

**Trials for war crimes and ethnically and politically motivated
crimes in post-Yugoslav countries**

1	Trials for war crimes and ethnically motivated criminal offences in Serbia	3
1.1.	Trials for war crimes and ethnically motivated crimes in which victims are represented by HLC legal representatives	5
1.1.1.	<i>Ovčara</i> case	5
1.1.2.	<i>Suva Reka</i> case.....	6
1.1.3.	<i>Bytyqi</i> case.....	7
1.1.4.	<i>Zvornik I and Zvornik II</i> cases.....	8
1.1.5.	<i>Podujevo II</i> case.....	10
1.1.6.	<i>Lovas</i> case.....	11
1.1.7.	<i>Emini</i> case.....	12
1.1.8.	<i>Pakšec</i> case.....	12
1.1.9.	Role of victims' legal representatives	13
1.2.	Monitoring war crimes trials in Serbia	15
1.2.1.	<i>Slunj</i> case	15
1.2.2.	<i>Tuzlanska kolona</i> (Tuzla Column) case.....	16
1.2.3.	<i>Banski Kovačevac</i> case.....	17
1.2.4.	<i>Zvornik III</i> case	18
1.2.5.	<i>Scorpions</i> case.....	18
1.2.6.	<i>Grubišno Polje</i> case	19
1.2.7.	<i>Kušnin</i> case.....	20
1.2.8.	<i>Orahovac</i> case.....	20
1.2.9.	<i>Morina</i> case	21
2.	Monitoring war crimes trials and trials for ethnically motivated crimes in Kosovo	22
2.1.	<i>Sadat Fejza</i> case.....	23
2.2.	<i>Miroslav Vučković</i> case	23
2.3.	<i>Skender Islami et al</i> case	24
2.4.	<i>Albin Kurti</i> case	25
2.5.	<i>Osman Zyberaj and Shyqeri Shala</i> case	26
2.6.	<i>Florim Ejupi</i> case.....	27
2.7.	<i>Gani Gashi</i> case.....	28
2.8.	<i>Skender Halilaj et al.</i> case	29
2.9.	<i>Gani Hazeraj</i> case.....	29
2.10.	Underage SM case.....	30
2.11.	<i>Gjelosh Krasniqi</i> case.....	30
3.	Monitoring war crimes trials in Montenegro	31
3.1.	<i>Morinj</i> case	31
3.2.	<i>Kaluđerski Laz</i> case.....	31
3.3.	<i>Bukovica</i> case.....	32
3.4.	Deportations.....	32
4.	Monitoring war crimes trials in Bosnia and Herzegovina	33
4.1.	<i>Kravica</i> case	33
4.2.	<i>Rašević and Todović</i> case	35
4.3.	<i>Lašvanska dolina</i> case.....	36
4.4.	<i>Zijad Kurtović</i> case	37
5.	Monitoring war crimes trials in Croatia.....	38
5.1.	<i>Cerna</i> case	38
5.2.	<i>Medački džep</i> (Medak Pocket) case	38
5.3.	<i>Glavaš</i> case.....	40
5.4.	<i>Gudelj</i> case	41

In 2008, the Humanitarian Law Center (HLC) monitored all trials held in Serbia for war crimes, murders and other criminal offences committed in the context of armed conflicts, all trials conducted in Kosovo for war crimes and ethnically or politically motivated criminal offences and selected war crimes trials in Croatia and Bosnia and Herzegovina, as part of regional cooperation on monitoring war crimes trials before national courts.

1 Trials for war crimes and ethnically motivated criminal offences in Serbia

War crimes trials in Serbia are conducted before the War Crimes Chamber of the Belgrade District Court and Požarevac District Court, with Niš and Novi Sad District Courts hearing cases of ethnically and politically motivated murders in the context of armed conflicts in the former Yugoslavia. HLC provided legal representation for the victims in the *Suva Reka*, *Bytyqi*, *Ovčara*, *Lovas*, *Podujevo II*, *Zvornik and Zvornik II*, *Pakšec* and *Emini* cases. HLC monitors observed the course of the main hearing in the war crimes cases *Tuzlanska kolona (Tuzla column)*, *Zvornik III*, *Banski Kovačevac*, *Grubišino Polje*, *Slunj*, *Scorpions II* and *Orahovac*.

Families of the victims in *Suva Reka*, *Zvornik and Zvornik II*, *Bytyqi* and *Lovas* cases attended the corresponding trials. Thanks to the financial assistance of USAID and OAK Foundation, HLC was able to arrange for the victims' family members to come to Belgrade and monitor the trials. Twenty family members travelled to Belgrade on a monthly basis to attend one of the aforementioned war crimes trials. Victims' family members from Kosovo stopped coming to Belgrade after 17 February 2008, in fear of possible hostility due to Kosovo's declaration of independence; however, they resumed attending the trial for war crimes committed in *Suva Reka/Suharekë* in June 2008.

HLC continued to encourage witnesses and victims from other countries to take part in trials conducted before the War Crimes Chamber as in the previous years. It secured the participation of all (six) victims in the *Podujevo II* case and three victims and two witnesses from Kosovo in the *Suva Reka* case. HLC was involved in designing protection measures for witnesses/victims and established an efficient and professional cooperation with the Witness Protection Unit of Serbian Ministry of the Interior (MUP) working on that task.

In the second half of 2008, the Office of the War Crimes Prosecutor received two criminal complaints filed by HLC for war crimes committed in BiH and Kosovo. By the end of the year, the Prosecutor's Office had not requested the opening of an investigation into these cases.

Careful monitoring has revealed several salient features of these war crimes trials:

- i. The Supreme Court of Serbia continues with the practice of setting aside first-instance convictions for war crimes, significantly reducing terms of imprisonment of those convicted and affirming acquittals, which gives rise to the suspicion that the reason behind these decisions may be political.

The retrial of the accused in the *Ovčara* case has been ongoing for two years now, with the court acting upon numerous objections raised by the Supreme Court relating neither to question of law nor to question of fact. In 2008, the Supreme Court reduced the term of imprisonment of the *Scorpions* member Branislav Medić from 20 to 15 years although he was sentenced for murdering at least two Bosniaks and active participation in the execution of all six captives. The Supreme Court affirmed the acquittal of Aleksandar Vukov, another member of the *Scorpions* unit, despite the fact that evidence heard during the proceedings conclusively proved his criminal responsibility. Since the Supreme Court is the highest last instance to decide upon prosecution appeals concerning the responsibility of the defendants, with all appeals being heard by one single chamber, always made up of the same justices, there is a real risk of arbitrariness in delivering final court rulings;

ii. The proceedings are protracted, largely owing to the practice of the Supreme Court to set aside good judgments for political reasons. Individual first-instance proceedings take on average at least two years to complete. An objective reason for delayed proceedings lies in the fact that witnesses and victims from foreign countries are not obliged to appear before the War Crimes Chamber, and the court has no power to compel them to do so if they fail to turn up, as is the case with Serbian nationals. Long drawn out proceedings are also a consequence of the fact that the War Crimes Chamber has only five justices, which is not enough even to set up two chambers.

iii. Case participants [trial chamber, prosecutor, victims' legal representatives and defendants] often ask questions that have nothing to do with the indictments and the context surrounding the crimes listed in the indictment. It in all cases the defence counsel insisted on data regarding interrogation in pre-trial proceedings, or data concerning personal, private, family life as well as on issues having political, national, or patriotic implications.

v. In setting aside the judgment in the *Ovčara* case, the Supreme Court ordered the court to obtain an expert psychiatric opinion about witnesses, thus introducing evidence unprecedented to date in the jurisprudence of courts. Contrary to procedural law provisions, according to which only the court has the authority to assess a statement given by a witness, the Supreme Court introduced a psychiatrist as an arbiter in a purely legal matter. Thus, complying with the authority and legal opinion of the Supreme Court, the trial chamber in the *Suva Reka* case ordered the psychiatric assessment of a significant number of witnesses, including all those who were ready to give full account of what they saw and heard about the incident which is the subject-matter of the indictment. Approximately 100 of the witnesses examined by the court said they had no knowledge about the incident the defendants are charged with, although the incident resulted in 49 people killed and took place in broad daylight [12:00 noon], in the very center of a very small town, in the immediate vicinity of the institutions where witnesses happened to be at the time of the incident. The court did not seek the psychiatric opinion on any of these witnesses, but of those witnesses who were willing to say in court what they had seen and heard, which is a nonsense and absurd.

1.1. Trials for war crimes and ethnically motivated crimes in which victims are represented by HLC legal representatives

1.1.1 *Ovčara* case

The re-trial of 16 defendants in the *Ovčara* case opened on 13 March, 2007. By the end of 2008, 56 hearings had been held, examining 18 defendants, 60 witnesses and five expert witnesses. The trial chamber is presided over by Judge Vesko Krstajić.¹ The trial of the persons indicted for killing approximately 200 war prisoners at the *Ovčara* farm near Vukovar commenced on 13 March, 2007, after the Supreme Court set aside the first-instance judgment in this case. In the retrial, the trial chamber rendered a decision to join cases against Saša Radak and Milorad Pejić, related to the same incident and the same criminal offence.

During the trial, the court fully complied with the objections of the Supreme Court, some 15 of them. It must be noted that the Supreme Court set aside the judgment for political reasons, completely unrelated to any relevant legal or factual issues established in the quashed first-instance judgment in the *Ovčara* case. The most cogent proof that the Supreme Court's objections had nothing to do with legal and factual conclusions set forth in the first-instance judgment was the very retrial itself. Namely, the Supreme Court ordered that a defence attorney of one of the defendants be heard in order to determine whether he had been present during his client's interrogation by the police, despite the existence of notes thereon, drawn up by the competent government body and signed by the defence attorney himself. At the retrial, the defence counsel confirmed that he had been present during the interrogation of his client validating his presence by signing the notes.

Contrary to procedural law provisions and applicable case-law, the Supreme Court ordered an expert psychiatric assessment of a cooperating witness. The findings obtained indicated that the psychical characteristics of the witness correspond to his age, that he has the ability to perceive events properly and recount them later, and that his IQ is above average.

The Criminal Procedure Code's provisions regarding expert analysis are very clear and precise and envisage that in cases where findings of an individual expert witness and a panel of expert witnesses contradict each other, the court shall accept the opinion of the panel. Even though the expert witness panel in this case asserted with certainty that one of the defendants whose injuries were established could have been at *Ovčara* at the time of the incident, the Supreme Court requested the expertise of the Forensic Medical Committee of the Medical School in Belgrade on this matter. The Forensic Medical Committee found that the defendant could have been at *Ovčara* at the time of the incident.

¹ Trial chamber members include: Judge Gordana Božilović-Petrović until 1 October 2007, and after that Judge Snežana Nikolić-Garotić and Judge Vinka Beraha-Nikićević.

Similar outcomes occurred in relation to other objections made by the Supreme Court that the court was bound to act upon. None of the objections of the Supreme Court proved well-founded; on the contrary, all verifications confirmed and reinforced the conclusions established in the overruled first-instance judgment.

1.1.2. *Suva Reka* case

The trial of eight members of the Serbian MUP for a war crime against the civilian population opened on 2 October 2006 before a trial chamber presided over by Judge Vinka Beraha-Nikićević.² The defendants are accused of killing 49 members of the Berisha family in a shopping center in Suva Reka on 26 March 1999, after which they had their bodies buried in a secret location near Prizren. By the end of 2008, 76 hearings had been held in this case, examining 113 witnesses, (three of whom gave testimony under pseudonyms, one with his appearance concealed and one via conference video-link), and three expert witnesses.

The indictment sets out that the incident occurred on 26 March 1999, although members of the same police units killed at least 10 Albanian civilians on 25 March 1999 in the same street, as stated the on-site investigation record made by an investigating judge of the Prizren District Court. Given the location of the crime, perpetrators' identity, victims and the temporal continuity (killings on two consecutive days), the indictment should also have included the crimes committed on 25 March 1999. Failing to do that, the indictment is incomplete, selective and allows a serious crime to go unpunished.

The indictment is based upon statements given by: the accused Nenad Jovanović, assistant to the Suva Reka police commander; police officer Velibor Veljković, serving with the Suva Reka police department as a witness; one police officer as a witness; two reservists as witnesses; witness A and Novica Đorđević; several Roma witnesses who in the aftermath of the crime loaded the bodies of the people killed in the pizzeria onto a truck; victim-witnesses Shyrete and Vjollca Berisha who survived the massacre, Agron Berisha, who saw the incident from a window and Fejzullah Berisha. The statements of the above witnesses were corroborated by numerous items of physical evidence and fragments of testimonies given by many other witnesses. The trial chamber, however, ordered a psychiatric assessment of most of the eyewitnesses who gave true statements before the court about what they had seen, which is a highly unusual decision from the point of view of applicable case law. Such assessment, however, was not ordered for witnesses who should and could have told much more about the event.

A distinctive feature of this trial is the fact that all the witnesses who at the time of incident worked for the municipal government, judiciary, police and army claimed at the main hearing not having known about the killing of 49 members of the Berisha family until coming to Serbia. They all claimed to have learned about the massacre only when the Milošević trial started. The killing took place in broad daylight, in the very center of Suva Reka, five meters away from the municipal building and 100 meters away from the

² Trial chamber members: Judge Gordana Božilović-Petrović and Judge Vesko Krstajić; as of 1 October 2007 Judge Snežana Nikolić-Garotić replaced Judge Božilović.

police station. Since Suva Reka is a small town, it is hard to believe that no one from the government institutions knew about of the event. These witnesses not only protected the accused by their false testimonies but also demonstrated they do not take the killing of Albanians for a crime.

The proceedings failed to ascertain which higher command members of the PJP and Suva Reka police department had reported to in wartime. The part played by the MUP Headquarters for Kosovo headed by Sreten Lukić was not clarified either. All the witnesses who possessed relevant knowledge maintained that the Special Police Units (PJP) were under the command of General Obrad Stevanović, while Stevanović himself stated before the court that at the time of the incident he had not been the commander of PJP but an advisor for Kosovo to the Serbian Minister of the Interior. Furthermore, the relationship between police and military units, often engaged in joint actions during wartime, remained unclear in terms of who was subordinate to whom.

In asking questions, filing procedural motions and objections, answering the questions asked by the court, prosecutor and victim's legal representatives, the defence attorneys frequently voiced their political views thus obstructing the proceedings and jeopardizing the impartiality and fairness of the trial.

1.1.3. *Bytyqi* case

The Bytyqi case concerns the trial of two members of the Operational Pursuit Group (OPG) of the Special Police Units (PJP) attached to the Serbian MUP who are charged as accessories in the commission of war crime against the prisoners of war. The trial chamber is presided over by Judge Vesko Krstajić.³ Since the beginning of the trial on 13 November 2006 until the end of December 2008, 31 hearings were held in which 96 witnesses were examined, including one victim-witness.

The indictment is selective, charging only accessories instead of perpetrators and those who ordered the commission of the crime in question. From the very beginning of the criminal procedure for resolving this murder and identifying the perpetrators, the investigation was limited to some less important participants in the crime seeking to protect certain police units and high-ranking officials of the PJP and Serbian MUP. The Assistant Minister of the Interior, Vlastimir Đorđević, and members of the Special Operations Units (JSO) of the State Security Division did not come under investigation although they were certainly involved in this murder. The very statements given by the defendants indicate that the initiative to arrest the Bytyqi brothers, after they served their prison terms for minor offences, came from the Assistant Minister of the Interior, General Vlastimir Đorđević. Besides, chief instructors at the police training camp at Petrovo selo, in which the Bytyqi brothers were confined after having served their time in the Prokuplje District Jail, were members of the JSO, and nothing could be done at the camp without their knowledge. Law enforcement agencies and the Office of the War Crimes Prosecutor let the high-ranking MUP official Goran Radosavljević a.k.a. Guri leave the country and thus be unavailable at the time when the Prosecutor's Office initiated the

³ Trial Chamber members: Judge Snežana Nikolić-Garotić and Judge Vinka Beraha-Nikićević.

proceedings against three senior officials of the Serbian MUP who were arrested, so the total number of detained MUP officers was five, including the two defendants. The five members of the Serbian MUP, holding much lower ranking positions than Goran Radosavljević, being in custody and under investigation for a serious crime, would certainly have been willing to confront Radosavljević on many details relating to the criminal offence. Thus, Radosavljević's appearance before the court, when no one was in custody any more, was no longer important because in those circumstances their confrontation is pointless and would not help shed light on the murder. The fact that Goran Radosavljević Guri returned to the country as a free man and testified as a witness in the investigation and the main hearing leads to the conclusion that he maintained contact with government authorities and obtained firm guarantees that he would not be indicted. It is hard to understand why the trial chamber did not examine Milorad Luković a.k.a. Legija, JSO commander at the time of the murder of the Bytyqi brothers, whose officers served as instructors at the training camp Petrovo selo at the very beginning of the trial for murder of the Bytyqi brothers. He was examined only after receiving four sentences of 40 years each, when he no longer had any interest to disclose any new detail concerning JSO operations, as demonstrated at the main hearing of 22 December 2008 by his refusal to take the stand. The court proceedings failed to ascertain the role played by the head of the Department for Foreign Nationals of the Prokuplje SUP, Zoran Stanković, and Prokuplje District Court warden, Aleksandar Đorđević, in all the events surrounding the murder of the Bytyqi brothers.

This trial is on the whole very unusual. Indicted were some accessories that had a secondary role in the commission of the crime and no charges were brought against the immediate perpetrators, co-perpetrators, true helpers and those who gave orders (abettors). All these point to the fact that the whole procedure was initiated and organized in order to fulfil, at least to some extent, the request of the American administration that the murder of the Bytyqi brothers, American citizens, be prosecuted. In the final outcome, this trial served to protect some high-ranking officials of the Serbian MUP from criminal responsibility and mock justice.

1.1. 4. Zvornik I and Zvornik II cases

The *Zvornik* case is the first case referred by the International Criminal Tribunal for the former Yugoslavia to the War Crimes Chamber of the Belgrade District Court (during the investigation stage). The trial of the former president of Zvornik municipality, Branko Grujić, former Territorial Defence (TO) commander, Branko Popović, and volunteers Dragan Slavković, Ivan Korać, Siniša Filipović and Dragutin Dragičević for a war crime against the civilian population started on 28 November 2005 before the trial chamber presided by Judge Tanja Vuković.⁴ Branko Grujić and Branko Popović were indicted for the deportation of 1,800 Bosniaks from Kozluk on 26 June 1992, for the detention, torturing and killing of Bosniaks at the prisoners camps of Čelopek, *Ekonomija* and *Cigłana* in the period from the beginning of April to the end of July 1992; other indictees are charged with killing Bosniak civilians at the said prisoners camps.

⁴ Trial Chamber members: Judges Olivera Anđelković and Vesko Krstajić.

From the beginning of the trial until the delivery of the judgment against Dragan Slavković, Ivan Korać, Siniša Filipović and Dragutin Dragičević on 12 June 2008, 101 hearings were held, a total of 89 witnesses were heard and statements of four victim-witnesses given during investigation and extensive documentation in writing were read out in court.

At the main hearing held on 26 May 2008, the prosecution filed an amended indictment and moved that the accused Branko Grujić and Branko Popović be tried separately. At the same hearing, the trial chamber ruled to separate cases against Branko Grujić and Branko Popović. The judgments against Dragan Slavković, Ivan Korać, Siniša Filipović and Dragutin Dragičević were delivered and made public on 12 June 2008. Slavković was sentenced to 15 years in prison, Korać to 13 years, Filipović to three years in prison. Dragičević was acquitted of charges.

This is the first judgment delivered for war crimes committed in Zvornik municipality. The convicts are volunteers from Serbia who arrived in Zvornik in an organized manner, with the support and knowledge of the Serbian MUP. All of them were convicted as immediate perpetrators of the offences with elements of the offence defined as a war crime.

Not all the persons responsible for individual crimes committed in Zvornik were indicted. For example, the *Čelopek* prison camp, in which Bosniak captives were tortured and murdered, was guarded by uniformed and armed policemen and neither they nor their superiors were indicted. The perpetrators of the most grievous crimes committed in the prisoners camps, namely Dušan Vučković a.k.a Repić (died 10 days before the start of the trial), a man called *Pufti* (untraceable to police), and another man *Pivarski* (killed in war) could not be tried.

Although the convicted men were the immediate perpetrators who did not have any significant power or authority, their responsibility is enormous. They committed crimes that are so grievous as to deserve the heaviest penalty prescribed by law, i.e. 20 years in prison. The court, however, placed far too much weight on mitigating circumstances in favour of the defendants, such as their young age, family situation, health condition, remorse, which are important where ordinary crimes are concerned but are deemed irrelevant in war crimes cases.

The trial chamber made every effort to establish the material truth, a difficult task since the key witnesses were camp survivors who were locked up and lived in appalling conditions, with great fear for their lives, forced to look at the floor or a wall, some of them occasionally losing consciousness, so it is quite understandable that their statements are not identical to the last detail. The court properly and fully established the facts in the case and provided convincing explanations as to why some evidence was admitted and some not. The court could not correct deficiencies in the indictment concerning proof of the involvement of the accused Dragičević and Filipović, or failure to include in the indictment the municipal officials and police and army members whose involvement was proved beyond doubt during the proceedings. For instance, among those who were not

indicted are: Stevo Radić, a municipal official who decided on numerous matters concerning prison camps and captives, Marinko Vasić, a police station commander, the guard commander and guards at *Čelopek*, Cvijetko Jović, Sredo Vuković and others, the Director of the *Drina-trans* company, Dragan Spasojević, who participated in organizing the transport of the captives and others.

On 22 October 2008, the Office of the War Crimes Prosecutor expanded the indictment against Branko Grujić and Branko Popović for a war crime against the civilian population, by adding the murder of some 700 Bosniak men – civilians who, after having been separated from their families, were confined in the Technical School Center (TŠC) in Karakaj, from where they were taken away and liquidated. The bodies of approximately 250 of the men were later discovered in a mass grave on the Crni Vrh Mountain while the bodies of other men are still missing. The indictment charges Grujić and Pavlović with the commission of a criminal offence with possible malice aforethought, which means that they knew about the crime and consented to it. This case does not involve command responsibility but direct and immediate responsibility (a more severe form of criminal responsibility). At the main hearing session held on 20 November 2008, the trial chamber ruled to join criminal proceedings upon the extended indictment with the proceedings already in process against Grujić and Popović [for the deportation of Bosniaks from Kozluk, and torture and killings at the *Čelopek*, *Ekonomija* and *Ciglana* prisoners camps]. The defendants were not ready to enter a plea on the expanded indictment explaining that they did not have enough time to prepare themselves. At the main hearing session held on 29 December 2008, the defendants presented their case failing to provide any single valid argument to refute their heavy involvement in the crime against Bosniak civilians, the second gravest crime after Srebrenica.

1.1.5. Podujevo II case

The trial of the four members of the *Scorpions* unit of the reserve component of the Serbian MUP opened on 8 September 2008 before the Trial Chamber presided by Judge Snežana Nikolić-Garotić.⁵ The defendants were indicted for killing 14 Albanian women and children and severely wounding five children on 28 March 1999 in Podujevo, Kosovo. By the end of 2008, 12 hearings had been held in this case, examining the defendants, nine witnesses (one of whom gave evidence under pseudonym) and seven victims.

The peculiarity of this case consists in the fact that one final judgment has already been passed in the case sentencing a *Scorpions* member Saša Cvjetan to a 20-year prison term. In addition, one member of the *Scorpions* who appeared under pseudonym as a witness in this trial had already been tried and acquitted of charges by a final decision.

P I. The trial in this case has been made easier by the fact that much of the evidence concerning this incident had already been heard in the trial of Saša Cvjetan, who was charged with the same criminal offence. The witness *PI*, who did not take the stand at the trial of Saša Cvjetan, appeared as an eyewitness in the Podujevo case. The testimony of a

⁵ Trial chamber members: Judge Vesko Krstajić and Judge Vinka Beraha-Nikićević.

Scorpions member Goran Stoparić incriminating Saša Cvjetan was further reinforced in the defence presented by the defendant Željko Đukić, who said that the day after the crime Stoparić described the event to him in a way which was identical to Stoparić's testimony given at the trial of Saša Cvjetan.

The course of the proceedings so far established beyond doubt that the task of Serbian MUP members and Special Anti-terrorist Unit's (SAJ) *Scorpions* unit in Podujevo was to drive the Albanians out of their homes [of Kosovo].

The appearance at the trial of four children who survived the massacre carried a lot of weight. By positively identifying the perpetrators and giving evidence in court, these children significantly helped to establish the facts of the case.

In this case, the Prosecutor's Office, using evidence and information obtained in the Saša Cvjetan case, for the first time instituted new criminal proceedings for the same crime against the persons whose involvement in the crime became obvious. The Prosecutor's Office, however, failed to do the same in the *Ovčara* and *Suva Reka* cases, which constitutes a serious omission on their part that suggests the Prosecutor's Office brings indictments in a selective manner.

1.1.6. Lovas case

The trial of 14 defendants, including four officers of the former Yugoslav People's Army (JNA), six members of the *Dušan Silni* paramilitary unit and four residents of Lovas serving with the local government in 1991 for a war crime against the civilian population opened on 17 April 2008 before a trial chamber presided by Judge Olivera Anđelković.⁶ By the end of October, 31 hearings had been held during which the court heard 14 defendants and nine witnesses.

The indictment charges some of the defendants as immediate perpetrators, and some as accomplices, within the limits of their culpability. There are three types of perpetrators in this case: JNA officers, volunteers and members of local authorities. The responsibility of individuals belonging to each of the three groups is accurately defined in the indictment, which was not a simple task, since their activities overlapped with each other and the defendants cast blame on each other during investigation.

The trial has a number of distinguishing characteristics. First of all, the defendants were not examined in the order in which they had been listed in the indictment. Instead, the first to be heard by the court was the 14th accused Aleksandar Nikolaidis, who was willing to disclose a series of arguments incriminating the accused belonging to all three groups. He provided very convincing facts proving the responsibility of the principal Ljuban Devetak, which forced the latter to try to rebut Nikolaidis' allegations in presenting his case. Other defendants found themselves in a similar position. In addition, the President of the Trial Chamber, contrary to the usual court practice, confronted each of the defendants, after they presented their defence, with the statements of the other

⁶ Trial chamber members: Judge Tanja Vuković and Judge Dragan Plazinić.

defendants and witnesses given during investigation and at the main hearing as well as with evidence in writing. By doing so, the court from the very beginning started to elucidate all aspects of the indictment and ascertain individual responsibility of each of the accused. Unlike some other trials, the President of the Trial Chamber was well-acquainted with all details contained in the court records (consisting of several thousand pages), which led to better efficiency and quality of the proceedings. A problem emerged at the onset of evidence presentation process: victims and witnesses from Croatia did not participate in the main hearing for various reasons, such as health problems, old age or adamant reluctance to come to Serbia. HLC arranged for victims and victims' family members to regularly attend trials, in order to observe the principle that justice must not only be done but must be seen to be done.

1.1.7. *Emini* case

The trial of Miloš Simonović and Dragiša Marković, members of the Serbian MUP, commenced on 14 September 2004 before the Niš District Court, in an empty courtroom despite being open to the public. The accused are charged with depriving of life Isa Emini, an Albanian from Priština, on 5 May 1999. The defendants are alleged to have entered the victim's apartment and fired two bullets into his head after dragging his wife into another room. During the first-instance proceedings, the main hearing was repeatedly put off owing to non-appearance of the defendants who were conducting their defence without being placed in custody. Besides, the main hearing had to start again from the beginning a couple of times because of the time elapsed. Despite being obliged to establish the material truth and render a lawful judgment, the court throughout the proceedings shifted the burden of proof to the injured party. The first-instance proceedings ended in acquittal on 15 June 2007, eight years after the commission of the crime. The Chamber, presided by Judge Zoran Krstić,⁷ held that the defendants' guilt had not been proved.

The prosecutor classified the offence committed as a murder instead of a war crime against the civilian population, notwithstanding the fact that the murder took place in the time of the armed conflict in Kosovo.

On 30 June 2008, the Supreme Court of Serbia set aside the first-instance judgment and referred the case for a retrial. Despite being scheduled twice in 2008, the main hearing was never held because the defendants failed to appear in court. The court nevertheless avoids compelling the defendants to appear or ordering their detention. The victims are represented by an HLC lawyer.

1.1.8. *Pakšec* case

On 19 October 2007 a five-member panel of judges of the Novi Sad District Court, presided over by Judge Zoran Drecun, delivered and made public the judgment finding Slavko Petrović, Nikola Dukić and Petar Ćirić guilty as follows: Slavko Petrović and

⁷ Trial chamber members: Judge Milan Nikolić and lay-judges Aleksandar Milenović, Gordana Krsmanović and Zagorka Cvijić.

Nikola Đukić for murder under Article 114 (1), sub-paragraphs 5 and 9 of the Criminal Code of the Republic of Serbia (KZRS); Slavko Petrović, Petar Ćirić and Nikola Đukić for rape under Article 103 (2) in conjunction with (1) of the KZRS. Having been found guilty of both offences, Slavko Petrović and Nikola Đukić were sentenced to 40 and 30 years in prison respectively. Petar Ćirić was acquitted of murder and sentenced to 12 years in prison for rape. Slavko Petrović and Nikola Đukić robbed and murdered four members of the Croatian Pakšec family on 9 April 1992 in Vukovar, Croatia and dumped their bodies in a well. On the same day, the three defendants in Vukovar raped a Serbian woman Branislava Pleša who lived next door to the Pakšec family.

On 2 December 2008, the Supreme Court of Serbia delivered a ruling upholding the convictions of Petrović and Đukić and reducing the terms of imprisonment for Ćirić from 12 to 10 years.

The trial was efficient; the defendants were given stiff penalties, commensurate with the gravity of the crime they committed. All judicial authorities dealing with this case – Prosecutor’s Office, trial court and the Supreme Court of Serbia performed in a highly professional manner and conducted the case without bias and, which is particularly important, taking fully into account the extreme severity of the offence involved. Owing to inconsistency among laws and other regulations in Serbia, the maximum sentence that can be imposed for a war crime is 20 years, regardless of the number of persons killed, whereas a multiple murder carries a sentence of up to 40 years in prison. The fact that the offence involved in this case was classified as a multiple murder allowed the court to impose more proportionate and just sentences on the defendants accused of such a heinous crime.

The trial was held *in camera* as prescribed by law for rape cases. The victims were represented by an HLC lawyer.

1.1.9. Role of victims’ legal representatives

According to Article 66 (1) of the Criminal Procedure Code of the Republic of Serbia, injured party may exercise his/her rights through a legal representative. While not being a party to the case [but only a participant], a legal representative in the main hearing is entitled to: examine the defendants, expert witnesses and victims; file objections to questions posed by other case participants; comment the statements given by case participants who have already been examined; put forward new evidence; and present his/her closing arguments. Legal representative’s rights in investigation and appeals procedure are very limited though (during investigation, a legal representative may be present during questioning of victims, on-site investigation and expert investigation). A legal representative may not file an appeal, except on a court’s decision relating to costs of court proceedings. In contrast to the Serbian legal system, victims in BiH enjoy only marginal rights in all stages of the proceedings. At the main hearing, an victim may give a statement concerning an indemnification claim and in all other stages of the proceedings the victim has no rights whatsoever, not even to assume criminal prosecution if the prosecutor decides to drop charges. In such a case the victim may only file an

objection with senior prosecutor against prosecutor's decision to drop charges. Under Croatian law, victims enjoy the same rights as in Serbia, with one exception: a person authorized by victims to represent them in main trial must be a lawyer, in contrast to Serbia, where victims may be represented by any individual of their own choosing.

Only in Serbia are victims represented before the court by their legal representatives. In all the cases presented in this report, the victims are represented by HLC Executive Director, Nataša Kandić, and prominent human rights attorney Dragoljub Todorović, which introduces a new practice of human rights defenders [individuals and human rights organizations] acting on behalf of the victims. Their participation in war crimes trials has contributed to establishing the material truth, facts of the offences, and context in which the crimes charged in the indictments took place. Numerous issues concerning the involvement of Serbian Radical Party volunteers in preparing the war in BiH and the commission of war crimes would not have been clarified and discussed in court had it not been for legal representatives who are well acquainted with the incidents and the context surrounding the crimes committed.

HLC cooperates with the Office of the War Crimes Prosecutor, using its documentation and information on war crimes stored in its war crimes database created in December 2005. HLC handed over to the Office of the War Crimes Prosecutor 45 statements of witnesses to war crimes committed in Suva Reka/Suharekë and 37 statements of witnesses to war crimes in Trnje/Tërm, Kosovo, committed on 25 March 1999. HLC documentation on war crimes in Suva Reka/Suharekë was included in the official court records on this case. The court records in the *Zvornik II* case contain a key piece of evidence, handed over to the trial chamber by HLC, proving that the defendant Marko Pavlović was the commander of the Zvornik Territorial Defence Headquarters at the time of capture and the subsequent liquidation of around 700 Bosniaks.

Thanks to its reputation among the victims, HLC managed to secure the participation of all [six] victims in the *Podujevo II* case, most of the victims and all the witnesses from Kosovo in the *Suva Reka/Suharekë* case. As a result of persistent urging of HLC and the Association of Families of Killed and Missing Persons from Zvornik, the Office of the War Crimes Prosecutor opened an investigation into the killing of approximately 700 Bosniaks in the Zvornik [*Zvornik II*] municipality.

Family members of victims' regularly attend war crimes trials in Serbia. HLC makes arrangements for them to attend the trials *Suva Reka*, *Zvornik II* and *Lovas*. HLC also organizes occasional visits of Fatos Bytyqi, who travels from the United States to attend the trial of the Serbian MUP members accused of killing Fatos's three brothers. Family members of victims from Kosovo come to Serbia under Serbian police escort who are responsible for their physical security during their trip from Kosovo and stay in Belgrade. They travel to Serbia under special arrangements. Since the Serbian authorities do not recognize personal documents issued by UNMIK, HLC approaches the Serbian Ministry of the Interior before each trial [once a month or once in two months] with a request that the victims' family members listed in the passengers list be allowed entry into Serbia. In

2008, however, the families were sometimes kept waiting at the Merdare border crossing for two or more hours before they were allowed to enter Serbia.

In order to prompt the Office of the War Crimes Prosecutor, HLC filed two criminal complaints against several persons in connection with war crimes against the civilian population. In May 2008, HLC brought charges against a few senior officials of the Yugoslav Army, including General Božidar Delić, for the murder of at least 35 Albanian civilians in the village of Trnje/Tërm, Kosovo, on 25 March 1999. In August 2008, HLC filed a criminal complaint against several members of the Serbian Radical Party for killing [war crime] at least 35 Roma in June 1992 in Zvornik municipality. By the end of 2008, the Prosecutor's Office had not requested the opening of an investigation into this case.

1.2. Monitoring war crimes trials in Serbia

1.2.1. *Slunj* case

On 8 July 2008 the War Crimes Trial Chamber of the Belgrade District Court delivered and made public its judgment sentencing the defendant Zdravko Pašić to eight years in prison for a war crime against the civilian population under Article 142 (1) of the Criminal Code of the Federal Republic of Yugoslavia. This case was transferred to the Office of War Crime Prosecutor of Serbia by the Croatian State Attorney's Office after the Karlovac County Court sentenced Zdravko Pašić *in absentia* and the co-accused Milan Grubješić to twelve years in prison each for the same offence. Grubješić is serving his term in Croatia.

The indictment states that Pašić, in his capacity of a member of the police of the self-proclaimed Republic of Srpska Krajina and following a previous agreement with Milan Grubješić, killed medical doctor Dragutin Krušić, a Croat on the night of 22 December 1991, after taking him out of the Medical Center in Slunj under the false pretext that a large number of Serbian wounded men in Cetingrad needed his medical assistance. They took the doctor in a car to the parking outside the *Suzi* inn in Mali Vuković, where they shot at him several times from a distance of several meters (Pašić from an automatic rifle and Grubješić using a 7.62 caliber pistol).

The main hearing opened on 1 February 2008 before the Trial Chamber presided by Judge Snežana Nikolić-Garotić.⁸ Seven hearings were held during which the court heard eight witnesses (three of whom were protected witnesses who testified *in camera*), read out the statement given by injured party Ana Krušić before a Croatian court, and heard the findings and opinion of an expert witness. Witnesses from Croatia also gave evidence in court, which is a result of the good cooperation between the Serbian and Croatian judiciaries. One of them was Milan Grubješić, convicted in Croatia for the same criminal offence. The defendant presented his defence, showed no remorse and pleaded not guilty.

⁸ Trial chamber members: Judge Vinka Beraha-Nikićević and Judge Vesko Krstajić.

The trial was conducted in accordance with the standards for professional conduct and fair trial. It was efficient and dynamic. Nevertheless, the sentence imposed to Zdravko Pašić is minimal, given the circumstances of the crime and the manner in which it was committed, especially bearing in mind that ethnic hate was the motive behind this murder and that the late Krušić, as a medical doctor enjoyed special protection under the Geneva Conventions. The court attached excessive importance to some extenuating circumstances, in particular to the fact that the defendant is a disabled war veteran. The gravity of the crime, the manner in which it was committed and the motives behind it are such that the extenuating circumstances taken into account by the court cannot possibly justify such a lenient sentence imposed.

1.2.2. *Tuzlanska kolona* (Tuzla Column) case

The trial of Ilija Jurišić, accused of the use of prohibited means of warfare under Article 148 (2) in conjunction with (1) of the Criminal Code of the Socialist Federal Republic of Yugoslavia, started on 22 February 2008 before the War Crimes Trial Chamber, presided by Judge Vinka Beraha-Nikićević.⁹

According to the indictment brought by the Office of the War Crimes Prosecutor, Ilija Jurišić, in his capacity of the officer in charge of the operational group known as operational staff, which had been formed as part of the Public Security Center with order-issuing authority over all armed formations deployed in the territory of Tuzla, in breach of the foregoing agreement between Bosnia and Herzegovina (BiH) and the then Federal Republic of Yugoslavia (SRJ) on the peaceful withdrawal of the Yugoslav People's Army (JNA) from the territory of BiH to the territory of SRJ and thus in breach of the agreement between the representatives of the civilian and military authorities of Tuzla, personally ordered the attack on the JNA column on 15 May 1992, thus using impermissible means of warfare that are prohibited under international law. The attack resulted in the death of at least 92 and the wounding of at least 33 members of the JNA.

Since the beginning of the main trial, a total of 16 hearings were held, during which 36 witnesses were heard, 26 of whom were victim-witnesses, including a protected witness "A". Although a large number of victim-witnesses have testified so far, the court has had difficulties in identifying the names of all the soldiers who were killed or wounded in the attack, so it faces the possibility that the victims may not been tracked down and summoned to give evidence at the main trial.

Immediately after arrest of Ilija Jurišić at the Belgrade Airport on 11 May 2007, the Ministry of Justice of BiH requested his extradition and transfer of the case to the BiH judiciary, invoking Article 30 of the *European Convention on the Transfer of Proceedings in Criminal Matters*, to which both Serbia and BiH are signatories. The War Crimes Trial Chamber of the Belgrade District Court, however, denied the request, without delivering any official act on its decision. On 9 November 2007 the Office of the War Crimes Prosecutor brought an indictment against Ilija Jurišić and made its content public through mass media before the investigation into him was over. On the same day,

⁹ Trial chamber members: Judge Snežana Nikolić-Garotić and Judge Vesko Krstajić.

the Prosecutor's Office of BiH was hearing witnesses in this case, after being asked to do so by a letter rotator of the War Crimes Chamber of the Belgrade District Court. Milan Dilparić, investigating Judge of the War Crimes Chamber of the Belgrade District Court and Dragoljub Stanković, Deputy War Crimes Prosecutor, participated in the hearing of witnesses in BiH.

Bringing the indictment before the investigation was over, and the persistent denial on the part of Serbian judicial authorities to transfer the case to the Prosecutor's Office of BiH, who also conducts investigation into the same event, suggests that the Office of the War Crimes Prosecutor has been using the *Tuzla Column* case to show to the public that it cares about Serbian victims as well. On the other hand, during 2008, hearings were scheduled only once or twice a month, which means that this case is given low priority. The trial is unduly prolonged, and few hearings held were used to establish the material truth. Furthermore, victim-witnesses often fail to appear in court, either because the court cannot establish their addresses or because the witnesses are not interested in taking part in the proceedings.

The way things are now, one of the characteristics of this trial is that the defence of Jurišić cannot be verified from Belgrade. The witnesses who may confirm or dispute the defendants' statements do not wish to come to Belgrade. Thus the court examines as witnesses or victim-witnesses only former members of the JNA who do not know anything about the defendant's activities at the time of the incident described in the indictment. This reinforces suspicions that this trial was initiated for political reasons, and not to establish the responsibility for the crime that was committed in Tuzla.

The defendant is held in custody although the defence repeatedly sought his release from custody subject to all necessary guarantees and despite the fact that in some other cases heard by the same Court the defendants were not placed in custody. The defendant expressed regret for the incident but pleaded not guilty. Contrary to what is stated in the indictment, which charges him with ordering the attack on the JNA column, the defendant claimed that he only communicated the order given by Mehmed Meha Bajrić, at the time head of the local Public Security Center (SJB), to *fire back if fired upon*, after having been informed that JNA officers had been shooting at buildings and citizens. The defence announced that physical evidence they intend to present will include footage broadcast on local TV on the occasion of the anniversary of the liberation of Tuzla in which Mehmed Bajrić explains what happened and says that he had told the defendant Jurišić to communicate the aforesaid order. That would be a key piece of evidence in this case, since the witnesses examined so far did not possess information regarding the responsibility of the defendant.

1.2.3. Banski Kovačevac case

Pan Bulat and Rade Vranešević are standing trial for a war crime against the civilian population under Article 142 (1) of the Criminal Code of the Federal Republic of Yugoslavia (KZSRJ) in conjunction with Article 22 of the KZSRJ. The trial opened on 2 September 2008 before the War Crimes Chamber presided over by Judge Olivera

Andelković.¹⁰ The indictment brought by the Office of the War Crimes Prosecutor on 16 April 2008 charges the defendants, at the time members of the army of the Republic of Srpska Krajina (RSK), with killing six Croatian civilians on the night of 22 March 1992 in Banski Kovačevac. This case had been transferred to the Republic of Serbia Office of the War Crimes Prosecutor from the State Attorney's Office of the Republic of Croatia under the Agreement on Cooperation in Processing War Criminals. During the eight hearings that took place in 2008, nine witnesses were heard, including some who came from Croatia to testify, whereas some were questioned by Croatian authorities during investigation. The defendants denied responsibility casting blame on each other. Although the defendants were confronted face-to-face with each other and with the majority of witnesses, their specific role in the incident remained unclear. The defendant Bulat is kept in custody and the defendant Vranešević is released pending sentence.

1.2.4. Zvornik III case

The trial of Goran Savić and Saša Čilerdžić indicted for war crime against the civilian population under Article 142 (1) of the Criminal Code of the Socialist Federal Republic of Yugoslavia (KZSFRJ) in conjunction with Article 22 of the KZSFRJ started on 4 September 2008 before the War Crimes Chamber presided over by Judge Tatjana Vuković.¹¹ The indictment brought by the Office of War Crimes Prosecutor charged the defendants with committing a crime at the *Ekonomija* farm and *Ciglana* (Brickyard) in Zvornik, in the period between May and July 1992. Four hearings have been held since the beginning of the trial, examining three witnesses, two of whom had already been sentenced in a separate case *K.V. 5/08 (Ivan Korać and Dragan Slavković)*. The defendants are released pending sentence. The defendant Savić pleaded not guilty claiming he had never been at *Ekonomija* or *Ciglana* or seen the Bosniak captives who were held there, but had only heard that the captives had been taken out of town to *Ekonomija*. The defendant Čilerdžić also pleaded not guilty, saying that he heard about *Ciglana*, but had never been there. He believes was indicted because he was mistaken for another man with a similar name, Saša Čirković, a former member of the *Pivarski* platoon.

1.2.5. Scorpions case

By the original sentence imposed on the *Scorpions* unit members, Aleksandar Medić was sentenced to a five-year prison term as an abettor in a war crime against the civilian population. The Supreme Court of Serbia granted an appeal filed by Medić's defence attorney and ordered a retrial. Where sentences imposed on *Scorpions* members in the first-instance judgment are concerned, the Supreme Court affirmed the acquittal of Aleksandar Vukov and reduced the prison term for Branislav Medić from 20 to 15 years, in spite of the evidence proving beyond doubt that both defendants were actively involved in the liquidation of six Bosniaks.

¹⁰ Trial chamber members: Judge Tatjana Vuković and Judge Dragan Plazinić.

¹¹ Trial chamber members: Judge Olivera Andelković and Judge Dragan Plazinić.

The new trial of Aleksandar Medić for war crime against the civilian population under Article 142 (1) of the Criminal Code of the Federal Republic of Yugoslavia started on 15 October 2008 before the Trial Chamber presided over by Judge Snežana Nikolić-Garotić.¹² According to the indictment brought by the Office of the War Crimes Prosecutor, Aleksandar Medić as a member of the *Scorpions* unit, with a premeditative design assisted members of his unit to deprive of life six Bosniaks on an undetermined date in July 1995, at the place called Godinske Bare near Trnovo, on the Treskavica Mountain (BiH). Two hearings were held in 2008, in which the court examined the defendant, who pleaded not guilty, and a witness for the prosecution.

Witness Slobodan Stojković, who filmed the event, altered his statement. At the first main hearing he said that after a captive answered Medic's question by saying *I've never fucked*, Medic replied *And you never will*, which suggested that the defendant was aware of what would happen to the captive. The witness, however, changed his statement saying he had not heard Medic saying such words. When asked why he modified his statement, the witness said that at the first hearing he said things he remembered, but after watching the video footage of the event he realized that things had not happened that way. Statements given by this witness during investigation and at the (first) main hearing are closer to the event, more credible and, unlike the later statement, given without any previous preparations, solely on the base of what he remembered. Although witness Stojković modified his statement, it will have no bearing on establishing the criminal responsibility of defendant Medić. The defendant did hear or could have heard Pera Petrašević saying that two captives would be killed and four released. Although on the video footage it seems that Petrašević is saying that to the captive lying on the ground, other soldiers' comments and laughter that ensued can easily be heard. Also, the video shows the defendant watching two captives carrying bodies. He stood aside without protesting over what had happened. He can be seen as watching the liquidation of the remaining two captives in a summer cottage, after which he slowly followed others towards a truck, in a relaxed manner, carrying a rifle on his shoulder. In short, Aleksandar Medić in no respect, word said, gesture made or behaviour differed from the others.

1.2.6. Grubišno Polje case

The trial of Bora Trbojević for a war crime against the civilian population under Article 142 (1) of the Criminal Code of KZJ started on 26 September 2008 before the Trial Chamber presided over by Judge Snežana Nikolić-Garotić.¹³ According to the indictment brought by the Office of the War Crimes Prosecutor on 21 May 2008, Trbojević, as a member of the so-called *Bilogora detachment*, engaged in the attacks against the civilian population, in the taking, confining and torturing of hostages and inhuman treatment and killing of civilians in the municipal area of Grubišno Polje between 13 August and 31 October 1991. The Bjelovar District Court (Croatia) sentenced Pan Bulat *in absentia* to 20 years in prison. This case was transferred by the Croatian judiciary to the Serbian Office of the War Crimes Prosecutor under the Agreement on Cooperation in Prosecution

¹² Trial chamber members: Judge Vinka Beraha-Nikićević and Judge Vesko Krstajić.

¹³ Trial chamber members: Judge Vinka Beraha-Nikićević and Judge Vesko Krstajić.

of War Criminals. Four hearings have been held so far in which nine witnesses were examined. The defendant, who at the time of the incident worked as a prison guard in the makeshift prison inside the school building in the village of Velika Peratovica in which captured Croats were held, pleaded not guilty adding that he did not know what happened to the captives after the withdrawal of the Serbian Army and population from the villages in the Grubišno Polje municipal area. His case is based on a probable identity mix-up. According to him, the witnesses' testimonies incriminating him actually refer to Boro Trbojević, who served as prison warden at the time of the incident.

1.2.7. *Kušnin* case

The retrial of Zlatan Mančić, Rade Radojević, Danilo Tešić and Mišel Seregi, accused of a war crime against the civilian population, started in September 2007 before the Niš District Court's panel of judges, presided over by Judge Radomir Mladenović.¹⁴ According to the indictment, the defendants murdered two Albanian civilians in the village of Kušnin, Prizren municipality, on an undetermined date in early April 1999. Defendant Mančić, at the time a senior military security officer, ordered the private Tešić, along with another private, to deprive of life two Albanian civilians, immediately after these two men had been brought before him. Tešić communicated the order to the defendant Radivojević, after which he and the defendant Seregi took brothers Miftar and Selman Temaj from the village of Kušnin/Kushner on the road to Prizren. Some 4 km away from the place their unit was stationed at, near the road, they shot the brothers with automatic rifles and burned their bodies afterwards. At the trial before the first-instance court, defendants Tešić and Seregi admitted to having committed the crime. The trial ended with acquittal, but the Supreme Court quashed the judgment of the lower court on the grounds that the bodies had not been identified and that the Supreme Military Court had accepted a piece of evidence produced outside the main hearing. In the new trial, all the defendants denied their involvement in the crime. Tešić and Seregi defended themselves saying that they had let the brothers Team walk in the direction of Prizren on their own and that they boasted of having killed them only to gain prestige in their unit. Miftar Temaj was identified in 2004 by a DNA test while the remains of Selman Temaj have not yet been found.

An HLC observer monitored one trial day in this case in 2008, during which the court ordered the defendant Tešić be brought into custody due to his unjustified non-appearance at the hearing. The other three defendants were granted conditional release.

1.2.8. *Orahovac* case

A five-member panel of judges of the Prizren District Court, sitting in Požarevac, presided over by Judge Dušan SAPI,¹⁵ is conducting a trial of two members of the Serbian MUP, namely Bobbin Petković and Đorđe Simić, accused of a war crime against

¹⁴ Trial chamber members: Judge Marina Milanović and law-judges Olivera Ivanković, Judge Ljiljana Parmać, Judge Slobodan Jocić.

¹⁵ Panel members: Judge Snežana Vitošević and lay-judges Ljubiša Nešić, Spasoje Čojić and Dobrila Krstev.

the civilian population under Article 142 (1) of the Criminal Code of the Federal Republic of Yugoslavia. The accused are charged with the murder of three Albanian civilians, Ismail Durguti and the married couple Sezair and Shefkija Miftari on 9 May 1999 in Orahovac. The trial opened on 5 December 2007. Two hearings were held in 2008. The main hearing was put-off due to the defendants' failure to appeal as summoned. The accused, who were granted conditional release, avoid service of summons or fail to appear as summoned thus disrupting the trial. The case, tried for the second time before the same panel, has been dragging on for eight years without the participation of the victims, which creates the impression that all case participants are behaving in an inappropriate and conformist way. During the examination of the defendants, the court seriously breached several provisions of the Criminal Procedure Code. After reading the indictment, the president of the panel failed to ask the defendants whether they understood the indictment despite being obliged to do so. During the hearing of the defendant Petković, the president of the panel did not insist that the defendant explain the disparity between his statements given at this trial and during investigation. Although the statements of the two defendants differed in some very important facts, the president of the panel failed to order face-to-face confrontation between them.

1.2.9. Morina case

Sinan Morina was arrested in Montenegro and extradited to Serbia on a wanted notice issued by the Serbian MUP. The Office of the War Crimes Prosecutor raised an indictment against him on 13 July 2005, and his trial opened on 17 October 2007. The Trial Chamber, presided by Olivera Anđelković,¹⁶ passed a judgment on 20 December 2007 acquitting Morina of charges of being a co-perpetrator in the commission of a war crime against the civilian population under Article 142 (1) of the Criminal Code of the Federal Republic of Yugoslavia (KZSRJ) in conjunction with Article 22 of the KZSRJ. According to the indictment, between 17 and 21 July 1998, aiming to force the Serbian population out of the Orahovac/Rahovec municipal area, Morina launched armed attacks which resulted in the death of several people. Morina was also charged with illegal detention, torturing and violation of bodily integrity, while members of his unit (Kosovo Liberation Army) engaged in killings, rape and devastation of civilian property and religious sites. In stating the reasons for Morina's acquittal, the trial chamber president said that the indictment was vague and that the prosecutor failed to prove the defendant's guilt. At the main hearing, victim-witness Slavica Banzić gave an account which differed from that given by her before the investigating judge; her son [witness Milan Banzić] gave the names of the Albanians his mother mentioned to him right after the incident, but omitted to mention Sinan Morina among them; other victim-witnesses failed to corroborate that Slavica and other women had been beaten by KLA members during their capture in Opteruša/Optershë. The case is currently before the Supreme Court which will decide on the prosecutor's appeal against the first-instance judgment. By the end of 2008 the Supreme Court had not delivered a decision on this matter.

¹⁶ Trial chamber members: Judge Tatjana Vuković and Judge Vesko Krstajić.

2. Monitoring war crimes trials and trials for ethnically motivated crimes in Kosovo

During 2008, HLC–Kosovo monitored 11 trials for war crimes or politically and ethnically motivated murders [59 trial days in total], before Kosovo district courts and the Supreme Court of Kosovo. Most of the trials commenced in 2007 and only two in 2008 - *Prosecutor v. Osman Zyberaj and Shyqeri Shala* and *Prosecutor v. Marko Simonović*. The first-instance proceedings against Osman Zyberaj and Shyqeri Shala were concluded, and only one hearing session was held in the *Marko Simonović* case.

One of the reasons for the small number of new trials is the transfer of authority over rule-of-law institutions from UN administration (UNMIK) to the EU Mission (EULEX), which was not completed until 9 December 2008. That is why no main hearings were scheduled in the second half of 2008, but only sessions before a single judge to confirm the indictment or order the detention of defendants. In 2008, no new trials were scheduled either in the following three cases referred for retrial by the Supreme Court of Kosovo: *Prosecutor v Latif Gashi et al* (first-instance judgment passed on 16 June 2003, decision upon appeal on 8 July 2005, when the defendants were released from pre-trial detention by a special decision thereon); *Prosecutor v Kolašinac Anđelko*, (first-instance judgment rendered on 31 January 2003, the Supreme Court's decision ordering new trial rendered on 9 January 2004, when the defendants were released from pre-trial detention by a special decision thereon; *Prosecutor v Shefqet Musliu* (first-instance judgment passed on 26 April 2004, ruling upon appeal delivered on 27 March 2007, with the defendant being in custody since 7 July 2003).

The tendency of the Supreme Court of Kosovo to delay review of cases which have been disposed of in the first instance several years ago causes concern. There are six such cases: *Prosecutor v Sadri Shabani et al* (first-instance judgment delivered on 19 May 2005; the defendants have been in custody since March 2004); *Prosecutor v Mehmet Morina* (first-instance judgment delivered on 22 July 2005; the defendant has been in custody since March 2004); *Prosecutor v Selim Krasniqi et al* (first-instance judgment delivered on 10 August 2006; the defendants have been in custody since February 2004); *Prosecutor v Jeton Kiqina*, (first-instance judgment delivered on 8 March 2007, the defendant has been in custody since 9 November 2004); *Prosecutor v Esmin Hamza and underage AK* (first-instance judgment delivered on 15 June 2007 imposing a correctional measure committing the defendant to the youth correctional facility in Lipljan for the period of two years)¹⁷ and *Prosecutor v Idriz Gashi*, (first-instance judgment delivered on 22 June 2007; the defendant has been in custody since May 2006).

The indictments in the monitored cases were brought and represented by international prosecutors alone. Also, all members and presidents of judicial panels were international judges.

¹⁷ Courts are obliged by the Law on Juvenile Perpetrators to act urgently

2.1. Sadat Fejza case

On 16 January 2008 the District Court of Gnjilane/Gjilan delivered and made public the judgment sentencing Sadat Fejza to six years and six months in prison for attempted murder under Article 30 (2), (3) and (4) of the Criminal Code of Kosovo in conjunction with Articles 19 and 22 of the Criminal Code of the Federal Republic of Yugoslavia.¹⁸ Sadat Fejza, who was tried *in absentia*, had originally, in the first judgment, been found guilty and sentenced to six years and six months in prison. The Supreme Court of Kosovo, deciding upon appeal filed by Fejza's defence attorney, ordered a new trial to be conducted before the same court.

The new trial of Sadat Fejza before a mixed panel of judges of the Gnjilane/Gjilan District Court (presided by International Judge Maurizio Salustro)¹⁹ opened on 7 September 2007. The indictment brought on 26 January 2001 charged Sadet Fejza with carrying out together with unidentified persons an armed attack on an Opel Vectra vehicle on the Gnjilane/Gjilan–Vitina/Viti regional road near the village of Klokot/Klllokot in an attempt to kill three Serbs: an Orthodox priest Dragan Kojić, Branko Paločević and Zvonko Kostić.

The court held seven hearings since the opening of the main trial, during which it examined two victim-witnesses and one defence witness. At the two hearings held in 2008, the court heard one defence witness and read out the statement of victim-witness Branko Palošević, who deceased in the meantime.

On 30 July 2008 The Supreme Court of Kosovo affirmed the judgment of the Gnjilane/Gjilan District Court, so this case was disposed of. Sadat Fejza started to serve his prison term on the day on which the judgment against him was made public.

2.2. Miroslav Vučković case

On 23 May 2008, the international panel of judges of the Mitrovica/Mitrovicë District Court, presided by International Judge Lolita Dumlao,²⁰ delivered a judgment finding the defendant Miroslav Vučković guilty of a war crime against the civilian population under Article 142 of the Criminal Code of the Federal Republic of Yugoslavia (KZJ) in conjunction with Article 22 of the KZJ and sentenced him to an eight-year prison term. The defendant had been previously sentenced to five years in prison for burning and looting with other people the houses of civilians on 15 April 1999, taking advantage of the helplessness and hardship of the Albanian population in the village of Gušavac/Gushac and for stealing all valuable movable property, including one truck from the estate of Abit Sahiti. He was also sentenced to seven years in prison for violence and arson after having been found guilty of setting fire to the houses of Abita Sahiti and Xhevat Zeka in the village of Gušavac/Gushac on 15 April 1999 with the intent to induce fear among the Albanian population and thus make them leave the village.

¹⁸ These laws are applied under UNMIK Regulation 1999/24.

¹⁹ Panel members: International Judge Alain Bloch and Kosovo Judge Avdullah Ahmeti.

²⁰ Panel members: International Judges Dennis Leubke and John Fields

Since the third re-trial in this case opened on 16 August 2007, 40 hearings were held, during which the court examined 36 witnesses and two expert witnesses. The defendant denied the charges against him, emphasizing his disability and the fact that he was physically unfit for military service during the war in Kosovo. During evidence presentation 12 witness statements given in previous stages of the proceedings were read out. Defence witnesses heard during 2008 mostly include defendant's relatives and friends, who provided him with an alibi, stating that at the time of the crime he was obliged to report to work, that he worked overtime and could not possibly abandon his workplace without leaving information on his whereabouts. The statements of defence witnesses differed in description of the physical condition of the defendant. One of the characteristics of this trial is that two expert witnesses, orthopaedic traumatologists, one proposed by each party, were engaged to assess the physical condition of the defendant. Their findings were different from one another.

The defendant, who was released pending sentencing, did not appear for the sentencing. He is still at large despite the fact that he was sentenced to more than five years in prison, which entails detention.²¹

After the Mitrovica/Mitrovicë District Court ceased operation as of early March 2008, the trial continued on the premises of the International Justice Support Department (IJSB) inside the Kosovo Supreme Court building in Priština/Prishtinë. Prosecutors were changed several times in the course of the main hearing, so were the judges serving on the panel, but this did not affect the efficiency and pace of the proceedings. At one point of the main hearing, the prosecutor proposed the defendant enter into a plea agreement on the following terms: the prosecutor would offer to amend the indictment, so as to still include the war crime against the civilian population, in exchange for a guilty plea, after which the court would sentence the defendant to a term that would include the period he had already spent in detention [five years is the minimum sentence prescribed for this criminal offence]. Negotiations between the prosecutor and the defendant and his attorney lasted four days and were held in private, to be discontinued by the trial chamber who warned the parties that the practice of plea bargaining does not exist in the Kosovo legal system and that any agreement reached in that way would not bind the court, which would decide only on the basis of evidence established in the course of main hearing. The HLC-Kosovo trial observer is of the opinion that the Court should have warned the parties at the beginning that plea agreement is not binding on the court and should not have allowed negotiations between the parties.

2.3. *Skender Islami et al* case

On 25 January 2008 the Priština/Prishtinë District Court rendered a judgment of conviction in the *Islami et al* case. The defendants received the following concurrent sentences: Skënder Islami eight years in prison, Mustafë Islami seven years, Ramadan Islami three years, Omer Sylejmani three years and Gazmend Morina two years in prison.

²¹ Article 353 (1), Criminal procedure Code. ZKP: If a defendant has been sentenced to five years in prison or more, the trial chamber will order his detention unless the defendant is already kept in detention.

Under the judgment, Skender Islami, Mustafa Islami and Gazmend Morina will have to pay 50,000 Euro to the injured party Miroslav Veličković and Mustafa Islami, Ramadan Islami and Omer Sylejmani are ordered to pay 20,000 Euro to the injured party Milomir Mitrović in compensation for the pecuniary damage suffered. Skender Islami is ordered to pay damages to the injured party Grujica Simić amounting to 3,000 Euro.

According to the indictment brought against them on 16 February 2007, the defendants set fire on 17-18 March 2004 [during March 2004 unrest] to the *Živin gaj* restaurant and house of the Serb Miroslav Veličković in the village of Bresje, Kosovo Polje/Fushë Kosovë municipality, a kiosk owned by Stojanka Zorić outside Veličković's house, the *Russian Hospital*, Health Center, a drugstore, *Sveti Sava* elementary school building and the post office in Kosovo Polje/Fushë Kosovë, as well as several mostly Serb-owned vehicles that were parked outside the Hospital, by which they committed a criminal offence of participating in a group of persons committing criminal offences under Article 200 (2) of the Criminal Code of Kosovo, a serious offence against public security under Article 164 (1) of KZK, and the criminal offence of inciting to national, racial, religious or ethnic hatred, discord and intolerance under Section 1, sub-sections 1.1. and 1.2. of the UNMIK Regulation 2000/4 on the Prohibition against Inciting to National, Racial, Religious or Ethnic Hatred, Discord or Intolerance.

The main hearing in this case opened on 22 October 2007 before an international panel of judges presided by International Judge Alain Bloch.²² Six trial sessions were held in 2008, in which the court heard the defendants, and five witnesses, including the representative of the injured party *PTT Srbija*; two witnesses were re-examined and asked to specify some details from their previous statements; a witness statement given during investigation was read out; and police officers of the Kosovo Police Service (KPS) were three times confronted face-to-face with the witnesses for the prosecution. Eight criminal complaints were filed against the witnesses in this case, based on reasonable suspicion that they gave false statements. On one occasion and contrary to Article 164 (1) of the Provisional Criminal Procedure Code of Kosovo (PKZK), the presiding judge failed to order a witness to leave the courtroom during examination of other witnesses, although he was bound to do so.

2.4. Albin Kurti case

The trial of Albin Kurti opened on 19 September 2007 before the international panel of judges presided over by Judge Maurizio Salustro.²³ Kurti is charged with participating in a group of persons obstructing police officers in performing their official duties under Article 318 (1) of the Provisional Criminal Code of Kosovo (PKZK), calling for resistance under Article 319 (1) of PKZK and participating in a crowd attempting to commit a criminal offence under Article 320 (1) of the PKZK in conjunction with Article 20 of PKZK. According to the indictment of 31 May 2007, defendant Albin Kurti committed the alleged criminal offences during demonstrations staged by the Self-Determination/Vetevensodje Movement in Priština/Prishtinë on 10 February 2007.

²² Panel members: International Judges Tron Gundersen and Dennis Luebke.

²³ Panel members: international Judges John Fiels and Koster Noster.

During the demonstrations, members of UNMIK police fired rubber bullets on protesters seriously injuring two members of the movement, who succumbed to injuries the next day in hospital.

In 2008, three trial sessions took place in which some procedural issues were discussed. Defendant Kurti refused to accept the panel of judges hearing his case and kept refusing to be represented by court-appointed attorneys. Given the criminal offences involved, the defendant must be represented by an attorney, so the court had to discontinue the trial and informed thereon the Special Representative of the U.N. Secretary-General in Kosovo, Kosovo Ministry of Justice, The UNMIK Department of Justice, and the Supreme Court of Kosovo. No main hearings were scheduled before the end of 2008. Vinod Boolell, head of International Judges of UNMIK informed HLC-Kosovo that the official case records in the *Kurti* case were handed over to the EULEX Mission in Kosovo.

2.5. Osman Zyberaj and Shyqeri Shala case

On 17 April 2008 the Prizren District Court delivered and made public the judgment finding Osman Zyberaj and Shyqeri Shala guilty and sentencing them to 25-year imprisonment each for the following criminal offences: aggravated murder under Article 147 (4) (5) (8) of the Provisional Criminal Code of Kosovo (PKZK), complicity in an attempt to commit an aggravated murder under Article 147 (11) of the PKZK in conjunction with Articles 20 and 23 of the PKZK, and unlawful carrying of weapons under Article 328 (1) (2) of the PKZK. International Prosecutor Robert Dean indicted Zyberaj and Shala on 16 July 2007.

The defendants were convicted as co-perpetrators in shooting Hasan Rrustemi and Nazim Rrustemi at the market in the village of Zrze/Xerxë, killing Hasan and seriously wounding Nazim. The crime was committed with an unidentified weapon. When arrested on 19 April 2005, Osman Zyberaj was carrying an *Amadeo Rossi* revolver with 5 bullets, without having a permit to possess, control, carry or use weapons. Osman Zyberaj is a relative of Bedri Zyberaj, one of the accused in the *Selim Krasniqi et al* case.²⁴ Hasan and Nazim Rrustemi were supposed to give evidence in this case in relation to the 1998 murder of their brother Murat Rrustemi. It has been established that on 10 October 2005, the defendants were seen at 16:20, immediately before the shooting, at the green market blocking the victims' vehicle with their *Opel Ascona*. On 12 October 2005, Zyberaj and Shala contacted a *Lajm* daily reporter, Qemal Krasniqi, and confessed to him having committed the crime.

The main hearing before the international panel of judges presided over by Judge Dennis Luebke²⁵ started on 31 January 2008. The court held 10 hearings before delivering a judgment. The main hearing was initially held on the premises of the Prizren District Court to be transferred later to the special courtroom inside the *Dubrava* prison. The

²⁴ The case was tried at the Gnjilan/eGjilan District Court, on charges of war crime against the civilian population. Selim Krasniqi, Bedri Zyberaj and Agron Krasniqi were sentenced on 10 August 2006 to seven years of prison each and the prosecutor desisted from prosecuting Xhavit Elshani and Isuf Gashi.

²⁵ Panel members: International Judges Daniel Cailoux and John Fields.

beginning of the trial was attended by over 50 people, mostly family members and friends of the accused. During the main trial, 17 witnesses, including victim-witness Nazmi Rustemi, who testified in a closed session, and three expert witnesses were examined. The defendant Osman Zyberaj chose to remain silent while Shyqëri Shala denied his guilt in his testimony.

The defendant complained of high blood pressure and poor health during the trial and repeatedly left the courtroom without court permission. At the defendant's request, the court made short breaks during the trial, requested the present medical staff to examine the defendant and ordered medical expertise of his health. According to the findings and opinion of the medical expert witness, Zyberaj, although in poor health, was able to follow the trial and understand its significance. The panel eventually allowed Zyberaj to follow the trial while lying on a medical bed introduced in the courtroom, which made the trial look trivial and frivolous in the eyes of legal community, and damaged the reputation and dignity of the court.

2.6. Florim Ejupi case

On 6 June 2008 an international panel of judges of the Mitrovica/Mitrovicë District Court presided over by Judge Hajnalka Karpati²⁶ handed down and made public a judgment sentencing the defendant Florim Ejupi to 40 years in prison for committing the following criminal offences: murder under Article 30 (1) (2) sub-paragraphs 1) 2) 3) and 5) of the Criminal Code of Kosovo (KZK) in conjunction with Article 22 of the Criminal Code of the Federal Republic of Yugoslavia (KZJ), attempted murder under Article 30 (2) (3) (4) of the KZK in conjunction with Articles 19 and 22. of the KZJ, terrorism under Article 125 of the KZJ, causing public danger under Article 157 (3) of the KZK, instigating national, racial and religious hatred under Article 134 of the KZJ and unlawful carrying of weapons under Article 199 (1) (3) of the KZK.

In an indictment brought by International Prosecutor Thomas Hickman on 17 May 2006,²⁷ Florim Ejupi was charged as co-perpetrator in planning and executing an attack against a convoy of buses carrying Serbs from Kosovo. On 16 February 2001, Ejupi, together with other unknown persons, planted an explosive device in an irrigation canal underneath the road on which a convoy was moving, near the village of Livadice/Livadice, Podujevo/Podujevë municipality. The Serb passengers, IDPs from Kosovo who lived in Serbia, were travelling from Niš to Gračanica/Graçanicë, Kosovo, for Zadušnice (the commemoration day for the dead). Around 11:15 the first bus on the convoy, carrying 56 passengers and escorted by Swedish KFOR after entering the territory of Kosovo, was blown up by the explosive. The blast lifted the bus off the ground and totally destroyed the front side of the bus, killing the driver and passengers

²⁶ Panel members: International Judges Noster Koster and Maurizio Salustro.

²⁷ After being confirmed, the indictment was amended several times, on 25 September 2007 and 2 December 2007. On 18 October 2007, the indictment was verbally amended by removing one person from the list of the persons killed, and changing the charge of infliction of grievous bodily harm into an attempted murder. .

seated in the front seats and wounding other passengers, some of whom died after receiving medical assistance.

The trial opened on 18 October 2007. After the Mitrovca/Mitrovicë District court ceased operation in February 2008, the trial was moved to Priština/Prishtinë District Court. The court held 10 hearings since the beginning of the trial, and heard six witnesses, including four victim-witnesses. Eight hearings took place in 2008, examining four witnesses, one of whom was a protected witness who took the stand under the pseudonym *Alfa*, and one expert witness. 17 witness statements were read out during evidence presentation, of which six had been given by victim-witnesses. The defence did not present their case and the defendant chose to remain silent.

In sentencing the defendant, the panel was governed by the law applicable at the time the crime was committed, which is more favourable for the perpetrator. The punishment imposed, while being commensurate with the severity of the crimes, must also serve as a deterrent and prevent possible perpetrators from repeating similar crimes. The panel took into account some mitigating factors – the defendant's young age, the fact that he is married, with two children, which should not have any impact on sentencing. The statement of the victim-witness *Alfa* was decisive for convicting Ejupi. Despite some inconsistencies found in this statement, the panel decided that they were not such as to render the statement unacceptable. So the panel accepted this statement as true, in particular its segment about the witness conversations with Florim Ejupi about the attack on the *Niš-express* bus.

2.7. Gani Gashi case

On 14 November 2007 International Prosecutor Deborah Wilkinson brought an indictment against Gani Gashi for committing a war crime against the civilian population under Article 142 of the Criminal Code of the Federal Republic of Yugoslavia (KZJ). According to the indictment, the defendant in July 1998 killed Kosovo Albanian Idriz Obri on the road connecting the villages of Komorane/Komoranë and Kišna Reka/Kishnarekë, Glogovac/Glllogoc municipality, attempted to murder Shpetim Obri and inflicted grievous bodily harm upon Halim and Selman Obri.

At the indictment confirmation session conducted by International Judge Timothy Baland on 18 January 2008, the defendant pleaded not guilty. While not denying firing a bullet which hit Idriz Obri, he stated that his intent was not to shoot civilians but enemy soldiers who had opened fire.

All counts of the indictment were confirmed. The main hearing had not started before the end of 2008.

2.8. Skender Halilaj et al. case

Kosovo Supreme Court's International panel of justices presided by Justice Maurizio Salustro,²⁸ reviewed on 20 May 2008 appeals filed by defence attorneys of 12 Kosovo Albanians against the judgment rendered by the Gnjilane/Gjilan District Court on 7 April 2005 acquitting Skender Halilaj, Florim Kiqina, Zeqir Kiqina, Agim Xhylani, Bekim Morina, Adem Kiqina and Muharrem Xhemajli of charges for murder of five members of the Hajra family and other criminal offences committed in relation to the murder, and sentencing Skender Halilaj and Kimete Krasniqi (tried *in absentia*) to five years' imprisonment each for an attempt to murder Hamza Hajra on 14-15 May 1998. The defendant Kimete Krasniqi was also sentenced to one year in prison for the criminal offence of unlawful carrying of weapons and received a concurrent sentence of five years and six months in prison. The Supreme Court affirmed the first-instance sentences for Burim Ramadani, Arben Kiqina, Arsim Ramadani and Blerim Kiqina for the premeditated murder of five persons (Hamza Hajra, his wife Miradije Hajra, and their children Xhevdet Hajra, Mimize Hajra and Adeline Hajra), and the attempted murder of Pranvera Hajra, whereby their conviction become final. The judgment states that the defendant committed these offences in a perfidious manner, ambushing the victims and shooting at them from more than one weapon as the victims were driving their car on 20 August 2001 around 23:00 on the road between the villages of Banjica/Baica and Trstenik/Terstenik, Glogovac/Glllogovc municipality. Burim Ramadan, Arben Kiqina and Arsim Ramadani were sentenced to 30 years each and Blerim Kiqina to 10 years in prison.

International Prosecutor Thomas Hickman brought an indictment for the murder of five members of the Hajra family, attempted murder of Pranvera Hajra and several other severe criminal offences committed on 20 August 2001 in the village of Trstenik/Terstenik, Glogovac/Glllogovc municipality, as well as for attempted murder of Hamza Hajra in 1998. The (first-instance) proceedings before the Gnjilane/Gjilan District Court lasted from 4 November 2003 to 7 April 2005, when the judgment of conviction was delivered. The defendants were sentenced as follows: Skender Halilaj, Burim Ramadani, Arben Kiqina and Arsim Ramadani to 30 years, Florim Kiqina to 21 years, Zeqir Kiqina and Blerim Kiqina to 11 years each, Agim Xhylani, Bekim Morina, Adem Kiqina and Muharrem Xhemajli to four years each and Kimeta Krasniqi to six years *in absentia*.

2.9. Gani Hazeraj case

The Prizren District Court held on 20 October 2008 an indictment confirmation session chaired by International Judge Lolita Dumlao. The indictment brought by International Prosecutor Roberta Baldini on 24 July 2008 charges Gani Hazeraj, a.k.a. Gani Thaqi, with participating in a group of people committing criminal offences under Article 320 (1) (2) of the Provisional Criminal Code of Kosovo (PKZK) and incitement to crime under Article 24 of the PKZK

²⁸ Panel members: International Judges Dennis Luebke and John Fields.

The indictment was confirmed in the count 1. – participating in a group of people committing criminal offences under Article 320 (1) of the PKZK. The main hearing did not open in 2008.

2.10. Underage SM case

The Priština/Prishitnë District Court held on 29 October 2008 a session chaired by International Judge Linn Slattengren to confirm the indictment in this case, brought by International Prosecutor Maria Bamieh on 12 August 2008. According to the indictment, SM, acting as co-perpetrator, committed together with other persons who managed to escape, a murder under Article 30 (2) sub-paragraphs 1), 2), 3) and 5) of the Criminal Code of Kosovo (KZK), attempted to commit an aggravated murder under Article 30 (2), sub-paragraphs 1), 2), 3) and 5) of the KZK, in conjunction with Article 19 of the Criminal Code of the Federal Republic of Yugoslavia (KZJ), and participated in a group of persons committing criminal offences under Article 200 (1) of the KZK. SM was under 18 when the aforementioned crimes took place.

The defendant, who has been kept in custody since 25 September 2007, pleaded not guilty. The court rejected the defence attorney's motion to release SM from custody because of the risk of the defendant fleeing.

The indictment against SM was dismissed on 10 November 2008. On 18 November 2008 International Prosecutor Marsha Mitchella filed a new motion to indict with the Juvenile Court in Priština/Prishitnë. The juvenile panel, presided over by International Judge Dennis Luebke,²⁹ opened the main hearing on 3 December 2008. The main hearing is being held in private.

2.11. Gjelosh Krasniqi case

On 24 November 2008, pre-trial Judge of the Priština/Prishitnë District Court Vinod Boolell held a hearing to review detention of Gjelosh Krasniqi in the pre-trial proceedings against Gjelosh Krasniqi, who is reasonably suspected of committing several criminal offences, namely a war crime against the civilian population, murder and attempted murder in 1999, during the armed conflicts in Kosovo.

International Judge Deborah Wilkinson proposed at the hearing that the suspect, who had been arrested on 28 May 2008, remain in custody. The prosecutor orally explained such a proposal stating that there were circumstances indicating that the suspect might flee Kosovo if released, that he has a criminal record abroad which showed that he usually evaded service of sentence and that there was a risk of the suspect committing yet another offence or interfering with the witnesses. The Judge Vinod Boolell decided to extend custody of SM until 24 December 2008. The custody was again extended without scheduling a new hearing.

Krasniqi was indicted on 3 December 2008.

²⁹ Panel members: International Judges Lolita Dumalo and Alain Bloch

3. Monitoring war crimes trials in Montenegro

In 2008, two specialized panels of judges were formed in Montenegro³⁰, at the Bijelo Polje and Podgorica Higher Courts, to hear criminal cases involving organised crime, corruption, war crimes and terrorism. Both panels adjudicate war crime cases. During 2008, four war crimes were investigated and two war crimes indictments were raised.

3.1. *Morinj* case

During 2008, the Podgorica Higher Court conducted an investigation into the conduct of Mladen Govedarica, Zlatka Tarle, Iva Gojnić, Špiro Lučić, Ivo Menzalin and Bora Gligić, former members of the then Yugoslav People's Army (JNA) in crimes against Croatian and Bosniak civilians and prisoners at the Morinj camp, near Kotor. The investigation opened in July 2007 at the motion of the Higher State Prosecutor. During the investigation, which lasted for 13 months, 180 witnesses were interviewed, the majority of whom gave evidence before Croatian County Courts in Dubrovnik, Split, Zagreb, Šibenik, Rijeka, Koprivnica, Sisak and Vukovar, on the basis of a letter rogatory.

Once the investigation was completed, the Senior State Prosecutor on 15 August 2008 indicted all six members of the former JNA who had been under investigation. The indictment alleges that the defendants, contrary to the norms of international law, ordered torturing and tortured 169 Croatian and Bosniak captives and civilians, subjected them to inhuman treatment and violated their bodily integrity from 3 October 1991 to 18 August 1992 at the so-called Centre for reception of prisoners in Morinj, near Kotor. The prisoners were brought to Morinj from the areas of Dubrovnik and Herzegovina. With the exception of Iva Menzalin, who is probably in hiding in Belgrade, all the defendants are kept in custody. By the end of 2008, the main trial had not opened.

3.2. *Kaluđerski Laz* case

On 30 July 2008, Montenegro's special Prosecutor for organized crime, Stojanka Radović, raised an indictment against Predrag Strugar, Momčilo Barjaktarović, Petar Labudović, Aco Knežević, Branislav Radnić, Boro Novaković, Miro Bojović and Radomir Đurašković for a war crime against Albanian civilians committed in April 1999 in Kaluđerski Laz, Rožaje municipality.

The inductees are charged with the killing of 23 Albanian civilians who had fled to the territory of Montenegro from Kosovo.³¹ The killing took place in Kaluđerski Laz during the armed conflicts in the former Yugoslavia, between 18 April and 21 May 1999. By the end of 2008, the trial had not opened.

³⁰ Act to Amend the Law on Courts, "Official Gazette of Montenegro" no. 22/2008 of 2 April 2008.

³¹ Investigation into this case opened in February 2007 before the Higher Court in Bijelo Polje, during which over 50 witnesses were examined.

3.3. Bukovica case

Senior State Prosecutor of Montenegro in December 2007 requested the opening of an investigation into seven former Yugoslav Army reserve members, namely Branimir Borović, Slaviša Svrkota, Radiša Đuković, Radmila Đuković, Slobodan Cvetković, Milorad Brković, Đoko Gogić, who are suspected of having committed a war crime against Bosniak civilians during 1992 and 1993 in the area of Bukovica, Pljevlja municipality. Over 30 witnesses in this case were examined in 2008, either before the Higher Court in Bijelo Polje or before the Cantonal Court in Sarajevo, on the basis of a letter rogatory.

During the investigation, which ended in December 2008, the victims were represented by an HLC attorney. By the end of 2008, the Prosecutor had not raised an indictment in this case.

3.4. Deportations

In February 2006, the Higher Court in Podgorica opened an investigation into the deportation in May 1992 of 83 Bosniaks who had fled to the territory of Montenegro at the outset of the war in BiH. After Montenegrin police turned them over to the authorities of the Republika Srpska, the deported Bosniak refugees were taken to a camp in Foča, after which all trace of them was lost.

The following persons came under investigation on suspicion of committing a war crime against the civilian population: Milisav Marković, former Assistant to the Montenegrin Minister of the Interior, Milorad Ivanović, head of the Herceg Novi Security Centre, Duško Bakrač, state security field operative from Herceg Novi, Milorad Šljivančanin, police commander, Branko Bujić, head of Berane Security Centre, and Damjan Turković, assistant to the head of Berane Security Centre. The investigation ended on 25 June 2008, but the prosecutor had not raised an indictment by the end of 2008. In August 2008, the investigation was expanded to include Radoje Radunović, head of the State Security Office in Herceg Novi and Sreten Glendža, head of the Security Department in Ulcinj.

In December 2008, the Senior State prosecutor filed a proposal to directly indict Božidar Stojović, head of State Security Department in Ulcinj. By the end of 2008, the Special panel of the Podgorica Higher Court had delivered no decision upon this proposal.

4. Monitoring war crimes trials in Bosnia and Herzegovina

4.1. *Kravica* case

On 29 July 2008, a trial chamber of the War Crimes Unit I of the Court of BiH presided over by local Judge Hilmo Vučinić³² passed and publicly pronounced a judgment convicting seven former members of the Republika Srpska Ministry of the Interior (MUP) for genocide against Muslims in Srebrenica (under Article 171 of the BiH Criminal Code) and sentenced them as follows: the principal perpetrator Miloš Stupar to 40 years imprisonment, Milenko Trifunović to 42 years, Aleksandar Radovanović and Brana Džinić to 42 years each, Slobodan Jakovljević and Branislav Medan to 40 years each, and Petar Mitrović to 38 years in prison. Velibor Maksimović, Dragiša Živanović, Milovan Matić and Miladin Stevanović were acquitted of all charges.

The trial of 11 former members of the Republika Srpska MUP for genocide committed in the warehouse of *Kravica* farming cooperative in July 1995 started on 3 February 2006 and lasted for more than two years, holding 121 hearings, in which the court examined 129 witnesses (including seven protected witnesses) and 11 expert witnesses. Several hundreds of pieces of physical evidence were presented, the key pieces of evidence being the statement of the witness for the prosecution, *S4*, and the statement of defendant Petar Mitrović given during investigation. The protected witness *S4* eye-witnessed the incident and described the role of each of the defendants in detail. The Court also heard protected witnesses *S1 and S2*, the only survivors among the captives, who did not positively identify the accused but provided a detailed account of the event that took place in the *Kravica* warehouse.

In 2008 a HLC trial observer monitored 30 hearing days during which the court heard 16 witnesses (two of whom were protected witnesses and three were witnesses of the prosecution who were cross-examined and whose statement were read out and admitted into the evidence instead of being directly examined), five expert witnesses, who presented their statements and expert opinion, and the accused Aleksandar Radovanović. The court admitted into evidence the statements given by Miladin Stevanović and Petar Mitrović during investigation, owing to which this case was split on 21 May 2008 with a view of providing other defendants with an opportunity to interrogate Stevanović and Mitrović, which their defence counsel did not use. The case was split into three separate, parallel cases as follows: the case of Miloš Stupar and other eight co-defendants, the case of Petar Mitrović and the case of Miladin Stevanović. Nevertheless, the trial chamber delivered the sentences in these cases at a joint session.

The essential element in proving genocide is establishing genocidal intent. The defence witnesses were saying that there had not been any previously devised plan to kill the Bosniak prisoners, and that the killing was preceded by an incident. However, defence witnesses in their testimonies indirectly confirmed the counts of the indictment,

³² Trial chamber members: international judges Brilman Paul Melchior and Fisher Shiren Avis

according to which this action of Serbian forces was well organised and systematically done, by clearly stating that they had been transferred to Srebrenica area from other locations at the relevant time. The prosecution managed to prove the existence of the genocidal intent of the defendants, by proving that they did know they would be engaged in the liberation, that is, the capture of Srebrenica, which is to say in the expulsion of Bosniak women and children and the killing of men but did not know what their specific tasks to that effect would be.

Miloš Stupar, as the commander of the 2nd Squad, was charged with command responsibility as well. Defence counsel attempted to prove that, at the relevant time, Stupar was not the commander because he had been replaced by a young officer Rado Čturić prior to the incident, in June 1995. The chamber, however, established, based on the statements of witnesses and physical evidence presented, that Čturić was only a deputy commander for field activities, which did not in any way affect the status of defendant Stupar. The chamber failed to ascertain beyond reasonable doubt that defendant Stupar knew that his men would commit the crime; however, he did subsequently learn about the incident and yet failed to punish the perpetrators. The platoon commander Milenko Trifunović was also indicted on the basis of command responsibility. In this respect, the chamber pointed out that there may not be dual responsibility, since the Trifunović committed the offence he is charged as an immediate perpetrator. However, the fact that at the time of the crime he held that rank was deemed to be an aggravating factor when sentencing him.

There also existed aggravating factors on the side of defendants Brano Džinić and Aleksandar Radovanović, which resulted in the imposing of stiffer sentences for the two. Brano Džinić acted in a cruel and evil manner when throwing grenades at prisoners who were not able to escape and were dying in agonizing suffering, and Radovanović incited and encouraged others to kill. Conversely, certain mitigating circumstances were present in the case of Petar Mitrović, who, although he chose to exercise his right to remain silent during the trial told the truth during investigation, and who suffers from psychological disturbance caused by the experiences he had been through, which is a sign of remorse. As for the defendants who were acquitted, the chamber accepted the argument presented by Maksimović, Živanović and Stevanović in their defence that they were not present at *Kravica* at the relevant time, which was corroborated by defence witnesses and the protected witness *S4*. Milovan Matić was acquitted on the basis of the principle *in dubio pro reo* (in doubt you must decide for the defendant) since his criminal responsibility was not established beyond reasonable doubt.

This trial is important in that it was the first genocide trial held in Bosnia and Herzegovina. If any crime deserves the most severe punishment it is genocide, especially when committed in such a manner as the one at Kravica and causing so many deaths. A protected group of people was murdered in a manner which is gravely injurious to human dignity, after being confined and kept in inhuman conditions. The trial before the Court of BiH was conducted in accordance with all professional and fair trial standards. The court demonstrated its readiness and capability to adjudicate the most severe criminal offences, even in such complicated proceedings, in which the court had to confront and

immediately address a series of procedural issues emerging from the very beginning of the trial. The trial was conducted under the applicable Criminal Code of BiH but had to be interrupted on several occasions because the defendants went on hunger strike demanding to be tried under the Criminal Code of the Socialist Federative Republic of Yugoslavia, which was in effect at the time the crime was committed. Since the abolition of the death penalty, the maximum sentence envisaged by the KZ SFRJ for this type of offence is 20 years of imprisonment, in contrast to the lengthy imprisonment of up to 45 years as prescribed by the KZ BiH. The first-instance trial chamber ruled in a responsible way without shifting the burden to the higher instance court, and sentenced the defendants to long prison terms in accordance with the BiH Constitutional Court decision on application of the KZ BiH of 2003.

4.2. Rašević and Todović case

On 28 February 2008, a panel of judges of the BiH Court presided over by Judge Hilmo Vučinić, convicted Mitar Rašević and Savo Todović of a crime against humanity committed between April 1992 and October 1994 at the *Foča* correctional facility in Foča. Rašević and Todović were sentenced to eight and a half years and twelve and a half years prison terms respectively.

On the basis of a decision of an ICTY trial chamber, the case against Mitar Rašević and Savo Todović was referred to the War Crimes Unit of the Prosecutor's Office of BiH. Pursuant to the BiH Criminal Procedure Code (ZKPBiH) and the Law on Transfer of Cases, the Prosecutor's Office of BiH charged them, in an amended indictment, with a crime against humanity under Article 172 (1) subparagraph h) of the KZBiH. Rašević and Todović had been charged with persecutions, murder, torture, imprisonment, and enslavement of Bosniaks and other non-Serbs imprisoned in the *KPD Foča* detention facility in Foča between April 1992 and October 1994. According to the indictment, Rašević was the commander of the *KPD* guards and Todović was a member of *KPD* management and *KPD* deputy warden from April 1992 to August 1993. The indictment also states that at least 700 non-Serbs were illegally detained in the *KPD Foča*, which had all of the characteristics of a detention camp. Mitar Rašević was a supervisor of at least 37 guards, exercising effective control over them, and Savo Todović, being the second in command in the prison hierarchy, had similar powers and duties as the warden.

This case was referred to the Court of BiH by ICTY under the rule *11bis*. The Court of BiH approved the amended indictment and opened the main hearing on 6 April 2007. During the 27 trial days, the court heard 42 witnesses, including 37 protected witnesses, and 2 expert witnesses. Most of the hearings were open to public with only seven hearings having been held *in camera*, including those at which protection measures for witnesses were discussed and the hearing at which defendant Savo Todović gave evidence. Most of the prosecution and defence witnesses were given pseudonyms and testified under certain protection measures including withholding of their identity.

In 2008, six hearings were held, during which the court heard three defence witnesses, two of whom had the status of protected witnesses. The court also heard defendant Todović in a hearing that was partially conducted *in camera*.

The trial was conducted in line with fair trial standards. However, HLC believes that the punishments are not commensurate with the severity of the crime and that justice has not been done to the victims. The trial chamber established some mitigating circumstances in favour of defendant Rašević, as a result of which the court sentenced him to a more lenient sentence, lesser than the minimum sentence prescribed by law for the criminal offence in question. The trial chamber failed to provide reasoning for imposing the milder sentence and mitigating circumstances established, but it appears to be a consequence of the favourable attitude towards Rašević of the prosecution and all the witnesses, who all stated his humaneness as one of the reasons why they are still alive and able to testify at the trial.

Besides Milorad Krnojelc, who was sentenced by ICTY to 15 years imprisonment in his capacity of warden of *Foča* correctional facility, Rašević and Todović are the only persons convicted of these crimes.

4.3. *Lašvanska dolina* case

On 29 April 2008, a trial chamber of the War Crimes Unit of the BiH Court passed a first-instance judgement finding defendant Paško Ljubičić guilty and sentenced him to 10 years of imprisonment. The judgment came as a result of a guilty plea agreement between the Prosecutor's Office of BiH and defendant Paško Ljubičić. In the amended indictment, which was agreed upon in the guilty plea agreement, there remained only one charge, that of a war crime against the civilian population under Article 173 (1) sub-paragraphs a) and f) of the Criminal Code of BiH (KZ BiH).

Defendant Ljubičić pleads guilty as charged and in Article 27 of the plea agreement states as follows: *During the attack of 16 April '93, Croatian Defence Council (HVO) soldiers, including the members of the 4th Military Police Battalion under my command, were using, among other things, grenades, explosive and incendiary ammunition to attack targets in Ahmići. Their targets were military facilities, houses, religious sites, livestock and people.*

Since the opening of the main hearing in this case on 11 May 2007, 29 trial days were held, and 27 witnesses of the prosecution were heard, 12 of whom were protected witnesses whose identity was withheld. On two occasions the public was excluded from hearings.

During 2008 six hearings took place. Although the defence council had announced the hearing of three witnesses, the defendant reached the guilty plea agreement with the Prosecutor's Office of BiH on 21 April 2008. The panel approved the agreement and found the defendant guilty. The defendant was released from custody until being sent to serve his 10- year prison term.

The defendant's confession seemed to lack candour; hence the victims of this crime did not get adequate satisfaction in this case.

4.4. *Zijad Kurtović* case

A panel of judges of the BiH Court's War Crimes Unit I delivered a judgement finding defendant Zijad Kurtović guilty of a war crime against the civilian population, a war crime against prisoners of war and violation of the laws or customs of war and sentenced him to a single sentence of 11 years in prison.

Zijad Kurtović was found guilty because he, as the commander of a Military Police platoon of the *Drežnica* Independent Battalion operating as part of the BiH Army, tortured and mistreated 20 Croatian prisoners, inflicting physical and mental harm on them, in the Roman Catholic All Saints Church in the second half of 1993. As stated in the indictment, the defendant during the same period issued orders to members of the Civil Defence to use imprisoned Croatian civilians and prisoners of war as human shields in the combat lines between the Army of BiH and the Croatian Defence Council (HVO).

The trial started on 27 August 2007. By the end of the main trial, the court held 22 hearings and heard 32 witnesses, including two protected witnesses. During 2008, 11 trial days were held in which the court heard 15 defence witnesses, who tried to provide the defendants with an alibi for the early October 1993 period. The court also heard the defendant, who denied being guilty.

Even though this trial was conducted in a highly professional manner and in accordance with the fair trial standards, the sentence imposed cannot be considered just as it is not proportionate to the seriousness of the crimes involved, the degree of the defendant's criminal responsibility, his intent and the hatred he expressed, as well as his readiness to repeat similar offences in the future. Also, the court's decision not to keep in custody a defendant charged with war crimes against the civilian population and prisoners of war and a grave violation of the laws or customs of war was quite inappropriate.

5. Monitoring war crimes trials in Croatia

5.1. *Cerna* case

On 14 February 2008 the Vukovar County Court convicted six former members of a reconnaissance and sabotage company of the Croatian Defence Forces (HOS) of robbery and murder of the Olujić married couple and their two minor children in Cerna in February 1992, and sentenced them as follows: Tomislav Madi to 20 years imprisonment, Mario Jurić to twelve years imprisonment, Zoran Poštić to eight years imprisonment, Davor Lazić to seven years imprisonment, and Mijo Starčević to ten year imprisonment. The indictment in this case was brought on 29 December 2006 and amended on 8 February 2008. The amended indictment charged the defendants with a war crime against the civilian population under Article 120 (1) of the Basic Criminal Code of the Republic of Croatia (OKZ HR).

The main trial before the panel of judges presided by Judge Ante Zeljko³³ commenced on 28 March 2007, after which a total of 40 hearings took place, with 58 witnesses taking the stand and eight expert witnesses. In 2008, the court held six hearings examining one witness, and ordered that the body of late Stojan Vujnović, a.k.a. “Srbin” be exhumed and taken to the Forensic Medicine Institute in Zagreb, in order to get Vujnović’ DNA samples and have them compared with those extracted from a *Milde Sorte* cigarette but found at the crime scene.

Even though this trial may seem efficient judging by the vast amount of evidence presented, it was not conducted swiftly enough. The reasons for this are that three of the defendants (Madi, Jurić and Starčević) did not present their defence until the main trial, that they changed defence attorneys owing to which new evidence had to be presented and that several already scheduled hearings had to be postponed. On the other hand, many pieces of evidence could have been presented as early as in investigation (DNA matching, exhumations and the like) instead at the main trial. Despite these shortcomings, it can be concluded that this trial was conducted professionally and in accordance with international fair trial standards, and that the defendants received punishments consistent with the law.

5.2. *Medački džep* (Medak Pocket) case

On 30 May 2008, the Zagreb County Court publicly handed down its judgment in the *Medak Pocket* case. Defendant Rahim Ademi was acquitted of all the charges; defendant Mirko Norac while exonerated of ordering an indiscriminate attack resulting in the death of civilians and destruction of their property, was found guilty on two other counts of the indictment – failing to prevent, hence supporting and encouraging the killing of civilians and the looting of their property and the killing and torturing of prisoners of war. The court sentenced Norac to two five-year sentences for the aforementioned two offences, which resulted in one single sentence of seven years in prison.

³³ Panel members: Judges Jadranka Kurbel and Branka Ratkajec-Čović.

The main hearing before the chamber presided by Judge Marin Mrčela³⁴ started on 18 June 2007. There were a total of 77 hearings held, during which 66 lay witnesses and two expert witnesses were examined. During 2008, the court held 31 hearings examining 33 witnesses (12 of whom were protected witnesses) and two expert witnesses before delivering the judgement.

The trial of two former Croatian Generals, Rahim Ademi and Mirko Norac, accused of crimes against civilians at the Medak Pocket was conducted in a highly professional manner in terms of pace and content. (This case was referred to the Croatian judiciary by the ICTY). With respect to the killings of numerous civilians who perished in the zone controlled by the special police, Ademi and Norac were found not guilty, because the prosecution failed to prove that the special police was under their command. The court on its part failed to provide in the judgment a convincing explanation as to why Ademi was completely cleared of responsibility if it was undoubtedly him who translated orally issued orders of the Croatian Army Headquarters into written orders, the order to launch the attack in particular, and issued several orders at his own initiative. The court neglected the fact that Ademi was present throughout the action and after it in the capacity of the effective commander of the corps, executing and issuing orders and being aware of, and consenting to, the events taking place. The court did not accept that defendant Norac was responsible for the indiscriminate attack and excessive shelling, even though several pieces of evidence clearly indicated throughout the proceedings that a large quantity of artillery ammunition had been used and that Norac in person ordered using four times as much ammunition as usual. The court came to such a conclusion in its judgment partially due to the prosecutor's failure to amend the indictment so that numerous victims, who, according to the indictment, died as a result of excessive shelling, be deemed as having been killed directly by Croatian soldiers in the aftermath of the operation, as indicated by evidence presented. This is why these victims were left out of the judgement. Defendant Norac was sentenced for the events that took place at Medak Pocket between 10 and 17 September 1993, not for the crimes that occurred on the very day of the attack, 9 September 1993. This is because the chamber was of the opinion that a person who fails to prevent crimes cannot be held responsible for the initial crimes but only for those which followed afterwards, as he will be deemed to have supported and encouraged them by his indolence. This is a nonsense, since Norac was charged with failing to prevent criminal offences and failure to punish the perpetrators, from the first to the last day of the operation. The punishment Norac received is the minimum punishment prescribed for this type of criminal offence. The president of the chamber justified the sentence by stating that the defendant did not order the commission of the crimes himself but failed to prevent them, that he was decorated, that he was *very* young at the time of the crimes (he was 26) and that a lot of time had passed since the event. The chamber conspicuously failed to take sufficient account of the aggravating circumstances and sentenced him to minimum sentences despite the grave consequences of the offence in question, the fact that Norac had already been convicted by a final judgment for a war crime and the fact there was a pattern in his criminal behaviour.

³⁴ Chamber members: Judges Siniša Pleše and Jasna Pavičić.

The prosecution's conduct draws even more criticism. On taking over the indictment from the ICTY, the prosecution failed to clarify not only the role of the accused but also of other persons involved as commanders. This refers primarily to Admiral Davor Domazet Loša, special police Colonel Željko Sačić and General Mladen Markač. Instead, the Office of the Prosecutor brought direct indictments in which it insisted that the *Džep 93 (Pocket 93)* was a legitimate military operation, on which basis it mitigated the severity of the offence committed, no longer charging Ademi and Norac as order givers but with failure to take required action, i.e. failure to prevent the crime. This ran counter to the statement of some witnesses, HV officers, who explicitly said that the operation was aimed at expelling and intimidating the Serbian population, and the fact that anti-tank mines, used to destruct houses, being a closely watched resource could not possibly have been employed except on orders from top army officials. The prosecutor in this case, Antun Kvakon, acted passively in a number of situations (putting forward evidence, asking questions, filing objections etc.), letting the two defence counsels have the initiative probably with a view to winning the goal of the prosecution by taking advantage of their mutual antagonism. The prosecution expressed no interest in identifying and punishing other commanders and direct perpetrators in the Medak Pocket crime, in spite of evidence pointing to certain persons, members of certain military formations. There is a feeling that the Croatian judiciary prosecuted this case reluctantly, and with no genuine willingness to resolve the case and justly punish the perpetrators.

5.3. Glavaš case

The Osijek County State Attorney's Office (ŽDO) raised an indictment for a war crime against the civilian population against Branimir Glavaš, Ivica Krnjak, Gordana Getoš Magdić, Mirko Sivić, Dino Kontić, Tihomir Valentić and Zdravko Dragić in connection with the murder of 10 and attempted murder of one person of Serbian nationality, in November-December 1991. Branimir Glavaš was also charged by the Zagreb ŽDO with the same offence for ordering and failing to prevent murder, torture and other forms of inhumane treatment of several civilians in Osijek between July and September 1991. The Zagreb County Court conducted a single trial on both indictments, which started on 15 October 2007. Owing to frequent health problems suffered by defendant Mirko Sivić, the court decided on 5 June 2008 to try him separately.

The panel of judges was chaired by Judge Željko Horvatić.³⁵ A total of 50 hearings were held, and 37 lay witnesses and three expert witnesses were examined. All lay and expert witnesses were heard in 2008, during 38 hearings held in that year.

The court faced a challenging situation at the very onset of the trial, as defendant Branimir Glavaš went on a hunger strike on 8 November 2007, which triggered media manipulations aimed at portraying Glavaš as the victim. The defendant himself on various occasions made public appearances and even taped several video messages intended for the voters in the then forthcoming elections, in violation of the rules of the pre-trial detention facility he was confined at. Upon the constitution of the Croatian

³⁵

Panel members: Judges Rajka Tomerlin Almer and Sonja Brešković Balent.

Parliament in early 2008, Glavaš gained legislative immunity from prosecution and detention, after which the Parliamentary committee in charge of mandates and immunity affairs consented to continuing the trial of Glavaš but did not consent to his being kept in custody. Glavaš's detention order was cancelled and he was released on 11 January 2008. Several other defendants were also released from detention on later dates, because the Constitutional Court of Croatia held, contrary to the opinion of the Croatian Supreme Court, that defendants may not be kept in detention for more than two years since they are entitled to a trial within a reasonable time.

The presiding judge, Željko Horvatić in managing the case did not fully exercise his statutory powers to maintain the adequate level of procedural discipline in the course of the main hearing, which may have an impact on the outcome of the trial. Besides, on several occasions he allowed the defendants to give statements concerning some facts set out in documents other than those included in the case file, which later turned out to be labelled confidential. The court proved incapable of coping with the tactical manipulations of the defence counsels, who succeeded in their plan to unduly delay this trial and have it re-opened for a second time.³⁶

That said, it comes as no surprise that witnesses from outside Croatia decline to testify in this case, thus making chances of establishing the truth about the 1991 events in Osijek and ascertaining the role played by the defendants even slimmer.

5.4. Gudelj case

On 7 July 2008, the Osijek County Court delivered and made public the judgement finding Antun Gudelj guilty of three murders and one attempted murder and sentenced him to 20 years imprisonment for each of the murders and 10 years imprisonment for the attempted murder, combined into a single sentence of 20 years in prison covering all guilty counts.

On 1 July 1991, Antun Gudelj, at the time a member of Croatian police reserve at a police checkpoint near Tenja, sprayed a car moving from Osijek towards Tenja carrying members of a negotiating team with some thirty bullets from a machine-gun, killing the then head of Osijek police department, Josip Reihl Kir, president the Osijek Executive Council, Goran Zobundžija, and Osijek municipal councillor, Milan Knežević, and heavily wounding the president of the Tenja local community, Mirko Tubić. Shortly afterwards, Antun Gudelj fled to Australia (he held both Croatian and Australian citizenship). In 1994 he was sentenced *in absentia* to twenty years in prison but the sentenced was annulled in 1996 when he was extradited to Croatia, as he became available to stand a re-trial. His defence counsel then moved that the prosecution against his client be discontinued invoking the Amnesty Law. The Osijek County Court dismissed the motion, but the Supreme Court of Croatia (VSH) reversed the lower court's decision by granting the motion for amnesty, suspending criminal prosecution, and lifting his detention order. With this Supreme Court ruling the Gudelj case was conclusively

³⁶ On 5 November 2007, only a month after opening, the main hearing was re-opened because of a panel member retirement, a fact that should be taken into account beforehand.

decided. However, in response to a request of the legal representative of the injured party Jadranka Reihl-Kir, Chief State Attorney of the Republic of Croatia challenged the legality of the decision granting amnesty to the defendant. The Criminal Law Division of the VSH established that the request for the review of legality is well-founded and that the law had been breached in favour of the defendant. The injured party, through her legal representative, filed a constitutional complaint with the Constitutional Court of Croatia (USH). The Constitutional Court rendered a decision on 14 March 2001 granting the constitutional complaint and rescinding the VSH ruling to discontinue the proceedings against Gudelj, and sent the case to the Supreme Court for a new ruling. Acting upon the USH ruling, the Supreme Court dismissed Gudelj's appeal and upheld the decision of the Osijek County Court to reject the motion for amnesty. Only then were conditions created for Antun Gudelj to be called to account for the criminal offences he committed. He was again extradited from Australia and detained on 15 July 2007.

The trial started on 9 October 2007. There were a total of 15 trial days, during which the court heard 24 witnesses (or had their affidavits read out). In 2008, 10 trial days took place examining 10 witnesses and reading four affidavits which were admitted as evidence instead of witnesses testifying in person.

The criminal proceedings were conducted properly and in accordance with the law. They resulted in the defendant being given the maximum sentence prescribed for such offence by the criminal code effective at the time of the commission of the crime. The aggravating factors which made the court impose the most severe sentence were that the victim Josip Reihl Kir was killed while acting in his official capacity, in the line of duty, and that the attempted murder was motivated by ruthless revenge. The court correctly concluded that the defendant did not commit the offence in an insidious manner, as charged by the prosecutor.

Despite such a severe sentence, it appears the trial would not have been carried through if the injured party, Jadranka Reihl Kir, and her legal representative had not embarked on a long hard legal struggle for the truth. In a way, they were forced to assume the role of the prosecutor in the case but also risk becoming the target of violence, since they had already been frequently attacked by the public. By taking part in the proceedings, they tried to shed more light on the entire event and the strange coincidence that Antun Gudelj killed Josip Reihl Kir, when the victim himself and many government officials knew that his murder was being planned. They also tried to discover when Josip Reihl Kir's transfer to Zagreb was planned, and who among the Croatian Democratic Union (HDZ) officials might have ordered his murder. The court accepted the fact that defendant Gudelj committed the murders enraged by the fact that Croats were negotiating with the Serbs from Tenja, after having heard that his father had been killed in that village and hanged from the orthodox church tower, that his mother had been raped and killed, and that their house had been demolished in an explosion. This information later proved false, but the question remains whether these rumours motivated him to kill. He was at the police checkpoint, located only 500 meters from his parents' house, from where he could have easily checked their veracity, since the telephone lines were still functioning. The court could not provide answers to these questions without the prosecutor taking the initiative,

because the court was bound to act only within the limits set by the indictment. It should be mentioned that the only hearing the injured party and her legal representative did not attend, apparently in protest, was when the sentence was pronounced.