tribute is paid to "those who perished in the wars"*), web site *Slobodna Dalmacija*, 8 November 2011, <http://slobodnadalmacija.hr/Hrvatska/tabid/66/articleType/ArticleView/articleId/154387/Default.aspx>.

894 "Otkrivena spomen ploča srpskim žrtvama" (*Memorial plaque for the Serb victims unveiled*), web site *Vesti online*, 30 August 2010, <http://www.vesti-online.com/Vesti/Srbija/78323/Otkrivena-spomen-ploca-srpskim-zrtvama>.

895 „Pančevo: Spomen ploča Srđanu Aleksiću" (*Pančevo: The memorial plaque for Srđan Aleksić*), web site *Vesti online*, 8 November 2010, <http://www.vesti-online.com/Vesti/Srbija/95392/Pancevo-Spomen-ploca-Srdanu-Aleksicu>.

896 "Spomen-ploča poginulim SAJ-evcima" (*Memorial plaque for killed SAJ members*), web site *Vesti online*, 20 December 2010, <http://www.vesti-online.com/Vesti/Srbija/105265/Spomenploca-poginulim-SAJevcima>.

members of the unit died either in the line of duty in the war or in peacetime which should remind us how dangerous, difficult and complex job this is. It is our duty not to allow the memory of them to fade. We wish that not a single name more be added to those on the plaque.”⁸⁹⁷ The Security-Intelligence Agency (BIA) has inaugurated a new display in its museum dedicated to the “Hague Accused”. On display are objects which belonged to the accused and were then forfeited and those found with the fugitives at their arrest, including two pistols found when Ratko Mladić was arrested and his identity card without a personal number and not issued on the basis of his fingerprints.⁸⁹⁸

In early 2009, after the European Parliament adopted the resolution calling upon the European Union Member-States, and in particular the West Balkan States, to mark the memory of the genocide in Srebrenica, several non-governmental organisations in Belgrade launched an initiative to proclaim the 11th of July the Remembrance Day for the genocide victims in Srebrenica.⁸⁹⁹ A letter was sent accordingly to the then President of Serbia Boris Tadić inviting him to support their initiative and proclaim and mark July 11th as Srebrenica Genocide Remembrance Day. Within the framework of this action, a public reading of the letter was staged in front of the Presidency of Serbia every eleventh day of the month; the action lasted until June 2011.⁹⁰⁰

Along with this, in 2010, on the 10th anniversary when the genocide in Srebrenica was first marked, the Women in Black, together with a group of artists, the Centre for Cultural Decontamination, the Dah Theatre, the Škart Group in Belgrade and the Arts Clinic in Novi Sad launched the campaign for the erection of a monument in Belgrade in memory of the genocide victims.⁹⁰¹

The campaign “A pair of shoes – a life” began with the symbolic collection of 8,372 pairs of shoes and messages for the victims of Srebrenica from Belgrade citizens. In November 2011, a group of organisations and artists wrote to the Commission for Monuments and Street and Square Names of the Assembly of the City of Belgrade requesting them to allocate a space in Belgrade where the collected shoes and messages could be displayed and which could also serve as a venue for public discussions about the war crimes.⁹⁰² The request was repeated in March 2011 but the Commission of the Assembly of the City of Belgrade rejected this initiative without any public debate. The Commission reasoned that “it is an event which certainly needs to be marked by a monument, erected, however, at the site of the event as is the usual practice”. This was not the criterion when the decision was taken to erect a monument to all those killed in the wars of the 1990s.⁹⁰³

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During its research and gathering of the material for the project *Human Losses*, covering Serbia, Montenegro and Kosovo, the Humanitarian Law Centre noted down and documented, *inter alia*, 70 monuments and memorial plaques relative to the victims of the 1991-2000 wars. The majority of the memorials dedicated to Serbia’s citizens killed in the armed conflicts are in Serbia (64) while very few are in Montenegro (4) or Kosovo (2). Of these, 40 memorials are in cities and towns, 26 in villages and 4 at the sites of the incidents. The marked scenes of incidents are in all cases sites where civilians lost their lives during the NATO bombing.

897 “Državni vrh Srbije, Kusta i Pižon na proslavi SAJ-a u Batajnicil” (*Serbia’s highest state officials, Kusta and Pižon attend SAJ Jubilee in Batajnica!*), web site *Press online*, 21 December 2010, <http://www.pressonline.rs/sr/vesti/hronika/story/144855/Dr%C5%BEavni+vrh+Srbije%2C+Kusta+i+Pi%C5%BEon+na+proslavi+SAJ-a+u+Batajnici%21.html>

898 “Od Mladićevih pištolja do Dabićevih seansi” (*From Mladić’s pistols to Dabić’s seances*), *Danas*, 21 November 2011, pp. 1, 4 and 5.

899 The initiative came from the Humanitarian Law Centre, Women in Black, Helsinki Committee for Human Rights in Serbia, Centre for the Promotion of Law Studies, Committee of Human Rights Lawyers and the Youth Initiative for Human Rights.

900 E-mail answer from Miloš Urošević and Nataša Lambić, Women in Black, 12 July 2012.

901 Ana Vilenica, performance artist, Biljana Rakočević, art photographer, Branimir Stojanović, psychoanalyst, Milica Tomić, artist and Saša Stojanović, artist.

902 Copies of the request of Women in Black sent to the Assembly of the City of Belgrade were received by e-mail from Women in Black, 12 July 2012.

903 *Ibid.*

The most prominent role in the erection of the memorials was played by associations of war veterans who at times acted autonomously and at times in cooperation with local governments and representatives of the police and the armed forces. Representatives of the local authorities, police and armed forces also raised monuments on their own and so did victims' families. One memorial plaque was put up by the Serb Radical Party and the funds for two monuments came from companies. One specific memorial in the shape of two altars in a church was the result of cooperation between the victims' families and the Serb Orthodox Church. The name of a square in Kraljevo also serves as a memorial.⁹⁰⁴ The majority of the monuments and plaques do not record the date when they were unveiled.⁹⁰⁵ The largest number of monuments and memorial plaques were made and unveiled in 2000, that is to say in the wake of the end of the armed conflicts in the former Yugoslavia.⁹⁰⁶

4.4. Kosovo

Kosovo does not have a law defining the procedure for the erection of monuments/memorials so practice varies from one municipality to the other. The initiatives to erect a monument have usually been submitted to municipal authorities by the families of killed combatants, associations of war veterans and the municipal assemblies.⁹⁰⁷ The Adem Jashari Complex is the only monument/memorial centre protected by law.

The law proclaiming the Adem Jashari Memorial Complex in Prekaze as an area of particular national significance (Law No. 2004/39), adopted in 2004, is the first law relative to the collective memorialisation of the Kosovo Albanians of the armed conflict of 1998-1999.⁹⁰⁸

Numerous monuments were erected across Kosovo after the armed conflict and they are almost all, dedicated to the fallen KLA combatants.⁹⁰⁹ The monuments dedicated to KLA combatants are big, dominate the surroundings and are erected mostly along the roadsides. As a rule, they glorify and promote the national symbols (Albanian flag, KLA uniform etc.) and often there are also inscriptions such as "fallen victim" (*martir*) and "fallen combatant" (*deshmor*), or "martyr for the nation" (*deshmorit e kombit*).⁹¹⁰ In rural areas, monuments were often erected without authorisation but the municipal authorities did not intervene whereas in the cities a permit from the town planning directorate has become necessary in recent years.⁹¹¹

The National Museum in Priština has a permanent exhibition dedicated to the KLA struggle, with artefacts from the armed conflict of 1998-1999.⁹¹²

A large number of commemorations are also held in Kosovo. Every municipality organises them at least once a year and they are often sponsored by municipal mayors. The most important commemorative event is the KLA Epopee (UçK-*Epopeja*, *Epopeja e Ushtrisë Çlirimtare të Kosovës*), dedicated to the struggle of the KLA and Adem Jashari. It lasts three days in March; it is not regulated by statute as a national holiday but it is supported by state authorities and all members of the Kosovo Government as well as international community representatives take part in it.

904 During their field work, HLC researchers registered several cases where streets were named after members of the Army of Yugoslavia and the Ministry of the Interior killed during the armed conflicts in the former SFRY. The streets bearing their names are by and large the streets where their families live.

905 Of 25 such monuments with a visible date, there were one each in 1995, 1998, 2001, 2002, 2003 and 2005. Two monuments were unveiled in 1996, 1999, 2006 and 2010 and three in 2009.

906 All information received from researchers into human losses in Serbia, Montenegro, Kosovo and the Humanitarian Law Centre.

907 Elife Krasniqi, "Spomenici na Kosovu danas" (*Monuments in Kosovo Today*), *Made in KS*, No. 6 May 2011, p. 5.

908 Law No.2004/39 on the proclamation of Adem Jashari Memorial Complex in Prekaze an area of particular national significance.

909 *Ibid*, p. 4-6.

910 *Ibid*, p. 6.

911 Information received from HLC Kosovo.

912 Interview with Helena Zdravković-Zonta, independent academic researcher, 24 November 2011.

Since 2003, the 27th of April has been celebrated as the Day of the Missing in Kosovo.⁹¹³ On 8 February 2007, the Kosovo Assembly decided that as of that day this date was to be officially marked as the National Day of the Missing.⁹¹⁴

In 2009, the Serb community in Kosovo erected in Velika Hoča, Municipality of Orahovac, a monument to the Serbs abducted and killed in 1998-2000 without, however, the permission of the municipal authorities. The monument features a mosaic with the image of St John the Baptist and plaques carved with the names of the abducted and killed individuals. Its construction was organised by the Serb Orthodox Church and the inhabitants of Velika Hoča. It was unveiled on 11 September 2009 in the presence of MKCA representatives, the Chairman of the Commission for Missing Persons of Serbia Veljko Odalović and members of the families of the missing from Orahovac.⁹¹⁵

The Serb community in Kosovo has its Day of the Missing, June 22nd.⁹¹⁶ Every year, the families of the missing mark this day in a number of places in Kosovo and in the north side of Mitrovica they lay wreaths on the monument called *Istina* (The Truth).⁹¹⁷

4.5. Montenegro

Although the Assembly of the City of Podgorica adopted the Programme for the Erection of Memorials to the civilian victims of war in the Pobrežje Memorial Park in Podgorica as early as 2009, this decision was only put into practice as late as 11 July 2011, the Remembrance Day for the victims of the genocide in Srebrenica, when the Prime Minister Igor Lukšić officially unveiled the monument. The memorial plaque reads: "To the civilians victims of the wars waged in the territory of the former Yugoslavia 1991-2001 – May it never happen again."⁹¹⁸ On that occasion in Pobrežje, Prime Minister Lukšić made special mention of the victims of deportation, the abduction and killing of the passengers on the train in Štrpci, the victims in Kaluđerski Laz, the civilians killed in the Dubrovnik theatre of operations, the persecution of the inhabitants of Bukovica and the civilian victims in Montenegro during the NATO intervention in 1999.⁹¹⁹

On the same day, the Forum of Bosniaks/Muslims of Montenegro who initiated the erection of this memorial organised a rally in Podgorica related to this event. Mirsad Rastoder, the Chairman of the Steering Board of the Forum said that he hoped that "it would be only the beginning of a more detailed development of the memorial complex with a record of recognisable characteristics of the victims for whom the responsibility or co-responsibility is borne by individuals in Montenegro."⁹²⁰ On the other hand, Radan Nikolić, the Chairman of the Association of

913 On that day in 1999, members of the Serbian armed forces killed or abducted some 400 Kosovo Albanians from the village of Meja in the Municipality of Đakovica. In 2001-2002 their bodies were found and exhumed from mass graves in Batajnica near Belgrade, in the training grounds of the Special Anti-Terrorist Unit (SAJ) of the Serbian Ministry of the Interior.

914 Pillar III (OSCE) Report 01/2007 On the Monitoring of the Assembly of Kosovo, 1 January 2007 – 28 February 2007, web site OSCE, <http://www.osce.org/kosovo/26234..>

915 "Otkriven spomenik nestalim u Veliki Hoči" (*The monument to the missing in Velika Hoča unveiled*), web site *Studio B*, 11 September 2009, <http://www.studiob.rs/info/vest.php?id=42164>.

916 On that day in 1998 about 100 Serbs in Orahovac, Velika Hoča, Zočište, Opteruša and Retimlje were abducted and they have been missing ever since.

917 „Obeležen dan nestalih na Kosovu“ (*Day of the Missing Marked in Kosovo*), web site *B92*, 22 June 2011, http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=06&dd=22&nav_category=640&nav_id=520495.

918 „Predsjednik Vlade Igor Lukšić otvorio Spomen park posvećen svim civilnim žrtvama ratova vodenih na prostorima bivše Jugoslavije u periodu od 1991 - 2001. godine“ (*Prime Minister Igor Lukšić inaugurates the Memorial Park dedicated to the civilian victims of the wars waged in the territory of the former Yugoslavia in 1991-2001*), web site, Government of Montenegro, 11 July 2011, <http://www.gov.me/vijesti/107350/Otvoren-Spomen-park-posvecen-svim-civilnim-zrtvama-ratova-vodenih-na-prostorima-bivse-Jugoslavije-u-periodu-od-1991-2001-godine.html>.

919 *Ibid.*

920 „Da se ne ponovi“ (*May it never happen again*), web site *Forum Bošnjaka/Muslimana Crne Gore*, 12 September 2011, http://www.forumbosnjaka.com/index.php?subaction=showfull&id=1315841407&archive=&start_from=&ucat=1&.

War Veterans since 1990, stated that the Pobrežje monument was a political act, singling out Bosniak victims.⁹²¹ The National Party maintained that this monument symbolised the selective treatment of the victims.⁹²²

Two non-governmental organisations, the Centre for Civil Education and the Action for Human Rights, together with Aleksandar Zeković, an independent researcher of human rights violations, submitted on 26 May 2011 an initiative to erect memorials to the victims of deportation from Herceg Novi,⁹²³ and the next day proposed to the Assembly of Montenegro that it proclaim the 27th of May the Remembrance Day for the victims of deportation.⁹²⁴ The initiative was supported by the President of the Assembly of Montenegro Ranko Krivokapić.⁹²⁵

By the end of 2011, the decision of the Monuments Commission and the Assembly of the Municipality of Bijelo Polje, announced in early 2010, to build a monument to five inhabitants of Bijelo Polje, abducted from the train in Štrpci on 27 February 1993, had not been translated into action.⁹²⁶

4.6. Macedonia

There are still no joint memorials dedicated to the Macedonian and Albanian victims or combatants killed or injured in 2001. The memorials built by the Albanian community in Macedonia (built largely without the permission of the relevant authorities) vastly outnumber the memorials dedicated to the combatants from the ranks of the security forces.⁹²⁷ Accurate information about the number of these memorials in Macedonia does not exist.

To mark the passing of a decade since the conflict in 2001, several monuments were built and dedicated to Macedonian defenders. Among others, there are the monument to all defenders of 2001 in the central part of Skopje erected in October 2011, a monument called *The Angel* in Bitola, dedicated to seven killed defenders, unveiled in April 2011 and the Karpalak monument in Prilep, dedicated to ten killed defenders of the town and unveiled in late May 2011. The monuments/memorials are often wilfully damaged. The memorial plaque in honour of the killed combatants of the Macedonian army near the locality of Karpalak on the Skopje-Tetovo road where the incident took place has been several times vandalised and re-instated.⁹²⁸

The Freedom Museum, better known as ONA Museum opened in Skopje in November 2008 but has not yet been registered and does not figure on the official list of museums in Macedonia.⁹²⁹ It has two sections: one section is dedicated to 1878 (the League of Prizren) and the second to the People's Liberation Army and the events of 2001.

4.7. Slovenia

The memorials in Slovenia as often as not relate to the suffering of members of the defence forces of Slovenia. After 1991, so-called tetrahedrons or “hedgehogs” were raised on numerous locations – scenes of conflicts between TD units and the JNA to remind observers of the anti-tank obstacles put in the way of the JNA. One such memorial

921 „Vlada zaboravila Murino i Loru“ (The government forgot Murino and Lora), web site *Dan*, 7 July 2011, <http://www.dan.co.me/?nivo=3&rubrika=Drustvo&datum=2011-07-07&clanak=287530>

922 *Ibid.*

923 „Inicijativa za podizanje spomen-obilježja žrtvama deportacije izbjeglica 1992. godine u Herceg-Novom“ (*The initiative to erect a memorial for the refugee -victims deported from Herceg-Novi in 1992*), Podgorica, 26 May 2011, <http://cgo-cce.org/saopstenja/Inicijativa%20za%20spomenik%2026052011.pdf>.

924 „Inicijativa za ustanovljenje Dana sjećanja za žrtve deportacije izbjeglica 1992. godine“ (*The initiative to introduce the Remembrance Day for refugee victims deported in 1992*), Podgorica, 27 May 2011, <http://cgo-cce.org/saopstenja/Inicijativa%20za%20dan%20sjecanja%2027052011.pdf>.

925 „Puna podrška inicijativi za izgradnju spomenika“ (*Full support to the initiative to build a monument*), web site *Portal Analitika*, 28 May 2011, <http://www.portalanalitika.me/drustvo/vijesti/27939-puna-podrka-inicijativi-za-izgradnju-spomenika-.html>.

926 Interview with the Chairman of the Steering Board of the Bosniaks/Muslim of Montenegro Mirsad Rastoder, 23 February 2012.

927 Interview with Vasiliki Neofotistos, Professor of Anthropology, Buffalo University, New York, 17 January 2012.

928 “Нова плоча кај Карпалак” (A new plaque at Karpalak), web site *Nova Makedonija*, 4 February 2011. <http://novamakedonija.com.mk/NewsDetal.asp?vest=2411839358&id=9&prilog=0&setIzdanie=22198>.

929 Interview with Skender Asani, chairman, the Association of the Albanian Historians in Macedonia, one of the initiators of the Freedom Museum, 25. December 2012.

was recently unveiled at the Brnik Airport in memory of the death of two Austrian journalists. A monument and a memorial plaque were unveiled at the airport on the occasion of the 20th anniversary of Slovenia's independence on the Police Day, 30 June 2011. The names of the three individuals killed are inscribed on the monument.⁹³⁰

Memorials (plaques) can also be found on houses used as clandestine depots of arms prior to the conflict in Slovenia, at Holmec Pass and in some places captured JNA combat objects are also displayed. One such memorial is in front of the Military Museum in Ljubljana and another on the Medvedjek Slope. There are no memorials in Slovenia in memory of killed JNA soldiers. Neither are there joint memorials honouring all the victims of the conflict in Slovenia in 1991.

In July 2011, when they last rallied around their somewhat neglected tetrahedron memorial, the former members of the Slovenian TD also paid tribute with a minute of silence to their former enemies who had died at that site.⁹³¹

930 „Na Brniku odkrili spomenik ob 20. obletnici samostojnosti« (*Monument unveiled at Brnik on the 20th anniversary of Independence*), web site *Delo*, 30 June 2011, <http://www.times.si/slovenija/na-brniku-odkrili-spomenik-ob-20-obletnici-samostojnosti--b45a410321-8600cc20c3.html>.

931 „Po 20 letih z grenkim priokusom namesto za orožje prijeli za metle“ (*After 20 years, with the bitter taste in their mouths they have replaced weapons with brooms*), web site portal *Lokalno* www.lokalno.si, 9 July 2011, http://lokalnoaktualno.ext.tmedia.si/2011/07/09/64757/zgodba/Po_20_letih_namesto_za_orozje_z_grenkim_priokusom_prijeli_za_metle.

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