

Transitional Justice in Post-Yugoslav Countries

2007 Report



Humanitarian Law Center
Documentation and Memory



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Summary

This report is the result of systematic monitoring of initiatives in the field of transitional justice in the countries which came into existence following the disintegration of the former Yugoslavia. The monitoring has been carried out by human rights organisations, the Humanitarian Law Center (Belgrade) and Documenta (Zagreb). The disintegration of the Yugoslav federation was marked by three high-intensity armed conflicts – in Croatia (1991-95), Bosnia and Herzegovina (1992-95) and Kosovo (1998-99), where at least 130,000 people lost their lives, millions were forced to flee their homes, while hundreds of thousands of houses were destroyed. In addition, shorter armed conflicts with relatively small numbers of victims occurred in Slovenia (June-July 1991) and Macedonia (January-November 2001). Over 1,300 Serbs, Roma and Albanians, labelled by the Albanian public as Serb collaborators, were murdered in the aftermath of the armed conflict and the deployment of international troops in Kosovo, in the period between 12 June 1999 and late 2000. The fate of around 17,000 missing persons in the region is still unknown.

The transition from a state of armed conflict and state repression to a period of peace and democratic institution building requires that these societies take a stance with respect to mass human rights violations from the recent past. A set of measures, whose fundamental elements are the establishment and disclosure of the facts, trials, reparations and institutional reforms, undertaken by governments and civil society for the purpose of facing up to these human

rights violations makes up the complex of transitional justice.

In 2007, in Bosnia and Herzegovina and, to a lesser degree, in Croatia, a positive step towards the strengthening of capacities for war crimes trial was made; in Serbia, activities related to the prosecution of war crimes remained at the same level as previous years, whilst in Montenegro and Kosovo they were insignificant. In none of the post-Yugoslav countries did the governments show any interest in setting up state truth commissions or other bodies to establish the facts about grave violations of human rights in the armed conflicts in the former Yugoslavia, nor in the reforms whose objective would be the removal from institutions of individuals who had violated human rights before, during or after the armed conflicts. Obtaining reparations on the basis of statute or by way of court proceedings remains a barely attainable goal for many categories of victims.

War Crimes Trials

War crimes trials in 2007, as previously, is the segment of transitional justice which drew the most public attention in post-Yugoslav countries, and was the segment where the governments were particularly enterprising. In Croatia, 35 trials in total were held before district courts during 2007, which constitutes an increase by a third in comparison to the previous year. Fifteen first-instance trials ended with non-final judgments. Earlier ethnically motivated bias in the work of investigative and prosecutorial organs was also apparent in 2007 as many accused Serbs – more than half of them – were tried *in absentia*. In addition,

6 | it was only Serbs that were put on trial for offences that did not involve death as a consequence (plunder, destruction of property, etc), whereas Croats were not charged with such offences. Courts in Bosnia and Herzegovina passed 29 first-instance judgments (six more than in 2006) and there were 19 trials underway at the end of the year. The Special Department for War Crimes of the Prosecutor's Office of Bosnia and Herzegovina as well as the War Crimes Chamber of the State Court of Bosnia and Herzegovina increasingly strengthened their capacities to prosecute war crimes so that the War Crimes Chamber rendered ten judgments over the course of the year, while nine trials were underway at the end of the year. On the other hand, the work of ordinary courts and prosecutors' offices at the local level was limited by their insufficient capacities to successfully prosecute war crimes. The ethnic composition of the accused before the War Crimes Chamber and local courts was highly varied which might suggest an increased willingness of Bosnia and Herzegovina's judiciary to prosecute war crimes irrespective of the ethnic background of perpetrators. In Serbia, activities pertaining to the prosecution of war crimes remained at the same level as previous years, i.e. relatively few trials (six) were held and only two first-instance judgments were pronounced. In Kosovo, only two war crimes trials were held, and none in Montenegro in 2007. However, investigative organs were conducting several inquiries, which were closely followed by the Montenegrin media and public at large, so that it seemed in late 2007 that charges would be brought in those cases in the forthcoming period.

In all parts of the former Yugoslavia, with the exception of Montenegro, special structures for the prosecution of war crimes were established in the past decade, and a positive effect of their work was conspicuous, particularly in terms of a higher level of professionalism and more serious approach to war crimes cases than before. Cooperation among the prosecutors' offices from Bosnia and Herzegovina, Croatia and Serbia continued, and a useful channel of communication was established between the prosecutors' offices of Croatia and Montenegro. However, most problems which limited the effectiveness of efforts in previous years to bring to justice those responsible for war crimes were not overcome. The support of political structures for the prosecution of war crimes suspects regardless of their nationality was inadequate.

Governments failed to create the conditions in which witnesses would feel free to help establish the truth about war crimes and the roles of suspects by their comprehensive and truthful statements. The problem of impunity remains unresolved regarding many perpetrators in Bosnia and Herzegovina who now live, and have obtained citizenships, in Serbia and Croatia, where the respective constitutions or laws guarantee non-extradition of the nationals, whereas Bosnia and Herzegovina is not willing to transfer trials of these persons to the courts in Croatia and Serbia.

Truth-seeking and Truth-telling

There were no serious discussions in any of the post-Yugoslav countries in 2007 about the possible formation of truth commissions. No official body exists as yet in the post-Yugoslav countries which would systematically establish the facts at the level of individual states or several states about violations of human rights and humanitarian law in the past. The Commission for Establishing Facts on Sufferings of Serbs, Croats, Bosniaks, Jews and others in 1992-1995 in Sarajevo, which had been formed by the decision of the Council of Ministers of Bosnia and Herzegovina in June 2006, failed to make any progress in data collection in 2007, which was primarily due to disagreements on its mandate among commission members. In parliamentary discussions as well as in textbooks in Serbia, Croatia and Bosnia and Herzegovina, portrayal of one's own nation as the only victims prevailed. In late 2007, there were about 17,000 unresolved petitions in the region to find missing persons. The number of persons that were identified over the course of the year in Croatia, Bosnia and Herzegovina and Kosovo decreased when compared to previous years, which heightened anxiety among associations of families of missing persons that the process of finding posthumous remains would take a very long time or largely would not even be completed.

The forthcoming termination of the work of the International Criminal Tribunal for Former Yugoslavia (ICTY), the objective limitations of national courts in the prosecution of war crimes (drawn-out trials, mortality of perpetrators and witnesses), the downplaying of crimes against others and the slowness in the process of determining the fate of missing persons, all prompted the Humanitarian Law Center, Documenta and Research and Documentation Center

(Sarajevo) to launch an initiative in May 2006 which is intended to result in the formation of an official commission for establishing the facts at the regional level on war crimes and violations of human rights committed during the armed conflicts in the 1990s in the former Yugoslavia. These organisations gradually and carefully created a space over the course of 2006 and 2007 for the strengthening of support for the initiative within civil society before the transition to the final phase, when they will call on the governments of post-Yugoslav countries to put their authority behind the formation of the regional commission.

Institutional Reforms

Neither “lustration” nor wider institutional reform whose purpose would be to reduce the possibility for state organs to violate human rights in the future were carried out in any of the parts of the former Yugoslavia during 2007.¹ The only comprehensive reforms of institutions undertaken in a country on the territory of the former Yugoslavia, whose stated objective was to remove from positions of power the individuals responsible for human rights violations in the 1990s were police and judicial reforms in Bosnia and Herzegovina implemented in the periods between 1999 and 2002, and from 2002 until 2004, respectively. The 2003 Serbian Law on Responsibility for Human Rights Violations remained a dead letter, and the belief in the country that time for “lustration” had passed was strengthened. In Croatia and Montenegro, key political groups did not demand similar reforms after the war since the political parties that had been in power in the 1990s continued to dominate the political life or because there was a widespread belief among the public that actions of the then governments were generally correct, hence there was no reason for a detailed inquiry into the manner in which some government officials acted from the viewpoint of human rights. The opposition Liberal Party submitted a lustration bill to the National Assembly of Montenegro on 16 March 2007,

but the ruling Democratic Party of Socialists, which had been continuously in power since the early 1990s, opposed the passage of this law. In Kosovo, the existence of context for possible application of lustration measures is questionable, because representatives of legislative, executive, judicial and administrative branches of power in the 1990s for the most part left Kosovo after 1999, or no longer participate for other reasons in the governing structures.

Reparations

In the course of 2007, the following types of reparations were implemented in post-Yugoslav countries: compensation (on the basis of statute and court rulings); restitution (repossession and reconstruction of property); determining the fate of missing persons; establishing the facts and their public disclosure; introduction of facts on violations of rights into educational materials; and erecting of memorials.

Compensation and restitution have been provided in the past years mostly for members of majority groups, i.e. the victims of war on the victorious side, while this process is still underway for members of minority groups, and in some places it is at the very beginning. Memorials are put up almost exclusively in memory of victims – the members of the majority community. In the process of drafting and application of laws on reparations in all post-Yugoslav countries, military personnel, i.e. their family members, are privileged with respect to civilians. In all parts of the former Yugoslavia, a number of civilian victims of war and persons whose human rights were gravely violated in the past period endeavoured to obtain compensation for damages in court. The number of plaintiffs was relatively small due to uncertainty as regards the possibility to win the case, the non-existence of efficient mechanisms of free legal aid and a lack of legal provisions which would exempt the victims from payment of court fees and costs of the proceedings if they lost the case.

1. The term *lustration* has entered general usage in all parts of former Yugoslavia, although the initiatives carried out in Bosnia and Herzegovina, as well as the law adopted in Serbia, are based on the principle of determining *individual* responsibility for human rights violations of candidates for public offices of positions with public powers. This model corresponds to the concept of *vetting*, not *lustration*.

I. War Crimes Trials

War crimes trials are the most important form of transitional justice applied in connection to violations of human rights in the former Yugoslavia during the 1990s. In the initial post-war period, the International Criminal Tribunal for the former Yugoslavia (hereinafter ICTY) was the chief duty bearer for the prosecution of war crimes in the region. In 2007, a large number of trials were held before the ICTY, but given the exit strategy adopted in 2003 by the United Nations Security Council according to which the ICTY should complete its work by 2010, trials in national courts in post-Yugoslav countries gathered momentum in terms of both their importance and intensity. For the most part these trials ceased to serve as an instrument used by the states against members of military, police or paramilitary formations of the other warring party, as a rule from the other ethnic group, which was the case in the first years following the armed conflicts in Croatia, Bosnia and Herzegovina, and Kosovo. Instead, under pressure exerted by the international community, local human rights organisations and independent media, members of the majority community in the given area were increasingly often put in the dock. Formation of special war crimes prosecutors' offices and special war crimes chambers or courts for these types of cases in the period from 2003 until 2005 led to an improvement in the investigations conducted and war crimes trials themselves.

In 2007, the positive trend from previous years continued, primarily with respect to a higher level of professionalism and a more serious approach to war crimes cases than previously. Cooperation among prosecutors' offices from Bosnia and Herzegovina, Croatia and Serbia continued, while useful communication between Croatian and Montenegrin prosecutors' offices was also established. On the other hand, some major problems in the prosecution of war crimes from the previous period were not resolved. Governments failed to create the conditions in which witnesses would feel free to help establish

the truth about war crimes through their comprehensive and truthful statements. The problem of impunity remains unresolved regarding many perpetrators in Bosnia and Herzegovina who now live, and have obtained citizenship, in either Serbia or Croatia, where the respective constitutions or laws guarantee the non-extradition of their citizens, whereas Bosnia and Herzegovina is not willing to transfer trials of these persons to the courts in Croatia and Serbia. In Serbia and Kosovo, the number of war crimes trials is insufficient, while in Montenegro no single trial for war crimes had been held since 2002.

Croatia

According to the data obtained from district courts during 2007, which are listed in the report compiled by leading Croatian human rights organisations, 35 first instance war crimes trials were held before district courts in the Republic of Croatia.² About a third of the cases (ten) were retrials of which in five cases the first-instance proceedings were being repeated for the third time.³ Two cases were retried at the request of the convicted persons who had been sentenced *in absentia*; the other retrials were ordered by the Supreme Court, mostly on account of the incomplete statement of facts.

The bias that has for years characterized the judiciary of the Republic of Croatia in war crimes trials primarily concerns the failure in some instances of trials of members of Serbian paramilitary formations to meet the standards of fair proceedings, as well as the application of unequal criteria, depending on ethnic background of suspects and victims, when deciding which offences will be prosecuted as war crimes. A large number of members of Serbian paramilitary formations (about 400) have been tried *in absentia*, whereas the investigation and prosecution of crimes committed by members of Croatian units began after almost a decade-long delay. In 2007 as well, according to the OSCE report, accused Croats were put on trial only for crimes resulting in victims' deaths, while

2. Center for Peace, Non-Violence and Human Rights Osijek, in collaboration with Documenta, Civil Board for Human Rights and Croatian Helsinki Committee, *Monitoring of War Crimes Trials – 2007 Report* (Osijek, 2007).

3. Reference is to the following cases: the crime in the village of Smoljanac – defendant Nikola Cvjetičanin; the crime on Korana Bridge – defendant Mihajlo Hrastov; the crime in Borovo Commerce – defendant Vlade Tepavac; the crime in Lovinac – the accused were members of Serb paramilitary formations; and the crime in Bjelovar – defendants were members of Croatian police force.

Serbs were also tried for lighter offences such as plunder and destruction of property.⁴

In 2007, there were war crimes proceedings against 92 defendants, of whom 71 were members of Serbian paramilitary and para-police forces, and 21 were members of Croatian forces. In 7 cases in total, the proceedings were conducted *in absentia*. As many as 40 defendants, the members of Serbian paramilitary and para-police forces, or 43.7% of all the accused, were not present at hearings. Fifteen trials of 33 defendants in total ended with first instance judgments. Twelve members of the Croatian Army and police and 3 members of Serbian paramilitary and para-police forces, respectively, were acquitted of all charges. Courts returned guilty verdicts for a total of 6 members of the army and police, and 12 members of Serbian forces.⁵

With several notable exceptions, the majority of war crimes trials during 2007 which were monitored by the coalition of nongovernmental organisations, according to the coalition's observers, met fair trial standards.⁶ Despite pressure exerted by some parts of the public, stiff political resistance and obstructions within state institutions, crimes committed by members of Croatian units were also prosecuted.⁷ Problems which the observers noted pertain to the following:

- multiple retrials of first-instance proceedings due to judgments brought on the basis of incomplete statement of facts;
- insufficient witness support, and insufficient visibility and involvement of victims in the criminal proceedings;
- a significant number of crimes committed have neither been investigated nor prosecuted;
- negative consequences of the policy of trials of the accused *in absentia* in the early 1990s.

All county courts in Croatia have jurisdiction to process war crimes cases, and in 2007, the proceedings were conducted before 11 courts.⁸ All the courts lack appropriate personnel and technical capacities for work on the most difficult criminal cases. In addition, they are exposed to pressure from the local community. Therefore, in the past decade, there have been multiple retrials because verdicts were issued on the basis of insufficiently determined statements of facts. In 2007, the Supreme Court overturned more than half first-instance judgments on appeal and ordered retrials.⁹

When the circumstances of the criminal offence in question and the needs of criminal proceedings so require, the Croatian judiciary allows the transfer of a case from a court with territorial jurisdiction to any of the four county courts in the largest Croatian cities: Zagreb, Osijek, Rijeka and Split.¹⁰ In practice,

4. Organisation for Security and Cooperation in Europe - Office in Zagreb, *Background Report: War Crimes Proceedings 2007*, 31 July 2008, pp. 3 and 11.

5. Center for Peace, Non-Violence and Human Rights Osijek, et al., *Monitoring of War Crimes Trials – 2007 Report*, pp. 19-21.

6. The trial *in absentia* of Predrag Gužvić, which was completed in the County Court in Požega, was singled out by Croatian human rights organisations as a particularly problematic example among the trials that they monitored in 2007. Duty defence counsel, a woman lawyer from Požega, left the courtroom during the presentation of evidence, without prior approval of the Trial Chamber Chairman, because of another main hearing taking place simultaneously in the Municipal Court in Požega. The main hearing resumed although the Trial Chamber Chairman should have adjourned it under article 306 of the Criminal Procedure Code. On the same day, following the completion of the presentation of evidence, the court issued its verdict. Center for Peace, Non-Violence and Human Rights Osijek, in collaboration with Documenta, Civil Board for Human Rights and Croatian Helsinki Committee, *Monitoring of War Crimes Trials – 2007 Report* (Osijek, 2007), p. 8.

7. In 2007, the Croatian judiciary tried members of Croatian units for the crimes committed in Cerna, Čepin, Paulin Dvoru, Osijek, Bjelovar and so-called Medački džep (Medak Pocket).

8. County courts which prosecuted war crimes cases were as follows: Osijek, Vukovar, Karlovac, Rijeka, Šibenik, Bjelovar, Sisak, Požega, Gospić, Split and Zagreb.

9. Organisation for Security and Cooperation in Europe, Office in Zagreb, *Background Report: War Crimes Proceedings 2007*, 31 July 2008, p. 2.

10. The Law on Application of the Statute of the International Criminal Court and Prosecution of Criminal Offences against International War and Humanitarian Law, *Official Gazette*, no. 175/2003, 4 November 2003, art. 12.

this legal option was rarely used so that in 2007 only the County Court in Zagreb operated as a “special” war crimes court.¹¹ Due to possible influence on victims, the Supreme Court approved in 2005 the transfer of investigation against Branimir Glavaš to the County Prosecutor’s Office in Zagreb, and this prosecutor’s office brought charges on 27 April 2007 in the so-called *Garage* case which pertained to the crimes committed in Osijek. This indictment was combined to another indictment brought by the County Prosecutor’s Office in Osijek on 16 April 2007 in the so-called *Scotch Tape* case. The trial itself started in 2007 before the County Court in Zagreb.

Improvements were recorded in the field of systematic support for witnesses so that, for instance, of a total of 28 endangered witnesses in the trial for crimes in Medački džep, 17 responded to summons to give testimony, while one witness’ statement was read out at the main hearing. Systemic institutional support for witnesses coming from Serbia or Bosnia and Herzegovina has been provided since 2006 by the Department for Support to Witnesses and Participants in Proceedings for War Crimes of the Justice Ministry of the Republic of Croatia. However, there is still a need for significant improvement of the position of witnesses in courts and the creation of more favourable social climate for witness statements. A major weakness is the absence of departments for witness support in the largest county courts – in Rijeka, Split and Zagreb. At the County Court in Vukovar, direct support for witnesses by the Voluntary Service for Support to Witnesses and Victims is regularly provided, while such a service is occasionally active at the County Court in Osijek.

Bosnia and Herzegovina

In 2007, the number of war crimes trials before the courts in Bosnia and Herzegovina was at the same level as in 2006 with a trend of further growth in the forthcoming period given that the special department for war crimes of the Prosecutor’s Office and the War Crimes Chamber of the State Court of Bosnia and Herzegovina were increasingly strengthening their capacities for prosecution in comparison to the previous period. Except for the State Court of Bosnia and Herzegovina, war crimes trials in Bosnia and Herzegovina were also held in the courts of the two entities (Federation of Bosnia and Herzegovina, and Republika Srpska), as well as in the court of Brčko District. The War Crimes Chamber of the State Court of Bosnia and Herzegovina was formed in March 2005, and it tries particularly sensitive war crimes cases, where the sensitivity is assessed on the basis of the gravity of crime or the rank of the accused. Some cases were transferred to the State Court of Bosnia and Herzegovina from the ICTY, as part of its “exit strategy”, which should result in the completion of the Tribunal’s work by 2010.¹² Less sensitive cases are prosecuted before cantonal courts in the Federation of Bosnia and Herzegovina, district courts in Republika Srpska, and the court of the Brčko District.

Cantonal courts in the Federation of Bosnia and Herzegovina and district courts in Republika Srpska issued 19 first-instance judgments in 2007, while the State Court of Bosnia and Herzegovina handed down ten judgments.¹³ (In 2006, 15 first instance judgments were pronounced by cantonal and district courts, and another eight in the State Court of

11. Organisation for Security and Cooperation in Europe - Office in Zagreb, *Report of the Head of the OSCE Office in Zagreb Ambassador Jorge Fuentes to the OSCE Permanent Council*, 6 March 2008, www.osce.org/documents/mc/2008/03/30456_en.pdf, p. 8.

12. The ICTY transferred six cases to the State Court of Bosnia and Herzegovina, involving ten defendants.

13. Information on the number of judgments in cantonal and district courts was obtained from OSCE Mission in Bosnia and Herzegovina, May 2008; information on the number of judgments issued by the State Court of Bosnia and Herzegovina is based on data posted on the Court’s web site, www.sudbih.gov.ba/.

Bosnia and Herzegovina.¹⁴) In late 2007, there were nine trials underway in the State Court of Bosnia and Herzegovina, and a further ten trials in cantonal and district courts.¹⁵ The trials often involved two or more defendants so that the number of the convicted and the accused is much higher than the number of trials themselves.

There are still some uncertainties as regards the number of potential war crimes indictees and necessary capacities of Bosnia and Herzegovina's judiciary so that as many persons responsible for war crimes as possible could be put on trial. In 2007, at times the Prosecutor's Office of Bosnia and Herzegovina presented to the public the figures on investigations launched or criminal charges brought before various competent organs against, at first, 13,000 individuals, and then as many as 16,000, but most observers considered these numbers to be unrealistically high, i.e. that there were duplicated criminal charges as well as those that were uncorroborated by any evidence. In the second half of the year, the Prosecutor's Office of Bosnia and Herzegovina started drafting the so-called map of war crimes in Bosnia and Herzegovina. Hence, in the following phase, in 2008, this map, together with an overview of the existing criminal charges and evidence against alleged perpetrators, should result in the creation of a realistic and accurate summary of the numbers of crimes committed and suspects.

A major problem to Bosnia and Herzegovina's courts is that many individuals suspected of war crimes no longer live in Bosnia and Herzegovina, but in a neighbouring country whose citizenship they have gained in the meantime. The Constitution of the Republic of Croatia and the Criminal Code of the Republic of Serbia do not allow extraditions of their citizens to other states, hence no extraditions to Bosnia and Herzegovina are possible. In 2007, there was no progress whatsoever in efforts to resolve this problem.

The number of ongoing and upcoming trials before the State Court of Bosnia and Herzegovina in 2007

was higher than the number of trials before all other courts in the state. A complex trial was still underway – the first of its kind in Bosnia and Herzegovina – for the criminal offence of genocide in the case of *Mitrović et al. (Kravice)*. The defendants were 11 former members of the Army and Interior Ministry of Republika Srpska who were charged with the execution of Bosniaks captured in the Srebrenica area on 13 July 1995.

A shortcoming in the prosecutions of war crimes in Bosnia and Herzegovina, including those conducted before the State Court of Bosnia and Herzegovina, is the fact that members of the public, particularly the citizens of communities where the perpetrators come from, are not sufficiently acquainted with the trials. Widespread belief among Bosnian Serbs that almost exclusively the members of their community are tried in Bosnia and Herzegovina's courts, while the crimes committed against Serbs are ignored, is a particular problem. However, the ethnic structure of those accused standing trial in courts of the two entities shows that this is not so: in 2007, 32 Bosniaks, 27 Serbs and 10 Croats were convicted. At the end of the year, there were 10 trials underway in courts of first instance with nine Serbs, six Croats and two Bosniaks as defendants. Before the State Court of Bosnia and Herzegovina, most of the indictees were Bosnian Serbs, but at least in ten trials the defendants were Bosnian Croats and Bosniaks. Bosnian Serbs, however, are totally unaware of these figures. Political elites in Republika Srpska, headed by Prime Minister Milorad Dodik, continued to portray an inaccurate picture to their voters about the work of the Prosecutor's Office and the State Court of Bosnia and Herzegovina with the intention of discrediting these institutions.

Serbia

In the course of 2007, in Serbia, five first-instance war crimes trials (in the cases of *Bytyqi brothers*, *Morina*,

14. Documenta, Humanitarian Law Center, and Research and Documentation Center, *Transitional Justice in Post-Yugoslav Countries: Report for 2006*, p. 11.

15. Information on the number of trials before cantonal and district courts was obtained from OSCE Mission in Bosnia and Herzegovina, May 2008; information on the number of trials before the State Court of Bosnia and Herzegovina is based on data posted on the Court's web site, www.sudbih.gov.ba/.

Suva Reka, *Scorpions* and *Zvornik*) were held before the Belgrade District Court War Crimes Chamber as well as a retrial after the first-instance judgment had been overturned by the Serbian Supreme Court (*Ovčara*). The trials in the *Morina* and *Scorpions* cases were completed. In 2007, the Supreme Court upheld earlier first-instance judgments in the *Lekaj* and *Bulić* cases, however, it reduced the prison sentence in the latter case from eight to two years' imprisonment.¹⁶

In addition, for the third time, the trial of an active policeman and a Serbian MUP reservist, both from Rrahovec/Orahovac in Kosovo, for a war crime against Albanian civilians started before the District Court in Požarevac. The Supreme Court overturned for the second time the first-instance judgment of 21 August 2003 whereby the principal defendant (an active policeman) was sentenced to five years in prison, while the police reservist was acquitted. The commencement of the trial was postponed on 5 December 2007 since the second defendant did not appear in court.

Except for the War Crimes Chamber and District Court in Požarevac, criminal offences committed in armed conflicts in Kosovo were also dealt with in 2007 by district courts in Niš and Novi Sad, but the prosecutors' offices qualified the offences in these cases as "ordinary" criminal offences instead of war crimes. On 15 June 2007, the District Court in Niš acquitted an active policeman and a Serbian MUP reservist of murder charges. The trial chamber found that there was no evidence that the accused murdered an Albanian civilian in Prishtinë/Priština on 5 May 1999. District Court in Novi Sad deliberated in the case brought against three persons accused of murders and sexual violence against a civilian committed in April 1992, in Vukovar, Croatia. On 19 October 2007, the court sentenced the principal defendant to 40 years' imprisonment, twice the maximum sentence for a war crime, while the second defendant was sentenced to 30 years. The third defendant was acquitted

of murder charges, but was sentenced to 13 years in prison for the criminal offence of rape.

In total, first-instance trials in only six cases were completed before the Serbian War Crimes Chamber since its inception in 2003 until the end of 2007; three are related to the crime at Ovčara farm, Croatia; the *Scorpions* case pertains to a crime committed in Bosnia and Herzegovina; and in the cases of *Lekaj* and *Morina*, Kosovo Albanians were the accused. Two trials in the cases of *Lekaj* and *Bulić* ended with final judgments – both in the first half of 2007. Hence, the work of the prosecutor's office and the court could still be described as insufficiently efficient. By comparison, both in Bosnia and Herzegovina and in Croatia there are several times more trials every year than there have been in Serbia in the past four years of work of the special judicial bodies (in 2007, there were 35 first-instance proceedings for war crimes in Croatia, while in Bosnia and Herzegovina there were 48).

The public, media and political elites in Serbia do not perceive war crimes trials as a priority issue. While government representatives (Serbian President and Minister of Justice), unlike previous years, showed their support for the War Crimes Prosecutor's Office by their visits and accompanying statements in 2007, there were no reactions by MPs from the ranks of ruling parties to the numerous attacks launched by nationalist opposition in the Serbian parliament on representatives of the War Crimes Prosecutor's Office and War Crimes Chamber (see below, *Parliamentary Discussions on War Crimes: Serbia*). Funds earmarked by the government and parliament for the work of the Prosecutor's Office were a far cry from what was needed so that the prosecutor's office had only seven prosecutors who were assisted by only two expert associates.¹⁷

Serbia could potentially achieve the largest contribution to war crimes prosecution by taking to court the

16. "Beograd: Vrhovni sud potvrdio presudu Milanu Buliću za ratni zločin kod Vukovara" ("Belgrade: Supreme Court Upheld Conviction of Milan Bulić for War Crime Near Vukovar"), *Danas* (Belgrade), 2 March 2007, www.danas.co.yu/20070302/hronika1.html.

17. Interview with representatives of the War Crimes Prosecutor's Office, Belgrade, 16 March 2007.

crimes committed in Kosovo between 1998 and 1999, given that most perpetrators are living in Serbia itself. Albanian witnesses from Kosovo are mostly reluctant to cooperate with the prosecutor's office from Serbia, even in the investigations into crimes committed against Albanians. In 2007, political tensions between Belgrade and Prishtinë/Priština came to a head with regard to the final status of Kosovo, which fuelled Albanian witnesses' distrust and fear of coming to Serbia. Investigations of war crimes against Albanians were also impeded by the Serbian prosecutor's refusal to cooperate with their Albanian counterparts out of fear that this could be interpreted as recognition of Kosovo's independence. Serbian prosecutors turned to the United Nations Mission in Kosovo (UNMIK) for assistance in delivering summons to Albanian witnesses to appear in court, but the Albanians were not willing to communicate with UNMIK, nor did the summons passed on by UNMIK incur any obligation for them.

Observers criticised the War Crimes Prosecutor's Office for its failure to bring charges against high-ranking officials of the police and army, four years after the commencement of trials before the special chamber, for crimes committed by individuals directly subordinated to them. Criticism is particularly relevant with respect to the crime in Ovčara and the crimes committed in Kosovo. In the *Ovčara* case, evidence presented in the first-instance proceedings constitute a basis for suspicion that other JNA officers, not only those convicted by the ICTY (Milan Mrkšić and Veselin Šljivančanin), were also responsible for the execution of about 200 captured Croats. As regards Kosovo, high-ranking members of the army and police of the Republic of Serbia have not been prosecuted for mass executions of Albanians in the period March-May 1999. An exception, albeit partial (given the rank of the accused), is the *Suva Reka* case, in which a Gendarmerie assistant commander was also encompassed by the indictment.

Both trials where first-instance judgments were passed in the course of the year (*Scorpions* and *Morina*) had

characteristics which pointed to politicisation of these war crimes prosecutions. According to the judgment in the *Scorpions* case, despite the testimony of victims' closest relatives that the victims were from Srebrenica, there was not enough evidence that six executed Bosniaks had been brought from that town. This part of the judgment may be interpreted as an attempt by the court to dispute the connection between the crime in question, which was perpetrated by a unit whose links to the Serbian police were a matter of controversy, and the Srebrenica genocide. HLC also sharply criticised the finding presented in the judgment that the *Scorpions* were a paramilitary formation, a part of the Army of Republika Srpska Krajina (in Croatia), whereas the evidence presented in the trial, according to HLC, led to the conclusion that the *Scorpions* in Trnovo combat zone operated as a unit of the Serbian Interior Ministry (MUP).¹⁸ The court sentenced one of the accused, Aleksandar Medić, as an aider and abettor, to the minimal punishment prescribed by law of five years' imprisonment, although the video footage taped immediately before the execution showed Medić verbally abusing one of the prisoners, a 16-year-old boy, and acting in a way that suggested that he was also, like the other defendants, a co-perpetrator rather than an aider and abettor. In its deliberations on the punishment, the trial chamber failed to take into account Medić's brutality as an aggravating circumstance. The families saw as their satisfaction the decision of the Belgrade District Court chairman on 1 October 2007 to dismiss Gordana Božilović-Petrović, the presiding judge in the *Scorpions* case, from the position of war crimes judge. In the *Morina* case, the trial chamber held the view that the evidence against the accused was unconvincing to such an extent that, in the presiding judge's words, "it was sad, miserable and shameful to take advantage of such an event and bring charges without corroborating evidence".¹⁹ This might give rise to an assumption that the Prosecutor's Office brought charges, despite the lack of evidence, in order to please the Serbian public, particularly the associations of families of missing Kosovo Serbs insisting on trials of Kosovo Albanians.

18. "Scorpions Verdict Politically Motivated", HLC press release, HlcIndexOut: 019-716-2, Belgrade, 12 April 2007.

19. "Pripadnik OVK oslobođen optužbi" ("KLA Member Acquitted"), B92 web site, 20 December 2007, www.b92.net/info/vesti/index.php?dd=20&mm=12&yyyy=2007&nav_category=64 (part of oral explanation of the judgment in the *Morina* case by Belgrade District Court War Crimes Chamber presiding judge Olivera Anđelković).

The role of witnesses living outside Serbia is of crucial importance for effective war crimes prosecution. Given the victims' distrust of Serbian institutions and the problem for prosecutors and judges to ensure their participation in trials, HLC has been representing the victims before the court and encouraging them to take part in trials.²⁰ In the trials for crimes committed on Ovčara farm, in Trnovo (*Scorpions* trial), and Zvornik, witnesses from Croatia and Bosnia and Herzegovina gave their testimonies. In the *Zvornik* case trial, the role of witnesses from Bosnia and Herzegovina was particularly important because the majority of 81 witnesses (by mid-December 2007) were Bosnian citizens. HLC played a crucial role in encouraging non-Serb witnesses from Bosnia and Herzegovina and Croatia to come to Belgrade for the purpose of giving evidence. Despite considerable difficulties to win over witnesses from Kosovo to take part in trials held in Serbia, HLC ensured the participation of three witnesses from Kosovo in *Suva Reka* case in December, while the ICTY ensured participation of a surviving female witness who was no longer living in Kosovo.²¹

Victims are represented by human rights defenders [the Humanitarian Law Center] in war crimes trials in Serbia, which is crucial for victims' decision to give evidence in a court in Serbia.

Kosovo – Trials for War Crimes and Ethnically Motivated Crimes

Two war crimes trials were held in 2007 in Kosovo as well as several dozen trials for ethnically motivated crimes committed after June 1999, when the armed conflict had ended. In all these cases, indictments were brought and presented by international prosecu-

tors. The trial chambers' chairmen are international judges, but there are also judges from Kosovo among members of these trial chambers.

In February, an international prosecutor brought charges against Idriz Gashi for a war crime against civilian population. During the armed conflict in Kosovo, in August 1998, Gashi allegedly murdered a civilian, an Albanian woman, in the vicinity of the village of Vranovac/Vranoc, Peć/Pejë municipality, because of her collaboration with Serbs. International trial chamber passed a guilty verdict in June and sentenced Gashi to 15 years' imprisonment.²²

In August, a retrial, the third in a row, with Miroslav Vučković as the accused started in the District Court in Mitrovica/Mitrovicë. In 1999, Vučković was charged with genocide and found guilty in January 2001. This verdict was reversed by the Supreme Court the same year, and in 2002 Vučković was tried on modified charges for a war crime. The October 2002 verdict was once again overturned by the Supreme Court, and in May 2004, Vučković was charged with crimes, including murder, against Albanians in the village of Suhodoll/Suvi Do from 1999.²³

In late November, a preliminary hearing as a preparation for the main hearing in the case of *Lap Group (Lapska grupa)* was held with defendants Rustem Mustafë, KLA commander of the Lap zone, and another three KLA members. In 2003, they were given lengthy prison sentences (17, 13, 10 and five years). In July 2005, a retrial was ordered, but it did not start before the end of 2007.²⁴

In 2007, HLC monitored 21 trials for ethnically motivated crimes in municipal and district courts, as well as four cases before the Supreme Court of Kosovo. In some trials, injured parties who were still not living

20. Humanitarian Law Center, *Savetovanje svedoka/zrtava i zastupanje pred sudom: model podrške - Izveštaj o realizaciji projekta (Counselling of Witnesses/Victims and Representation in a Court of Law: Model of Support - Report on Project Implementation)*, 21 February 2007 (www.hlc.org.yu/srpski/Nacionalna_sudjenja_za_ratne_zlocine/Srbija/index.php?file=1601.html).

21. Trial chamber in the *Suva Reka* case accepted a request by victims' authorised representative Nataša Kandić that witnesses from Kosovo be escorted by Kosovo Police Service (KPS) according to the same procedure applied to witnesses from Croatia and Bosnia and Herzegovina.

22. Data of HLC; Human Rights Watch, *World Report 2008*, chapter "Serbia: Events of 2007", <http://hrw.org/englishwr2k8/docs/2008/01/31/serbia17679.htm>.

23. Data of HLC; Human Rights Watch, *World Report 2008*.

24. Data of HLC.

in Kosovo were afraid, which was why they did not identify the accused, or refused to give their testimonies altogether.²⁵ The problem of witness protection continued to block the successful prosecution of war crimes and other criminal offences. While all main courts in Kosovo had equipment for witness protection (video link, devices for voice distortion, special “box” for witnesses, etc.), prosecutors often did not request the use of protection measures, or judges failed to order the application of such measures. Other states were not willing to admit witnesses from Kosovo on account of their general policies in matters of migration and asylum, the necessity to financially support the victims, as well as uncertain legal status of Kosovo.²⁶

Members of the Kosovo Police Service (KPS) acted differently as witnesses in cases for ethnically motivated crimes. In the trial of Mirsad Kurteshi and Kadrija Sylejamani, accused of leading on 18 March 2004 a group of Albanians who set ablaze using Molotov cocktails the *White Building (Bela zgrada)* in Obilić/Obiliq, where Serbs were living, a witness-KPS member firmly upheld his statement given in earlier phases of the proceedings, while others considerably moderated their testimonies. The trial lasted from August till November 2007, and the accused were given suspended prison sentences.²⁷ In the trial of Skender Islami and four other persons accused of setting fire to the restaurant *Živin gaj*, a Serb house, hospital, local health center, pharmacy, primary school and post office, as well as several vehicles mostly owned by Serbs, in March 2004 in Kosovo Polje/Fushë Kosovë, witnesses-policemen were heard who reiterated their previous statements that they had seen the defendants in a group setting buildings ablaze. The trial started in late October and was not completed by the end of 2007.²⁸

Kosovo judges were also intimidated by the accused, their relatives and supporters, which partly explains relatively mild sentences in the given cases.²⁹

Montenegro

There were no war crimes trials in Montenegro in 2007. Investigations were underway in several cases, but no single one was completed in the course of the year either by the prosecutor bringing charges or discontinuing the case. The state prosecutor did not suggest detention in any of the ongoing investigations, although the State Prosecutor’s Office often seeks detention in investigations into lesser criminal offences, if there is a danger that the suspect will escape or influence witnesses.

In the course of the year, the investigation resumed before Higher Court in Podgorica into events of May 1992, when the Montenegrin police had arrested a large number of Bosniak refugees who had sought refuge in Montenegro from the armed conflict in Bosnia and Herzegovina. The police handed over these persons to the Army and police of Republika Srpska, allegedly to be exchanged for Bosnian Serbs captured by the Army of Bosnia and Herzegovina. The majority of these Bosniaks were killed upon their arrival in Bosnia and Herzegovina by members of the armed forces of Republika Srpska. The investigation into this case was launched in February 2006, and it encompassed the following five individuals: former head of Herceg Novi Security Center Milorad Ivanović, former assistant to Montenegrin interior minister Milisav Marković, the then agent of the Security State Service Duško Bakrač, police commander Milorad Šljivančanin, and former assistant to head of Herceg Novi Security Center Branko Bujčić. The sixth suspect,

25. Ibid. An example to illustrate refusals to give testimonies would be the trial of Florim Jakupi for several criminal offences (including a murder) perpetrated during the attack on a passenger bus in February 2001 near Podujevo, when 11 people lost their lives, while another 18 were seriously wounded.

26. Human Rights Watch, *Kosovo Criminal Justice Scorecard*, March 2008, p. 21 and p. 23.

27. Data of HLC.

28. Ibid.

29. Human Rights Watch, *Kosovo Criminal Justice Scorecard*, p. 16.

former Security Center chief in Bar Damjan Turković, died in 2007.³⁰

According to the reply of the Montenegrin Interior Ministry in April 1993 to the question posed by four deputies in the Montenegrin parliament, 49 Bosniaks had been arrested and handed over to Republika Srpska in the Montenegrin police action.³¹ However, a journalist of Podgorica weekly *Monitor*, Šeki Radončić, who investigated the case in detail and talked to a large number of witnesses, presented the data in his book on this case (*Fateful Freedom*) about 85 Bosniaks who had been deported in May 1992, and another twenty who had been brought from Foča in August of the same year to an area near Nikšić (in Montenegro) only to be subsequently returned to Republika Srpska, after which their every trace was lost.³²

In December 2007, unknown persons attacked physically Slobodan Pejović, former police inspector, who had refused to take part in the arrest of the Bosniaks and spoke several times in public about the 1992 events.³³ The attacker on Pejović was eventually identified. Allegedly he is a building contractor who is often seen in company with police officers.³⁴

Another investigation is related to the murders of a larger number of people committed during the NATO bombing in the spring of 1999 in Kaluđerski Laz and several other villages on the border between Montenegro and Kosovo. Persons who were assumed to be members of the Yugoslav Army murdered on 18 April 1999 in Kaluđerski Laz six persons in the column of refugees from Kosovo, who tried to seek

refuge in Montenegro. By mid-June 1999, a total of 21 persons, including the elderly, women and children, were killed in this area. In February 2007, an investigation was launched before the court in Bijelo Polje into twelve individuals suspected of murdering six persons in the village of Kaluđerski Laz. A larger number of witnesses from Kosovo, thanks to the Montenegrin Lawyers' Committee for Human Rights, came to Bijelo Polje and testified before investigative judge. Among the suspects there are persons with place of residence in Serbia, who were not questioned in the course of the year.³⁵

In December 2007, another investigation was opened before the Higher Court in Bijelo Polje in relation to persecution of Bosniaks in the Bukovica area comprising 39 villages. Members of the police and former Yugoslav Army forced residents of several villages to flee and caused the deaths of eight persons in 1992 and 1993. The investigation encompassed seven persons from the area of Pljevlja, the members of the then reserve police and army units. The commanding officers in this case were not placed under investigation.³⁶

Regional Cooperation

In 2007, the positive trend in cooperation among courts and prosecutors' offices in Croatia, Bosnia and Herzegovina, Serbia and Montenegro covering the issues of war crimes continued. In 2005 and 2006, prosecutors' offices reached several agreements on direct cooperation, which largely helped avoid mediation of

30. Interview with representatives of Prelević law office, Podgorica, 20 March 2008. (Prelević law office represents victims' families in lawsuits for compensation for damages before the court in Podgorica.)

31. Reply to MPs question, no. 278/2, 8 April 1993.

32. Šeki Radončić, *Kobna sloboda: Deportacija bosanskih izbjeglica iz Crne Gore (Fateful Freedom: Deportation of Bosniak Refugees from Montenegro)* (Humanitarian Law Center, Belgrade, 2005), p. 140.

33. "Napad na svjedoka deportacije" ("Attack on Deportation Witness"), *Vijesti* (Podgorica), 10 December 2007, www.vijesti.cg.yu/index.php?id_pre=255608&godina=2007.

34. Veseljko Koprivica, "Na crti" ("On the Line"), *Monitor* (Podgorica), no. 895, December 2007, www.monitor.cg.yu/ARHIVA/a_895_03.html.

35. Interview with Velija Murić, chairman of Montenegrin Lawyers Committee for Protection of Human Rights, Berane, 18 March 2008. Lawyer Murić is authorised legal representative of injured families.

36. Interview with Velija Murić; interview with Sead Sadiković, journalist of *Monitor* weekly (Podgorica) and author of documentary film "Void" about Bukovica case.

diplomatic bodies in their mutual communication. In addition, competent prosecutors from Croatia and Serbia signed a supplementary agreement on transfer of evidence for the purpose of criminal prosecution.³⁷ This should help avoid impunity for perpetrators of war crimes in Croatia who moved to Serbia, gained its citizenship and took advantage of the fact that the law prevents the extradition of Serbian citizens to other countries. By the end of 2007, the Croatian state prosecutor's office prepared the transfer of several cases. On the basis of those materials, the prosecutor's office in Serbia brought charges on 7 November 2007 against Zdravko Pašić for the crime committed in Slunj in 1991. Also, evidence from Croatia helped the Serbian War Crimes Prosecutor's Office to prepare charges for the crime committed in 1991 in the village of Lovas, although the investigation into this case in Serbia had been launched earlier. On 28 November 2007, the prosecutor's office brought charges against 14 persons, including, for the first time, officers of former Yugoslav People's Army (JNA).

In late March 2007, the Prosecutor's Office of the Republic of Croatia transferred to the Montenegrin Prosecutor's Office documentation on crimes committed against Croatian citizens in the areas of Dubrovnik and Konavli who had been incarcerated in late 1991 and the first half of 1992 in Morinj prison in Boka Kotorska Bay. Prisoners – mostly civilians – were tortured and exposed to inhuman treatment.³⁸ In July, the State Prosecutor's Office submitted a request to Podgorica Higher Court investigative judge for the investigation into six persons out of ten Montenegrin citizens listed in the documents of the Croatian Prosecutor's Office.³⁹ Until the end of the year, the

investigative judge did not make a decision as to whether a formal investigation into the case would be launched.

There were also instances of cooperation in some trials in the main hearing phase, e.g. in the trial of Mirko Norac and Rahim Ademi (Medački džep case) in Zagreb, several witnesses from Serbia gave evidence at the main hearing, either in person in court or by a video link from Belgrade.⁴⁰ The department for support to witnesses and participants in war crimes proceedings of the Justice Ministry of the Republic of Croatia organised the transfer of 20 witnesses from the Republic of Croatia who were invited to give evidence before the Belgrade District Court.⁴¹ In the *Zvornik* case, at the hearings held on 29 and 30 January 2007, protected witnesses gave their statements by video link from a courtroom in Sarajevo.⁴²

Relations between Bosnia and Herzegovina and neighbouring countries are still fraught with legal and political obstacles to justice being done. Many perpetrators of war crimes in Bosnia and Herzegovina fled to Serbia and Croatia after the war and gained their respective citizenships. Serbia and Croatia prohibit extraditions of their citizens to other countries for the purpose of criminal prosecution.⁴³ In such a situation, trials could take place if Serbia and Croatia themselves would open investigations against the perpetrators, or if Bosnia and Herzegovina would transfer prosecutions to the country where the perpetrators now lived. However, the former of the two scenarios rarely occur in practice, while the impediment to the latter in 2007, and in previous years, was a legal provision in Bosnia and Herzegovina prohibiting transfers

37. Center for Peace, Non-Violence and Human Rights Osijek, Documenta, Civil Board for Human Rights and Croatian Helsinki Committee for Human Rights, *Monitoring of War Crimes Trials, 2006 Report* (Osijek, 2006), p. 18.
 38. Luko Brailo, "Istraga o Morinju nije okončana" ("Morinj Investigation Is Not Completed"), *Vijesti* (Podgorica), 15 June 2008, www.vijesti.cg.yu/index.php?id=272863.
 39. M.R.-D.B., "Osumnjičeno šest rezervista JNA iz Bara i Herceg Novog" ("Six JNA reservists from Bar and Herceg Novi Are Suspects"), *Vijesti* (Podgorica), 26 October 2007, www.vijesti.cg.yu/index.php?id_pre=251365&godina=2007.
 40. Mary Wyckoff (head of the OSCE Unit for Monitoring of War Crimes Proceedings in Zagreb), "From Rule of Law to Prosecution of War Crimes", *The Courier: Newsletter of the OSCE Office in Zagreb*, January 2008, www.osce.org/publications/mc/2008/04/30531_1089_en.pdf, p. 6.
 41. Quoted from the Justice Ministry's communication to Documenta organisation in January 2008.
 42. Information provided by the Humanitarian Law Center.
 43. These prohibitions are stipulated by the Croatian Constitution (article 9) and the Serbian Criminal Procedure Code (article 540 (1)), respectively.

of war crimes cases.⁴⁴In practice, this effectively resulted in impunity for many war crimes perpetrators. The solution to the problem would be to remove constitutional and legal obstacles in both Croatia and Serbia to extraditions related to war crimes cases, as well as to simultaneously open up possibilities in Bosnia and Herzegovina's legislation for transfers of criminal prosecutions where this would be a more practical solution.⁴⁵

Where citizenship was not an obstacle, extraditions did take place. On 20 June 2007, Serbia handed over Gojko Kličković, suspected of war crimes in Bosanska Krupa, to judicial organs in Bosnia and Herzegovina.⁴⁶ Earlier, Kličković applied for Serbian citizenship, but the Ministry of Justice dismissed his lawyers' arguments that extradition could not be allowed until after a decision was made regarding Kličković's application for citizenship.

As regards prosecutions of war criminals, relations between Bosnia and Herzegovina and Serbia deteriorated in 2007 following the arrest of Ilija Jurišić, a citizen of Bosnia and Herzegovina, in Belgrade, on 11 May 2007, and subsequent charges brought against him for his alleged responsibility for a war crime committed in 1992 in Tuzla. At the time of Jurišić's arrest, the Prosecutor's Office of Bosnia and Herzegovina was already conducting an investigation into the same event (so-called *Tuzla Column case*), hence the arrest was seen in Bosnia and Herzegovina as interference with the work of Bosnia and Herzegovina's judiciary. In addition, the public in Bosnia and Herzegovina and human rights organisations in Serbia were convinced that the instigation of proceedings against Jurišić was motivated by political instead of legal reasons. In its 2007 report on war crimes trials, HLC stated that the said indictment was instrumental for the War Crimes Prosecutor's Office in fending off attacks by nationalist opposition and a part of the government claiming that it was prosecuting Serbs only.⁴⁷

II. Institutional reforms

"Lustration" was not implemented in any part of the former Yugoslavia in the course of 2007, nor was wider institutional reform carried out whose purpose would be to restrict the possibility for state organs to violate human rights in the future. The only comprehensive reforms of institutions undertaken in a country on the territory of the former Yugoslavia whose declared goal was to remove from public office those individuals who had been responsible for violations of rights in the 1990s were the reforms of police and judiciary in Bosnia and Herzegovina, implemented in the periods of 1999-2002 and 2002-2004, respectively. There is a widespread belief in Serbia that the time for such reforms has already passed despite the fact that the law stipulating these reforms is still in effect. In Croatia and Montenegro, key political groups did not demand similar reforms at any point after the war because the forces which were in power in the 1990s continue to dominate the political life in these two countries, or due to a widespread public belief that then government's actions were beyond dispute, hence there was no reason, from the viewpoint of human rights, for a detailed review of the way in which government officials had acted. In Kosovo, ethnic Serbs who were in power in the 1990s, have not been participating in the executive branch of power, judiciary and police after 1999. Representatives of the Albanian community, who were excluded in the 1990s from legislative, executive, judicial and administrative structures, are now in power.

In all parts of the former Yugoslavia, the systemic establishing of responsibility for human rights violations by persons discharging or persons who are candidates for political, judicial, administrative and other functions, i.e. public offices with powers of authority, and the issuing of measures for established violations, is signified by the term *lustration*. In 2007, for example, the

44. Under article 412(4) of the Criminal Procedure Code of Bosnia and Herzegovina, transfer of cases to another country is not possible if criminal offences in question carry ten years' imprisonment or more severe sentences.

45. See International Center for Transitional Justice, "The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court" (September 2008), p. 28-29.

46. "Gojko Kličković Extradited to Bosnia and Herzegovina," *Court of Bosnia and Herzegovina press release*, 20 June 2007, www.sudbih.gov.ba/?id=439&jezik=e (accessed 24 June 2008).

47. Humanitarian Law Center, *Godišnji izveštaj 2007 (2007 Annual Report)*, <http://www.hlc-rdc.org/uploads/editor/2007-HLC-Godisnji-izvestaj.pdf>, p. 30.

opposition Liberal Party submitted to the Montenegro Assembly a draft law on responsibility for human rights violations where for the resulting responsibility the term “lustration” was used. Strictly speaking, such a usage is incorrect as lustration implies the application of a collective measure to all persons who belonged to a certain organisation or structure (most often a political party that was in power before the democratic transition). In reality, the initiatives conducted in Bosnia and Herzegovina, as well as the law adopted in Serbia and the draft law in Montenegro, are based on the principle of establishing individual responsibility. This model corresponds to the concept of *vetting*, more so than that of *lustration*.

Bosnia and Herzegovina

In the course of the year, on several occasions the media reported on vetting of war-time actions undertaken by members of police agencies operating at the state level of Bosnia and Herzegovina –the Investigation and Protection Agency of Bosnia and Herzegovina (SIPA) and the Border Police of Bosnia and Herzegovina. In mid-2007, the Center for War Crimes Investigation operating as part of SIPA vetted war-time actions of its twenty employees on account of their alleged involvement in war crimes committed by Serb forces in Srebrenica in July 1995. According to Sarajevo daily *Oslobođenje*, there were similar suspicions with respect to 11 employees of the Border Police of Bosnia and Herzegovina.⁴⁸ All these persons were named in the report of the Republika Srpska Commission for Srebrenica, in October 2004, as possible participants in the crimes committed in July 1995.

In early 2007, on the basis of the Council of Ministers Act, SIPA checked if some candidates for positions in the ministerial council were convicted of war crimes,

or accused but failed to appear in a court of law, which would present an obstacle to their appointment.⁴⁹ The Council of Ministers was formed on 9 February, after the submission of SIPA’s final positive report. In the process, SIPA established that the Prosecutor’s Office of Bosnia and Herzegovina had opened an investigation against the candidate for defence minister, Selmo Cikotić, for alleged involvement in the war crime against civilian population and prisoners of war – Bosnian Croats, in the area of Bugojno.⁵⁰ However, the vetting of candidates, according to the law, is limited to finding out if there is a court judgment and if the person in question as the accused party is available to the court so that the existence of ongoing investigation against Selmo Cikotić was not an impediment to his appointment to the ministerial position.

Serbia

The new Government of the Republic of Serbia, formed on 15 May 2007, failed to make any progress towards the application of the Law on Responsibility for Human Rights Violations passed by the National Assembly of Serbia as far back as June 2003.⁵¹ While the majority of ministers in the government were representatives of political parties – the Democratic Party (DS) and G-17 Plus – which had voted for this law, their coalition partner, the Democratic Party of Serbia (DSS), had been opposed to its passage in the parliament. Serbian Radical Party (SRS) and Socialist Party of Serbia (SPS), the two largest opposition parties in the new parliament, had also earlier had a negative view of the said law so that the majority of deputies in the Serbian parliament in 2007 were effectively against its application.

In such a political environment, among politicians with a positive attitude to possible “lustration”, there

48. “U policiji BiH još rade odgovorni za masakr u Srebrenici?” (“Those Responsible for Srebrenica Massacre Are Still Working for Bosnia and Herzegovina’s Police?”), *Oslobođenje* (Sarajevo), 6 May 2007, www.vecernji.hr/newsroom/news/bih/797651/index.do.

49. Telephone interview with representative of SIPA Internal Control Department, 28 April 2008.

50. See “SIPA: Protiv Selme Cikotića otvorena istraga za ratni zločin?” (“SIPA: War Crime Investigation against Selmo Cikotić Opened?”), *web page www.24sata.info*, 8 February 2007. (www.24sata.info/3476).

51. Law on Responsibility for Human Rights Violations, *Official Gazette of the Republic of Serbia*, no. 58/03, 3 June 2003.

was no strong conviction that such an institutional reform was feasible. In this respect, two diametrically opposed statements on “lustration” by two high-ranking public officials from the Democratic Party would serve well to illustrate the point. Serbian president and DS leader Boris Tadić said, “After so many years have passed, lustration is not possible, but it was possible on 5 or 6 October. After so many years... it is absolutely impossible, and I must say so. I’m sorry that it’s impossible.”⁵² Three days later, another senior DS official, Dragan Šutanovac, said that it was not too late for lustration, “As far as I’m concerned, it isn’t too late. Be sure of that.”⁵³ Šutanovac was appointed Minister of Defence in May following the government’s formation. Neither the government nor the DS launched any initiatives to begin a process of “lustration”.

In the course of the year the issue of possible tenure review for judges as part of the application of the November 2006 Constitutional Law on Implementation of the Serbian Constitution was not resolved. Under the Constitutional Law, the first appointment of judges to the Supreme Court of Cassation should take place “at the latest within 90 days from the date of formation of the High Judicial Council”, and the appointment of judges to other courts “at the latest within a year from the date of formation of the High Judicial Council”.⁵⁴ These provisions left room for different interpretations as to whether reappointment applied to all the judges, or solely the judges of newly-formed courts and old

courts whose jurisdiction was to change. Laws on the judiciary, which should have sorted out these issues, were not passed in 2007.⁵⁵

Montenegro

Opposition Liberal Party of Montenegro submitted to the Montenegro’s Assembly a draft law on responsibility for human rights violations on 16 March 2007. Until the end of the year, the bill was not yet tabled in the parliament for adoption. The draft law was largely based on the 2003 Serbian law bearing the same name. Except for persons in public offices in legislative, executive and judicial branches of power at the state level and candidates for appointment to these offices, media editors-in-chief and their deputies, senior police officials at all levels, mayors, municipal officials, chiefs and heads of agencies serving the president of the state, government and parliament, as well as candidates for all these positions, would be also vetted.⁵⁶ The lustration commission would inform a particular person that, according to the commission’s findings, he/she was responsible for human rights violations. If that person voluntarily leaves his/her position, the commission would not inform the public about his/her activities in the past. If the person in question decides not to leave his/her position voluntarily, information about this person’s activities in the past would be disclosed to the public.⁵⁷

52. “Izbori” (“Elections”) (transcript of television interview with Boris Tadić, *Utisak nedelje (Impression of the Week)* TV talk show), 14 January 2007, www.b92.net/info/emisije/utisak_nedelje.php?yyyy=2007&mm=01&nav_id=227853. Reference to “5 and 6 October” is related to October 2000 events when, in the wake of mass opposition demonstrations in Belgrade, the then Serbian president Slobodan Milošević was forced out of power.
53. “Ja ne bih sa DSS-om” (“I wouldn’t Go along with DSS”), (transcript of TV interview with Dragan Šutanovac, *Poligraf* TV talk show), 17 January 2007, www.b92.net/info/emisije/poligraf.php?yyyy=2007&mm=01&nav_id=228210.
54. Constitutional Law on Implementation of the Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, no. 98/06, art. 7.
55. See interview with president of Serbian Supreme Court, Vida Petrović-Škero, entitled “Existing Network of Courts Does Not Guarantee Reasonable Length of Trials”, for Novi Sad daily *Dnevnik*, posted on B-92 web page, www.b92.net/info/vesti/pregled_stampe.php?yyyy=2007&mm=09&dd=05&nav_id=262180, 5 September 2007.
56. “Da se provjere i glavni urednici” (“Vetting Also for Editors-in-Chief”), *Vijesti* (Podgorica), 12 February 2007, www.vijesti.cg.yu/index.php?id_pre=227165&godina=2007.
57. Interview with Enis Harović, Montenegrin Liberal Party spokesperson, Podgorica, 20 March 2008.

The ruling Democrat Party of Socialists, which has been in power continuously since the early 1990s, opposed the adoption of the draft law. A party spokesperson said, “Montenegro does not need lustration, which is advocated by those trapped in the labyrinths of the past.”⁵⁸ Senior party official Miodrag Vuković argued that such laws in countries undergoing transition which adopted them “are not functional or their implementation has been abandoned.”⁵⁹ Although the draft law was based on examination of an individual’s role in violations of human rights instead of the principle of collective responsibility, Vuković pointed out, “This law must not punish and eliminate whole groups and generations.”⁶⁰ In a similar vein, the party spokesperson accused the advocates of “lustration” of “instigating a witch-hunt.”⁶¹

Kosovo

In the course of 2007, as in the previous period after the withdrawal of Serb forces in 1999, there were no initiatives which would be directly related to a review of the actions of a person during or after the armed conflict intended to establish if such a person was eligible for public office. In Kosovo, there is a ban on election to a representative body if the person in question is serving a sentence handed down by the ICTY, or if an indictment against him/her has been brought but the person in question has failed to make him/her available to the Hague-based Tribunal.⁶² Corresponding regulations of the central election commission do not stipulate a similar ban on account of a verdict rendered or ongoing proceedings before a local court.

Croatia

In 2007, there were no new debates on “lustration” in Croatia. According to the positive laws of the Republic of Croatia, ongoing criminal proceedings, including the proceedings for a grave criminal offence (e.g. war crimes), do not constitute an obstacle to the nomination for a seat in the Croatian parliament. A war crime indictee, Branimir Glavaš, gained a seat in the parliament in the general election held on 25 November 2007, on the list of the Croatian Democratic Alliance of Slavonia and Baranja (HDSSB).⁶³ At the time of the election, the court proceedings against Glavaš in the Zagreb District Court were underway for a war crime against Serb civilians in 1991 in Osijek. This was the first instance of election to the Croatian parliament of a war crime indictee. In general, there is neither political will in Croatia, nor consensus in the public about the need for lustration pertaining to one’s acts and conduct in the 1990s, given that violence and human rights violations in that period are mostly played down and justified as legitimate defence against the actions of JNA and Croatian Serb rebels.

III. Truth-seeking and Truth-telling

Truth commissions are a standard vehicle in societies undergoing transition for establishing the facts on human rights violations in the previous period. However, no efficient truth commission was formed in any of the successor countries of SFR Yugoslavia,

58. Veseljko Koprivica, “Kovetirana optužnica” (“Sealed Indictment”), *Monitor* (Podgorica), 16 March 2007, www.monitor.cg.yu/ARHIVA/a_856_05.html (quoting Rajko Kovačević, Democrat Party of Socialists spokesman).

59. “Zakon o lustraciji ne smije da presuđuje” (“Law on Lustration Must Not Bring Verdicts”), *Vijesti* (Podgorica), 4 November 2007, www.vijesti.cg.yu/index.php?id_pre=252197&godina=2007.

60. *Ibid.* (statement by Miodrag Vuković, head of Montenegrin Democrat Party of Socialists parliamentary caucus).

61. Veseljko Koprivica, “Kovetirana optužnica” (“Sealed Indictment”), *Monitor* (Podgorica), 16 March 2007 (quoting Rajko Kovačević, Democrat Party of Socialists spokesman).

62. See, e.g., Regulation no. 2004/12 on Elections for Kosovo Assembly, 5 May 2004, art. 23.1.

63. Center for Peace, Non-Violence and Human Rights Osijek, in collaboration with Documenta, Civil Board for Human Rights and Croatian Helsinki Committee, *Monitoring of War Crimes Trials – 2007 Report* (Osijek, 2007), p. 13.

nor were serious discussions on the possibility for their formation held in 2007. In post-Yugoslav countries, within institutions and political elites, and in a part of the civil society, there is a prevailing belief that the case of the former Yugoslavia is unique and unsuitable for truth commissions, that everything is well-known and that there were no “hidden” facts which should be disclosed. Parallel to this, in each country political elites and a considerable part of the public interpret available facts in such a way that the dominant ethnic group in the given area is entitled to the role of an innocent victim, while others assume the role of perpetrators. Hence, all of the post-Yugoslav societies have been reluctant to bring into question their already existing “truth” by forming a truth commission.

In this respect, establishing the facts on the territory of the former Yugoslavia is a minor challenge in comparison to a bigger challenge of finding a way to present the facts to the public in a non-selective and credible manner. Parliamentary discussions and contents of textbooks in Serbia, Croatia and, Bosnia and Herzegovina, in the part related to armed conflicts in the 1990s, illustrate the problem of the official “truth” about this period as a one-sided, i.e. slanted towards idealised representation of one’s own nation and heaping the blame on others.

Predominant practice of selective presentation of facts and their distortion, as well as drawn-out process of resolving the issue of missing persons, prompted a group of leading human rights organisations in the region, including the Humanitarian Law Center and Documenta, to launch an initiative in May 2006 which should result by the end of this decade in the formation of an official regional commission for establishing the facts about the events in the 1990s. The commission would rely for the most part on the facts about war crimes committed, victims and perpetrators, which have already been established by the ICTY and national courts, as well as the data on victims in armed conflicts, which have been gathered by the Research and Documentation Center (Sarajevo) for Bosnia and Herzegovina, while the Humanitarian

Law Center is about to complete the gathering of data on Kosovo. The specific contribution of the commission would be that it would enable the public in all parts of the former Yugoslavia to come to know the facts that would constitute a comprehensive portrait of the events, sufferings, injustices and responsibility. Given the radical change in approach to facts, in 2006 and 2007 the said human rights organisations gradually and carefully created a space for the strengthening of support for the initiative within civil society, before transition to the final phase, when they will call on the governments in post-Yugoslav countries to give official backing for the formation of a regional commission. This step is planned for 2009.

Truth Commissions

In the course of 2007, discussions related to activities of truth commissions took place only in Bosnia and Herzegovina. These commissions were established in the previous years and tasked with investigating war events in designated locations (Srebrenica and Sarajevo). There were neither official nor unofficial initiatives to form state truth commissions. On the other hand, a group of leading nongovernmental organisations from Serbia, Croatia, and Bosnia and Herzegovina stepped up their activities initiated in 2005 to form an official regional body which would establish the facts on war crimes on the territory of the former Yugoslavia and enable the victims to tell of their experiences.

Bosnia and Herzegovina

After the working group, comprising representatives of all parliamentary parties in Bosnia and Herzegovina, completed its work in May 2006 on the drafting of a state truth commission bill, further initiatives that would lead towards the passage of the bill and truth commission formation were suspended.⁶⁴ This state of affairs remained unchanged in 2007.

64. See Documenta, Humanitarian Law Center, and Research and Documentation Center, *Transitional Justice in Post-Yugoslav Countries: Report for 2006*, p. 23.

The Commission for Establishing the Facts on Sufferings of Serbs, Croats, Bosniaks, Jews and Others in Sarajevo from 1992 to 1995, formed by the decision of the Council of Ministers of Bosnia and Herzegovina in June 2006, did not make any progress in collecting data in 2007. Disagreements among commission members as to whether establishing facts about damage inflicted on buildings and facilities in the city was also a part of its mandate resulted in a standstill in its work. War damage to buildings in the city was mostly caused by shelling from Serb positions around the city. Serb commission members were against the inclusion of this issue in the commission's mandate, demanding that the mandate be restricted to establishing facts about human victims – those killed, deported, imprisoned, raped, tortured and missing. After January 2007, no single meeting of the commission was held even though it was not formally dissolved until the end of the year.⁶⁵

Given the failure of the two initiatives, the only truth commission established in Bosnia and Herzegovina which fulfilled its mandate relatively successfully was the Srebrenica commission formed by the decision of the Republika Srpska government in December 2003. The commission came into existence following intensive pressure exerted by the High Representative for Bosnia and Herzegovina and the decision of the then Chamber for Human Rights which instructed Republika Srpska to make public the full truth about the crime in Srebrenica in July 1995. The final report of the commission, dated October 2004, represented the first public admission on the part of Republika Srpska authorities that over 7,000 Bosniaks had been murdered in Srebrenica. The commission's mandate did not include public hearings of victims and witnesses.

In relation to the report of the Srebrenica commission, some controversies still persisted, which resurfaced in 2007. Some public figures from the Serb

community in Bosnia and Herzegovina expressed their doubts as regards the statement of facts in some parts of the report, whilst Bosniaks were dissatisfied with the fact that, despite allegations in the report about the involvement of a number of named persons in the crimes committed, no criminal proceedings were launched against the majority of these persons. War Veteran Association of Republika Srpska claimed in late 2007 that it had in its possession a list of 954 soldiers of the Army of Bosnia and Herzegovina who had allegedly died by January 1994, but were listed in the Srebrenica commission report among 7,806 Bosniak victims in July 1995.⁶⁶ This list was not made public in the course of the year. As regards the persons who were named as possible perpetrators in the Srebrenica commission report, Miroslav Lajčak, High Representative of the International Community for Bosnia and Herzegovina, made a decision on 10 July 2007 to confiscate the travel documents from ninety of them as they were under investigation conducted by the Prosecutor's Office of Bosnia and Herzegovina. Thirty-five of them were employees of the Republika Srpska police, and they were suspended from work on 10 July.⁶⁷ By the end of the year there was no information that any of the persons targeted by measures taken on 10 July had been charged.

Initiatives for the Establishment of a Truth Commission at the Regional Level

One of the fundamental reasons the process of normalisation in relations among inhabitants of the post-Yugoslav countries has been protracted is the exclusive focus in all parts of the former common state on the sufferings of the majority community in a given area as well as the conviction that members of other communities in the region are indifferent to these sufferings. Among victims the prevailing belief is that their voice is not heard outside the community to

65. Interview with Amor Mašović, a member of the Commission for Establishing the Facts on Sufferings of Serbs, Croats, Bosniaks, Jews and Others in Sarajevo in 1992-95 and a member of the Board of Directors of the Institute for Missing Persons, Sarajevo, 30 April 2008.

66. "Klub srpskih odbornika traži reviziju izvještaja Komisije za Srebrenicu" ("Serb Deputies Caucus Seeks Revision of Srebrenica Commission Report"), web page of *Glas Srpske* (Banja Luka), 13 October 2007., www.glassrpske.com/481/3727.html.

67. Lisa Clifford, "Lajčak Gets Down to Business in Bosnia", *IWPR Tribunal Update*, 13 July 2007, www.iwpr.net/index.php?apc_state=hen&=o&o=p=tri&l=EN&s=f&o=337125.

which they belong. This is one of the reasons why civil society organisations in recent years have started to consider the need for the establishment of a regional body or mechanism before which the victims from all parts of the former Yugoslavia could speak out about their experiences.

Another reason for the establishment of a regional mechanism lies in the very character of the events from the previous decade. All the armed conflicts had a strong regional dimension: citizens of other countries were involved in the conflicts on the territory of another country; missing persons were being transferred before their disappearance to another country; and hundreds of thousands of people fled from a state where they had lived to another state. Establishing the facts about the events in one state would be very difficult if the facts about the events in another state are not also established.

In the course of 2007, three regional partners (the Humanitarian Law Center, Documenta and the Research and Documentation Center) organised the second Regional Forum in Zagreb with over 300 participants: representatives of associations of victims, war veterans and refugees, political analysts, historians, sociologists, judges and prosecutors, members of political parties, deputies in national parliaments and representatives of international institutions and human rights nongovernmental organisations. Over the course of the year, several regional consultations in smaller groups (about 35 participants) were held with the youth, journalists and human rights organisations from the region. In 2007, nationwide consultations with the youth were also held. Discussions did not reach a point where the manner of operation and financing of the regional body for establishing and disclosing the facts, its composition and other specific issues (objectives, mandate, structure and method of work) would be considered. Instead, the participants were presenting their views on whether the existence of a regional commission was needed. The prevailing view was that only a regional body could fully investigate and disclose the facts about war crimes committed in the 1990s.

Determining the Fate of Missing Persons

The work of commissions for finding missing persons, as well as international organisations involved in these activities (International Committee of the Red Cross, International Commission on Missing Persons), is invaluable for establishing the facts, both on behalf of families and friends of the identified people, and broader public. In late 2007, there were around 17,000 unresolved requests for finding missing persons in the region. Five years before that, ICRC had data for around 24,500 missing people.⁶⁸ Based on the tempo that the number of people whose fate is unknown decreases it is obvious that it will take a number of years before the process of finding missing people is concluded.

Activities on finding and identifying mortal remains of missing persons were carried out by state commissions for missing persons in Serbia, Croatia, and Montenegro, while in Bosnia and Herzegovina, during the year, the jurisdiction still belonged to committees of two entities (the Federation of Bosnia and Herzegovina and Republika Srpska). In Kosovo, most of these activities are carried out by the OMPF – *Office for Missing Persons and Forensics*. A crucial contribution to the process of seeking and identifying the missing is also provided by two international organizations – ICRC – *International Committee of the Red Cross* and ICMP – *International Commission on Missing Persons*. Members of commissions from each country regularly attend exhumations in region's other countries, when there is a probability that bodies of their citizens are to be discovered. However, there is dissatisfaction with the work of the commissions and governments in other countries. For example, the president of the Serbian government's Commission for Missing Persons, Veljko Odalović, in November said that his commission "has virtually no cooperation with the Federation of Bosnia and Herzegovina" and also made some public accusations against the authorities in the Federation.⁶⁹ Even more

68. "Na prostoru bivše Jugoslavije 25.000 nestalih" ("In the territory of former Yugoslavia there are 25,000 missing"), *Politika* (Belgrade), 31 August 2002, reported in the Bulletin No. 43 of the Documentation Informative Center "Veritas" (Belgrade), August 2002, p. 5, www.veritas.org.yu/bilteni/Bilten_43.pdf.

frequent and sterner are criticisms coming from associations for the missing against various state bodies. All this adds to the impression of politicization of an eminently humanitarian issue, and reduces efficiency in efforts to search for missing persons.

In all areas in which armed conflicts took place in the 1990s, there is a large number of mortal remains discovered which still have not been identified. The salient reason for this is the insufficient number of blood samples from family members. These samples are necessary in order to establish a match with bone samples from the exhumed ones. The state of some of the mortal remains also makes identification difficult, especially in cases where bodies were incinerated. The number of identifications and exhumations in 2007 was fewer than in the previous year.

Bosnia and Herzegovina

During the war in Bosnia and Herzegovina, just less than 28,000 persons went missing. By the end of 2007, a little over 15,000 missing persons had been identified, which means that the search for 13,500 people was still ongoing, around 5,000 of which were held in morgues as unidentified persons.⁷⁰ It is not entirely clear why the number of unidentified people is so high. It is assumed that the main reason for this is that a large number of unidentified people have no close relatives that could give their blood, either

naturally or because all the family members were executed (these are mostly bodies of executed people from Srebrenica and Prijedor).

In 2007, the Federation of Bosnia and Herzegovina's Commission for Searching for the Missing has exhumed 1,371 mortal remains, mostly of Bosniak nationality. In 2007, the total of identified victims by the Commission was 924, including victims exhumed in previous years.⁷¹ In October and November, the expert team of the Federal Commission for the Missing, under leadership of the Tuzla Canton's Prosecution, exhumed 616 mortal remains of victims killed in Srebrenica in 1995 from the secondary mass grave *Kamenica 9*, on the territory of the municipality of Zvornik.⁷² Arms and legs of most of the bodies had been bound.⁷³ It is the largest grave in Kamenica, and the largest mass grave discovered in Bosnia and Herzegovina in 2007. In September and October, 226 skeletal remains were exhumed, 34 of which were complete bodies, in the secondary grave site in the place called Zeleni Jadar, near Srebrenica.⁷⁴

In 2007, Republika Srpska's Office for the Search for the Missing and Captives exhumed 71 bodies, and in addition, took over 23 bodies of Bosnian Serbs from the authorised state bodies from the Federation of Bosnia and Herzegovina, Brčko District and Serbia. A total of 174 bodies were identified, including bodies exhumed in previous years.⁷⁵ Between the end of war and late 2007, the Office had 4,934 missing

69. "Komisija Vlade Srbije za nestale kritikovala Federaciju BiH" ("Serbian government's Commission for the Missing criticises Bosnian Federation"), *Glas Srpske* (Banja Luka), 14 November 2007., www.glassrpske.com/481/4349.html.

70. Interview with Amor Mašović, board member of the director of the Institute for Missing Persons in Bosnia and Herzegovina, and chairman of the former Commission for Searching after the missing in The Federation of Bosnia and Herzegovina, Sarajevo, 30 April 2008

71. *Ibid.* In 2006, the same commission exhumed 2,251 mortal remains and identified 1,350 people. Documenta, Humanitarian Law Center, and Research and Documentation Center, *Transitional Justice in Post-Yugoslav Countries: Report for 2006*, p. 27.

72. "Zvornik: Eksumirano 616 žrtava" ("Zvornik: 616 Victims Exhumed"), *web page B-92*, 22 November 2007 www.b92.net/info/vesti/index.php?yyyy=2007&mm=11&dd=22&nav_category=64&nav_id=273403. Term "secondary grave" denotes that bodies were moved from the original grave.

73. Emir Ibrahimović, prosecutor of the Cantonal Prosecution, www.srebrenica-zepa.ba/index.php?categoryid=1&p2_articleid=8.

74. "Zatvorena masovna grobnica Zeleni Jadar" ("Closed mass grave Zeleni Jadar"), www.sarajevo-x.com/clanak/071010137, 10 October 2007; "Ekshumacija 226 tela iz Srebrenice" ("Exhumation of 226 bodies from Srebrenica"), 11 October 2007, www.b92.net/info/vesti/index.php?yyyy=2007&mm=10&dd=11&nav_category=64&nav_id=267420.

75. Telephone interview with Milko Majić, head of regional office in Banja Luka of the Institute for Missing Persons BH, 6 May 2008; "Accelerated process of searching after the missing one of the most important tasks of authorities in Republika Srpska and Bosnia and Herzegovina," *Glas Srpske* (Banja Luka), January 4, 2008 (statement from Milan Bogdanić, director of the former Office for Searching After Imprisoned and Missing Persons of Republika Srpska).

persons on file.⁷⁶ The Office's offices in Banja Luka in late 2007 still had over 900 requests for resolving the fates of the missing. The Office had incomplete data for the whole of Republika Srpska, which should include requests sent to offices in Eastern Sarajevo and Nevesinje.⁷⁷

Partial Implementation of State Law on Missing Persons

In 2007, preparatory activities for the beginning of the work of the Institute for Missing Persons of Bosnia and Herzegovina were finalized, the Institute's managerial and supervisory bodies were constituted and its offices were provided. The Institute was launched on January 1, 2008.⁷⁸ With this, one of the three main obligations from the Law on Missing Persons (October 2004) has been met. However, the Fund for Support to the Families of the Missing Persons and a unique data base (Central Records) of the missing persons have still not been established. Their data would be used for issuing certificates of disappearance, as the basis for exercising other rights defined by the Law.

Co-founders of the Institute for Missing Persons are Bosnia and Herzegovina's Council of Ministers and ICMP.⁷⁹ The Institute replaces entity commissions for searching for missing persons, and its jurisdiction includes:⁸⁰

- gathering, processing and systematizing information on missing persons and individual and mass graves;
- establishing a unique data base on the missing persons;
- issuing certificates on the missing and victims' identities;

- finding individual and mass grave sites;
- participation in excavations and exhumations from mass and individual graves, restoration of the terrain, autopsies, anthropological processes, identifications, and other activities related to missing persons;
- cooperation with authorized state bodies, including judiciary and other organizations and International Criminal Tribunal for the former Yugoslavia; and
- cooperation with international and local organisations and institutions dealing with the issues of the missing.

Despite the fact that all the Institute's bodies have been established, two entity commissions continued operating until the end of 2007. Marko Jurišić, chairman of the board of Bosnia's Institute for Missing Persons, in October said that all legal acts necessary for the Institute's work had been prepared and they should soon receive consent from Bosnia's Council of Ministers.⁸¹ The Council of Ministers adopted these normative acts on 29 November 2007.⁸²

By the end of 2007, the Fund for Support to the Families of the Missing Persons had still not been founded. It is supposed to be used for paying monetary compensation to the families of missing persons. The authorities of the Federation of Bosnia and Herzegovina and Republika Srpska have not reached agreement on where the headquarters should be located and on the method of financing the Fund. The Federation of Bosnia and Herzegovina believes that financing should be proportional to the number of the missing in each entity.⁸³ Republika Srpska authorities cannot accept that this entity provide the majority

76. Telephone interview with Milan Bogdanić, board member of the director of the Institute for Missing Persons in Bosnia and Herzegovina and director of the former Office for Searching After Imprisoned and Missing Persons of Republika Srpska, 15 May 2008

77. Telephone interview with Milko Majić, 6 May 2008.

78. Telephone interview with Milan Bogdanić, 15 May 2008.

79. Institute for Missing Persons was registered back in July 2000, in the court in Sarajevo, and the founder was the International Commission on Missing Persons (ICMP). Bosnia's Council of Ministers has taken over the role of co-founder in August 2005.

80. The agreement between the Council of Ministers and International Commission on Missing Persons on taking over the role of co-founder for Bosnia's Institute for Missing Persons, 30 August 2005, Article 4.

81. "Regional meeting on searching after missing persons held in Brčko", *Glas Srpske* (Banja Luka), 11 October 2007, www.glassrpske.com/481/3658.html.

82. International Commission on Missing Persons, "ICMP welcomes BiH CoM's decision" (statement for the press), November 30, 2007, www.ic-mp.org/press-releases/icmp-welcomes-bih-coms-decision/.

83. Interview with Milan Bogdanić, 6 February 2007; interview with Amor Mašović, 30 April 2008.

of finances for the work of the Fund and proposes that financing be carried out from the budget of the joint bodies, according to the principle of distribution of value added tax (Republika Srpska – 33 percent, the Federation of Bosnia and Herzegovina – 44 percent, Brčko District – the rest).⁸⁴

Croatia

In late 2007, a little over 2,000 Croatian citizens were still considered missing, including 881 persons who went missing in operations *Flash* and *Storm*.⁸⁵ During the year, test excavations were carried out at 75 locations in 9 counties in order to find individual and mass graves. At 17 sites, mortal remains of 182 persons were exhumed, 160 of them from the period of *Storm*, monitored by representatives of authorised commissions from Serbia and Bosnia and Herzegovina. The majority of mortal remains from *Storm* were exhumed at the cemetery in Petrinja. 76 people were identified and buried, 24 of them from *Storm*, and preparatory activities have been carried out for identification of a further 28 missing people.⁸⁶ Families from neighbouring countries freely came to the identification, even in cases when they did not have appropriate travel documents. The number of identified was considerably lower than in the previous year, when 180 people were identified.⁸⁷

Between the beginning of the war and late 2007, 4,402 mortal remains have been exhumed (717 of them killed in operations *Storm* and *Flash*) from 143 mass graves, while 3,484 persons have been identified.⁸⁸ By the end of 2007, the number of those who went missing in 1991 was reduced to 1,093.⁸⁹ The other large group of the missing consists mainly of ethnic Serbs, about whom families lost every word after the *Flash* and *Storm* operations in 1995. According to the data from Croatian authorities from October 2007, they were searching for 916 missing persons from the list for 1995.⁹⁰ Associations of Croatian Serbs, both those living in Serbia now and those who are still in Croatia, claim that the number of Serbs who went missing in Croatia and whose fate is still unknown is twice as high. The Government's Office for the Captured and the Missing Persons follows international criteria, whose minimum requirement is that there is a known seeker (family member) and that the circumstances of disappearance are known.⁹¹ Serbs associations, on the other hand, find relevant the information on the missing obtained from other sources such as fellow soldiers, neighbours, newspaper reports and television footage. From mass graves on the territory of the former so-called Republika Srpska Krajina a much larger number of people was exhumed than expected before the exhumation based on the Croatian government's figures.⁹²

84. Interview with Amor Mašović, 30 April 2008.

85. Interview with Ivan Grujić, president of Croatian government's Bureau for the Imprisoned and Missing, Zagreb, 17 March 2008. Bureau for the Imprisoned and Missing gathers data on the missing and kidnapped citizens of Croatia, gathers information on missing persons and locations of mass and individual graves, carries out exhumations of mass and individual graves, identifies mortal remains, organizes burial of mortal remains in cooperation with authorised bodies of other countries and international organisations.

86. Ibid.

87. Interview with Ivan Grujić, Zagreb, 7 February 2007.

88. Interview with Ivan Grujić, 17 March 2008.

89. Croatian government, "Deputy prime minister at identification of victims from Homeland War", *public statement*, 7 December 2007, www.vlada.hr/hr/naslovnica/priopcenja_za_javnost/2007/prosinac/potpredsjednica_vlade_na_identifikacijama_zrtava_iz_domovinskog_rata; Croatian government, "Deputy Prime Minister Kosor at unveiling of memorial plaque of mass grave in Negoslavci", *public statement*, 22 February 2008, http://www.vlada.hr/hr/naslovnica/priopcenja_za_javnost/2008/veljaca/potpredsjednica_kosor_na_otkrivanju_spomen_obilježja_mjesta_masovne_grobnice_u_negoslavcima.

90. Croatian government, "Deputy prime minister at the opening of the Tenth Regional Conference on missing persons in Novi Vinodolski", *public statement*, 25 October 2007, www.vlada.hr/hr/naslovnica/priopcenja_za_javnost/2007/listopad/potpredsjednica_vlade_na_otvorenju_desete_regionalne_konferencije_o_nestalim_osobama_u_novom_vinodolskom.

91. Interview with the representative of ICRC in Belgrade, 7 March 2007.

92. At four locations – Knin (exhumation carried out in 2001), Gračac (2002), Korenica (2002) and Žitnik (2006) – it was expected to find around 415 persons, based on previous information from Croatia's Bureau for the Missing and Captives. Eventually, 540 have been exhumed. In 2006, at the location Žitnik 58 persons were exhumed, although the Bureau's assessment was that the grave holds 44 bodies. Interview with representatives of Serbia's Commission for the Missing, 28 February 2007.

Families of the missing people of both nationalities in Croatia are frustrated with how slow the identifying of exhumed bodies is. Laboratories used for identification are located in Zagreb, Split and Osijek,⁹³ and some of identification is also done by ICMP, in the center in Tuzla, Bosnia. The reasons why around 950 bodies exhumed in late 2007 have still not been identified includes difficulties in isolating DNA from mortal remains and a lack of blood samples from family members to be used for the DNA analysis. In 2007, the Croatian government's Office for the Captured and the Missing Persons contacted families which still have not given blood samples by letter and telephone. The Bureau estimates that around 80 persons will not be identified under the current available technology, at the current level of knowledge, because the mortal remains were incinerated and too degraded.⁹⁴ In October 2007, after fifteen months of standstill, the bodies of missing Serbs were identified, a total 28 of them, exhumed in previous years.⁹⁵

Another serious problem is the slow pace with which the Croatian state is exhuming bodies of missing Serbs. The location where Serbs who went missing in 1995 were buried have been known for a long time, because the bodies were buried by the police after the sanitisation (*asanacija*) of the terrain. There are around 20 such sites on the territory of the Republic of Croatia, but since 1996, exhumations have been carried out at only five of them.⁹⁶

Although Croatia's Office for the Captured and the Missing Persons since 2006 in its figures includes numbers of all the missing, including the missing from the Serb side of the war, and presents them in an

annual report which Ministry of Families, Defenders and Intergenerational Solidarity (MOBS) submits to the government, speeches by Croatian politicians mostly do not mention those that went missing during and after operations *Storm* and *Flash*. Minister of MOBS and Deputy Prime Minister Jadranka Kosor in her public appearances on several occasions spoke only of the missing from the Croatian side of the war.

Kosovo

The first list with names of the missing in Kosovo was made by the ICRC in summer 1999 and it included 5,982 people. Several hundreds from that list were in fact alive, but families did not have information about them because they were held in prisons in Serbia proper. In 1999 and 2000, they were released and returned to Kosovo. When in June 2002 UNMIK formed the *Office for Missing Persons and Forensics*, the updated list of the missing people used by OMPF included 5,236 names.⁹⁷

By the end of 2007, 1,998 people were believed to be missing in the conflict in Kosovo.⁹⁸ That year, a total of 216 identified bodies, including ones exhumed in previous years were returned to the families.⁹⁹ After moving unidentified bodies from a location in Suva Reka/Suharekë in 2007, the only location in Kosovo where exhumed mortal remains were taken to was the morgue in Prishtinë/Priština. By the end of the year, there were 455 bodies there that had still not been identified.¹⁰⁰

93. Interview with Ivan Grujić, Zagreb, 7 February 2007.

94. Interview with Ivan Grujić, Zagreb, 17 March 2008.

95. Interview with Veljko Odalović, chairman of Serbian government's Commission for the Missing Persons, Belgrade, 18 June 2008. See also web page of the Association of Families of the Missing Persons from Krajina, www.afmpkr.org.yu/aktuelnosti.html (news for 3 and 15 October 2007).

96. The said numbers were received by extrapolation from tables which exist in the possession of the Commission for the Missing in Belgrade, based on data from Croatian's government's Office for the Captured and the Missing Persons and data which Serbian Commission for the Missing Person, obtained from other sources regarding same locations.

97. Information obtained at the UNMIK Office for Missing Persons and Forensics, Prishtinë/Priština, 19 February 2007.

98. "Kosovo in February 2008", *UNMIK Factsheet*, p. 5, www.unmikonline.org/docs/2008/Fact_Sheet_February_2008.pdf.

99. Information obtained at the OMPF, Prishtinë/Priština, 28 March 2008. In 2006, families were returned 323 identified bodies.

Documenta, Humanitarian Law Center, and Research and Documentation Center, *Transitional Justice in Post-Yugoslav Countries: Report for 2006*, p. 32.

100. Information obtained at the OMPF, Prishtinë/Priština, 28 March 2008.

In 2007, 73 bodies were exhumed in Kosovo, most of which were identified.¹⁰¹ According to claims from representatives of the Republic of Serbia's Commission for Missing Persons, in 16 cases the exhumed bodies were most probably those of ethnic Serbs, but they were not identified during the year.¹⁰² In 2007, no mortal remains from Serbia were returned to Albanian families in Kosovo.¹⁰³ Between June 5 and 8, 2007, at a quarry near Raška (Serbia), the OMPF participated in the examination of an alleged mass grave of Albanians. The investigation was headed by the investigative magistrate of Belgrade District Court's Chamber for War Crimes, and the team also included deputy prosecutor for war crimes. Not a single body has been found at the time.¹⁰⁴ During the search for the grave, the Humanitarian Law Center received information that the grave is not at the location where they were digging, but a little bit further away, and informed the War Crime Prosecutor about it. By the end of the year, there had been no new attempts to locate the grave in accordance with the new information.

The jurisdiction for finding bodies, exhumation and identification of missing persons in Kosovo is in the hands of OMPF. The Kosovo government has a Commission for Missing Persons, an interdepartmental body formed in 2006, but in practice this body does not conduct any significant activities related to discovering missing persons. OMPF does the identification based on the DNA profile made on the basis of blood samples, which are taken from the families of the missing by the International Commission on Missing Persons (ICMP).¹⁰⁵ ICMP has so far taken blood samples from 98 percent of the families whose members are still missing. As for the remaining 2

percent, ICMP failed to contact them because their addresses are unknown.¹⁰⁶

For a large number of DNA profiles taken by the ICMP it has not been established whether they match the DNA received from bone marrow of unidentified bodies in the morgue in Prishtinë/Priština. It is assumed that the inability to establish matches is a consequence of the biological contamination of the material due to a long period spent in the ground.¹⁰⁷

Forty six bodies of non-Albanians, identified in 2007 in Kosovo, were returned during the year to Serbia, where families live now. Communication between Belgrade and Prishtinë/Priština has been going on for years between UNMIK and Serbian authorities, with meetings of the bilateral working group for resolving issues of the missing attended, beside UNMIK, by representatives of Kosovo Albanians as well. Members of Kosovo's Commission for Missing Persons also attended the search for the alleged mass grave at Raška in June.¹⁰⁸

Serbia

Although during the 1990s there were no armed conflicts between warring formations on the territory of Serbia (not including Kosovo), the issue of the missing in conflicts from the period is raised in Serbia as relevant on two bases: as an issue of Serbian citizens who went missing in conflicts in other parts of the former Yugoslavia, and as an issue of the missing who at the beginning of wars were citizens of Croatia, Bosnia and Herzegovina, and Kosovo, and whose

101. *Ibid.* In the previous year, UNMIK exhumed 59 people in Kosovo. "In search of the missing", *UNMIK press release*, 6 December 2006, [www.unmikonline.org/dpi/pressrelease.nsf/0/527C5584B5323A01C125723C00469E5D/\\$FILE/pr1613.pdf](http://www.unmikonline.org/dpi/pressrelease.nsf/0/527C5584B5323A01C125723C00469E5D/$FILE/pr1613.pdf).

102. Interview with Veljko Odalović and Zorica Avramović, representatives of the Serbian government's Commission for the Missing, Belgrade, 24 March 2008.

103. *Ibid.*

104. Information obtained at the OMPF, Prishtinë/Priština, 28 March 2008; interview with Veljko Odalović and Zorica Avramović, 24 March 2008.

105. Interview with Lugi Ndou, ICMP official at the Prishtinë/Priština office for relations with governments, Prishtinë/Priština, 26 March 2008.

106. *Ibid.*

107. *Ibid.*

108. *Ibid.*; interview with Veljko Odalović and Zorica Avramović, representatives of Serbian government's Commission for the Missing, Belgrade, 24 March 2008.

bodies were buried in Serbia. The issues related to missing persons in Serbia is dealt with by the state Commission for Missing Persons, which in 2007 acted through Serbian government's Service for Human and Minority Rights. During the year, only two persons were permanently employed in the commission.¹⁰⁹

Persons whom Serbia claims as its citizens, or as family members of Serbian citizens, went missing in armed conflicts outside the territory of Serbia proper – in Croatia, Bosnia and Herzegovina, and Kosovo. In late 2007, 103 citizens of Serbia were considered missing in Bosnia and Herzegovina, and 552 Serbs and other non-Albanians missing in Kosovo. When it comes to the missing in the conflict in Croatia, the government's Commission for Missing Persons uses aggregate figure which includes both Serbian citizens and ethnic Serbs from Croatia, since the majority of families who claim persons from the latter group took Serbian citizenship in the years after the war. In late 2007, there were around 1,200 people from these two groups remaining on the search list in the hands of the Commission. In addition, the Commission quotes a figure of another 1,000 Serbs who went missing in the Croatian conflict, but whose disappearance was not reported by their families to state bodies, either in Croatia or Serbia.¹¹⁰ In 2007, the Commission has taken over 46 bodies from Kosovo and 28 from Croatia, and none from Bosnia and Herzegovina.¹¹¹

The bodies of a certain number of people from Croatia and Bosnia were buried on the territory of Serbia during the war, after they floated down the Danube and Sava rivers. When Serbian government's Commission decides to examine a certain grave site in which unknown persons assumed to have gone missing in conflicts in Croatia or Bosnia and Herzegovina were buried during the war, the Commission invites authorized people from commissions from Croatia and Bosnia to visit the location. The Serbian Commission carries out the exhumation and takes samples and then returns the bodies to the

grave. By the end of 2007, 426 bodies of the missing from Croatia and Bosnia and Herzegovina had been exhumed, 50 percent of which were identified. In 2007, 23 bodies were exhumed at two cemeteries, in Smederevo and Pančevo. The Commission for Missing Persons handed over 16 bodies to Bosnia and Herzegovina, and 10 to Croatia.¹¹²

In 2007, no mortal remains from Serbia were returned to Albanian families in Kosovo, because all the bodies, (around 800 of them) which the authorities discovered in mass graves and exhumed in the first half of the decade were returned by the end of 2006.¹¹³ Between June 5 and 8, 2007, the Serbian government's Commission for Missing Persons on the request, and in presence, of OMPF examined the site of the alleged mass grave of Kosovo Albanians, at a quarry near Raška. No mortal remains were found at that time.¹¹⁴

Montenegro

While according to data from the International Committee of the Red Cross in late 2007 there were 88 missing citizens of Montenegro, state institutions did not have information from the families which would indicate such a figure. Montenegro did not have an exact register of missing persons, and the authorised Ministry of Health, Labour and Welfare assumed that nine persons still could be held as missing. Seven disappearances are connected to the crime in Štrpci, on February 27, 1993, when members of the *Avengers* unit led by Milan Lukić kidnapped 18 ethnic Bosniaks and a Croat, as well as one unidentified person, from a train and executed them. Since 1996, the families of the missing have been receiving aid from the state which is paid through municipal centers for welfare. The amount of aid in late 2007 was 60 euros per family member, based on the Law on Social and Child Care.¹¹⁵

109. Interview with Veljko Odalović and Zorica Avramović, 24 March 2008.

110. Interview with Veljko Odalović, chairman of Serbian government's Commission for the Missing Persons, Belgrade, 18 June 2008.

111. Interview with Veljko Odalović and Zorica Avramović, 24 March 2008.

112. Ibid.

113. Interview with Veljko Odalović, 18 June 2008.

114. Information obtained at OMPF, Prishtinë/Priština, 28 March 2008.

115. Interview with Veljko Odalović and Zorica Avramović, 24 March 2008.

Since Montenegro's independence in May 2006 and up until June 2007, Montenegro did not have a state commission for missing persons. On June 7, 2007, the Montenegrin government made a decision to form such a commission, as a working body within the Ministry of Health, Labour and Welfare.¹¹⁶

Role of International Organisations

Two important international organisations had a key role in resolving a series of issues related to the problem of missing persons on the territory of the former Yugoslavia: the International Commission for Missing Persons (ICMP) and the International Committee of Red Cross (ICRC).

ICMP is an international organisation headquartered in Sarajevo. There are ICMP offices in Bosnia and Herzegovina and in Kosovo. The basic activity of ICMP is related to the identification of missing persons. ICMP gathers blood samples from family members and extracts bone samples from located posthumous remains (or obtains such samples from local institutions).¹¹⁷ As regards the bodies exhumed in Bosnia and Herzegovina, and Serbia, blood and bone samples are compared at the ICMP center in Tuzla (Bosnia and Herzegovina) in order to establish identities of persons whose remains were found. Identification of bodies exhumed in Kosovo is under the jurisdiction of OMPF, providing that ICMP previously submits information about extracted DNA blood samples to OMPF.¹¹⁸ By mid-2007, through its activities, ICMP ensured identification of almost 13,000 persons missing in the conflicts on the territory of the former Yugoslavia, of whom 10,000 DNA

matches were related to persons from Bosnia and Herzegovina.¹¹⁹

In Bosnia and Herzegovina, ICMP is co-founder of the Institute for Missing Persons (see above, the chapter on Bosnia and Herzegovina). Other important ICMP activities are as follows: networking of missing persons from different parts of the former Yugoslavia for the purpose of their mutual cooperation; provision of smaller financial aid to associations for missing persons; and, implementation of capacity-building projects for associations for missing persons.

ICRC work on the issue of missing persons is one of many activities of this international nongovernmental organisation headquartered in Geneva. In the post-Yugoslav countries, ICRC is gathering ante-mortem data on missing persons, which in many cases enables identification of exhumed bodies even without expensive DNA analyses.

An important aspect of ICRC's operation is the periodical publishing of lists of missing persons. Such lists have been published by ICRC in Bosnia and Herzegovina since 1996, and in Kosovo since 2000. On 23 February 2007, ICRC issued a publication with the names of 2,384 Croatian citizens, irrespective of their ethnic background, who had been registered as missing persons up to that point.¹²⁰ This was the first time that a joint list of missing persons, both Serbs and Croats, was published in Croatia. In August 2007, ICRC published the fourth edition of *The Book of Missing Persons in Kosovo*, with the names of 2,047 persons who had the status of missing person at the time of publishing.¹²¹ Thus far, ICRC has published eight editions of books of missing persons in Bosnia

116. Interview with official of the Ministry of Health, Labour and Welfare, Podgorica, 19 March 2008.

117. Telephone interview with ICMP representative, 9 March 2007.

118. Interview with Luj Ndoum, an officer of Prishtinë/Priština ICMP branch for relations with governments, Prishtinë/Priština, 26 March 2008.

119. "Odlučnost za saznanjem sudbine svih nestalih osoba se nastavlja" ("Determination to Learn the Fate of All Missing Persons Persists"), www.sarajevo-x.com/clanak/070829086, 29 August 2007 (statement by Kathryn Bomberger, ICMP general manager). See also "Bosnia and Herzegovina Justice Minister and Chief Prosecutor Visited ICMP", 17 September 2007, www.ic-mp.org/?p=125#more-125 ("Recently, ICMP Made Its 10,000 DNA Match of Persons Missing from the Conflicts in Bosnia and Herzegovina").

120. "New Book of Missing Persons for Croatia", *ICRC news release*, www.icrc.org/web/eng/siteeng0.nsf/htmlall/croatia-news-230207?opendocument, 23 February 2007.

121. International Committee of the Red Cross, "Kosovo: ICRC Publishes New Edition of Book of the Missing" (press release), 29 August 2007, www.icrc.org/web/eng/siteeng0.nsf/html/kosovo-news-290807!OpenDocument.

and Herzegovina, four editions in Kosovo, and one in Croatia.¹²²

In mid-April 2007, ICRC closed its office in Zagreb and transferred its entire documentation to the Croatian Red Cross. This was the first time on the territory of the former Yugoslavia that ICRC transferred its documentation to a national organisation of Red Cross.

Parliamentary Discussions on War Crimes

In parliamentary discussions on war crime issues in Serbia, Croatia and Bosnia and Herzegovina in 2007, just like in the previous years, the members of parliament emphasized the suffering of their own community and stressed the crimes committed by the members of other communities. The members of parliament mostly contested the work of the ICTY and the national courts processing war crimes, concluding that those legal institutions did not sufficiently, or adequately, deal with the crimes committed by “others”. Although not necessarily all the members of parliament have unilateral views on war crime issues, such viewpoints dominated the statements of those who spoke about war crimes. That practice was particularly present in the Serbian parliament, in which the year 2007 was marked by increasingly abusive speeches on war crimes by the nationalist opposition, as well as the completely passive viewpoint of the centrist parties in the government.

Serbia

Just like in the previous years, the discussions in the Serbian parliament were dominated by extreme nationalist voices. Deputies from the ranks of the

Serbian Radical Party (SRS), against whose president, Vojislav Šešelj, legal proceedings have been instigated at the ICTY, often touched upon war crime topics in their statements. They were occasionally confronted by the deputies of the Liberal Democratic Party and the Social Democrat League of Vojvodina, the opposition parties with a small number of deputies. The deputies of the governing coalition (Democratic Party, Democratic Party of Serbia and G-17) did not partake in such discussions.

There were three dominating topics important for the transitional justice in the SRS MPs’ statements and, less frequently, in the statements of the deputies of the opposition Socialist Party of Serbia (SPS): supporting Ratko Mladić and other Serbs indicted at the ICTY; accusing the ICTY of treating Serbian defendants discriminatorily and of the “murder” of Slobodan Milošević, the former Serbian president, who died in 2006 before the end of the trial in which he was the defendant; and, criticizing the Serbian War Crimes Prosecutor’s Office for focusing on the crimes against non-Serbian victims and allegedly disregarding the crimes against Serbs.

Ratko Mladić and other Serbs indicted by the ICTY were often referred to as “heroes” by the Radicals.¹²³ SRS deputies stressed that, as far as they were concerned, the Serbian parliament was a “safe haven” for Ratko Mladić.¹²⁴ One SRS deputy claimed that, had it not been for Ratko Mladić and other defendants in The Hague, “Republika Srpska and the Serbs in it would not exist any more. They would be in concentration camps and in the ditches which were prepared for us by the Muslims and the ustashas, just like in the Second World War”.¹²⁵ In contrast, the LDP president and the member of parliament, Čedomir Jovanović, invited the newly formed government to “make a step for which the [authorities] had not thus far had the strength, and [admit] that general Mladić is not a Serb hero”.¹²⁶ Vladan Batić, from the Christian Democrat

122. “Missing Persons on the Territory of Former Yugoslavia,” Newsletter, April 2008, [www.icrc.org/web/eng/siteeng0.nsf/htmlall/serbia-missing-newsletter-010408/\\$FILE/missing-newsletter-0408.pdf](http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/serbia-missing-newsletter-010408/$FILE/missing-newsletter-0408.pdf).

123. Srboľjub Źivanović (SRS), the transcript of the session of the Serbian parliament, 20 June 2007; Nataša Jovanović (SRS), July 18, 2007; BoŹidar Koprivica (SRS), 3 October 2007.

124. Aleksandar Vučić (SRS), 4 October 2007; Vjerica Radeta (SRS), 4 October 2007.

125. Nikola Vukelić (SRS), 20 June 2007.

126. Čedomir Jovanović (LDP), 15 May 2007.

Party, which entered the parliament on the same list as LDP, pointed out that the real heroes from Serbian history were leaders such as Živojin Mišić, Vojvoda Putnik and General Petar Bojović, “who respected war laws and customs... unlike those who killed, had blood on their hands, and then received apartments..., [and who have] become heroes, brave men and patriots in the eyes of the few who are trying to create a balance of crimes”.¹²⁷ The president of the parliament, Oliver Dulić, from the Democratic Party, asserted, in a rare statement by any deputy of that party in war crimes discussions, that “the National Assembly of the Republic of Serbia would never be a safe haven for anyone wanted by international legal institutions and indicted for war crimes, which included General Ratko Mladić”.¹²⁸

The SRS and SPS deputies continued to accuse the ICTY of “murdering” Slobodan Milošević.¹²⁹ As far as the prominent Serbs indicted of crimes against humanity and war crimes by the ICTY were concerned – Bosnian Serb Momčilo Krajišnik and the former president of the so-called Republika Srpska Krajina (in Croatia), Milan Martić – SRS deputies claimed that they had been punished just because they tried “to defend their people at least a little”,¹³⁰ because they “desperately tried to defend the Serbian people which were deeply suffering at the time”,¹³¹ i.e. to defend “their ancient hearths and the Serb defenceless and elderly population”.¹³² The first-instance judgment of the ICTY, according to which Krajišnik was sentenced to 35 years in prison, was allegedly passed “without proof of him committing a single crime”.¹³³ The then chief prosecutor of the ICTY, Carla Del

Ponte, was called “a monster”¹³⁴ by an SPS deputy, and an SRS deputy called the whole Tribunal “a murderer from hell”.¹³⁵

The War Crimes Prosecutor’s Office of the Republic of Serbia was often criticized by SRS deputies. SRS parliamentary caucus chief Aleksandar Vučić, called the War Crimes Prosecutor Vladimir Vukčević an “anti-Serbian show-off”.¹³⁶ Jadranko Vuković demanded Vukčević’s dismissal, because he “was working under the instructions of various foreign ambassadors” and was allegedly not processing the cases referring to the crimes against the members of the former Yugoslav National Army in Bosnia and Herzegovina.¹³⁷ Nataša Jovanović said that Vukčević was “ready for a lunatic asylum, rather than a court”, and that the Tribunal spokesman, Bruno Vekarić, “was insane”.¹³⁸ Vjerica Radeta called Vekarić “an idiot”.¹³⁹ Referring to the Prosecutor’s Office and the special war crimes department of the Belgrade district court, SRS deputy Zoran Krasić declared that they were “under the control” of nongovernmental organisations (the Humanitarian Law Center) and the US embassy.¹⁴⁰ Željko Vasiljević, an SPS deputy, protested because the position of the Prosecutor’s spokesman was awarded to a person of non-Serb ethnicity.¹⁴¹

Croatia

The matter of war crimes was discussed at the Croatian Assembly on October 3 and 12, 2007, regarding the judgment of the ICTY of September 27 in the

127. Vladan Batić (Christian Democrat Party), 4 October 2007.

128. Oliver Dulić (Democratic Party), 4 October 2007.

129. Ivica Dačić (SPS), 22 May 2007; Žarko Obradović (SRS), 21 June 2007; Nataša Jovanović (SRS), 20 September 2007.

130. Dragan Todorović (SRS), 12 June 2007.

131. Nikola Vukelić (SRS), 12 June 2007.

132. Nikola Savić (SRS), 12 June 2007.

133. Petar Jojić (SRS), 22 June 2007.

134. Radiša Ilić (SPS), 20 September 2007.

135. Božidar Koprivica (SRS), 3 October 2007.

136. Aleksandar Vučić, 15 May 2007.

137. Jadranko Vuković (SRS), 20 June 2007 and 23 July 2007.

138. Nataša Jovanović (SRS), 17 September 2007.

139. Vjerica Radeta (SRS), 3 October 2007.

140. Zoran Krasić (SRS), 3 October 2007.

141. Željko Vasiljević (SPS), 3 October 2007.

Ovčara case. The Tribunal sentenced two of the three defendants, Milan Mrkšić and Veselin Šljivančanin; Šljivančanin received a significantly shorter sentence of five years in prison than the one the Croatians had expected. The third defendant, Miroslav Radić, was cleared of all charges. The sentence caused great disapproval among the Croatian public. The Assembly discussed the motion of the opposition Croatian Peasant Party and the Croatian Social Liberal Union that the parliament ought to reach a conclusion according to which the government of the Republic of Croatia would be obliged to submit a report on the sentence and the actions the government had taken or would take after the sentence has been pronounced. The Assembly also considered the motion of another opposition party, the Croatian Party of Rights (HSP) to suspend the further application of the Constitutional Law on Cooperation with the ICTY and to initiate proceedings at the UN Security Council to examine the purpose of the ICTY's further functioning.

All the deputies who spoke in the name of their parties, as well as those who spoke in their personal capacity, were disappointed by the sentence to the "Vukovar troika", which was characterized as "unjust, shameful, shocking and scandalous". Almost all the parties took part in the discussion, the most active being individuals such as Pero Kovačević (HSP), Ivo Lončar (independent) and Slaven Letica (independent). The Croatian Prime Minister Ivo Sanader (the member of the Croatian Democratic Union, HDZ), said that "the government and HDZ were in favour of the continual cooperation with the International Criminal Tribunal in the Hague, because that precisely gives them the right to criticize it". The ICTY was referred to as the "continuation of Bleiburg" (Ivo Lončar), and "the court which made the victim and the aggressor equal" (Andrija Hebrang (HDZ), Pero Kovačević). Most opposition deputies believed that the Croatian government, both the previous and the current, had not done enough, i.e. had not reacted during the proceedings, either via the "friends of the court" institution, or via other legal or political instruments. Ivo Josipović (Social Democratic Party, SDP)

said that his party saw the sentence as the result of the inadequate work of the Prosecutor's Office and the poorly formulated indictment, and that the Court Council ought to have passed a different verdict in spite of the limitations of the indictment itself.

The deputies claimed that the leaders of the former Yugoslav National Army ought to be indicted for the crimes in Vukovar.

All the deputies disagreed with the HSP's request to suspend the further implementation of the Constitutional Law on Cooperation with the ICTY and start the procedure at the UN Security Council regarding the purpose of the ICTY's functioning, believing that such measures would lead towards isolation and would detriment the advance of Croatia towards Euro-Atlantic integrations.

The discussion ended by accepting the *Declaration on the Sentence of the International Criminal Tribunal for the Crimes at Ovčara and the Cooperation of the Republic of Croatia with the International Criminal Tribunal for Former Yugoslavia*, which stated that the first-instance verdict for the crimes at *Ovčara* questioned whether the ICTY fulfilled its mandate, as well as the values it was supposed to protect and advocate. It was stated that the sentence was legally and morally unsustainable, and that it did not contribute to the fulfilment of justice. The Croatian Assembly expressed their expectation that the ICTY would "fully and consistently fulfil its mandate according to the resolution of the Security Council on the foundation of the Court" in the appellate procedure, as well as that the stated verdict would be changed "in order to fully conform to the justice, and give the victims moral satisfaction and comfort".¹⁴²

Bosnia and Herzegovina

The discussions in the Bosnia and Herzegovina Assembly referring to war crimes were primarily con-

142. Declaration on the Judgment of the International Criminal Tribunal for the Crimes at Ovčara and the Cooperation of the Republic of Croatia with the International Criminal Tribunal for Former Yugoslavia, 12 October 2007, *Official Gazette*, 108/2007, 22 October 2007.

ducted between the Bosnian and Serbian members of the House of Representatives, one of the two chambers of the Parliamentary Assembly. (The second chamber – House of Peoples – is rarely in session, and did not deal with the issues relating to transitional justice last year.) When discussing most issues – such as Srebrenica, the need to process certain crimes, and arresting the Bosnian citizens indicted in Serbia of crimes committed in Bosnia and Herzegovina – the deputies had opposing views, depending on their ethnic origin. They agreed only on the initiative to financially assist the erection of a monument in memory of Srđan Aleksić, a Serb who died in Trebinje in 1993, while trying to defend a Bosnian attacked by other Serbs.

Srebrenica

In the months ensuing the ICTY's verdict (February 26, 2007) in the case of Bosnia and Herzegovina against Serbia and Montenegro, at the Assembly of the House of Representatives, Bosnian and Serbian deputies had opposing views when discussing the measures that Bosnia and Herzegovina government ought to take as a reaction to the sentence. Bakir Izetbegović (Party of Democratic Action, SDA) motioned at the Assembly of February 28 that "Bosnia and Herzegovina Presidency and the Bosnia and Herzegovina Council of Ministers ought to compose a set of suggested measures to remedy the consequences of the genocide, in which they would precisely prescribe as to who needed to do what in the state of Bosnia and Herzegovina and until which deadline", and that the Parliamentary Assembly should accept the document. Remzija Kadrić (Party for Bosnia and Herzegovina) asked what particular measures regarding the ICTY's verdict the Bosnia and Herzegovina Council of Ministers, the Bosnia and Herzegovina Presidency and the Board of the House of Representatives planned to take, and when. Slavko Jovičić (Alliance of Independent Social Democrats, SNSD) reacted to that by suggesting that "the Serbs should name at least one city or town where Serbs had been the victims, and the Croats, too; not in order to create a balance or parity among the committed crimes or victims, but to achieve an overall state in Bosnia and Herzegovina, international relations and reconciliation". At the Assembly of the House of Representatives, on 29 March 2007, Azra Hadžiahmetović (Party for Bosnia and Herzegovina) introduced several initiatives regarding Srebrenica, including a law, which ought to be passed by the Bosnia and Herzegovina Parliamentary Assembly,

on the special status of the area which the victims of Srebrenica genocide originated from, and that Bosnia and Herzegovina should launch an initiative with the UN to mark 11 July as Srebrenica Day.

At the Parliamentary Assembly held on 12 April 2007, Sadik Ahmetović (SDA) expressed a doubt that the Department for War Crimes at the Bosnia and Herzegovina Prosecutor's Office had the capacity to satisfy justice in the case of the Srebrenica genocide, since the Prosecutor's Office had not prosecuted persons listed in the report of the RS government's Srebrenica Commission from 2004 as potentially responsible for the crime committed in July 1995. Remzija Kadrić asked at the same session whether the Prosecutor's Office treated the prosecution of those responsible for the crime in Srebrenica as a priority. The Bosnia and Herzegovina Chief Prosecutor, Marinko Jurčević, who was present at the session, responded that the war crimes in Srebrenica were the number one priority for the Prosecutor's Office. Jurčević informed the deputies that the Prosecutor's Office had a special team in charge of Srebrenica, which comprised four prosecutors and about 20 expert contractors.

At the session of June 13, 2007, Beriz Belkić (SDA) called on the Parliament to urgently consider his motion to adopt a Draft Law on the *Srebrenica – Potočari* memorial center, a memorial erected in memory of the victims of the genocide in 1995. He suggested that the responsibility to finance the memorial would thus be transferred to the Bosnia and Herzegovina state (until then, the memorial had functioned as a foundation, and had been financed by the means of state subventions, donations and other sources). Belkić's request to urgently discuss the Draft Law received 21 affirmative votes by the deputies, out of which 20 by the Federation of Bosnia and Herzegovina and only one by Republika Srpska, whereas eight deputies abstained from voting. Hence, the request did not get the necessary majority. That is why the High Representative of the international community in Bosnia and Herzegovina, Christian Schwarz-Schilling, imposed the Law on June 25.

Dual Citizenships as an Obstacle to War Crimes Prosecution

At the session of the House of Representatives of the Parliamentary Assembly, held on April 12, 2007, Šefik Džaferović (SDA) stressed the problem of dual

citizenship, which enabled those suspected of war crimes in Bosnia and Herzegovina to enjoy protection from extradition to Bosnia and Herzegovina from Serbia and Croatia, because they had acquired the citizenship of those countries after the war. Džaferović motioned that the Bosnia and Herzegovina Presidency and the Council of Ministers ought to resolve that issue in bilateral talks with Serbia and Croatia in order to enable trials according to the place where the crime was committed. Halid Genjac (SDA) said that the problem could be solved only by lobbying in the European Union, so that the Union might incorporate the cooperation in that area among its conditions for the accession. Bosnia and Herzegovina Chief Prosecutor, Marinko Jurčević, said at the session that the Prosecutor's Office's viewpoint was that those suspected of committing war crimes should be tried in Bosnia and Herzegovina, because the crimes had been committed there. According to Jurčević, the Council of Ministers, the Presidency and the Parliament ought to strive to achieve the political conformity of the neighbouring countries to possibly sign a trilateral agreement regarding extradition, or to form a single court and a single prosecutor's office for the overall territory of the former Yugoslavia in which judges and prosecutors from the countries of the former Yugoslavia, as well as those from the international community would work together.

Exclusive Request to Prosecute Crimes Committed against Victims Belonging to One's Own People

When talking about the legal proceedings against the perpetrators of war crimes within the Bosnia and Herzegovina legal system, members of the House of Representatives of the Parliamentary Assembly insisted on the need to prosecute the cases in which the victims were of the same ethnic origin as the members themselves. At the session held on May 23, 2007, Denis Bećirević (Social Democratic Party – SDP) asked the Bosnia and Herzegovina Prosecutor's Office to explain to the Parliament why it had not indicted a single person for the crime committed in Tuzla on 25 May 1995, when a grenade fired from the positions of the Army of Republika Srpska killed 71 and wounded 172. Savo Erić (Serbian Democratic Party – SDS) reacted to this by asking a counter-question as to what the Bosnia and Herzegovina Prosecutor's Office had done to discover those responsible for the murder of tens of soldiers of the former Yugoslav National

Army by the so-called Tuzla Squad in May 1992. Slavko Jovčić (SNSD) claimed that the Department for War Crimes had not “struck a balance in the amount of justice”; according to him, “Serbs and all the associations turning to him were completely dissatisfied by the Department's functioning. It [seemed] that some were privileged, whereas others... were already convicted even before the indictment”.

Arresting Bosnian Citizens Suspected in Serbia of Crimes in Bosnia and Herzegovina

At the session of the House of Representatives held on July 4, the first point of the agenda was SDP's request for a discussion on the “illegal arrest of the SDP deputy at the House of Representatives of the Bosnia and Herzegovina Parliamentary Assembly, Selim Bešliagić, as well as Budimir Nikolić, Brkić and Enver Delibegović”. Several deputies severely protested against the interrogation of Bešliagić and others by the Bosnia and Herzegovina Prosecutor's Office, based on the request of the Serbian Prosecutor's Office for war crimes, on the attack of the JNA soldiers in May 1992 in Tuzla. Jozo Križanović (SDP) requested that the House of Representatives “should discuss the possible holes in the Bosnia and Herzegovina legal regulations which had allowed such events to happen”, as well as the war crimes investigations against Bosnia and Herzegovina citizens in other states, since Bosnia and Herzegovina citizens “were objectively in danger of being arrested worldwide by Interpol”. Šefik Džaferović (SDA) said the key issue was the fact that there was no neutral body which would approve criminal proceedings in the region; hence, the prosecutor's offices in one state started criminal proceedings against the citizens of another state, in spite of its sovereignty. Bakir Izetbegović (SDA) pointed out that Serbia and Croatia “were hiding war criminals and were not extraditing them to Bosnia and Herzegovina”, and that in the 1990s they “had trespassed to this territory and... committed crimes here”, and now they were trying Bosnia and Herzegovina citizens. Denis Bećirević (SDP) concluded that “to arrest and interrogate Selim Bešliagić for an alleged war crime, while Radovan Karadžić and Ratko Mladić were still free, was the highest level of moral and political disgrace”. Serb deputies believed that it would only be constructive to discuss whether Bešliagić's and others' arrest for the purpose of interrogation was legal or not. Only if the competent institutions decided that the arrest was

illegal, should the Assembly discuss it.¹⁴³ According to a SNSD deputy, there was nothing illegal in the detention of Bešliagić and the others.¹⁴⁴ At one point, most Serbian deputies left the session.

Other Issues of Transitional Justice

At the session of the House of Representatives of the Parliamentary Assembly held on 23 May 2007, Denis Bećirević (SDP) suggested that the House of Representatives ought to accept the initiative according to which the Bosnia and Herzegovina Council of Ministers would be in charge of the financial support for the erection of the monument to Srđan Aleksić in Trebinje, in cooperation with the authorities of that town. Aleksić, who was of Serb ethnicity, was killed in January 1993, at the age of twenty-seven, while defending his fellow citizen Alen Glavović, a Bosnian, who was being beaten by three members of the Republika Srpska Army. The representatives supported Bećirević's initiative.

Unofficial Initiatives to Establish Facts¹⁴⁵

The most important nongovernmental initiative was above all the Register of direct victims in the armed conflict in Bosnia and Herzegovina (Human Losses) conducted by the Research and Documentation Center (RDC).¹⁴⁶ By publishing and publicly presenting the data, RDC ended political interpretations and manipulations using the number of victims, by offering a list of those who were killed, died or disappeared in the armed conflict. Following the example of the Register of victims in Bosnia and Herzegovina, HLC began to list the victims of armed conflicts on the territory of Kosovo, and immediately following the arrival of international forces to Kosovo. By the end of 2007, HLC had collected data on 12,000 victims. It was planned that in the coming period Documenta would commence a register of direct victims, Croatian

citizens, in the armed conflicts in Croatia and Bosnia and Herzegovina.

Educational System and Events from 1990s

The educational systems in the three countries which had key roles in the conflicts in the 1990s – Serbia, Croatia and Bosnia and Herzegovina – were based on a one-sided representation of the period. Both in Serbia and Croatia the textbooks primarily show the stereotypes of the majority community as the victim of the political events preceding the war and the main victim of the armed conflicts. The crimes and other breaches of law for which the majority community is responsible is mostly avoided as a topic, although there are positive exceptions in that respect in some history course books used in Croatian primary education, in which crimes against Serbian civilians after the *Storm* operation are also mentioned. In the ethnically complex Bosnia and Herzegovina, in which the schools are mostly divided according to the students' ethnicity, the textbooks in Republika Srpska stand out in their nationalistic interpretation of the contemporary history.

Serbia

The disintegration of Yugoslavia and the armed conflicts following the process are the topics of two history course books used in elementary and high schools in Serbia in 2007 – the course book for the 8th grade primary school (hereinafter: *History 8*) and the course book for the 3rd grade of science grammar schools and the 4th grade of general and social-linguistic grammar schools (hereinafter: *History 3/4*). However, the events after 1991 did not comprise the mandatory part of the curriculum prescribed by the Ministry of Education; therefore, it was up to students' and teachers' initiative to use the parts of the

143. Branko Dokić (Party of Democratic Progress, PDP), Drago Kalabić (SNSD).

144. Milorad Živković (SNSD).

145. See *Map of Unofficial Initiatives to Face the Past*, accompanying this report.

146. See Documenta, Humanitarian Law Center, and Research and Documentation Center, *Transitional Justice in Post-Yugoslav Countries: Report for 2006*, p. 42.

course books referring to the 1990s.¹⁴⁷ Both course books use a relatively neutral tone when describing contemporary historical events, but the selective choice of data and subjective statements reveal an ethno-nationalist approach to controversial topics, primarily in an effort to present Serbs as the greatest victims among all the nations on the territory of the former Yugoslavia.

The main causes of the crisis which brought about the disintegration of the former Yugoslavia were, according to the authors of *History 3/4*, the long-term tensions in Kosovo and the persistent influence of the bloody events from the Second World War on the conscience of many in Yugoslavia.¹⁴⁸ Although less strongly, the course book also criticizes Slobodan Milošević's politics regarding other nations in the former Yugoslavia, because it "shook the country from the roots" and "brought the relations with other Yugoslav republics to open hostility".¹⁴⁹

History 3/4 claims that Kosovo Serbs were under pressure for decades, as victims of rape, private property destruction and murder. The course book does not mention the drastic violations of Albanians' rights by the Milošević regime in the 1980s and 1990s. It asserts that in 1995 over 300,000 Serbs were exiled from Croatia in the *Flash* and *Storm* operations,¹⁵⁰ whereas the exodus of 2 million non-Serbs from the territory under Serbian control in the conflicts in Bosnia and Herzegovina, Croatia and Kosovo is not even mentioned. Without any reservations, it accepts the undocumented claim by the Milošević regime that between 1,200 and 2,500 civilians were killed in the NATO bomb attacks on Serbia in 1999, although Human Rights Watch published a list of civil victims

in 2000 (on the basis of detailed field-research and inspection of the government's sources) and concluded that their real number was drastically lower (a little over 500).¹⁵¹ The textbook claims that when the international forces came to Kosovo several hundred of Serb civilians were killed and more than a thousand people disappeared, without mentioning a much greater number of the Albanians killed or missing in the months prior to the arrival of NATO troops.

The *History 8* course book also contains the aforementioned one-sided descriptions of the events in Kosovo and in Croatia, with certain variations and additions. In the fashion of the dominant nationalistic discourse of the last 15 years, characterized by dramatic representations of allegedly existential suffering of the Serbian people, the textbook claims that in the period of isolation and warfare in the 1990s "the Serbian people were brought to the verge of destruction".¹⁵² The NATO air campaign over Serbia in 1999 is referred to as "The Merciful Angel", a term created by the Serbian propaganda during the bombing in order to present the intervention as a cynical act of violence followed by quasi-humanitarian rhetoric.¹⁵³ The course book for elementary schools declares that 2,500 civilians were killed in the bombing (almost five times more than what the real numbers show).¹⁵⁴

Croatia

Teaching history in elementary schools is prescribed by the Croatian National Educational Standard (HNOS), compiled by the Ministry of Science, Education and Sports. Education in contemporary history for eighth graders includes mandatory topics such as "Croatia

147. Telephone conversation with the representative of the Institute for Textbooks and Teaching Aids of the Republic of Serbia, 10 September 2007.

148. Kosta Nikolić et al., *Istorija 3/4, za 3. razred gimnazije prirodno-matematičkog smera i 4. razred gimnazije opšteg i društveno-jezičkog smera (History 3/4 for the third grade of science grammar school and fourth grade of general and socio-linguistical grammar school)* (Belgrade, 2005), pp. 227-28.

149. Ibid.

150. Ibid., p. 229. The other data stated in this paragraph can be found in the *History 3/4* school book at pp. 229-230.

151. Human Rights Watch, *Civilian Deaths in the NATO Air Campaign*, February 2000, Appendix B: Civilian Victims of NATO Bombing During Operation Allied Force, www.hrw.org/reports/2000/nato/Natbm200-03.htm#P1212_254868.

152. Suzana Rajić et. al, *Istorija, za 8. razred osnovne škole (History for the eight grade of elementary schools)* (Belgrade, 3. Edition, 2007), p. 184.

153. Ibid., p. 188.

154. Ibid.

in the second Yugoslavia”, and “the Existence and development of the sovereign Croatian state”. This educational program was experimentally implemented in certain schools in 2005-06, and since 2006-07 has been implemented in all elementary schools. Although the topic of recent wars is mentioned in all the course books from the beginning of 1990s, it is difficult to assess how many teachers actually taught about the recent war.

In 2007, schools could choose from among five course books by various publishing houses selected by the Committee for the Selection of History Textbooks. The schools could choose them from a catalogue of selected textbooks published in May by the Ministry of Science, Education and Sports.

For the purpose of making this short presentation, here are a few examples of the description of the events that took place during and after Operation Storm in the summer of 1995. Following an official opinion¹⁵⁵ that Croatian authorities are not even partially responsible for the exodus of the Serbs from the so-called Krajina, one textbook interprets that event as follows: “Upon an invitation from the leadership of the Republika Srpska Krajina, and partly because they feared facing the consequences of the crimes they committed, a vast majority of Serbs left the region and went to Serbia.”¹⁵⁶ Another textbook deals with this issue in the following manner: “At the time Operations Flash and Storm took place, many Croatian citizens of Serb ethnicity left Croatia in an organized manner because they did not want to wait for the arrival of the Croatian Army and because they refused to accept the Croatian government.”¹⁵⁷

However, three out of five textbooks for eight grade students for the first time discuss the crimes that

took place following Operation Storm. In her history textbook author Snježana Koren writes: “The Serb population from these regions fled to Bosnia and Herzegovina and Serbia shortly after the beginning of armed operations. Very few Serb residents remained in the area and in the months to follow several hundreds of Serb civilians were killed, while the abandoned Serb property was looted and burned.”¹⁵⁸ Krešimir Erdelja and Igor Stojaković write: “During and after Operation Storm a number of houses belonging to the Serbs who fled were set on fire and a number of Serb civilians were killed.”¹⁵⁹ Such crimes are also mentioned in the textbook titled *History – Textbook for Eight Grade Students* written by three authors, in the chapter “War Crimes against Civilian Population”: “In the course and after the operations [*Flash* and *Storm*] crimes were committed against Croatian citizens of Serb ethnicity and these crimes are now being processed by the Croatian judiciary as well as the International Crimes Tribunal for the Former Yugoslavia in the Hague.”¹⁶⁰

In contrast, in the textbook *History 8* (Stjepan Bekavac, Marija Bradvica, Marinko Miočić), in the chapter “War Crimes in Croatia and the International Crimes Tribunal” the only crimes one can read about are those committed by “Serbian and Montenegro armed forces... comprised of the Yugoslav Army members, MUP Serbia and MUP Montenegro members, as well as different volunteer units”,¹⁶¹ while there is no mention of the crimes committed during and after the operations conducted by the Croatian Army in 1995.

In a public letter written by Croatian academics and historians on the history textbooks for the eight grade of elementary schools (from April 2007) the signatories stress, especially in the cases of the course books by Krešimir Erdelja and Snježana Koren that it was

155. Declaration on the Homeland War, adopted by the Croatian Assembly in October 2000, and the Declaration on the *Storm* operation, adopted in June 2006.

156. Krešimir Erdelja i Igor Stojaković, *Tragom prošlosti 8 (Tracing the Past 8)* (Zagreb, Školska knjiga, 2007), p. 237.

157. Mira Kolar Dimitrijević, Hrvoje Petrić, and Jakša Raguž, *Povijest-Udžbenik za osmi razred osnovne škole (History - Textbook for the eight grade of elementary schools)* (Meridijani, Zagreb 2007), p. 200.

158. Snježana Koren, *Povijest 8 (History 8)* (Profil, Zagreb, 2007), p. 226.

159. Krešimir Erdelja i Igor Stojaković, *Tragom prošlosti 8* (Školska knjiga, Zagreb, 2007), p. 237.

160. Mira Kolar Dimitrijević, Hrvoje Petrić, and Jakša Raguž, *Povijest-Udžbenik za osmi razred osnovne škole*, p. 200.

161. Stjepan Bekavac, Marija Bradvica, and Marinko Miočić, *Povijest 8 (History 8)* (Alfa, Zagreb 2007), p. 192.

“more than pitiful that the authors of the textbooks which ought to teach Croatian students their recent past actually fought ‘with all their might’ against the positive representation of such important and notable events such as *Flash* and *Storm!*”. The signatories wondered whether the authors of the textbooks and the Committee for Selecting History Textbooks were bound to oblige the Declaration of the Assembly on the Homeland War and the *Storm* operation, and the Report of the Constitutional Court.¹⁶²

The implementation of the current history curriculum in schools was preceded by a period of several years when the experts and the public fervently debated the adequate way of dealing with the war period in them. After the ethnocentric textbooks of the first part of the nineties, in the second part of the decade parallel textbooks were introduced. The first alternative textbook for the seventh grade was approved in 1996/7 for the sixth grade, and for the eighth grade in 2000. They offered various interpretations of certain historical events, and especially those from the World War II period. Apart from the introduction of alternative history textbooks, important influence on history studies was caused by the expert and public debate which broke out during the preparation of additional school materials primarily planned to be a teaching aid for history study in peacefully reintegrated areas, since in 2002-2003 the five-year moratorium on the studies of contemporary history had ceased to be valid. The Ministry headed by Minister Vladimir Strugar, in cooperation with the representatives of the Serbian community and history teachers, decided to form the Committee for drafting a suggestion regarding the studies of history on the territory of former Yugoslavia in the period from 1989 in the schools in

the Croatian area of Podunavlje, and organizing the publishing of textbooks which would cover the period of contemporary Croatian history since 1989. The work on the production of the textbook (*Annex to the textbooks for the recent past*) was finalized in April 2005. In the meantime, the Committee decided that not only the students in Podunavlje ought to use the text, but also others throughout Croatia, as additional material to study the recent past.

In the period from 2003 to 2005, while the *Annex to the textbooks for the recent past* was being drafted, the authors were subject to sensationalist news about the *Annex*. The authors were most frequently criticized for the alleged relativisation of the guilt for war crimes, because some media, politicians and veteran unions evaluated the multi-perspective view of the conflicts, which was applied when the *Annex* was being done, as distortion of the historic truth and an attempt to equalize the guilt for the war. The campaign also included several expert consultants commissioned by the Ministry. The debates were permeated by the unwillingness of some participants in the project to face up to the past in a multi-perspectival way, and therefore to employ a multi-perspectival research and scientific approach to contemporary Croatian history. The debate influenced the decision of the Ministry of Science, Education and Sports to denounce publishing the *Annex*.

Believing that the *Annex* offered a historically acceptable and objectively founded approach to contemporary Croatian history, *Documenta* decided to publish the publication named *A Single History, Multiple Histories*, in which it published the newspaper articles and authors' remarks, in addition to the *Annex* itself.

162. On 13 October 2000, the House of Representatives of the Croatian Assembly passed the Declaration on the Homeland War in which, among else, it is stated that “the Republic of Croatia was fighting a just and legitimate defensive and liberating, and not aggressive and invasive war towards anyone, in which it defended its territory within its internationally recognized boundaries from the Serbian aggression which strove to create a “Greater Serbia”. The successful defence in the Homeland War, together with the final liberating military operations ‘Flash’ and ‘Storm’, and the subsequent peaceful reintegration of the Croatian territory of Podunavlje, created all the conditions for the harmonious development of the Republic of Croatia as a state which accepted democratic standards of the modern Western world...” The Constitutional Court of the Republic of Croatia stated in its Report No. U-X-2271/2002 of 12 November 2002, published in *Official Gazette* no. 133/2002, that „the actions of the armed forces of the Republic of Croatia conducted with the aim of liberating parts of the occupied territory of the Republic of Croatia (...) were according to the constitutional obligation of the armed forces of the Republic of Croatia to protect the sovereignty and independence of the Republic of Croatia and defend its territorial integrity“. The armed forces of the Republic of Croatia „were introducing the national (constitutional and legal), and, therefore, the international legislative framework, of which it is a part, to those areas“.

The initial intention was to publish the experts' analyses as well, but it turned out to be impossible, because not all the experts agreed to that. The publication was promoted in Osijek and Vukovar in November 2007.

Bosnia and Herzegovina

Because of the complex constitutional setup and a high degree of decentralization in Bosnia and Herzegovina, the country's educational system was characterized by a large number of different curricula, as well as the existence of dozens of textbooks which partly deal with contemporary history. For this reason it is difficult to have a full insight into the way in which textbooks represent the events from 1990s. Nevertheless, in 2007 a publication which significantly contributes to the comprehension of the issue was published in Bosnia and Herzegovina. It was a study called: "Education in Bosnia and Herzegovina: What Are We Teaching our Children?," based on the research conducted by the Fund for an Open Society Bosnia and Herzegovina and the agency for social research *Promente* from Sarajevo. The study analysed the content of 145 different textbooks approved by the Ministry of Education, Science and Culture of the Federation of Bosnia and Herzegovina and Republika Srpska, used in 2005/06 when teaching the so-called "national group of subjects" (history, literature and geography) and religion from grade 5 to 9 in elementary schools and in all high-school grades on the whole Bosnia and Herzegovina territory.

The analysis shows that the history textbooks in Bosnia and Herzegovina contain especially many stereotyped and romantic texts, which make it difficult for the students to acquire a realistic picture of the past events.¹⁶³ The examples of representing political structures, options and political changes are so radical that, according to the study, "they deliber-

ately encourage destructive educational practice".¹⁶⁴ The course books "use such content which teaches the students about the historical victimization of one's own ethnic group, which survived thanks to its leaders; this is then characterized as a 'lesson learned from the past' and a guideline for future inter-ethnic relations."¹⁶⁵

Such an approach also refers to the representations of the recent past, as illustrated by the following examples:

• (Textbooks in Republika Srpska):

- "The 1974 Constitution put Serbia at great disadvantage. Vojvodina and Kosovo provinces were separated as states within a state. ... Those conditions were used by provincial leadership for their own purposes." (History course book for the 1st grade of vocational schools of III degree, by Ranko Pejić, and History for the 9th grade of elementary schools, by Ranko Pejić.)¹⁶⁶

- "The Slovenian Territorial Defence forces started attacking the members of the JNA in 1991. Many innocent youngsters serving in the army died in the attacks by the Slovenian Territorial Defence, and resisted the attacks by the secessionist without real ammunition. ... Slovenia forcefully became independent and was soon internationally recognized. Subsequently, Croatia, Bosnia and Herzegovina and Macedonia also became independent and were immediately internationally recognized. Having swiftly recognized the seceded republics, the Western countries clearly showed that they had planned and helped the break-up of Yugoslavia." (History course book for the 1st grade of vocational schools of III degree, by Ranko Pejić, and History for the 9th grade of elementary schools, by Ranko Pejić.)¹⁶⁷

- "Rivers of refugees, shelled by Croatian airplanes, came to Serbia. Still, NATO did not condemn those violent operations, but supported them and

163. Open Society Fund Bosnia and Herzegovina and Promente, *Obrazovanje u Bosni i Hercegovini: Čemu učimo djecu?, Analiza sadržaja udžbenika nacionalne grupe predmeta (Education in Bosnia and Herzegovina: What Are We Teaching our Children? An analysis of the content of school books for the national group of subjects)* (Sarajevo, October 2007), p. 94.

164. Ibid, p. 98.

165. Ibid. p. 185.

166. Ibid. p. 102.

167. Ibid, p. 102.

assisted in their performance. The western part of Republika Srpska Krajina (RSK) was occupied by the Croatian army in 1995. The eastern part of RSK remained under UN protection until 1998, and was subsequently, against the wish of the Serbian people, annexed to Croatia. The international community did not have enough understanding for the Serbian people, who only wanted their freedom, i.e. to protect their national and political rights. The life of the Serbs in RSK was good, free and democratic, but, unfortunately, brief." (History course book for the 1st grade of vocational schools of III degree, by Ranko Pejić, and History for the 9th grade of elementary schools, by Ranko Pejić.¹⁶⁸

- "In 1998 the NATO pact and the European Union increased the economic and political pressure on Yugoslavia. NATO member states launched false news on the breaches of human rights in Kosovo so as to win over the public opinion in their countries and justify the military intervention... NATO commenced air attacks on Yugoslavia on March 24, 1999. The most powerful military alliance in the history of mankind, comprising 19 states and 500 million citizens, attacked a small and peace-loving Balkan country." (History course book for the 9th grade of elementary schools, Ranko Pejić, Institute for Textbooks, East Sarajevo, 2005).¹⁶⁹
- "The NATO pact intervention. ... The aggressors cynically named the attack on Yugoslavia "the Merciful Angel" (the stronger party is always right). The aggression was carried out without a UN decision, thereby breaching its Charter, but the aggressors did not pay attention to that. NATO deliberately conducted the attack to facilitate future occupations." (History course book for the 1. grade of vocational schools of III degree, by Ranko Pejić and History for the 9th grade of elementary schools, by Ranko Pejić.)¹⁷⁰
- "According to statistical data from 1996, the population of Republika Srpska is 1,391,000, which is almost one third of the overall population of the for-

mer Socialist Republic of Bosnia and Herzegovina (according to data from 1991). The dynamics of figure changes, the geographical distribution and the structural attributes of the population of Republika Srpska were significantly disturbed in the last war conflicts (1992-1995). All the peoples living in Bosnia and Herzegovina (Serbs, Croats and Bosnians) suffered great losses in the war, and they will continue to face the consequences for years to come. Hence, about 20,000 gave their lives for liberty and the creation of Republika Srpska, and about 830,000 Serbs were exiled or transferred from their hearths." (Geography 9, by Gnjato and Marić, Institute for Textbooks, East Sarajevo, 2005).¹⁷¹

- "Which people primarily lives in Republika Srpska, and which in the Federation of Bosnia and Herzegovina? Say why the entities of the modern Bosnia and Herzegovina are similar to most European countries according to their national structure!" (Geography 9, by Gnjato and Marić, Institute for Textbooks, East Sarajevo, 2005).¹⁷²
- (Textbooks in the Federation of Bosnia and Herzegovina, for the schools attended by primarily Bosnian students):
- "As opposed to other national movements, the Bosnian national movement was never governed by the idea of forming a great country. What do you think, why?" (History course book for the 7th grade of elementary school, by Radušić, Husić and Smriko, Sarajevo Publishing, Sarajevo, 2005).¹⁷³
- "The alleged improvement of the realistic situation [in former Yugoslavia] was not assisted by a multiparty system, because the project of 'Greater Serbia' had already been completed and it was only a question of the day when its realization would be carried out." (History textbook for the 8th grade of elementary school, by M. Ganibegović, Svjetlost, Sarajevo, 2004).¹⁷⁴
- (Textbooks in the Federation of Bosnia and Herzegovina, for the schools attended by primarily Croat students):

168. Ibid, p. 102.

169. Ibid, p. 96.

170. Ibid, p. 103.

171. Ibid, p. 127.

172. Ibid, p. 139.

173. Ibid, p. 96.

174. Ibid, p. 99.

- “The [p]arty leaders emphasised the need to strengthen the ‘Yugoslav socialist patriotism,’ which, in effect, only reinforced the nationalism and the striving towards Greater Serbia, because the party leadership contained a number of members who strove towards Greater Serbia. The nationalism of the largest (Serb) nation was concealed by the unitary and centralistic practice introduced from the very renewal of the state. ... As far as Croatia is concerned, its unfair economic exploitation was becoming more prominent than ever. That is proven by the statistical data, according to which the increase of Yugoslav economy was 202%, and that of Croatia only 19% in the period from 1953 to 1959 (in the years of the economic boom).” (History course textbook for the 4th grade of grammar school, by Matković, Mirošević, Goluža and Šarac, *Školska naklada Mostar*, and *Školska knjiga Zagreb*, Mostar 2003).¹⁷⁵

IV. Reparations

Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law, recognised by a Resolution of the UN General Assembly in 2006, specify several forms of reparation for victims of violation of human rights: restitution, compensation, rehabilitation, various forms of satisfaction (cessation of violation of rights, establishment of facts and their public announcement, search for the missing, official return of dignity and reputation to a person, public apology, memorial services and dedications to victims, introduction of facts on violation of rights into educational material), and guarantees of non-repetition.¹⁷⁶ Some of the aforementioned forms of reparation – truth committees, establishment of the fate of the missing, introduction of facts on violation of rights into educational material – have already been described in the report, in chapters dealing with other fields of transitional justice which these forms

also belong to. This chapter will present other forms of reparation that were implemented in post-Yugoslav countries in 2007.

The authorities that provide reparations in the most cases are not the authorities of the state (or entity) which at the time caused the right’s violation that now entails the right to reparation, but the authorities of the country in which the person lives. In practice, this means that reparations are based on the principle of solidarity with victims, victims being in the most cases members of the majority community in the given area. Contrary to this, principle of responsibility is in the most cases absent from the practice of reparations in the territory of the former Yugoslavia. Therefore, examples when representatives of authorities offer apologies (as a form of symbolic reparation) to other countries and nations, which would mean they accepted responsibility for the violation of rights on behalf of the country they represent, are quite rare. In a similar vein, when the authorities of the given country caused damages to health, or loss of family members of the member of a minority community, a small number of persons receive compensation from the state for caused damages, even where legislation does not rule out country’s responsibility in similar cases (Bosnia and Herzegovina, Kosovo, Croatia). The authorities have not erected monuments to civilians whose deaths were caused by the same authorities in the war period.

Material Reparations on the Basis of Statute

In 2007, the legislation which regulates the status and rights of civilian war victims remained unchanged from the previous period, or the amendments (in Republika Srpska) have not become fully implemented in practice. Therefore, assessments from previous years remain: in devising and implementing laws on reparations, in all parts of the former Yugoslavia, army members, or members of their families, or members of ethnic groups which represent the

175. Ibid, p. 101.

176. UN General Assembly Resolution, A/RES/60/147, 21 March 2006.

majority in the given environment, are the privileged ones. Although laws do not make explicit distinction by the ethnic criterion between users of state's measures of reparation, in practice the effect of these laws is discriminatory because of the regulations on restricted deadlines within which it is possible to acquire the status of a war victim, with members of minority not being able to apply, as well as because of regulations which condition the recognition of status by establishing whether death or damages to health were a result of activity of "enemy formations". Laws explicitly give significantly less rights to civilians than army members, by establishing stricter conditions for acquiring the status of a war victim and prescribing considerably lower compensation.

Defects in the majority of laws in the region include the fact that families must proclaim the missing person dead in order to be entitled to compensation. Many families refuse to do that, believing that proclaiming a family member dead amounts to giving up hope that they are still alive and efforts to find them. Another defect is that most legislation does not recognize former war camp prisoners the mere fact of imprisonment as a basis for receiving compensation, and the camp prisoners must prove a certain degree of physical or mental damages. In some legislation, the fact that a person was raped is also not enough for the status of a war victim. Instead, they have to prove that, as a consequence of the rape, their health was damaged to a considerable degree. Also, there are strict regulations, in effect in most countries, that persons who seek civilian disability pensions based on damaged health must present medical documentation on treatment, acquired in a short period after being wounded, raped, or injured.

Croatia

In Croatia in 2007, around 3,000 civilians were receiving monthly compensation from the state based on personal or family disability pension.¹⁷⁷ Beside that, invalids and persons who lost a close family member used a large number of other rights, based on financial and other needs.¹⁷⁸ Among the recipients of compensation and users of other rights, there are still few Serb repatriates in Croatian territories from which they fled during the war.

Individual disability pensions amounted to 3,326 kunas (454 euros) per month for the highest (first) group, while for the lowest (tenth) group, it amounted to 99.78 kunas per month.¹⁷⁹ Average net salary in December 2007 was 4,958 kunas, while the average net salary for the whole year was 4,841 kunas (660 euros).¹⁸⁰

The European Court of Human Rights early in 2007 dismissed the application from the Association of Organizations of Croatian Civilian Victims of the Homeland War in Croatia, which required from the court to establish that Croatian legislation is discriminatory towards civilian invalids vis-à-vis army invalids. In January 2006, the Association of Organizations of Civilian Victims filed an application in which it pointed out that amounts of individual disability pensions for civilian invalids are lower than amounts for army invalids. On 23 March 2007, the European Court of Human Rights declared the request inadmissible, with an explanation that the Association is not directly damaged by alleged violation of the Convention.¹⁸¹

177. Communication from the Ministry of Health Care and Welfare, March 2008.

178. Among the rights used by invalids of war and family members of the killed, or missing, are: receiving welfare benefit (so-called *opskrbnina*), allowance for aid at home, free textbooks, special children's allowance, student scholarships, advantage at accommodation in pupil or student dormitories, advantage at employment, advantage at accommodation in welfare homes, and a right to travelling and funeral expenses.

179. Communication from the Ministry of Health Care and Welfare, March 2008.

180. "Prosječna plaća za prosinac 4958 kuna" ("Average salary for December 4,958 kunas"), web page *Business Diary* (Zagreb), 29 February 2008, www.poslovni.hr/72194.aspx (accessed on 18 September 2008) (data obtained from the State Statistics Office).

181. Information received from the Lawyer's Association Palić and Šurjak, legal representative of the Alliance of Associations of Civilian War Victims, 15 April 2008.

This year, there were no changes or amendments to the Law on Protection of Army and Civilian War Invalids, and Law on Rights of Croatian Defenders in part where it deals with reparations.

Bosnia and Herzegovina

The position of army invalids and families of killed fighters is considerably more favourable than the position of civilian invalids and families of killed civilians in terms of financial reparations for war victims between 1992 and 1995. The rights of war victims are regulated solely by the laws on the level of entities, with an exception of the Law on Missing Persons, which includes regulations on rights of the families of missing persons. A significant flaw in entity legislation is that the mere fact of imprisonment is not recognized as condition enough for former prisoners of war camps to receive compensation, so they have to prove a certain degree of physical or mental damages.

Federation of Bosnia and Herzegovina

Until December 2007, in the Federation of Bosnia and Herzegovina 9,387 people had the status of civilian war victim.¹⁸² The figure includes civilian invalids, victims of sexual crime, and family members of the killed or missing civilians. The number is larger than in 2006, when 8,746 people had this status, and the increase is explained with implementation of the amended Law on Basics of Welfare, Care for Civilian War Victims and Care for Families with Children (hereinafter: Law on Civilian War Victims). Before amendments to the law in September 2006, only the physical damage was accepted as a basis for disability, so people with other forms of damaged health (including post-traumatic stress disorder – PTSD)

and rape victims were not recognized as civilian war victims. The amended law recognizes the status of a victim to persons who in the course of war actions suffered considerable damage to their health, even if it is not expressed in physical damage. Former war camp prisoners were especially intended to get the possibility of receiving financial compensation from the state. Beside that, persons who survived sexual abuse and rape were explicitly recognized by the law as a special group of civilian victims.

The Law on Civilian War Victims prescribes that acquiring the status of a civilian victim requires the minimum percentage of damaged health to be 60 percent. (For the status of an army victim, it is enough to have 20 percent of damage.) Amendments to the law from 2006 prescribe that the amount of individual disability pension for a one hundred percent civilian invalid is in the amount of 70 percent of salaries for 100% army invalids. The Government of the Federation of Bosnia and Herzegovina is obligated to ensure 50 percent with respect to the said 70 percent, whereas the remaining 20 percent should come from the cantonal budget.¹⁸³ In 2007, the basis for army war invalids (compensation for a 100% invalid) was 734 convertible marks (KM) (around 375 euros, according to the rates at the end of the year), whereas for civilian invalids it was 514 KM (263 euros). (By comparison, the average salary in the Federation of Bosnia and Herzegovina in 2007 was around 537 KM (275 euros)).¹⁸⁴

Victims of sexual abuse receive a unique compensation in the amount of base sum for the first category of civilian invalids (514 KM). These persons can prove their status of a civilian victim both with medical documentation and evidence that they addressed an organization or institution for a psychosocial assistance. The evidence accepted as valid in practice are

182. Information received from the Department of Care for Persons With Disability and Care for Civilian War Victims within the Ministry of Labour and Welfare Policy of the Federation of Bosnia and Herzegovina, May, 2008.

183. Law on Changes and Amendments to the Law on Basis of Welfare, Care for Civilian War Victims, Care for Families with Children, *Službene novine Federacije BiH (Official Gazette of Federation of Bosnia and Herzegovina)*, No. 39/06, Article 9 (which changes the Article 59 of the Law [about bases of the care for civilian war victims]); interview with Ankica Kostić, head of the Department of Care for Persons with Disability and Care for Civilian War Victims within the Ministry of Labour and Welfare Policy of the Federation of Bosnia and Herzegovina, Sarajevo, 7 May 2008.

184. *Ibid.*

certificates from several leading associations – such as the Association of Camp Prisoners of Bosnia and Herzegovina, Association of Camp Prisoners of Homeland War, Women War Victims, and Medica – that the person who is their member, or had expert assistance from their organization, was sexually abused.¹⁸⁵

More controversial are regulations related to rights of former camp prisoners. In order for these persons to receive compensation, their degree of damaged health must be a minimum of 60 percent. This degree of disability is proven with medical documentation issued by the Institute for Medical Expert Opinion of the Federation of Bosnia and Herzegovina. Former camp prisoners whose degree of invalidity is below 60 percent are entitled to assistance in the expense of treatment and supply of orthopaedic aid, priority employment, and advantage at housing procedures. Members of the Association of Camp Prisoners of Bosnia and Herzegovina criticized such legislation, pointing out that a mere five percent of camp prisoners can prove a damaged health of at least 60 percent, demanding that the fact that a person spent at least three days in a camp be condition enough for receiving monthly compensation.

Family disability pensions, if related to war – for example, a civilian family member lost his life – amounted to 221 KM (113 euros). For each following family member that was killed, the family disability pension is increased by several dozens of KM. At the same time, family disability pension when a family lost their member who was a soldier amounted to 315 KM (161 euros).¹⁸⁶

Persons who are entitled to compensation lose that right if they return to Republika Srpska and register their residence there. If they acquire the status of a

civilian war victim under the legislation of Republika Srpska, the compensation that they receive there is considerably lower than in the Federation of Bosnia and Herzegovina. For this reason, some repatriates register their residence in the Federation of Bosnia and Herzegovina again, although they actually resume living in the place of repatriation in Republika Srpska.¹⁸⁷ By reapplying in the Federation of Bosnia and Herzegovina, these persons lose certain rights – such as the right to vote at elections – in Republika Srpska.¹⁸⁸

Most male Croats who were imprisoned during the war in camps run by Bosnian Serbs or Army of Bosnia and Herzegovina, acquired their rights by being recognised the status of an army (and not civilian) war victim, or army invalid. Military war invalids who were members of the Croat Defence Council (HVO), as well as family members of the killed, captured or missing members of the HVO in war actions, are in a considerably better position than other victims in Bosnia and Herzegovina. These persons, the majority of which have Croatian citizenship as well, are entitled to receive from Croatia the difference between the compensation they receive from Bosnia and Herzegovina and the compensation they would have received on the same basis in Croatia. Since compensation in the economically more powerful Croatia is higher than in Bosnia and Herzegovina, the users receive monthly compensation which is considerably higher than that paid to other war victims in Bosnia and Herzegovina.

Republika Srpska

In late 2007, around 3,150 persons in Republika Srpska were exercising their rights under the Law on Civilian War Victims. Civilian personal disability benefits were received by 1,818 persons, while

185. *Ibid.*

186. Information gathered from the Department of Care for Persons with Disability and Care for Civilian War Victims within the Ministry of Labour and Welfare Policy of the Federation of Bosnia and Herzegovina, Sarajevo, 7 May 2008.

187. Telephone interview with Seida Karabašić, chairperson of the Association of the Prijedor Women “Source”, 7 March 2007; interview with representatives of the Association of Families of the Captured and Missing in the municipality of Zvornik, Belgrade, 28 March 2007.

188. *Ibid.*

189. Communication from the Ministry of Labour and Disabled Veterans’ Care of Republika Srpska, 26 September 2008.

1,332 persons were receiving civilian family disability benefits.¹⁸⁹ In 2006, about 3,440 persons enjoyed the status of civilian victim of war or member of civilian victim's family.

On 5 July 2007, the National Assembly of Republika Srpska adopted changes and amendments to the Law on Civilian War Victims from 1993. For persons who missed the opportunity to apply for recognition of rights within the deadline, a new deadline was opened till December 31, 2007.¹⁹⁰ This regulation opened the possibility for repatriates to Republika Srpska – primarily Bosniaks and Croats – to realize their right to compensation, since they failed to file requests during earlier deadlines, primarily because they still had not returned from refuge, or displacement within Bosnia and Herzegovina. In addition, a number of Serbs missed the original deadline too. By the end of 2007, 1,679 persons submitted applications seeking recognition of the right under the Law.¹⁹¹

The amended Law did not change the categories of people who are recognized the status of a civilian war victim. That status thus goes to: a person who suffered a bodily damage of at least 60 percent or injuries in connection to war operations, such as bombing, street fights, stray bullets, mortar and cannon grenade, etc.; people who have bodily damage of at least 60 percent due to rape, time spent in imprisonment, concentration camp, internment, or forced labour; and persons who were murdered, killed or went missing in war actions.¹⁹² The relevant regulation mentions a “damaged body”, but not a “disease”, therefore it is not clear whether the post-traumatic stress disorder (PTSD)

represents a basis for acquiring the status due to a damaged body. According to the authorised personnel of the Ministry of Labour and Disabled Veterans' Care, the medical committees accept problems of mental nature as the basis for recognising disability only in special cases.¹⁹³ Rights based on the Law on Care for Civilian War Victims are also exercised by family members of the killed, deceased, missing or murdered persons, if they lost their life or went missing under circumstances defined by the law (abuse, rape, imprisonment, refuge, war operations, activity of leftover army materials, or acts of sabotage).¹⁹⁴

The law did not bring considerable improvement when it comes to strict conditions for proving the status of a victim. According to the earlier text of the Law, along with the request for recognizing the right, the applicant had to enclose medical documentation on treatment “immediately after being wounded, raped or suffering injuries.”¹⁹⁵ This regulation prevented a large number of former camp prisoners from acquiring the status of a civilian war victim, since they did not have the required documentation. Association of Camp Prisoners of Republika Srpska requested in 2006 that Republika Srpska adopt a special law on the camp prisoners, because considerable number of civilian camp prisoners was not receiving compensation. In 2007, the Association redirected its activities towards pledging for amendments to the existing Law on Civilian War Victims and Law on Rights of Veterans, Disabled Veterans and Families of Killed Veterans, demanding that both laws include regulations according to which the mere presence in camps would be considered as basis for recognizing the status of a victim.¹⁹⁶ Such a provision did not end

190. Law on Changes and Amendments to the Law on the Protection of Civilian War Victims, *Službeni glasnik Republike Srpske (Official Gazette of RS)*, No. 60/07, July 5, 2007, Article 2 (introducing a new article (36b) into the Law on the Protection of Civilian War Victims).

191. Communication from the Ministry of Labour and Disabled Veterans' Care of Republika Srpska, 26 September 2008.

192. Law on Care for Civilian War Victims, *Official Gazette of RS*, No. 25/93, 30 December 1993, Article 2.

193. Interview with representatives of the Ministry of Labour and Disabled Veterans' Care of Republika Srpska, Banja Luka, 23 January 2007.

194. Law on the Protection of Civilian War Victims, *Official Gazette of RS*, No. 25/93, December 30, 1993, Articles 2 and 3. In July 2005, the Republika Srpska Parliament adopted a new Law on Care for Civilian War Victims, but the Republika Srpska's Council of Peoples denied it over the protection of national interests of Bosniak and Croatian peoples. The law was returned to the proposer (government) for the repeat procedure. Interview with representatives of the Ministry of Labour and Disabled Veterans' Care of the Republic of Srpska, Banja Luka, 23 January 2007.

195. Law on the Protection of Civilian War Victims, Article 37 (2).

196. Telephone interview with Branislav Dukić, chairman of the Association of Camp Prisoners of Republika Srpska, 4 June 2008.

up in the amended Law on Civilian War Victims. Instead, the Law prescribes that the fact that the damage to the organism happened in connection to war operations needs to be proved “with, among other, medical documentation on treatment which took place a year at the latest from the date when the damage was inflicted, or the day when the circumstances under which the damage was inflicted ceased.” The change of deadline related to the documentation, from “immediately after” to “a year at the latest since the day the damage was inflicted”, for the majority of camp prisoners does not represent a considerable improvement.

In 2007, the initial basis for establishing a monthly amount of civilian disability pension was 351 KM (equivalent of 180 euros) (the amount received by civilian invalids of the first category).¹⁹⁷ This amount is adjusted at the beginning of each year with the index of movements of retail prices in the previous year and rate of available assets in the budget of Republika Srpska planned for those purposes.¹⁹⁸ At the end of 2007, the average salary in Republika Srpska amounted to 628 KM (321 euros).¹⁹⁹

Family members of a civilian war victim who was murdered, killed, passed away or went missing exercise their right to family disability pension in the amount of 40 percent from the amount of civilian disability pension of the first category, which in prac-

tice means that family disability pension amounts to 140.40 KM (72 euros).²⁰⁰

Legislation in Republika Srpska treats civilian and army victims unequally. Army persons are recognized disability in cases of damaged health of a minimum 20 percent (if the damage came as a result of a wound, injury or trauma), or 40 percent (if the damage came as a result of a disease), while the damage of a civilian must be at least 60 percent.²⁰¹ First-category war military invalids were receiving in December 2007 maximum benefits amounting to 1,544 KM (790 euros).²⁰² The maximum amount of benefits of a first-category civilian war invalid was considerably lower – 877.50 KM (449 euros).²⁰³

State Level

After several unsuccessful attempts in 2006 to draft a state law on rights of civilian war victims and torture victims, which would be supported by entity authorities and victim associations, the Council of Ministers of Bosnia and Herzegovina, i.e. the authorized Ministry for Human Rights and Refugees, in 2007 did not attempt to renew the initiative for adopting the law. The law should regulate the categories of victims, specify the procedures and criteria for establishing their victim status and define their rights. Those in charge at the Ministry believed that the

197. International Committee for Missing Persons, Institute for Missing Persons, and Center for Free Access to Information, *Vodič za civilne žrtve rata: Kako ostvariti pravo na zaštitu kao civilna žrtva rata u Republici Srpskoj (Guide for civilian war victims: How to exercise the right to care as civilian war victim in Republika Srpska)* (Sarajevo, 2007.), p. 5, www.ic-mp.org/wp-content/uploads/2007/12/rs-guidebook.pdf (accessed on 15 August 2008).

198. Law on Changes and Amendments to the Law on the Protection of Civilian War Victims, *Službeni glasnik Republike Srpske (Official Gazette of RS)*, No. 37/07, February 28, 2007, Article 4 (changing Article 10 of the Law on Care for Civilian War Victims).

199. Republic's Statistics Office, *Saopštenje Statistike rada: decembar 2007 (Announcement of the Labour Statistics: December 2007)*, 24 January 2008, www.rzs.rs.ba/Saopstenja/Rad/RadDecembar07.pdf (accessed on 15 August 2008)

200. International Committee for Missing Persons, Institute for Missing Persons, and Center for Free Access to Information, *Guide for civilian war victims*, p. 6. For a certain number of beneficiaries, additional financial assistance, allowance for single parents, and benefit supplement for incapacitated member of the household were paid, hence the total sum on all three counts would be 112.70 KM (58 euros). Communication from the Ministry of Labour and Disabled Veterans' Care of Republika Srpska, 26 September 2008.

201. Law on Rights of Veterans, Disabled Veterans and Families of Killed Veterans of the Defence and Homeland War of Republika Srpska, *Službeni glasnik Republike Srpske (Official Gazette of Republika Srpska)*, No. 46/04 and 53/04, Article 4; Law on the Protection of Civilian War Victims, Article 2.

202. Communication from the Ministry of Labour and Disabled Veterans' Care of Republika Srpska, 26 September 2008. These payments consisted of personal disability benefit (amounting to 468 KM), increased care and assistance allowance (561.60 KM), orthopaedic implements benefit supplement (135.70 KM) and additional material compensation (379 KM).

203. *Ibid* In addition, personal disability benefit was 351 KM, additional financial assistance – 70.20 KM, allowance for care and assistance by another person – 280.80 KM, and benefit supplement for a disabled family member who is incapable of work – 175.50 KM.

204. Telephone interview with the representative of the Ministry of Human Rights and Refugees, 5 May 2008.

positions of entity authorities differed so much that it was not realistic to expect in the course of the year to harmonise them to a degree that would allow for the passage of the law at the state level.²⁰⁴

In addition, two of three associations of camp prisoners which at first called for the adoption of the state law, abandoned the initiative in the meantime. The Association of Camp Prisoners of Republika Srpska, in accordance with their general position on ignoring joint Bosnia and Herzegovina institutions, redirected its activities in 2007 to the improvement of relevant laws in Republika Srpska. Association of Croatian Camp Prisoners in the Homeland War in Bosnia and Herzegovina, based in Mostar, resolved the status of the majority of its members by having their status of army invalids recognized, with these persons receiving from Croatia the difference between the compensation they receive from Bosnia and Herzegovina state and compensation they would receive for the same purpose in Croatia.²⁰⁵ Only the Association of Camp Prisoners of Bosnia and Herzegovina, whose membership is mainly made of Bosniaks, continued lobbying for adoption of the state law on rights of civilian war victims and torture victims.²⁰⁶

Serbia

Legislation of the Republic of Serbia provides financial and other aid from the state to a limited circle of people – war invalids and families of people who were killed in armed conflict, or died as result of being wounded or injured. This kind of establishment of users of state programmes excludes people who did not suffer bodily damage or loss of life, although during the armed conflict, or during the rule of Slobodan Milosevic, they suffered severe rights violations, such

as rape, torture and illegal imprisonment. The next restriction is that war invalids are considered to be only persons who suffered bodily damage through the actions of “enemy formations”, but not persons whose health was damaged by actions of Serbian state bodies. Therefore, under Serbian legislation, there is no basis for paying compensation to civilians (including Serbia’s citizens) who sustained bodily damage as result of torture or of being wounded by Serbian police or army. These persons can only sue the state in court for compensation of damages caused by actions of its institutions.

In 2007, a consolidated law on disabled veteran’s care was not adopted. The Serbian government has been working on that law since 2006. The law is supposed to codify the legislation related to rights of army and civilian war victims. A draft adopted by the government at the end of the year met the demands of disabled veterans’ associations which demanded that disability pensions be revalorized on a monthly basis, according to the growth of salaries in Serbia, and not twice a year, as envisaged by the earlier draft. Also, the government accepted the initiative of army war invalids to form a fund of resident building construction for this category of invalids.²⁰⁷

War Invalids

There are two categories of war invalids: military invalids and civilian ones. A military war invalid is a veteran who suffered a wound, injury, trauma or illness, which resulted in a damage to his/her body to a degree of at least 20 percent.²⁰⁸ This includes people with psychosomatic diseases.²⁰⁹ A civilian war invalid is a civilian whose degree of bodily damage sustained as a result of a wound, injury or trauma is at least 50 percent.²¹⁰ Therefore, victims of sexual violence do not have the right to compensation, except if during

205. See above, *Reparations based on the statute – Bosnia and Herzegovina – Federation B-H*.

206. Interview with Saćir Srebrenica, vice-president of the Association of Camp Prisoners of Bosnia and Herzegovina, Sarajevo, 23 April 2008.

207. Interview with Saša Dujović, president of the Executive Committee of the Association of War and Military Invalids of Serbia (URVIS), Belgrade, 13 March 2008.

208. Law on Basic Rights of Veterans, Army Invalids and Families of Killed Veterans, *Službeni list SRJ (Official Gazette of FRY)*, No. 24/98, 29/98, and 25/2000, Article 3.

209. Interview with representative of Ministry for Social Affairs of the Republic of Serbia, Belgrade, 17 June 2008.

210. Law on Rights of Civilian War Invalids, *Službeni glasnik RS (Official Gazette of RS)*, No. 52/96, Article 2.

rape they suffered an injury to their internal organ, or other bodily injury. As opposed to army invalids, civilians have no right to individual disability pension if their bodily damage was caused by an illness suffered in connection to war circumstances.

In Serbia in late 2007, 1,972 persons had the status of a civilian war invalid, based on which, depending on the degree of disability, they received money compensation and other benefits. Although the precise number of military invalids is not known, it is undoubtedly much larger than the number of civilian invalids. The impossibility of establishing the exact number of military invalids comes from the fact that the authorised Ministry for Social Affairs possesses data on users based on two laws (from 1989 and 1998), with an indefinite number of persons enjoying benefits from both laws, since some appear on both lists – one, with 24,630 persons, under the law from 1998, and the other, with 8,824 persons, under the law from 1989.²¹¹ It should be pointed out that the number of users of individual army disability pension mostly (around two thirds) relate to members of the Partisan movement from the Second World War, and to a lesser degree to veterans of wars from 1990s.

Although the Law on Rights of Civilian War Invalids does not contain an explicit regulation according to which the status of a civilian war invalid can be recognized for damages inflicted only on the territory of Serbia, the Ministry for Social Affairs interpreted the law in such a way that damages suffered on the terri-

tory of other parts of the former Yugoslavia were not accepted as a basis for recognizing disability.²¹² That is why, for example, a Serbian civilian from Croatia who became disabled due to injuries suffered in Operation Storm in 1995, was not accorded the status of a civilian war invalid in Serbia.²¹³

The status of a military war invalid is recognized to Serbian citizens who became disabled fighting in Croatia or Bosnia and Herzegovina until April 1992, “for preservation of the sovereignty and integrity of the Socialist Federative Republic of Yugoslavia.”²¹⁴ Since the Federal Republic of Yugoslavia emerged in April that year, participation in armed conflicts in Croatia and Bosnia and Herzegovina after that date does not represent a fight for preservation of territorial integrity of the newly-formed Serbian-Montenegrin state. That is why the law does not recognize the status of a military invalid to those nationals who were in the subsequent years wounded in territories outside of Serbia.²¹⁵

Families of Killed, Deceased Veterans and Civilians

Beside army and civilian invalids, there are a large number of recipients of the military family disability pensions and the so-called monthly money admission. Family disability pensions belong to family members of veterans who were killed in armed conflict, or died as a result of wounds/injuries (sustained in armed conflict), with the right to a disability

211. Interview with representative of Ministry for Social Affairs of the Republic of Serbia, Belgrade, 17 June 2008.

212. *Ibid.* Such a solution is included in government's bill from 2006.

213. As opposed to this, the Serbian authorities were recognizing the status of a military war invalid to persons from Croatia and Bosnia who, as members of local Serb armed forces suffered injuries in the first half of 1990s, and then came to Serbia as refugees. Recognition of status regarding this category represented a form of humanitarian aid, and was based on the decree of the Serbian government. Subsequently, in 2000, governments of Federal Republic of Yugoslavia and Republika Srpska signed a protocol which obliged Republika Srpska to accept responsibility of providing compensation and aid to those users with residence in Yugoslavia who had been wounded after 19 May 1992 (the date when former Yugoslav Army withdrew from Bosnia). Yugoslavia resumed taking care of those military war invalids who had been wounded before 19 May. Interview with representative of Ministry for Social Affairs of the Republic of Serbia, Belgrade, 2 February 2007.

214. Law on Basic Rights of Veterans, Army Invalids and Families of Killed Veterans, *Službeni list SRJ (Official Gazette of FRY)*, No. 24/98, 29/98, and 25/2000, Article 2 (1) (point 5).

215. Interview with representative of Ministry for Social Affairs of the Republic of Serbia, Belgrade, 17 June 2008.

pension not depending on family's financial status. Families of a killed civilian, who died as a result of wounds/injuries, have the right to monthly money admission providing they have an income below the level established by the law.²¹⁶ According to the situation from December 2007, 19,230 persons – family members of killed veterans – were users of army family disability pension.²¹⁷ The Republic authorities did not have systematized information on the number of family members of killed civilians, and civilians that died as a result of wounds/injuries, who have the right to monthly money admission.²¹⁸

The different treatment of families, depending on whether the deceased was veteran or civilian, is based on difference in principles on which aid to these two categories is based. With families of the killed veteran, the principle is accepting responsibility for the death of a person who fought for the country; while with families of civilians, the provision of compensation is based on solidarity with persons in a difficult financial situation.²¹⁹

Families of Missing Persons

Even though the 1998 Law on Fundamental Rights of War Veterans, Military Invalids and Families of Fallen Fighters designates the fallen fighter family as the family of “a person who perished, died *or went missing* under circumstances [related to an armed conflict]”, families must declare the missing person dead in order to exercise the right to compensation. The same requirement also applies to the families of missing civilians. In most cases, family members

are unaware of the possibility of obtaining monthly compensation by law in case the missing person is declared dead,²²⁰ or are reluctant to initiate such proceedings out of respect for the victim.²²¹

Amounts of Financial Compensation and Other Benefits

Amounts received by both military and civilian invalids on account of their disabilities caused by a wound, injury or physical trauma are equal.²²² First-category invalids receive the amount of an average salary in the country, increased by 80 percent.²²³ In late 2007, this amount was a little below 53,000 dinars (about 670 euros). If other benefits to which this category of invalids is entitled – care and assistance benefit, orthopaedic implements benefit supplement, monthly unemployment benefit – are added to that, the full amount could total up to 154,000 dinars (1,950 euros). Lesser categories receive smaller amounts, depending on the degree of disability, so that some persons from the tenth category receive 3,200 dinars (40 euros) a month.²²⁴

In late 2007, family disability benefit on account of the death of a family member-veteran amounted to about 47,600 dinars (600 euros) per one beneficiary, and 50 percent of this amount for other beneficiaries in the family. (In this way, a three-member family would receive about 92,500 dinars (1,170 euros) in total in family disability benefits. In contrast, families of killed civilians, i.e. civilians who died of inflicted wounds/injuries, did not receive any benefits (if they had incomes exceeding the threshold stipulated

216. While the right to receiving family disability pension does not depend on financial status of family members, there are other conditions they have to meet in order to be entitled to pension. There is an age limit after which they are entitled to family assets (45 for wife, 50 for husband), and there are conditions for children related to education (they can exercise their right while they are at regular education, aged 27 at the latest). Interview with representative of Ministry for Social Affairs of the Republic of Serbia, Belgrade, 17 June 2008.

217. Interview with Djordje Stefanović, Assistant City Secretary for Social and Children's Care - Sector for Veteran Care, Belgrade, 14 March 2008.

218. Interview with representative of Ministry for Social Affairs of the Republic of Serbia, Belgrade, 17 June 2008.

219. *Ibid.*

220. *Ibid.*

221. Interviews with representatives of the Ministry of Social Affairs of the Republic of Serbia, Belgrade, 2 February 2007 and 17 June 2008.

222. This unusual move to make disability benefits equal for military and civilian invalids of war occurred after the demonstrations of civilian invalids of war in 1996.

223. Law on Fundamental Rights of Veterans, Army Invalids and Families of Killed Veterans, *Službeni list SRJ (Official Gazette of FRY)*, no. 24/98, 29/98, and 25/2000, art. 28.

224. Interview with representative of the Ministry of Social Affairs of the Republic of Serbia, Belgrade, 17 June 2008.

by law), or were receiving so-called benefits on a monthly basis (if they had low incomes) which were much lower than the family disability benefits – about 14,750 dinars (187 euros) per family, regardless of the number of beneficiaries.²²⁵

Kosovo

In late 2007, according to data of the Ministry of Labour and Social Protection, 9,486 persons, of whom 5,200 were civilians, were receiving compensation for death or disability incurred during the 1998-1999 conflict.²²⁶ The number of civilian beneficiaries significantly increased in comparison to the previous year when fewer than 3,000 persons were receiving compensation.²²⁷

Two categories – invalid-veterans of the Kosovo Liberation Army (KLA) and families of victim-veterans, on the one hand, and civilian invalids and families of civilian victims, on the other – received compensation on various legal grounds. The basis for payments of benefits to KLA fighters and their family members was the Law on the Rights of War Invalids, Veterans-Former KLA Members and Civilian Victims, adopted by the Kosovo Assembly on 23 February 2006. Implementation of the law began in January 2007, but – due to limited resources – only in the part related to military invalids and families of killed or missing

veterans.²²⁸ Civilian war victims, including civilian invalids, continued to receive more modest payments on the basis of UNMIK's Regulation 2000/66.²²⁹

Regulation 2000/66 and the accompanying Administrative Instruction of Special Representative (2001) stipulate that persons with physical disability of at least 40 percent which is directly related to the armed conflict in Kosovo, as well as families of KLA members and civilians who lost their lives due to the conflict, are entitled to compensation.²³⁰ This decree does not apply to Serb policemen and soldiers,²³¹ but as regards civilians, enjoyment of the right regulated by the decree is not related to one's ethnic background. In practice, however, the number of non-Albanians who sought compensation on the basis of this decree was negligible. In late 2007, about 30 Serbs and 20 Roma who lost family members were receiving benefits from the Kosovo government.²³²

Compensation that was paid in late 2007 to civilian invalids with 80% disability was 117 euros, while compensation to families of killed civilians totalled 130 euros. The compensation paid to invalids-KLA veterans was 182 euros (80% disability), and family disability benefits were 234 euros for one killed family member-KLA fighter. (If two or more persons-fighters from the same family were killed, the amounts increase by 25-30 euros on average per killed family member.) By comparison, average salary in Kosovo in late 2007 was 217 euros.²³³

225. Ibid. If the beneficiary is a person over 80 years of age, monthly benefits in December 2007 amounted to a slightly higher sum – 17,200 dinars (218 euros).

226. Interview with Bajram Pajaziti, head of Department for Fallen Soldiers, Veterans, War Invalids, Civilian Victims and Missing Persons within the Ministry of Labour and Social Protection, Prishtinë/Priština, 27 March 2008.

227. Documenta, Humanitarian Law Center, and Research and Documentation Center, *Transitional Justice in Post-Yugoslav Countries: Report for 2006*, p. 53.

228. Interview with Muhamed Gjocaj, head of Department for Social Protection within the Ministry of Labour and Social Protection, Prishtinë/Priština, 20 February 2007; interview with Bajram Pajaziti, 27 March 2008.

229. Ibid.

230. Regulation 2000/66 on Benefits for War Invalids in Kosovo and for Next-of-Kin of Persons Who Lost Their Lives Due to Armed Conflict in Kosovo, 21 December 2000, art. 2(1); Administrative Instruction no. 2001/19 for Implementation of Regulation 2000/66 on Benefits for War Invalids in Kosovo and for Next-of-Kin of Persons Who Lost Their Lives Due to Armed Conflict in Kosovo, 28 November 2001, para. 2.

231. International Committee of Red Cross, *Legal study: The families of Missing Persons in Serbia and Montenegro* (2004), p. 56.

232. Interview with Bajram Pajaziti, head of Department for Fallen Soldiers, Veterans, War Invalids, Civilian Victims and Missing Persons within the Ministry of Labour and Social Protection, Prishtinë/Priština, 27 March 2008.

233. Data obtained from the Ministry of Labour and Social Protection, 27 March 2008.

The inequitable position of civilian victims is also reflected by the fact that the law prescribes certain privileges – precedence in employment opportunities and enrolment in educational institutions – for KLA veterans who were *not* victims of war, and members of their families, which do not apply to civilian war victims.²³⁴

Rights of Missing Persons' Families

UNMIK Regulation 2000/66, which was still being implemented in 2007 with respect to families of killed civilians, does not explicitly mention families of missing persons as possible recipients of monthly compensation. Hence, in order to obtain compensation, the families of missing persons would have to declare their missing family members dead first. Few Albanians were prepared to do so.²³⁵ Given that the regulation pertains solely to the period until 20 June 1999,²³⁶ families of missing persons of Serb, Roma and other nationalities, whose members went missing after this date, could not exercise the rights stipulated in the said decree. For these two reasons, there were very few persons, according to data of the Ministry of Labour and Social Protection of the Kosovo Government, who were receiving benefits on this account – only eight families of persons who went missing in war, which was the situation in December 2007.²³⁷

According to the new Law on Rights of Veterans, Invalids and Civilian Victims of War, adopted in February 2006, families are not required to declare a

missing family member dead in order to exercise the right to financial compensation.²³⁸ As stated above, the law was solely implemented in the part pertaining to families of missing fighters, but not missing civilians.

Montenegro

In late 2007, the number of persons to whom the state was paying compensation in relation to armed conflicts in the 1990s remained almost unchanged in comparison to the previous year: 254 war military invalids, five civilian invalids, and families of 198 killed former members of the JNA.²³⁹ The number of beneficiaries is relatively small because there was no armed conflict on the territory of Montenegro, with the exception of the relatively short 1999 NATO bombing. Killed or wounded fighters from Montenegro were killed or sustained injuries mostly in other parts of the former Yugoslavia. Given that the number of killed or missing civilians with Montenegrin citizenship is relatively small, Montenegrin laws do not stipulate compensation for families of killed or missing civilians. This is an oversight as there are some civilians with Montenegrin citizenship who suffered in war, hence the lack legal grounds prevents family members from obtaining reparations. To illustrate the point, during the NATO bombing in the village of Murino (between Andrijevica and Plav), six civilians were killed, but the state did not provide any compensation to their families.²⁴⁰

234. See articles 10(1), 10(2) and 11.

235. Information received at OMPE, Prishtinë/Priština, 19 February 2007. ICRC's 2004 Study showed that less than 12 percent of families of missing persons in Kosovo declared their member who went missing dead. International Committee of Red Cross, *Legal study: The families of the missing in Serbia and Montenegro* (2004), p. 116, footnote 156.

236. Regulation 2000/66 on Benefits for War Invalids in Kosovo and for Next-of-Kin of Persons Who Lost Their Lives Due to Armed Conflict in Kosovo, 21 December 2000, art. 1(5).

237. Data obtained from Ministry of Labour and Social Protection, 27 March 2008.

238. Law on Status and Rights of Families of Martyrs, Invalids, Veterans and KLA Members, and of the Families of Civilian Victims of War, 23 February 2006, art. 11(6).

239. Interview with representative of Ministry of Health, Labour and Social Welfare of the Republic of Montenegro, Podgorica, 18 March 2008. A year earlier, relevant numbers were 258, 4 and 184.

240. Interview with Velija Murić, chairman of Montenegrin Lawyers' Committee for Human Rights, Podgorica, 20 March 2008. Lawyer Murić represents the victims in court proceedings for compensation for damages against the State of Montenegro.

Personal War Disability Benefit (Military and Civilian)

A lower percentage of disability (20%) is sufficient in Montenegro to be accorded the status of military war invalid as opposed to the threshold required to be accorded the status of civilian war invalid (50%).²⁴¹ First-category invalids were receiving 415 euros (average monthly salary in Montenegro was 376 euros) in late 2007, and this amount is reduced for each of the following lower degree of disability. Care and assistance benefit supplement (270 euros) as well as orthopaedic implements benefit supplement (150 euros) are designated for the first category of invalids.²⁴²

Family Disability Benefits for Members of Fallen Soldiers' Families

In late 2007, family disability benefit for one beneficiary (a member of fallen fighter's immediate family) amounted to 249 euros. Spouse and one child going to school were receiving 601 euros, on the basis of increased family disability benefit and the so-called material insurance. Spouse and two children were receiving on these various grounds 888 euros (one year earlier – 800 euros). In addition, the state solved the housing problems of almost all the fallen fighters' families, although such an obligation was not stipulated by law.²⁴³

Material Reparations on the Basis of Court Decisions

In the post-Yugoslav countries encompassed by this report, a certain number of civilian victims of war and persons whose human rights were seriously violated in the previous period endeavour to obtain compensation for damages through court proceedings. Mostly those persons who were not included,

due to restrictive provisions under laws on invalids and other war victims, in any of the categories of victims that are receiving regular compensation through administrative procedures decide to seek justice in a court of law. Plaintiffs are often, though not exclusively, members of ethnic minorities in the given community, or citizens of other post-Yugoslav countries as opposed to the country against which legal cases are brought. Plaintiffs' claims mostly refer to compensation for non-material damages on account of illegal detention, physical injuries and mental anguish, including sufferings caused by death or disappearance of family members. In 2007, the number of applicants increased considerably in comparison to the previous period thanks to concerted efforts on the part of former camp prisoners associations in Bosnia and Herzegovina to force the authorities with thousands of applications for damages to improve the laws on war victims as well as to obtain symbolic recognition of their victim status from the public and the government alike.

However, with the exception of former camp prisoners who have a coordinated approach, the majority of other victims rarely decide to seek reparations in a court of law. Lawsuits against states are lengthy and entail considerable expenses on the part of victims-plaintiffs, while positive outcome is uncertain since the burden of proof is on the plaintiff. Victims-witnesses in war crimes trials often possess no legal knowledge which would enable them to bring separate civil cases for compensation of damages against the accused, and there is no effective mechanism of free legal aid in place in any of the countries that would facilitate for the victims to initiate such proceedings.

Bosnia and Herzegovina

In 2007, in Bosnia and Herzegovina, the media and largest victims associations did not register a single

241. Law on Protection of Servicemen and Invalids (2003), Articles 8 and 18.

242. Data obtained via e-mail from the Ministry of Health, Labour and Social Welfare of the Republic of Montenegro, 17 March 2008.

243. Ibid.

case in which applicants for compensation for damages caused by actions in war received a judgment in their favour. In rare cases from previous years when courts ruled in favour of applicants, court decisions have not since been implemented.

However, the year 2007 saw the most vigorous efforts of victims to try to exercise their right to damages by lawsuits. The Association of Camp Prisoners of Bosnia and Herzegovina, whose members are mostly Bosniaks, filed about 12,000 such claims over the course of the year, seeking compensation for sufferings that applicants endured in camps on the territory of Republika Srpska, and in a smaller number of cases, in the Federation of Bosnia and Herzegovina, Croatia and Serbia.²⁴⁴ By the end of the year, not a single court in Bosnia and Herzegovina and neighbouring states had scheduled a preliminary hearing on any of these charges.²⁴⁵ Even if courts were to rule in favour of camp prisoners, it would be highly unlikely that such court decisions would be implemented any time soon. About 15,000 persons, according to War Veteran Association of Republika Srpska, in the latter half of the 1990s, received court rulings in their favour in lawsuits against Republika Srpska on account of physical injuries or deaths of family members mobilised by the Republika Srpska authorities during the war. However, these court decisions were not implemented due to lack of funds, i.e. Republika Srpska declared damages awarded to applicants a part of public debt.²⁴⁶

According to information in the possession of the Association of Camp Prisoners of Bosnia and Herzegovina, only one former camp prisoner, Zijahudin

Smajlagić, managed to win a lawsuit against Republika Srpska on the grounds of illegal detention. The first-instance decision handed down by the Banja Luka court in March 2003 was upheld by a court of second instance in October 2005, and Republika Srpska was ordered to pay 4,500 convertible marks (2,300 euros) in damages to the plaintiff. However, this court ruling had not been implemented by the end of 2007.²⁴⁷

In the course of 2007, the Association of Camp Prisoners of Republika Srpska also collected applications for compensation for damages caused by sufferings of Serbs imprisoned in camps on the territory of present-day Federation of Bosnia and Herzegovina during the war.

Judging by some statements of representatives of camp Prisoners associations of Bosnia and Herzegovina and Republika Srpska respectively, over the course of the year, it seemed that the real purpose of claims for damages was not compensation on the basis of court rulings, given that it would be highly unlikely that any entity would be able to pay the requested compensation. The motive of the Association of Camp Prisoners of Bosnia and Herzegovina was to exert pressure by way of lawsuits brought on the governments in the entities and at the state level to improve the legislative framework within which victims would be compensated through administrative procedures.²⁴⁸ The Chairman of the Association of Camp Prisoners of Republika Srpska explained that lawsuits for damages against the Federation of Bosnia and Herzegovina were intended to show to the public that the Serbs of Bosnia and Herzegovina had been victims of human rights violations and war crimes.²⁴⁹

244. Interview with Šaćir Srebrenica, vice-president of the Association of Camp Prisoners of Bosnia and Herzegovina, Sarajevo, 23 April 2008.

245. "Podneseno 12 hiljada tužbi" ("Twelve thousand lawsuits brought"), *Dnevni avaz* (Sarajevo), 12 January 2008, posted on the following web address: http://aktuelno.ba/index.php?option=com_content&task=view&id=223&Itemid=94.

246. Interview with Milorad Kalamanda, secretary general of War Veteran Association of Republika Srpska, Banja Luka, 23 January 2007.

247. Interview with Šaćir Srebrenica, vice-president of the Association of Camp Prisoners of Bosnia and Herzegovina, Sarajevo, 23 April 2008.

248. Speech by Murat Tahirović, president of the Association of Camp Prisoners of Bosnia and Herzegovina, at a conference on the rights of civilian war victims, Sarajevo, 11 April 2007.

249. I.K., "Logoraši Republike Srpske tužit će Federaciju BiH" ("Republika Srpska camp prisoners will sue Federation B-H"), *web page Index.hr*, 11 November 2007, www.index.hr/vijesti/clanak/logorasi-republike-srpske-tuzit-ce-federaciju-bih/364563.aspx (quoted statement of chairman of the Association of Camp Prisoners of Republika Srpska).

Serbia

According to the law, a civilian may obtain compensation if he/she incurred a wound, injury or illness as a result of actions of enemy formations, which effectively caused bodily damage of at least 50 percent, or if he/she is a member of the family of a killed civilian or a civilian who died from inflicted injuries/wounds. Hence, the legislation does not provide for compensation in cases where bodily damage to civilians was caused by actions of Serbian state organs, either during or after the war. There is no state reparations programme in place for human rights violations in the past, particularly during the rule of Slobodan Milošević.

Persons who sustained physical injury or mental anguish at the hands of Serbian state organs may obtain compensation for damages solely through legal actions against the state. However, the state may be held responsible only if the lawsuit was brought within three years after the victim learnt about the damage and perpetrator. This deadline expired for many potential plaintiffs who did not bring charges, and now they have no possibility to do that. In addition, where lawsuits for damages were brought on time, court proceedings were not appropriate to the context and nature of human rights violations for several reasons: the burden of proof is on the victim; court proceedings are lengthy and entail considerable expenses; the damages awarded fail to correspond to the gravity of the criminal offences committed; and the courts tend to assume a protective attitude towards the state.

On behalf of 780 Serb refugees from Croatia, who had fled to Serbia in 1995 in the wake of *Storm* military operation, HLC brought charges in the past years against the Republic of Serbia for unlawful deprivation of liberty, violations of the Convention Relating to the Status of Refugees and Serbian Refugee Act, arrests of refugees by the police in Serbia and their forcible return to war zones. There these persons were exposed to inhuman treatment at the hands

of command structures in Serb units, or received bodily injuries in military operations. In 2007, HLC continued to represent 53 victims of forcible mobilisation on whose behalf it had previously brought seven lawsuits for compensation for damages before the courts in Serbia in the period between 1998 and 2001. In 2007, the courts delivered six verdicts out of which five established the responsibility of the State for illegal arrests and mobilisation of refugees, hence the State was ordered to pay compensation for non-material damages to forty-nine refugees ranging between 40,000 (about 500 euros) and 680,000 dinars (about 8,500 euros).

Given the Serbian Supreme Court's opinion adopted in February 2004 on the issue of applicability of statute of limitations, those victims who had not brought lawsuits by that year cannot exercise their right. Before this decision of the Supreme Court, if the damage was caused by the perpetration of a criminal offence such as unlawful detention, the claim against the state would fall under the statute of limitation within the time limit applicable to the criminal offence itself, which was a considerably longer limitation period than the general limitation under the Contractual Relations Act pertaining to claims for damages (subjective limitation period of 3 years from the date when the injured party learnt about the damage and the perpetrator, and objective limitation period of 5 years). According to the Supreme Court's opinion, however, only identified individuals-perpetrators of a criminal offence, but not the State, may be charged within the longer limitation period.²⁵⁰ Identities of police officers and soldiers who were arresting forcibly mobilised refugees are not known to the refugees, hence no requirements are met to institute the proceedings due to the statute of limitation. In addition, lawsuits against individuals who were at the helm of political and police structures in mid-1990s are not possible because they are either deceased or inaccessible as they have been put on trial at the ICTY. The legal opinion adopted by the Serbian Supreme Court prevented a large number of victims to bring lawsuits. Of about 10,000 forcibly mobilised refugees, only about 1,000 filed claims for

250. Legal opinion of the Serbian Supreme Court Civil Department, adopted at the session held on 10 February 2004.

compensation for non-material damages within the legal limitation period through HLC or other human rights organisations.²⁵¹

On behalf of the victims of torture and other human rights violations during the rule of Slobodan Milošević, HLC and other human rights organisations have brought a significant number of claims for damages against the state in the past years. On behalf of several dozen former *Otpor* activists and other participants in actions and protests against the authorities, HLC instituted legal proceedings demanding that the state pay compensation for non-material damages on account of mental anguish suffered due to arrests and abuses in 1999 and 2000.²⁵² The Serbian Supreme Court handed down two rulings in 2007 which ended the proceedings instituted by HLC on behalf of 10 *Otpor* members: the state was ordered to pay the total amount of 1,700,000 dinars (about 28,000 euros) to activists who had been unlawfully deprived of liberty.

Kosovo Albanians, the victims of violations of rights in the course of 1998 and 1999, constitute the following category of plaintiffs in the proceedings for compensation for damages. In 2007, there were five proceedings underway in Serbia pertaining to unlawful deprivation of liberty, which were instituted by HLC in 2004, 2005 and 2007. Proceedings against the Serbian state brought by HLC in January 2007 on behalf of 24 close relatives of 14 Albanian women and children, who had been killed in March 1999 in Podujevo by members of the *Scorpions* unit operating as part of the reserve force of the Serbian Interior Ministry, were also underway.

In 2007, there were five lawsuits for compensation for damages against the Serbian state before the Belgrade First Municipal Court, which were brought by HLC in 2006 and 2007 on behalf of five Bosniaks from Sandžak on the grounds of state responsibility

for torture to which they had been exposed in the period 1991-95 at the hands of members of the Serbian Interior Ministry. The ruling issued by the First Municipal Court in February 2007 obligated the Serbian state to pay a total of 1,690,000 dinars to Himza Kamberović and Kasim Hajdarević on account of state responsibility for torture to which they had been subjected in February 1994 by the members of the Serbian Interior Ministry.

In May 2007, the First Municipal Court in Belgrade upheld the HLC charges brought in 2006 against the Republic of Serbia on behalf of Alija Halilović, who had been the victim of 16.5 month-long illegal detention starting in 1993. The court ordered the state to pay the damages of 1,300,000 dinars to Alija Halilović on account of its responsibility for illegal detention. The court ruling went into effect in 2007.

Croatia

Claims for compensation for non-material damages caused by acts of terror and other violence were mostly dismissed with explanations citing either expiry of limitation period or war damages for which the Croatian state held no responsibility, or both.²⁵³ In several cases, the courts upheld claims for damages on the basis of previously established criminal responsibility. There were also instances that the courts (e.g. the Municipal Court in Sisak) would accept applicants' claims even though no individual criminal responsibility had been previously established, but such court rulings were not subsequently upheld by courts of second instance.

“War damage” is damage inflicted by military operations or actions which are an integral part of such operations. There were, however, several cases in which members of Croatian forces caused non-ma-

251. Mojca Šivert, “Naknada štete u slučajevima prinudno mobilisanih izbeglica” (“Compensation for Damages in Cases of Forcibly Mobilised Refugees”), in Goran Opačić et al. (ed.), *Posledice prinudne mobilizacije izbeglica 1995. godine (Consequences of Forcible Mobilisation of Refugees in 1995)* (IAN – International Aid Network, Belgrade, 2006), p. 167.

252. During 2000 and 2001, HLC brought 60 lawsuits on behalf of 86 members of *Otpor* (Resistance). All the proceedings had positive outcomes, except for two cases where the claims for damages were ultimately dismissed following the decision adopted by the Serbian Supreme Court. Compensation ranged between 10,000 and 200,000 dinars (130 - 2,560 euros, at the currency rate in late 2006).

terial damage by perpetrating a murder which would fall under the category of war crime, but not the notion of “war damage”. In several cases, as part of the criminal proceedings conducted, criminal responsibility of the accused for a war crime was established. Surviving members of victims’ families were awarded compensation in subsequently instigated lawsuits.²⁵⁴ E.g. in a case related to the crime committed in the village of Paulin Dvor, the District Court in Zagreb issued a ruling effective immediately in October 2006 ordering the Republic of Croatia to pay compensation for non-material damages of 220,000 kunas to each of the three applicants (Labus Dušanka, Janković Kosana and Labus Jovan). At its session in May 2007, the Supreme Court dismissed the motion for revision submitted by the Republic of Croatia as unsubstantiated, with the explanation that the damage caused by murder in a zone outside the war operations area could not be placed under the category of war damage. Even if the perpetrator was on leave, as stated in the motion for revision, the Republic of Croatia as the defendant in the case would be held responsible, in accordance with the principle of objective responsibility, with respect to the plaintiffs for damages on account of the loss of their husband and father, given that the murder had been committed with a lethal weapon owned by the Croatian Army.²⁵⁵

In addition, in some cases the courts awarded compensation for damages to members of murdered Serbs’ families, although individual criminal responsibility for the crime committed had not been previ-

ously established.²⁵⁶ However, there were more cases in which the courts dismissed claims for damages on the grounds of applicants having filed them after the expiry of the statute of limitation or with explanation that this was war damage for which the state could not be held responsible.²⁵⁷ One such case was the well-known Solar family case in which the Municipal Court in Sisak dismissed the claim for damages on 18 December 2007 citing the expiry of the statute of limitation and absence of conditions required by the Law on Responsibility for Damage Caused by Terrorist Acts and Public Demonstrations. The case pertains to the murder of Ljubica Solar by sniper fire in 1991 in Sisak.²⁵⁸

Actions of Serb formations may constitute the basis for an obligation of the state to compensate for non-material damages if these actions were terrorist in character. However, as a rule, courts would decide that the damage caused by Serb forces was the consequence of war operations, not terrorist actions. Some commentators disputed logical and legal grounds for broad interpretation of the notion of “war damage”, and explained the courts’ decisions as a reflection of the state’s need to avoid a situation in which numerous applicants would be paid substantial amounts of money for damages caused by Serb formations.

The District Court in Šibenik overturned a 2006 ruling by the Municipal Court in Drniš whereby the Republic of Croatia was instructed to pay compensation for non-material damages of 2.5 million kunas

253. Under relevant legal provisions, the State is responsible for damage caused by terrorist acts or damage caused by its own organs. The Law on Responsibility for Damage Caused by Terrorist Acts and Public Demonstrations, *Narodne novine (Official Gazette)*, no. 117/03, 23 July 2003, art. 1 para. 1; the Law on Responsibility of the Republic of Croatia for Damage Caused by Members of Croatian Armed Forces and Police during the Homeland War, *Narodne novine (Official Gazette)*, no. 117/03, 23 July 2003, art. 1.

254. Municipal Court in Zagreb issued a ruling which came into effect to award compensation of 220,000 kunas to Mirjana Tepšić, daughter of Draginja Katić who had been murdered by Nikola Ivanković, a member of the Croatian Army.

255. Supreme Court of the Republic of Croatia, Judgment in the case Rev 272/07-2, 9 May 2007.

256. Municipal Court in Sisak awarded compensation of 200,000 kunas to Milja and Petar Bojinović, parents whose daughter had been murdered. In 2006, Sisak Municipal Court awarded compensation for non-material damages of 62,300 kunas to applicant Aleksandar Vukičević who had been wounded in the war.

257. The court rejected the claim for damages brought by Petar Damjanović from Petrinja. Municipal Court in Vojnić dismissed the claim for damages filed by applicants Marija and Nikola Gačeša on the grounds that this was war damage for which the state bore no responsibility. Applicants were ordered to pay the costs of the lawsuit amounting to 25,000 kunas. Under the provision of article 376, para. 1, of the Law on Contractual Relations, a claim for compensation for inflicted damages falls under the statute of limitations after the passage of three years from the date when the injured party found out about the damage and the person responsible.

258. See ruling and decision issued by Sisak Municipal Court, dated 18 December 2007.

to legal heirs of four Croats from the village of Čitluk near Drniš, who had been murdered in January 1993, and ordered a retrial before the court of first instance so as to explain better why the action of Serbian paramilitary formations was characterised as a terrorist act.²⁵⁹ The court's ruling of first instance, dated 12 July 2006, treated the crime committed by Serbian paramilitary units as a terrorist attack and instructed the state to compensate for damages under the Law on Responsibility for Damages Caused by Terrorist Acts and Public Demonstrations.

In the proceedings of first instance, the courts in Sisak, Karlovac, Vojnić, Gvozd and Glina dismissed for the most part during 2007 applicants' claims for compensation for non-material damages caused by actions of Serb formations. The courts explained their decisions by stating that the damage was inflicted by war operations, hence the state, under the Law on Responsibility for Damages Caused by Terrorist Acts and Public Demonstrations, could not be held responsible.²⁶⁰

As regards the claims for compensation for material damages, irrespective of who caused it, the courts reject such applications and refer the applicants to submit their claims to a competent government ministry under the 1996 Reconstruction Act.²⁶¹

Montenegro

In 2007, in Podgorica, a large number of trials instigated by charges brought by families of Bosniak victims from Bosnia and Herzegovina were held. The plaintiffs sought compensation for damages on account of deportation of their loved ones in May

1992 from Montenegro to Republika Srpska, where many had been subsequently killed (see above, chapter *War Crimes Trials – Montenegro*). By the end of 2007, the Basic Court in Podgorica rendered first-instance judgments in 30 cases, out of which in 28 the responsibility of the State was established for damages caused by unfounded deprivation of liberty. The court awarded different amounts to applicants, ranging from 15,000 to 30,000 euros. Trial chambers dismissed claims alleging applicants' sustained fear and violations of the right of a person (on account of inhuman and degrading treatment in inefficiently conducted investigations, and ethnic/religious discrimination). Therefore, the applicants appealed against the rulings of first instance.

The state also appealed against the court rulings arguing that there was no cause-and-effect relationship between the actions of the Montenegrin police and subsequent deaths. No ruling of second instance in any of the cases was passed until the end of 2007. Given the possibility that the court rulings of first instance could be reversed and that a court of second instance could order retrials, which would further protract the agony of family members, applicants' legal representatives proposed an appropriate settlement in all 36 cases to Montenegrin prime minister.²⁶² Until the end of 2007, the prime minister did not respond to this proposal.

The following set of lawsuits for compensation of damages before Montenegrin courts pertains to the crime in Štrpci (in Bosnia and Herzegovina), committed on 27 February 1993, when the members of the *Avengers* unit under command of Milan Lukić had abducted 18 Bosniaks and one Croat, as well as an unidentified person, from a train, and subsequently murdered them. In the course of 2007, two

259. Telephone interview with lawyer Zrinko Zrilić, legal representative of a large number of applicants of Croatian ethnicity from wider Zadar area in the legal action against the State for compensation for non-material damages, 9 September 2008.

260. Interview with lawyer Luka Šušak, legal representative of Croat Serb families in several cases where applicants sought compensation for damages inflicted by the Croatian Army or police, Zagreb, 5 July 2008.

261. See, in this respect, judgments passed by the Supreme Court in 2007 in the following cases: Rev 449/2007-2 (judgment dated 5 June 2007), Rev 450/2007-2 (27 June 2007), Rev 983/2006-2 (29 August 2007), and Rev 858/07-2 (26 September 2007).

262. Letter addressed by Prelević Law Office to Montenegrin prime minister Željko Šturanović (Initiative for Settlement with Respect to Compensation for Damages for Victims of 1992 Bosnian Refugees Deportation), Podgorica, 13 December 2006.

first-instance rulings of local courts to compensate for damages were handed down, one in Plav, and the other one in Bijelo Polje. Municipal Court in Bijelo Polje awarded 15,000 euros each to brothers and the mother of one of the victims on account of their mental anguish. Municipal Court in Plav awarded 20,000 euros each to parents of another victim as well as 15,000 euros each to children and wife.²⁶³

The third big set of lawsuits for compensation for damages in Montenegro related to crimes committed on the border between Montenegro and Kosovo during the NATO bombing in the spring of 1999. According to the data of the Montenegrin Lawyers Committee for Human Rights, in the village of Kaluđerski Laz, on 18 April 1999, the persons assumed to be members of the Yugoslav Army killed seven persons from a group of 32 persons from Kosovo who tried to seek refuge in Montenegro. By mid-June, 21 persons in total were killed, including a larger number of the elderly, women and children. In 2005 and 2006, the families of those murdered brought twelve lawsuits for compensation for damages against the State Union of Serbia and Montenegro, and the Army of Serbia and Montenegro, as principal defendants. The second defendant in these proceedings is the Republic of Montenegro, whose Ministry of Interior failed to protect the lives of the refugees. Except for these cases, 36 families from several villages in the border area between Montenegro and Kosovo also charged the State Union and the Army of Serbia and Montenegro with destruction or inflicting damage to their properties in April 1999. Trial chamber judges of the Podgorica Primary Court's civil department adopted the position in June 2006 that the proceedings related to events in Kaluđerski Laz should be adjourned until it was established which of the two now independent states was the legal successor to the

State Union of Serbia and Montenegro.²⁶⁴ In 2007, the proceedings resumed.

In the course of 2007, there were three lawsuits underway for compensation for damages against the Republic of Montenegro before the Podgorica Basic Court which had been brought by HLC in 2006. Two lawsuits were brought on behalf of two Bosniak men and one Bosniak woman, the victims of torture in November 1992 and February 1993 in the Bukovica villages of Mrčići and Čejrenci (Pljevlja municipality). Another lawsuit was brought on behalf a Bosniak from the Bukovica village of Vitina, whose property had been destroyed in April 1994.

Kosovo

From 1999 until 2007, Kosovo Serbs brought about 15,000 lawsuits for compensation for damages to the property destroyed immediately after the end of 1999 war and during March 2004 violence before courts in Kosovo.²⁶⁵ Property owners sued the Kosovo government and municipal authorities, and often also UNMIK and KFOR (international forces in Kosovo). Immunity protects UNMIK and KFOR from such charges. As regards the Kosovo authorities, they were formed as late as 1 January 2002, hence they do not consider themselves responsible for the destruction inflicted in 1999. In 900 cases, courts declared their lack of jurisdiction, whereas in the remaining cases, hearings had not been scheduled by the end of 2007.²⁶⁶

In January 2007, HLC brought a lawsuit for compensation of damages on behalf of a Serb from Kosovo who had been unlawfully detained under suspicion of

263. Interview with Velija Murić, chairman of Montenegrin Lawyers Committee for Human Rights, Berane, 18 March 2008.

264. D.B., "No Solution until Successor Is Appointed", *web page Vijesti* (Podgorica), 7 June 2006 (www.vijesti.cg.yu/naslovna.php?akcija=advview&id=202399).

265. Interview with Trifun Jovanović, head of Office for Communication with Courts in the Court Integration Sector, UNMIK Justice Department, Gračanica, 21 February 2007.

266. Interview with Trifun Jovanović, Gračanica, 27 March 2008.

having committed a war crime. He was acquitted by a court ruling when it came into effect.

Return and Reconstruction of Property

While armed conflicts in Croatia and Bosnia and Herzegovina ended twelve years ago, the return of seized property and reconstruction of destroyed or damaged property were not completed even by the end of 2007. Moreover, several tens of thousands of families were still waiting for the reconstruction of their properties. In addition, the authorities in Croatia did very little to enable former holders of the so-called tenancy rights to obtain the same or similar apartments, unlike Bosnia and Herzegovina which had resolved this matter as far back as 2004 even though the problem of seized apartments in Bosnia and Herzegovina had been more widespread than in Croatia. For the most part, both states have returned occupied private properties (houses) to their rightful owners. In Kosovo, where the conflict ended four years after the wars in Croatia and Bosnia and Herzegovina had come to an end, there are still several thousand houses and apartments which were occupied by illegal tenants at the expense of rightful owners.

Croatia

The issue of return and reconstruction of property in Croatia in 2007 concerned mostly, as in previous years, provision of housing for Croatian Serbs-former holders of the so-called tenancy rights, as well as the reconstruction of destroyed and damaged properties owned by Serbs. Croats who had been forced to flee their homes during the war in areas of Croatia under Serb control had their property returned to them in the years after the war, while the reconstruction of

their destroyed and damaged properties was completed by 2003-2004.

Before the war, tens of thousands of Serbs in urban areas had lived in apartments belonging to the state or state companies for which they had had the so-called tenancy rights. This was a property right, equal in many of its aspects to ownership, except for the inability of the holder of tenancy right to sell the apartment, which the State could take from him/her under certain restricted circumstances. During and immediately after the war, by resorting to discriminatory measures the authorities deprived tens of thousands of Serb refugees of their tenancy rights.²⁶⁷ About 23,700 tenancy rights, which belonged to Croatian Serbs, were taken away from them in court proceedings during and after the war. At issue here are apartments in the areas which were under control of the Croatian government. In addition, thousands of tenancy rights in areas under Serb rebel forces (Krajina) ceased to exist on the basis of the law adopted in September 1995, after the Croatian government regained control over this part of the country.²⁶⁸

In areas controlled by Serbs during the war (areas of special state concern – hereinafter: ASSC), about 8,100 former tenancy right holders applied for the provision of housing by October 2007. Of this number, the government resolved housing problems of 3,638 applicants, while 3,653 cases, mostly pertaining to Croatian Serbs' applications, remained unsolved (the rest of applications were dismissed).²⁶⁹ The majority of beneficiaries were ethnic Croats, who, on various grounds, met conditions on the basis of which they could be provided housing in ASSC. Models of provision of housing include: renting state-owned apartments in ASSC; renting state-owned houses in ASSC; protected rents; provision of basic building material for construction of houses on one's own land; and, provision of plot of land and basic building material for construction of houses.²⁷⁰ In the course of 2007,

267. Human Rights Watch, *Croatia: A Decade of Disappointment: Continuing Obstacles to Reintegration of Serb Returnees*, September 2006, p. 4.

268. *Ibid.*

269. OSCE Mission to Croatia, *News in brief: 3 – 16 October 2007*, www.osce.org/documents/mc/2007/11/27905_en.pdf, p. 1.

270. Law on Areas of Special State Concern, the part "Incentives for Settlement and Development of Areas of Special State Concern", *Narodne novine (Official Gazette)*, no. 26/2003, 20 February 2003.

the government pledged twice in public that it would provide 1,000 housing units by the end of the year as “turnkey solutions” to former holders of tenancy rights in the areas of special state concern.²⁷¹ By mid-November, however, the authorities had provided apartments for only 550 families.²⁷²

On 28 June 2007, the Government of the Republic of Croatia issued a decree on the basis of which the state would offer to sell about 4,800 family houses and 6,300 apartments owned by the state to present-day and future housing beneficiaries in ASSC. According to the government’s explanation of the decree, the range of prices for an average apartment of 60m² is between 7,000 and 14,000 euros, while the price for an average house of 100m² would be between 8,700 and 23,500 euros.²⁷³ These prices are significantly lower than market prices. Since the majority of present-day housing beneficiaries in ASSC are ethnic Croats, the June 2007 decree will probably be of most use to them in terms of being able to become owners instead of tenants.

For areas which were under state control during the war (areas beyond areas of special state concern), the Croatian government adopted in June 2003 the Conclusion on the Methods of Providing Housing to Returnees – Former Tenancy Right Holders in Socially-Owned Apartments, which should allow former tenancy right holders to rent or purchase state-owned apartments at below market prices. Before the expiry of the 2005 deadline, 4,425 former holders of tenancy right, mostly Serbs, applied for housing provision as part of

this programme. The authorities estimated that about 2,200 applicants met the requirements.²⁷⁴ The government pledged in public that it would provide housing by the end of 2007 for 400 former tenancy right holders in this area. However, from the start of the programme’s implementation in 2003 until 31 December 2007, only 158 families had been provided housing, out of which 124 in 2007.²⁷⁵

In Croatia, by the end of 2007, out of 195,000 houses and apartments destroyed or damaged in the war, 142,480 in total had been reconstructed.²⁷⁶ After 2003, the majority of beneficiaries who had their houses reconstructed were Croatian Serbs, but they were also the ones to file the majority of almost 14,000 appeals against the decisions whereby their applications for reconstruction were dismissed. Given the strict criteria for reconstruction assistance, the competent ministry (of sea, transport, tourism and development) was referring unsuccessful applicants to another programme as part of which aid in building material could be provided to them.²⁷⁷

Serb owners of about 100 plots of agricultural land near Zadar and Benkovac have not yet managed to regain their land which was occupied by local Croats and those who moved in after the *Storm* operation. Owners who tried to have their land restored to them through administrative aid mechanisms have failed because of amendments to the 1996 law abolishing the existing administrative aid mechanisms without introducing the new ones by the end of 2007.²⁷⁸

271. OSCE Mission to Croatia, *News in brief: 14 – 27 November 2007*, www.osce.org/documents/mc/2007/12/29157_en.pdf, p. 4.

272. OSCE Mission to Croatia, *News in brief: 31 October – 13 November 2007*, http://www.osce.org/documents/mc/2007/11/28166_en.pdf, p. 3.

273. Government of the Republic of Croatia, Decree on Amendments and Addenda to the Decree on Conditions for the Purchase of Family House or Apartment Owned by the State in Areas of Special State Concern – Explanation, 28 June 2007.

274. *Ibid.* Among the requirements to be met for housing provision for former holders of tenancy right, the most important one is that the applicant in question does not own other properties and that he/she intends to return to Croatia.

275. Organisation for Security and Cooperation in Europe - Office in Zagreb, *Report of the Head of the OSCE Office in Zagreb Ambassador Jorge Fuentes to the OSCE Permanent Council*, 6 March 2008, www.osce.org/documents/mc/2008/03/30456_en.pdf, p. 12.

276. *Ibid.*, p. 13.

277. *Ibid.*

Bosnia and Herzegovina

At the end of the war, about 250,000 houses and apartments in Bosnia and Herzegovina were occupied by temporary beneficiaries.²⁷⁹ Thanks, above all, to the active role of representatives of the international community in Bosnia and Herzegovina, between 2000 and 2004, a programme for the return of property to pre-war tenants was implemented.²⁸⁰ Reconstruction of destroyed and damaged property has unfolded at a slower pace, and has still not been completed.

As a consequence of war, about 453,000 homes in Bosnia and Herzegovina were partly or completely destroyed, which amounted to over a third of the pre-war housing inventory. The destruction went on even after the end of armed conflicts so that an additional 14,000 housing units were destroyed after the signing of the peace accords.²⁸¹ By the end of 2007, out of 467,000 damaged or destroyed housing units in total, 317,000 had been reconstructed, including reconstruction efforts financed by donor funds, the funds provided by the state of Bosnia and Herzegovina, or the funds of owners themselves.²⁸² The number which the ministry used in late 2007 was based on the auditing of housing inventory status in Bosnia and Herzegovina, i.e. information that the ministry received from all the municipalities in the country concerning the number of housing units which were

still unreconstructed. Before the auditing, the ministry believed that the number of reconstructed houses and apartments was around 260,000, which was considerably lower than the real figure. The assumption is that the difference between the earlier estimate and newly established figure results from the fact that many owners reconstructed their properties on their own, particularly in those cases where damages were smaller in scope, and the data on properties reconstructed in this manner were not recorded.²⁸³

According to the data of the ministry in late 2007, there were 150,000 housing units in Bosnia and Herzegovina which had not yet been reconstructed. However, judging by applications of displaced persons and refugees for assistance in reconstruction, the real need for reconstruction of property was relevant to about 45,000 housing units.²⁸⁴ In the course of 2007, 4,586 housing units were reconstructed.²⁸⁵ Thus, a declining trend in terms of numbers of reconstructed houses and apartments per year continued, given that in 2004 there were 7,783 housing which were reconstructed, in 2005 – 7,371, and in 2006 – 5,476.²⁸⁶

Up until 2003, reconstruction efforts were mostly financed by foreign donors funds. This was understandable given the limited economic resources of the authorities in post-war period and the importance attached to the issue of reconstruction of the war-torn

278. The example to illustrate the point would be the case of Gligorije Radak, whose land was allocated for use 11 years ago to an immigrant from Vojvodina for an 8-year period. Despite Radak's efforts since 1995, complaints submitted to the local administration, court, government and competent ministry, he has not managed to regain ownership over his land although the decision on allocation of his land was overturned 7 years ago. OSCE Mission to Croatia, *News in Brief: 7-18 September 2007*, www.osce.org/documents/mc/2007/10/27142_en.pdf, p. 4.

279. Rhodri Williams, *The Contemporary Right to Property Restitution in the Context of Transitional Justice*, International Center for Transitional Justice, ICTJ Occasional Paper, May 2007, p. 33.

280. *Ibid.*, p. 40.

281. Ministry of Human Rights and Refugees of Bosnia and Herzegovina, *Analiza stanja u oblasti razrušenosti stambenog fonda izbjeglica iz BiH i raseljenih osoba i dosadašnje rekonstrukcije sa procjenom sredstava potrebnih za obnovu preostalih stambenih jedinica u svrhu povratka u BiH (Analysis of the Situation Pertaining to the Degree of Destruction of Housing Inventory of Refugees from Bosnia and Herzegovina and Displaced Persons, and Previous Reconstructions with an Assessment of the Funds Needed for Reconstruction of Remaining Housing Units for the Purpose of Return to Bosnia and Herzegovina)*, February 2007, p. 5.

282. Data obtained from the Ministry for Human Rights and Refugees of Bosnia and Herzegovina, 5 May 2008.

283. Telephone interview with representative of the Ministry for Human Rights and Refugees of Bosnia and Herzegovina, 9 October 2008.

284. *Ibid.*

285. Data obtained from the Ministry for Human Rights and Refugees of Bosnia and Herzegovina, 5 May 2008.

286. Ministry of Human Rights and Refugees of Bosnia and Herzegovina, *Analysis of the Situation Pertaining to the Degree of Destruction of Housing Inventory*, p. 6.

country by the international community. As donor assistance was drying up in Bosnia and Herzegovina, the authorities were increasingly assuming an ever-more important role in the financing of reconstruction efforts. In late 2003, the Reconstruction and Return Task Force (RRTF) with the Office of High Representative was closed and its powers were transferred to the Ministry of Human Rights and Refugees. In the period between 2003 and 2006, about 70 percent of reconstruction efforts were financed from domestic sources.²⁸⁷ In 2007, as much as 81 percent of reconstruction efforts were financed by funds from domestic institutions.²⁸⁸

Kosovo

The Kosovo Property Agency (KPA), an independent administrative body established in March 2006, was in charge of the process of returning property in 2007. Previously, as of 1999, protection and restoration of property rights was under the jurisdiction of Housing and Property Directorate (HPD), as part of the United Nations Mission in Kosovo (UNMIK). While the HPD mandate pertained solely to houses and apartments, the establishment of KPA introduced a mechanism which should allow for the return of business premises and agricultural land as well.

Before the expiry of the deadline for applications coinciding with the expiry of the HPD mandate (July

2003), the directorate had received about 29,160 applications.²⁸⁹ By far the largest number of applications (over 27,100) fell into the “C” group, i.e. they referred to the return of property abandoned by their owners, mostly non-Albanians, during and after the NATO bombing (March-June 1999).²⁹⁰ However, over a half of the applications (about 16,000) were not relevant as these were either related to destroyed property which was not occupied, or the applicants failed to prove their ownership over the given property before the 1999 NATO bombing, or the owners withdrew their applications for various reasons (mostly due to sale of their property).²⁹¹

By the end of 2007, HPD and its successor KPA had reached decisions on almost all the applications, irrespective of the category to which they belonged.²⁹² Of 11,100 applications concerning rightful claims to property before the NATO bombing, but whose property was usurped in its aftermath, 5,582 cases were solved by the end of 2007 by allowing owners to regain their property, 3,279 properties were under KPA administration, and in 2,250 cases, KPA ordered temporary users to move out, but this has not come to pass, mostly due to the refusal of temporary users to leave usurped properties and drawn-out eviction procedures.²⁹³

As regards the 5,582 housing units that were restored to their rightful owners, the majority of applicants do not live there for security and other reasons. KPA

287. Of 260,000 housing units that had been reconstructed by the end of 2006, more than two thirds were reconstructed thanks to donors funds. Ministry of Human Rights and Refugees of Bosnia and Herzegovina, *Analysis of the Situation Pertaining to Degree of Destruction of the Housing Inventory*, p. 5.

288. Data obtained from the Ministry for Human Rights and Refugees of Bosnia and Herzegovina, 5 May 2008.

289. Interview with Xhevat Azemi, Kosovo Property Agency deputy director, Prishtinë/Priština, 27 March 2008.

290. Claims from category “A” pertain to confirmation of ownership over property which has been taken away from Kosovo Albanians during the rule of Slobodan Milošević by implementation of discriminatory measures; 1,212 such applications were submitted to HPD. Claims from category “B” (766 in total) pertain to confirmation of ownership in cases of unregistered transfers of properties in the 1991-99 period, when the Serb authorities, in an attempt to prevent the sale of Serb-owned properties thus encouraging as many Serbs as possible to stay in the province, made the sale of real estate properties conditional upon the issuance of a special permit, but in these cases the parties involved did not seek nor obtained this permit. As regards the claims falling under the categories “A” and “B” (fewer than 2,000 in total), positive solution would be when HPD/KPA confirms that the applicant did have ownership over the housing unit on 24 March 1999.

291. Data on the number of returned properties, under KPA administration or which are still unlawfully used by temporary beneficiaries, were taken from KPA table on implemented decisions on applications, delivered to the researcher for the purpose of this report in March 2008.

292. Interview with Xhevat Azemi, Kosovo Property Agency deputy director, Prishtinë/Priština, 27 March 2008.

293. Ibid.

has no data on how many owners actually returned to their houses or apartments, given that the mandate of this organisation does not entail monitoring this issue.

KPA property management model implies that a temporary beneficiary may continue living in the given apartment or house with the consent of the rightful owner.²⁹⁴ Since March 2006, temporary beneficiaries are obliged to pay the rent to owners if the owners request it. In late 2007, this scheme was applied in 917 cases. The temporary beneficiary is under obligation to present to the Agency every month a receipt confirming that the rent has been paid. The amount of monthly rent is set by the municipality. They are below the market prices because if this were not the case, it would be difficult to rent out these apartments, and it would be particularly difficult to find tenants within a short space of time. By the end of 2007, KPA had contacted another 2,000 property owners offering to rent out their apartments or houses. The vast majority of owners accepted the offer.²⁹⁵

According to the Kosovo authorities, in the course of 2007, the number of repeated usurpations of apartments and houses dropped considerably. For years this was happening if owners or persons trusted by owners did not move into apartments or houses immediately after the first eviction of temporary beneficiary. As this was a widespread phenomenon, KPA made an agreement in 2007 with the Kosovo Police Service (KPS) to guard the property against illegal usurpation for 72 hours after the eviction.²⁹⁶

As regards usurped land or business premises, by the expiry of deadline on 3 December 2007, KPA had received 39,574 applications for return, four times more than expected at the time of KPA's formation

in 2006.²⁹⁷ In nine out of ten cases, applications were related to the return of agricultural land. In 96 percent of all cases, applications were submitted in the Serbian language, hence KPA assumed that applicants were Serbs and other non-Albanians. KPA estimates that between 25 and 30 percent of land has been usurped in Kosovo. By the end of 2007, KPA had issued decisions related to 5,743 applications, but their implementation has not yet started.²⁹⁸

None of the organisations or institutions in Kosovo, be they international or domestic, are in possession of accurate data on the total number of destroyed or damaged housing units which have not yet been reconstructed. The assumption is that about 100,000 houses of Kosovo Albanians were destroyed or damaged during the 1998-99 conflict, as well as an unknown number of houses owned by displaced non-Albanians.²⁹⁹ By 2002, reconstruction of houses owned by Albanians had been largely completed.³⁰⁰ Reconstruction of non-Albanian properties are still underway. In the past three years, the Kosovo government has become the largest individual financial sponsor of return projects, including the reconstruction. The government also financed the reconstruction of properties owned by Serbs and Roma which was destroyed in March 2004 violence. Reconstruction is linked to return, hence the state is not reconstructing houses for owners who have not requested to return to their properties.

The prevailing reconstruction model is the one being implemented as part of the organised return of displaced persons and refugees. Throughout 2007, the Ministry for Return and Communities organised the return of Serbs to the village of Berkovë/Berkovo in the municipality of Kline/Klina, where 19 houses were built, as well as in the village of Klinavc/

294. Telephone interview with KPA PR officer, Prishtinë/Priština, 21 February 2007.

295. Interview with Xhevat Azemi, Kosovo Property Agency deputy director, Prishtinë/Priština, 27 March 2008.

296. *Ibid.*

297. *Ibid.*

298. *Ibid.*

299. Data on destroyed houses is taken from "Kosovo: The human rights situation and the fate of persons displaced from their homes", Report by Alvaro Gil-Robles, Human Rights Commissioner, to Parliamentary Assembly and Ministerial Council of the Council of Europe, 16 October 2002, para. 109.

Klinavac (Kline/Klina municipality), where 15 houses were built to facilitate return. In addition, the return of Roma, Ashkali, Egyptians and Circassians to the municipality of Vushtri/Vučitrn was completed. Kosovo authorities built 17 houses for them in the town of Vushtri/Vučitrn, and three houses in the village of Stanovc i Poshtem/Donje Stanovce.³⁰¹ There were, however, cases where the Ministry for Return and Communities reconstructed some housing units for potential returnees, but the actual return did not occur. In the village of Babushi i Serbëve/Srpski Babuš (Ferizaj/Uroševac municipality), in the course of 2007, the construction of 75 houses, a school and community health care center was completed. In the previous years, the villagers had already permanently adapted to life in Serbia proper. In addition, before the war, they had not exclusively been farmers, and yet the return project was based on the premise that they would be engage in agricultural activities once they returned. Hence, the Serbs did not return to their village.³⁰²

A person or family that wishes to return individually is to submit application for return to the Ministry for Return and Communities through municipal administration. Joint commission of the ministry and United Nations Development Programme (UNDP) goes out in the field to make an assessment of the condition in which the given house is. The condition is measured on a 1-5 scale where 5 indicates that the house is totally destroyed. The size of the house to be built depends on the number of family members who will return, but the maximum surface area is 75m². Adaptation or construction of a house does not exceed the cost of 12,000 to 14,000 euros. Adaptation is also applicable to houses whose surface

area exceeds 75 m². In practice, the number of adaptations is negligible, i.e. the emphasis is on the construction of new houses.³⁰³ In 2007, the construction of 164 houses was completed on the basis of requests for individual return thanks to the financial support of the British and Kosovo governments.³⁰⁴

Apologies

The only instance of apology, as a form of symbolic reparation, in 2007, was the apology by Serbian president Boris Tadić in a televised interview in Zagreb intended for the Croatian public. Tadić, as a guest on the popular show *On Sunday at Two (Nedeljom u dva)*, on 24 June, said, “To all the citizens of Croatia and all the members of the Croatian nation who were rendered miserable at the hands of members of my nation, I convey my apology and assume responsibility for it.”³⁰⁵ Although Croatian president Stjepan Mesić and largest opposition party leader Zoran Milanović (Social Democrat Party) welcomed Tadić’s gesture, the apology did not have a significant impact in Croatia and the region. In the same interview, Tadić also pointed out “the fact that such things were done to my nation as well” and called on other politicians in the Balkans “to take more responsibility on themselves”. In a similar vein, in December 2004, the Serbian president conveyed his apology in Sarajevo “to all those against whom crimes were committed in the name of the Serb nation”, going on to underline that “the same crimes were committed against our nation, and in this respect we all owe one another apologies.”³⁰⁶ By highlighting the need that others should also apologise to Serbs in the same speeches

300. “Kosovo: The human rights situation and the fate of persons displaced from their homes”, *Report by Alvaro Gil-Robles, Human Rights Commissioner, to Parliamentary Assembly and Ministerial Council of the Council of Europe*, 16 October 2002, para. 180.

301. Interview with Saša Ivić, head of Project Implementation Sector at the Ministry for Return and Communities, Prishtinë/Priština, 28 March 2008.

302. *Ibid.*

303. Interview with Saša Ivić, head of Project Implementation Sector at the Ministry for Return and Communities, Prishtinë/Priština, 28 March 2008.

304. Telephone interview with a representative of UNDP office in Prishtinë/Priština, 28 March 2008.

305. “Tadić se izvinio građanima Hrvatske” (“Tadić Apologised to Citizens of Croatia”), *B-92 web page (Belgrade)*, 24 June 2007, www.b92.net/info/vesti/index.php?yyyy=2007&mm=06&dd=24&nav_category=11&nav_id=252551.

306. “Tadić: Svi dugujemo izvinjenje” (“Tadić: We All Owe Apologies”), *B-92 web page (Belgrade)*, 6 December 2004, www.b92.net/info/vesti/index.php?yyyy=2004&mm=12&dd=06&nav_id=157274.

in which he apologised to others, Tadić failed to convince a larger part of the public in both Bosnia and Herzegovina and Croatia of the significance of his own gesture.

In Serbia, Tadić's Democratic Party coalition partner in the Serbian government, the Democratic Party of Serbia, had no official reaction to Tadić's apology in Zagreb, but a member of this party's senior executives, Dušan Proroković, stated his disagreement with Tadić, arguing that apologies on the territory of the former Yugoslavia had not produced any results and that others should also apologise to Serbs given the sufferings of members of this nation.³⁰⁷ The largest opposition party, Serbian Radical Party, strongly criticised Tadić, while the nongovernmental sector representatives mostly praised his act.³⁰⁸

Memorials

In each post-Yugoslav country, a near complete absence of memorials to the sufferings of minority communities in the given area reflects a widespread view that the role of righteous victims belongs exclusively to the majority. In rare cases in which memorials mark the sufferings of members of minority communities, the minority communities themselves have erected those monuments, often in isolated locations, without the participation of the authorities. In all post-Yugoslav countries, except for Croatia, municipalities, war veteran associations and families of killed soldiers and civilians often put up memorials without requesting prior approval of competent ministries so that the authorities, as a rule, have no full insight into the practice of erecting monuments. This is why it is difficult to come by accurate aggregate information about the number and types of memorials in these states.

Bosnia and Herzegovina

In Bosnia and Herzegovina, the largest number of memorials is dedicated to members of specific ethnic groups which constitute the majority in a given area. There are several exceptions to the rule, and the best-known is the one in Potočari, in Republika Srpska, where a memorial to those who perished in the Srebrenica genocide was erected in 2003. However, neither in this case was the said memorial built by the government which was responsible for the sufferings on account of which the memorial was put up in the first place (the Republika Srpska government, in this case).

On 25 June 2007, the then High Representative of the International Community in Bosnia and Herzegovina, Christian Schwarz-Schilling, forced the adoption of the Law on Memorial Center Srebrenica-Potočari, on the grounds of which the responsibility for financing memorials was transferred to the state of Bosnia and Herzegovina. Up to that point, the memorial operated as a foundation which was funded through state subsidies, donations and from other sources. According to the 2007 law, the Memorial Center is run by the Council of Ministers of Bosnia and Herzegovina which also appoints management board members.³⁰⁹ The political elite in Republika Srpska was against the passage of this law, arguing that this piece of legislation detached a part of Republika Srpska out of the jurisdiction of this entity, thus rearranging territorially Republika Srpska and Bosnia and Herzegovina.³¹⁰ On the other hand, families of murdered Bosniaks explained their motion for transfer of jurisdiction over the memorial to the state level of Bosnia and Herzegovina by their fear that the memorial might belong to Republika Srpska after the closure of the Office of High Representative.³¹¹

307. "Izvinite zbog izvinjenja" ("I apologise for apology"), *B-92 web page (Belgrade)*, 25 June 2007, www.b92.net/info/emisije/kaziprst.php?yyyy=2007&mm=06&nav_id=253980 (transcript of interview with Dušan Proroković in Index Finger show ("Kažiprst")).

308. "Tadić se izvinio građanima Hrvatske" ("Tadić apologised to citizens of Croatia"), *B-92 web page*.

309. The Law on the Memorial Center Srebrenica – Potočari, memorial and burial ground for genocide victims in 1995, 25 June 2007, www.ohr.int/decisions/plipdec/default.asp?content_id=40029, art. 8.

310. Gordana Katana, "Skupština RS odbacila Šilingov zakon o Memorijalnom centru Potočari" ("Republika Srpska Assembly Rejected Schilling's Law on Memorial Center Potočari"), *web page Voice of America*, 27 June 2007, www.voanews.com/Serbian/archive/2007-06/2007-06-27-voa6.cfm.

311. A. Omeragić, "OHR podržao zakon o Memorijalnom centru" ("OHR Upheld Law on Memorial Center"), *Oslobođenje* (Sarajevo), 15 June 2007, www.oslobodjenje.ba/index.php?option=com_content&task=view&id=50697&Itemid=44.

In Republika Srpska, there are a large number of memorials to Bosnian Serbs who lost their lives in the 1992-95 war. In 2006, the war veteran organisation started gathering data for the purpose of compiling registers of all monuments and memorials, including memorials to non-Serb victims. In the course of 2007, this procedure was not completed since less than a half of War Veteran Association's municipal boards had submitted the data to their headquarters.³¹² In some parts of Republika Srpska, such as the Prijedor area, memorials with names of military victims from the ranks of the Serb ethnic group have been put up in front of many primary and secondary schools.³¹³

Bosniak returnees have put up memorials to local residents who lost their lives in several locations in Republika Srpska. These are mostly the locations owned by the Islamic religious community, victim burial grounds and public locations in returnee settlements, beyond the areas where the majority Serb population lives. Thus, for example, in 2007, on the territory of Prijedor municipality, a memorial plaque was put up in a place called Stari Kevljani where three years earlier a mass grave with bodies of hundreds of local Bosniaks had been found.³¹⁴ Bosniak returnees to the village of Biščani – the hamlet of Sredice also put up a memorial plaque in 2007.³¹⁵

In 2007 former prisoners of *Omarska*, the most notorious camp on the territory of Bosnia and Herzegovina during the 1992-95 war, did not succeed in carrying out their initiative to turn a camp building (*Bijela zgrada*) into a memorial center. This area is now a part of Novi rudnici Ljubija (New Mines Ljubija), whose majority owner is *Mittal Steel* multinational company. *Mittal Steel* management was willing to accept the initiative, but the Prijedor municipal (Serb)

government opposed it, saying that the existence of a memorial center would heighten tensions between Serbs and Bosniaks in the municipality.³¹⁶

Over the course of the year, there were incidents recorded in which memorials were damaged or removed in areas where they commemorated the sufferings of a minority population. Such an incident occurred in Stolac, a town in the Federation of Bosnia and Herzegovina, where Croats now constitute the majority. The Association of Camp Prisoners of Bosnia and Herzegovina put up on 9 May 2007 a memorial plaque on the building of former Bone Hospital [Koštana bolnica] in the town where the Croatian Defence Council had set up a prisoner camp for Bosniaks. Two days after the memorial plaque had been put up, unknown perpetrators smashed it. The Association of Camp Prisoners of Bosnia and Herzegovina put up a new plaque later, but it was soon removed by unknown perpetrators.³¹⁷ In the village of Donja Ljubija, near Prijedor, in the night of 25/27 February, unknown perpetrators desecrated a memorial to Bosniak victims of *Omarska* and *Keraterm* Prijedor camps. The perpetrators pulled out planted roses at the memorial site and made crosses out of them, and on the tarmac in front of the memorial they drew crosses with four "S" letters, the traditional Serb symbol.³¹⁸

Croatia

In Croatia, in the period after the 1991-95 war, 143 mass graves with bodies of Croat soldiers and civilians were found. By the end of December 2007, the government erected 51 memorials to commemorate 91 mass grave sites. In cases where two or more mass

312. Telephone interview with Milorad Kalamanda, Republika Srpska War Veteran Association secretary general, 7 May 2008.

313. Telephone interview with Seida Karabašić, chairwoman of Prijedor Women Association "Izvor" (Prijedor), 24 April 2008.

314. Sade Alić, "Tugo moja kozaračka" ("My Sorrow of Kozara"), web page www.kevljani.eu, 29 March 2008 www.kevljani.eu/index.php?option=com_content&task=view&id=238&Itemid=2 (the article features photographs of the memorial plaque).

315. Telephone interview with Seida Karabašić, chairwoman of Prijedor Women Association "Izvor" (Prijedor), 24 April 2008.

316. *Ibid.*

317. Interview with Šaćir Srebrenica, vice-president of Association of Camp Prisoners of Bosnia and Herzegovina, Sarajevo, 23 April 2008.

318. D.K., "Incidenti uznemirili povratnike" ("Incidents Disturbed Returnees"), *Nezavisne* (Banja Luka), 28 February 2007. (www.nezavisne.com/vijesti.php?vijest=6546&meni=4) (statement by Sead Hasanagić, representative of Islamic religious community in Donja Ljubija).

graves are situated in the immediate vicinity of one another, they are marked by erecting one memorial. Five memorials were put up during 2007 to mark mass graves of Smoljanac, Čakovci, Gornje Taborište, Sonković and Golubnjača-Ljubovo.³¹⁹ In addition, in 2007, a memorial plaque of the Association of Zagreb Defenders of Vukovar was put up in Vlačka Street in Zagreb. In the course of the year no monument to the victims on the Serb side in the war was unveiled.

As in previous years, so too in 2007, along with monuments to victims built by the government at mass grave sites, local governments and war veteran associations erected monuments to defenders. In Dubrovnik, on 5 August 2007, on the Day of Victory and Homeland Thanksgiving, a monument to defenders in Pile was formally unveiled. The monument is designed as “a sea cube”, the regular cube with screens and mirrors on the outside, and red earth at its base which symbolically stands for Croatia soaked in the blood of its defenders.

At the Holy Mother of Liberty votive church in the Zagreb district of Jarun, a common cenotaph (an empty grave) for 15,840 defenders who died in the Homeland War was erected on 4 November 2007. Their names are inscribed in alphabetical order on stone plaques with which the inner walls are coated. The list of those who perished was being compiled for a year by Dinko Mikulić, an assistant to Minister Jadranka Kosor, who explained that the total number included members of both the Croatian Army and Croatian Defence Council (HVO – the armed formation of Bosnia and Herzegovina’s Croats in the 1992-95 period).

The Ministry of Family, Veterans’ Affairs and Intergenerational Solidarity signed an agreement on the construction of a monument to Croatian war invalids in Zagreb with the Zagreb branch of HVIDR (the Association of Croatian Homeland War Military

Invalids). According to the agreement, the ministry would earmark the funds particularly designated for co-financing of the construction of monuments as of 2008.

On 24 October 2007, near Vukovar general hospital, Prime Minister Ivo Sanader unveiled a monument to the victims who had died in Vukovar and Vukovar hospital.

Serbia

In Serbia proper, there are no monuments as yet that commemorate the sufferings of non-Serb communities in the armed conflicts of the 1990s. The Priboj municipal assembly made a decision in 2005 to finance the construction of a monument to seventeen Sandžak Muslims who had been abducted by Bosnian Serb Army members on 22 October 1992 from a bus at the location of Mioče, on the territory of Bosnia and Herzegovina, and subsequently murdered. The victims’ families originally requested that the monument be erected in Mioče, where the victims had been abducted. Municipal authorities in Rudo gave their consent for the monument to be built on the territory of Rudo municipality. However, the public company on whose land the abduction of passengers had taken place (*Bosna šume*, Republika Srpska branch) rejected the initiative. The families then decided to put up the monument in Sjeverin, but by the end of 2007 the authorities had failed to provide a suitable location.³²⁰

Despite the efforts lasting several years by victims’ families to erect a monument in Prijepolje to the Bosniaks that were abducted in Štrpci in 1993 and subsequently murdered by armed Bosnian Serbs from Milan Lukić’s unit, by the end of 2007 the initiative had not yet been realised. In 2005, Prijepolje

319. The Government of the Republic of Croatia, *Izvešće o provedbi Zakona o pravima hrvatskih branitelja iz Domovinskog rata i članoava njihovih obitelji za razdoblje od 01.01.2007. do 31.12.2007.* (Report on Implementation of Law on Rights of Croatian Defenders from Homeland War and Their Family Members for the period between 1 January 2007 and 31 December 2007), April 2008, p. 105.

320. Interview with Džemail Halilagić, chairman of the Committee for Human Rights and Humanitarian Aid, Priboj, 6 March 2008.

municipal assembly voted unanimously to erect the monument and tasked the municipal council with the implementation of its decision. In 2007, the municipal council invited tenders for monument preliminary design twice – in mid-2007 and late that year. The council adopted a preliminary design – 19 stylised windows representing 19 victims and rails reminiscent of a train and the Štrpci railway station. Also, a decision was made that the location for the monument should be near a bridge over the river Lim where, in previous years, commemorative processions to mark the crime ended.³²¹

By the end of 2007 no construction of a monument to the fallen fighters from the territory of Belgrade who perished in the wars had begun, despite an initiative launched as long ago as September 1997 by the Serbian Association of War Veteran Invalids. Those killed fighters who had not been born in Belgrade, but whose families moved to the capital from Bosnia, Croatia or Kosovo would also fall into the category of persons to whom the monument would be dedicated. In a compromise with the city authorities the war veteran invalids accepted that the monument, in addition to killed fighters themselves, be also dedicated to civilian victims of the 1990-1999 wars. The initiative was adopted in April 2005. The Belgrade City Assembly decided then to erect the monument in the Sava Square, and in late 2006, adopted a preliminary monument design and urban master plan for the Sava Square (Savski trg).

Kosovo

Throughout 2007, the Humanitarian Law Center continued to document memorials in Kosovo, establishing that there were several hundreds of such memorials. In most cases, memorials were put up by victims' families or residents of local villages and municipalities. Most memorials honoured civilian victims, while about a third of the monuments were dedicated to KLA members. Only one memorial was erected to commemorate ethnic Serb victims, which is located in the municipality of Vitina.

Montenegro

During 2007, no new memorials related to the armed conflicts in the 1990s were erected in Montenegro.³²² In previous years, monuments had been built in Golubovci (near Podgorica), Andrijevisa, Masline army barracks in Podgorica, in Mojkovac, Grnčarevo (near Bijelo Polje), Nikšić and Berane, mostly by the Montenegrin war veteran association. The government of the then-FR Yugoslavia financed the construction of a monument in the village of Murino dedicated to six civilian victims of NATO bombing in April 1999, as well as in Grnčarevo. In Sutorina community near Herceg-Novi, the Alliance of Second World War Fighters erected a monument to four fighters killed in the wars of the 1990s.³²³

321. Interview with Nedžad Turković, president of Prijepolje Municipal Assembly, Prijepolje, 5 March 2008; interview with Nail Kajović, unofficial representative of the families of victims of the crime in Štrpci, Prijepolje, 5 March 2008.

322. Telephone interview with Radan Nikolić, chairman of Montenegrin Association of Veterans of Wars since 1990, 15 September 2008.

323. Documenta, Humanitarian Law Center, and Research and Documentation Center, *Transitional Justice in Post-Yugoslav Countries: Report for 2006*, p. 75.

Conclusion

In the areas of transitional justice which attract the most attention of the public, including therein the international community, post-Yugoslav countries' governments made significant steps in 2007 towards a balanced treatment of victims of war crimes and other human rights violations from the 1990s. This primarily applies to war crimes prosecutors' offices which initiated a larger number of trials of members of majority communities. At the same time, initiatives intended to locate missing persons in most countries were not burdened with preferential treatment of victims from one ethnic group at the expense of victims from another ethnic group.

Nonetheless, in other areas of transitional justice, the governments were passive or continued to give

privileged treatment to members of majority ethnic communities as opposed to members of minority groups. Bias is particularly conspicuous in the field of establishing and communicating the facts about war crimes, including in parliamentary discussions on war crimes and the manner in which educational systems present the events from the 1990s. A discriminatory approach is noticeable in the field of both material and symbolic reparations. As regards institutional reforms and the formation of truth commissions, there were no significant official initiatives in this respect in any of the post-Yugoslav countries in 2007. Because the passive and discriminatory attitude of governments towards transitional justice prevails over an active and unbiased approach, there is still a widespread belief in place among all ethnic communities in Croatia, Bosnia and Herzegovina, Serbia, Montenegro and Kosovo that justice has not yet been done.

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