

Croatia

Report on the implementation of ICCPR

Replies to the list of issues

on some issues taken up in connection with the consideration
of the second periodic review of Croatia

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Introduction

Croatian organizations for human rights – Centre for Peace, Non-Violence and Human Rights Osijek, *Documenta*, and Civic Committee for Human Rights, have systematically been monitoring war crime trials and their effect on the process of dealing with the past since 2004. In years between 2000 – 2006 the judicial, legislative and executive bodies of the Republic of Croatia failed to make the expected, necessary, and objectively realistic qualitative step forward in the creation of the positive atmosphere for the processing of war crime trials. The greatest problems occurring

year after year are yet again the adverse political context, insufficient personnel and technical conditions for the processing of war crimes, insufficient application of the existing legal instruments for witness protection, and a large number of verdicts reached *in absentia*¹.

Question 11 (List of issues)

Please provide detailed information on the practical application and interpretation of the Amnesty Law by the judiciary (previous concluding observations, para. 11; comments by Croatia on the concluding observations, point 11.

Practical application and interpretation of the Amnesty Law

Part of the legacy of the poorly conducted criminal procedures of the early 1990s also relates to those cases in which the *General Amnesty Law* was inappropriately applied to the crimes of murder or war crimes. Although the dominating perception in public is that the amnesty laws, referred to acts committed in the period from 17 August 1990 to 23 August 1996 (Law on Amnesty for Criminal Prosecution for Criminal Acts Committed in Armed Conflict and War Against the Republic of Croatia from 1992 and later modified in 1995) was mostly used for amnesty of members of Serb units. In judicial practice this law was used many times for amnesty of members of Croatian Military. For example in the case against Antun Gudelj, the legal battle of many years fought by the injured person resulted in the repetition of the procedure.²

¹ Monitoring of War Crimes Trials Reports 2005, 2006, 2007; Centre for Peace, Non-Violence and Human Rights Osijek, Documenta, and Civic Committee for Human Rights, www.documenta.hr and www.centar-za-mir.hr

² At the Osijek County Court, the repeated procedure against the accused Antun Gudelj ended in July 2008. Antun Gudelj was charged with the murder of the head of the Osijek Police Department Josip Reihl-Kir, a member of the Osijek Municipal Assembly Milan Knežević, and president of the Osijek Municipal Assembly Executive Board Goran Zobundžija. He was also charged with the murder attempt of the president of the Tenja Local Community Mirko Tubić on 1 July 1991, while he served as a member of the Reserve Unit of the Croatian Police. Although the previous procedure against him was terminated in 1997 by the decision of the Croatian Supreme Court, referring to the General Amnesty Law, the Croatian Constitutional Court overturned this decision and reversed the case for a new consideration. This time the Supreme Court rejected the appeal of the accused and upheld the decision of the Osijek County Court to reject the request for the termination of the procedure. It was only then that the conditions were created for Antun Gudelj to be tried for the crimes he was accused of.

Another example is related to crimes against civilians committed in late 1991 in Novska.³

Question 12 (List of issues)

Please provide more detailed and updated statistics regarding the domestic investigation of war crimes, including, inter alia, information on discontinued cases and the nature of the charges (previous concluding observations, para. 10; State party's report, para. 81; comments by Croatia on the concluding observations, point 11). How has the State party ensured that allegations of war crimes have been investigated with a view to prosecution, irrespective of the ethnic identity of those suspected? Please comment on reports according to which the prosecution of war crimes continues to be dealt with in a discriminatory manner. Please also comment on the allegations that many trials have taken place *in absentia*. Please provide up to date statistics on the number of cases processed by the county courts' special war crimes chambers.

Investigation of war crimes

In 2007, the State Attorney's Office of the Republic of Croatia reported on having 703 registered cases of war crimes in its map of crimes. Out of this number, criminal procedures have been instigated for only 391 war crimes, while the perpetrators of the other 402 crimes have still not been identified.⁴ This points to the need for more staff to conduct pre-trial investigations at both the national level (at the Department for Terrorism and War Crimes) and the level of regional police departments.

Prosecution of war crimes

In the years 2004 – 2006 between fifteen and twenty-three first-instance court trials for criminal acts against values protected by the international humanitarian law have been annually conducted in Croatia. Despite the pressure exerted by a part of the public, and facing a serious political resistance as well as obstructions within the state institutions, the war crimes which were committed by members of Croatian military

³ Indictes for murder of Mihajlo Šeatović, Sajka Rašković, Miša Rašković and Ljuban Vujić of have been acquitted by judgment of Zagreb Military Court (K-42/92); indicted for murder of Vera Mileusnić, Goranka Mileusnić and Blaženka Slabak have been acquitted by judgment of Zagreb Military Court (K-44/92)

⁴ A report on the work of state attorney's offices for 2007: A list of war crimes including a list of the tried and convicted defendants, p. 153.

units have also been brought to courts (the Croatian Army generals have been among those charged for crimes according to the command responsibility e.g. the case against Mirko Norac et al for crimes in Gospić and case against Enes Viteškić for crimes in Paulin Dvor). Problems that have arisen are the following:

- a significant number of committed crimes still has not been investigated or prosecuted,
- insufficient support for witnesses and insufficient visibility and inclusion of victim in criminal proceedings.

Although pursuant to *The Law on Application of the Statute of the International Criminal Court and Prosecution of Crimes Against the Values Protected by the International Humanitarian Law (NN 175/03)* special departments for war crimes have been established within four county courts (in Zagreb, Osijek, Rijeka, and Split), in practice they have not really been utilized to their intended effect. War crime trials take place at approximately ten county courts, while county state's attorneys are not specialized for these trials. This reflects the quality of war crime trials in Croatia. There is still a large number of trials in absentia, and many trials are inefficient and marked by frequent and long interruptions and repetitions of procedures. Policy on detention is inconsistent, while penal policy is both inconsistent and utterly inappropriate. Important issue to consider are imprecise indictments, which are often insufficiently checked and issued against a large number of the accused persons, some of whom not being charged with a single specific crime. Consequently, the investigations are conducted at main hearings, and prosecutors repeatedly change the indictments (sometimes to the extent that none of the original incriminations remain included), which leads to dismissals of charges or acquittals.

The fact that many war crime councils comprise of judges from civic departments suggests an inadequate personnel capacity of the courts -- the procedures take place before approximately 10 different county courts (i.e. not only before the County Courts of Zagreb, Osijek, Rijeka and Split). It is obvious that some courts do not have either technical or expert personnel capacity to trial cases as serious as war crimes (for example, insufficient number of judges in criminal departments is evident from frequent repetitions of procedures whenever there is a need for the replacement of coun-

cil members)⁵. Additionally, the Zagreb County Court does not have the adequate room capacity to concurrently host several big court cases, which greatly influences the dynamics and length of court procedures.

Further, county attorney's offices do not have a sufficient number of specialized replacement staff who work on cases of criminal acts committed against the values protected by the international humanitarian law. This reflects the quality of indictments and work of the prosecution.

Trials in absentia

In regard with the reform of the justice system, fair trial is not guaranteed in some cases because of the practice of trials in absentia.

Concerning final court decisions reached during the 1990s in particular in case of trials in *absentia* in the case of more than 300 verdicts, the defence had not appealed, so the verdicts became final upon the expiry of the appeal deadline even in cases where the accused were sentenced to maximum sentences of 20 years in prison.

In the year 2006, a large number of trials were still held in absentia. From 18 trials we monitored, in which 157 persons were accused, 5 cases against 49 inductees (56%) were held in *absentia*. Only 38 inductees (44%) were present at all the trials we monitored. That is partially legacy of the nineties (indictments containing large number of inductees, at the same time indictments are insufficiently precise) and partially result of not respecting prescribed policy of State Attorney of stopping practice of trials in absentia from the 1990s.

⁵ In the case against Radoslav Čubrilo and others for the crime in Lovinac, the Croatian Supreme Court twice overturned the verdict reached by the Gospić County Court. The case was then delegated to the Rijeka County Court since the Gospić County Court did not have enough judges to form a new council.