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# **amnesty international**

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## **Croatia**

### **Briefing to the Human Rights Committee on the Republic of Croatia**



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## **Introduction**

During its meeting between 16 March and 3 April 2009, the Human Rights Committee is scheduled to discuss its future examination of the second periodic report of the government of the Republic of Croatia on measures undertaken to give effect to the rights enshrined in the International Covenant on Civil and Political Rights (ICCPR).

This briefing outlines Amnesty International's concerns about the failure of the Croatian authorities to meet its obligations to respect and protect the rights to life, to freedom from torture and other ill-treatment and to a remedy for violations of these rights without discrimination; as well as the right to freedom of expression, as required under Articles 6, 7, 2 and 26 and 19 of the ICCPR (respectively), in particular in relation to the human rights violations which took place during the 1991-1995 war.

In particular, this briefing highlights concerns related to:

- The failure of the Croatian authorities to provide an effective remedy for war crimes committed by the members of the Croatian Army and police forces against Croatian Serbs and members of other minority communities by failing to ensure independent, impartial and thorough investigations and prosecutions of these war crimes which includes:
  - Discrimination in charging depending on the ethnicity of the accused and the victim;
  - Discriminatory use of the *in absentia* trials;
  - Discrimination in sentencing depending on the ethnicity of the accused.
- Croatia's failure to guarantee the right to freedom of expression by not undertaking adequate measures to protect journalists from attacks and intimidation and by not investigating, prosecuting and punishing those responsible for these attacks.

## I. Prosecution of war crimes

**Right to remedy (Article 2.3), right to life (Article 6.1), freedom from torture, cruel, inhuman or degrading treatment or punishment (Article 7) and freedom from discrimination (Article 2.1 and 26)**

In its report to the Committee the government of Croatia has stated that war crimes prosecutions “have been concluded with a legally effective judgement against 611 persons”.<sup>1</sup> Amnesty International is concerned that such statistics point to the slow progress in prosecution of war crimes cases, especially considering the number of war crimes committed during the 1991-1995 conflict and the length of time that has passed since the war ended.

Amnesty International is also concerned that in the vast majority of the prosecuted cases the trials took place *in absentia* where in many cases the defendants’ right to a fair trial was violated or severely compromised.

The organization observes with concern that 14 years since the war ended the atmosphere of intimidation against witnesses and journalists reporting on war crimes cases is still apparent as the state authorities have failed to express their unconditional support for prosecution of all war crimes and to undertake effective measures to hold those responsible for such attacks to account.

**Milan Levar**, a potential witness of the International Criminal Tribunal for the former Yugoslavia (Tribunal) was killed in August 2000 by an explosive device planted underneath his car, after making statements to the media alleging that Mirko Norac and some other high level Croatian politicians were responsible for war crimes committed against the Croatian Serb population in the Lika region. More than eight years later no one has been brought to justice for his death. Milan Levar’s wife has received death threats from unknown individuals, which began after she was interviewed by the media about her husband’s death.

In the more recent case of **Vladimir Gojanović** who was called by the Tribunal in May 2008 to testify in the case against three Croatian generals - Ante Gotovina, Ivan Čermak and Mladen Markač - both Vladimir Gojanović and his family were threatened, allegedly by associations of war veterans. Reportedly on 28 May 2008 a group of 20 men tried to

assault Vladimir Gojanović in front of the Šibenik University, where he went to sit an examination. A police intervention protected Vladimir Gojanović from being physically assaulted by the crowd.

Both Milan Levar and Vladimir Gojanović were ethnic Croats who had the courage to testify in relation to war crimes committed by the members of their own army.

Although the police have undertaken measures to protect Vladimir Gojanović, Amnesty International is concerned that the incident is yet another example of the atmosphere of intimidation of witnesses which prevails in Croatia.

In addition to the failure to condemn attacks on witnesses and investigate incidents of intimidation against them, government officials continue to demonstrate their support for individuals indicted by the Tribunal. For example, in February 2008 the Deputy Prime Minister Jadranka Kosor visited the three Croatian Army generals Ante Gotovina, Ivan Čermak and Mladen Markač who are currently held in the Tribunal's detention facility and who are the highest Croatian officials being tried for war crimes at the Tribunal.<sup>2</sup> Amnesty International is concerned that such action sends a very negative message to all potential witnesses in war crimes cases as well as to the victims and their families.

Amnesty International continues to urge the Croatian authorities at the highest level to express unconditional support for prosecution of war crimes cases irrespective of the ethnicity of the perpetrators and victims.

Amnesty International also continues to call on the authorities to investigate and prosecute in fair proceedings all of those responsible for the attacks on witnesses and journalists reporting on war crimes cases.

### **Failure to impartially investigate all war crimes, without discrimination**

Amnesty International is concerned that the Croatian justice system continues to suffer an apparent discriminatory trend which manifests itself in discrepancies in charging and sentencing of the accused depending on their ethnicity, as well as in the use of trials held *in absentia*. As a result, war crimes committed by members of the Croatian Army and police forces against Croatian Serbs and members of other minority communities remain largely unaddressed.

Discrimination in charging:

According to a report by the Organization for Security and Co-operation in Europe (OSCE) “[i]n May 2007, the Chief State Attorney, in response to a request from a veterans’ organization, indicated that more than 98 per cent of those charged with war crimes since 1991 had been members of the Yugoslav Army or Serb paramilitary forces, while less than two per cent had been members of the Croatian armed forces.”<sup>3</sup>

Amnesty International is concerned that such statistics are not so much indicative of whether members of the Yugoslav Army or Serb paramilitary forces committed war crimes more often than the members of the Croatian Army and police forces, but rather that they point to the fact that the ethnicity of the accused and the victims has played the major role in deciding whether the case should be prosecuted or not.

The organization is also concerned at the existence of disparities in the nature and gravity of charges brought against the accused depending on their ethnicity.

According to the OSCE Office in Zagreb in 2007:

“...only Serbs were indicted for war crimes based on non-lethal crimes against Croats including detention, abuse, and assault of civilians or POWs, torture, and threats to civilians, threatening and robbing civilians, and damage and arson of property.”<sup>4</sup>

Amnesty International is aware that in October 2008 the Chief State Attorney issued instructions to local prosecutors which aimed to ensure common standards for criminal accountability, irrespective of ethnicity, in war crimes cases. However the organization believes that additional measures to ensure the implementation of these instructions are necessary.

Unresolved problem of *in absentia* trials:

As noted above the Croatian judiciary has concluded prosecutions with a final judgement against 611 individuals. However, Amnesty International is concerned that the vast majority of these cases are those in which the proceedings have taken place *in absentia*, which raises the issue of the defendants’ right to a fair trial. According to the OSCE Office in Zagreb there are approximately 400 cases in which the accused were convicted *in absentia*, almost all of them Croatian Serbs.<sup>5</sup>

Amnesty International believes that the accused should be present in court during a trial to hear the full prosecution case, to put forward a defence or assist their counsel in doing so, to refute or provide information to enable their counsel to refute evidence and to examine witnesses or advise their counsel in the examination of witnesses. The organization believes that the sole exceptions to this should be if the accused has deliberately absented themselves from the proceedings **after** they have begun or has been so disruptive that they have had to be removed temporarily. In such cases video or audio links should be employed to allow the accused to follow proceedings. Amnesty International believes that, if an accused is apprehended following a trial in which he or she was convicted *in absentia* for other than these reasons, the verdict rendered *in absentia* should be quashed and a completely new trial held before a different trial court.

Discrimination in sentencing:

Amnesty International is also concerned that as a general rule the ethnicity of the accused has had an effect on the sentence that was handed out following conviction for war crimes.

It appears that mitigating circumstances were considered more often when the perpetrators were ethnic Croats and their victims Croatian Serbs or members of other ethnic communities. Furthermore the organization is concerned that some of the mitigating factors taken into consideration by courts appeared to be unreasonable. In many cases service in the Croatian Army during the war itself was considered to be a mitigating factor.

Based on their war crimes trial monitoring, the OSCE Office in Zagreb observed that there existed an apparent trend related to the ethnicity of the accused and victims which can be summarized in the following way:

- “1. Serbs tended to receive higher sentences for murders of Croats than Croats for murders of Serbs.
2. Serbs tended to receive sentences for non-lethal crimes against Croats similar to those received by Croats for murder of Serbs”.<sup>6</sup>

In addition to the responsibility of the prosecutors working on war crimes cases, the organization considers that judges presiding over war crimes cases have a real role in



ensuring that sentences are commensurate with the gravity of the crimes and are not effected by the ethnicity of the accused or victim.

### **Unaddressed war crimes**

Amnesty International is concerned that a vast number of potential cases involving war crimes remain unresolved due to the lack of political will to open investigations or to conduct thorough, independent and impartial investigations. In the majority of such cases the alleged perpetrators were members of the Croatian Army and the victims Croatian Serbs or members of other minorities.

This is the case, for example, in relation to the Sisak area of Croatia, where more than 100 people (most of them Croatian Serbs) were killed or subjected to enforced disappearance in the period between 1991 and 1992. According to information provided by the Croatian authorities, in only one case of an enforced disappearance, that of a Romani man who was subjected to forced disappearance in 1991 by members of the Croatian Army, have those directly responsible been prosecuted and convicted. For all other crimes committed in the Sisak area impunity remains prevalent as cases related to many of the other victims are still at the “pre-investigative” stage some 17 years after the incident. Local authorities have told Amnesty International that their lack of capacity is the main reason for the delay in investigating these crimes.

The local prosecutor in Sisak also informed Amnesty International in 2007 that only approximately 30 killings of Croatian Serbs are being treated as war crimes, although organizations of victims and their families consider that a significantly larger number of crimes should be qualified as war crimes. This raises concerns over the possibility that, for the remaining murders and other crimes not treated as war crimes, a statute of limitations may apply.<sup>7</sup>

The situation in the Sisak area illustrates the problem which is present in many other war affected areas in Croatia where very few or no prosecutions for enforced disappearances and other war crimes have taken place.

Amnesty International continues to urge the Croatian authorities to conduct a mapping exercise in order to identify, without discrimination, the total number and range of war crimes committed during the 1991-1995 war. The organization has recommended that the mapping be followed by a review of existing case files. Amnesty International has urged

the Croatian authorities to then devise an action plan to address the remaining cases of alleged war crimes, which have yet to be investigated and prosecuted.

### **Ineffective prosecutions in war crimes chambers**

In its Concluding Observations on Croatia's initial report on the implementation of the ICCPR in 2001, the Committee expressed its concern that "many cases involving violations of articles 6 and 7 of the Covenant committed during the armed conflict, including the "Storm" and "Flash" operations, have not yet been adequately investigated, and that only a small number of the persons suspected of involvement in those violations have been brought to trial".<sup>8</sup>

The Committee emphasized that the authorities were "under an obligation to investigate fully all cases of alleged violations of articles 6 and 7 and to bring to trial all persons who are suspected of involvement in such violations". The Committee recommended that "the State party should proceed, as a matter of urgency, with the enactment of the draft law on the establishment of specialized trial chambers within the major county courts, specialized investigative departments, and a separate department within the Office of the Public Prosecutor for dealing specifically with the prosecution of war crimes".<sup>9</sup>

Amnesty International is concerned that these Concluding Observations by the Committee from 2001 remain largely unimplemented. Notwithstanding the adoption of a law in 2003, which among other things enabled the transfer of war crimes cases from ordinary county courts to special war crimes chambers established at four county courts in Zagreb, Osijek, Rijeka and Split, the organization is concerned that cases are rarely considered in these special war crimes chambers.<sup>10</sup>

According to information available to Amnesty International, in total only three cases have been transferred to the war crimes chambers under this procedure since the establishment of these chambers. All three of the cases were referred to the war crimes chamber at the Zagreb County Court; the other three remaining special war crimes chambers have not prosecuted any case under the above-mentioned special procedure. The aim of the establishment of the special war crimes chambers was to try war crimes cases outside the community where the crimes were committed, a move which was supposed to lessen potential pressure on witnesses and reduce bias. It was also expected that the special war crimes chambers hearing these cases would increase their capacity and expertise and by doing so would serve as an example for other courts trying war

crimes cases in Croatia. As it is illustrated below Amnesty International is concerned that these expectations have not been met.

The organization is also concerned that the Zagreb County Court failed to address some of the obstacles to an effective prosecution in at least two out of these three cases.<sup>11</sup>

One of the examples of such a failure is the case against Branimir Glavaš. Amnesty International is concerned that in the case the relevant Croatian authorities have failed to take effective measures to address the intimidation of witnesses and journalists reporting on the case against Branimir Glavaš and six other co-accused. The organization also notes that the progress of the prosecution of the case is worryingly slow as the obstacles to proceed promptly with the case are not addressed effectively by the judge. Some also have raised concerns that the delays caused by the accused seem to be often illegitimate.

***Branimir Glavaš and others***

War crimes committed against the civilian non-Croat population of the Osijek region were included in two separate indictments against Branimir Glavaš and six other accused persons.

In April 2007 Branimir Glavaš was indicted together with six other persons by the Osijek County Prosecutor in the so called “Sellotape” case. The accused were charged with the murder of 10 Croatian Serb civilians whose bodies were later dumped into the Drava River.

In May 2007 Branimir Glavaš was indicted by the Zagreb County Prosecutor in the “Garage” case. He was charged, in his capacity as the local military leader in 1991, with having failed to prevent his subordinates from detaining, ill-treating and killing civilians and of having directly participated in some of the alleged war crimes.

Due to the risk of witness intimidation the “Sellotape” case was transferred in May 2007 to the Zagreb County Court upon the request by the Chief State Attorney. In June 2007, the Zagreb County Court joined both cases. The trial started on 15 October 2007 and is ongoing.

Since October 2007, the trial has re-started several times from the beginning - most recently in November 2008 - following the judge’s failure to hold a hearing in the case for more than three months. On some other occasions hearings were adjourned after the accused or their legal representatives had not appeared in court, including on grounds of

ill-health or because of dissatisfaction with the way the judge was handling the case. On 24 November 2008 one of the accused, Ivica Krnjak, left the courtroom in protest against the court's decision that he was fit to stand trial. As a result the hearing was adjourned.

Since the proceedings were initiated Branimir Glavaš, who is a member of the Croatian parliament and the leader of the Croatian Democratic Council of Slavonia and Baranya (Hrvatski Demokratski Sabor Slavonije i Baranje, HDSSB), has revealed the identity of a protected witness and has been using his position to intimidate and discredit witnesses and journalists reporting on his case. In June 2008 he publicly disclosed the identity of one of the protected witnesses during an interview broadcast on local television in Osijek. In addition, in press conferences that he organized, Branimir Glavaš verbally attacked members of the Croatian judiciary, witnesses, journalists and members of non-governmental organizations dealing with war crimes.

Furthermore, Drago Hedl, a journalist reporting on the case who is also a witness in this case, has repeatedly received death threats, including in February and November 2008, allegedly in relation to his investigative work related to Branimir Glavaš' case.

Witnesses' fear of intimidation was also one of the factors discouraging them to testify in another high profile case before the special war crimes chamber of the Zagreb County Court, namely the case against two Croatian Army generals Mirko Norac and Rahim Ademi.

***Ademi-Norac case***

The indictment for war crimes committed during and after the "Međak Pocket" Operation in 1993 against two Croatian Army generals, Mirko Norac and Rahim Ademi, was transferred to the Croatian judiciary by the Tribunal in September 2005.

The accused were charged with ordering indiscriminate artillery attacks, failing to prevent or punish their subordinates for the torture and murder of Croatian Serb civilians and prisoners of war, and the destruction of property.

In this case the court had to deal with difficulties in getting witnesses to testify. Despite the use of a video link some prosecution witnesses refused to testify citing fears for their safety as the main reason. Others decided to do so only after having been promised that their identity would be protected.

In the end, 30 out of 74 of prosecution witnesses who testified did so through video link. One-third of them were “endangered” witnesses residing in Croatia; video links were used with the aim of protecting their identities from public disclosure.

In May 2008 Rahim Ademi was acquitted and Mirko Norac was found guilty of some of the charges and sentenced to seven years’ imprisonment. An appeal lodged by the Chief State Attorney in October 2008, remained pending in January 2009.

Although in the Ademi-Norac case the witness protection measures were used more effectively than in the Glavaš case, Amnesty International is concerned that the high number of the witnesses who were initially reluctant to testify points to the fact that there is still an atmosphere in Croatia which is not conducive to prosecution of war crimes. In this context Amnesty International considers that it is crucial that Croatian authorities at the highest level express their unconditional support for prosecution of war crimes irrespective of the ethnicity of the accused and victims.

### **Lack of full cooperation with the Tribunal**

As noted above the Croatian authorities have continued demonstrating their support for individuals indicted by the Tribunal, including by the February 2008 visit of the Deputy Prime Minister to the three Croatian Army generals Ante Gotovina, Ivan Čermak and Mladen Markač who are currently held in the Tribunal’s detention facility in The Hague, Netherlands.

The trial in the case started in March 2008. The accused are charged with command responsibility for war crimes and crimes against humanity committed during Operation Storm which took place between August and November 1995. From the outset the effective prosecution of this case has been hampered by the failure of the Croatian authorities to provide the Tribunal with military documents related to Operation Storm.

According to the Tribunal’s Prosecutor, the Croatian authorities have intentionally hidden or concealed military documents concerning Operation Storm. In June 2008 the Tribunal’s Prosecutor filed an application for an order requesting the Croatian authorities

to provide his office with all outstanding documentation in the case.<sup>12</sup> In September 2008 the Trial Chamber ordered the Croatian authorities to continue the investigation into whereabouts of the documents, which had yet to be provided and to provide the Tribunal with a further report on the steps undertaken to obtain the requested documents. As of 1 January 2009 no progress in this respect has been reported.

## **II. Intimidation of journalists**

### ***Freedom of expression (Article 19)***

Amnesty International is concerned at the increasing number of incidents of physical attacks, death threats and other intimidation against journalists in recent years in Croatia. The majority of such incidents were perpetrated against journalists investigating war crimes (especially allegations of war crimes committed by the members of the Croatian Army and police forces against Croatian Serbs and other minorities) and organized crime (often including allegations of the involvement of politicians and other persons in the position of power in illegal business activities and organized crime).

The organization is aware of several incidents in which journalists have been subjected to physical attacks, death threats and intimidation in 2008. Amnesty International is concerned that the authorities have failed to take prompt and effective measures to investigate these crimes. According to the information available to Amnesty International, only in a small proportion of cases have criminal investigations been opened and persons suspected of being responsible identified.

In October 2008 Ivo Pukanić, owner of the Croatian weekly *Nacional* and his colleague Niko Franjić, were killed by a car bomb in Zagreb. Reportedly, the killing was related to investigations of organized crime activities in the former Yugoslavia undertaken by their newspaper.

In June 2008 Dušan Miljuš, a journalist for the Croatian daily *Jutarnji List* was beaten by individuals unknown to him in front of his house in Zagreb following publication of his articles alleging links between politicians and illegal business activities. He has received further threats since this incident.

In November 2008 a fake car bomb was planted under journalist Hrvoje Appelt's car. This crime is believed to be related to his investigation of oil smuggling which reportedly involved organized crime structures from other south-east European countries.

As noted above, in February and November 2008 journalist Drago Hedl, who is a witness in the war crimes trial against Branimir Glavaš, received death threats reportedly linked to his reports about the role of Branimir Glavaš in the murders of Croatian Serbs in the Osijek area during the 1991-1995 war. The alleged perpetrator of the November incident was identified and the investigation against him is ongoing.

In April 2008 two death threats were posted on the blog of a freelance journalist Željko Peratović. One of the threats has been investigated by the police and turned over to the State Attorney's Office for further investigation. Reportedly the results of the investigation are not yet known. It is alleged that no investigation has yet been initiated in relation to the other threat.

Amnesty International is concerned that in most of these cases, the authorities have failed to investigate such incidents. The organization considers that the failure to investigate and bring those responsible to justice has encouraged further attacks and threats and created an environment which is intimidating to journalists and risks having a chilling effect on journalists conducting their investigative work. In this context it should be noted that many war crimes cases and other war related human rights violations have been brought to light as a result of the investigative work done by Croatian journalists. Some of these cases have resulted in prosecutions, as a result of the information gathered by journalists, and the public pressure created following that information coming to light.

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*Croatia: Briefing to the Human Rights Committee on the Republic of Croatia*

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<sup>1</sup> See Croatia's second periodic report to the Human Rights Committee. CCPR/C/HRV/2. 2 December 2008, para. 81, p. 23 <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.HRV.2.doc>

<sup>2</sup> The highest Croatian official who has been indicted by the Tribunal was Janko Bobetko - the Chief of Staff of the Croatian Army (case IT-02-62). He deceased on 29 April 2003 before being extradited to The Hague. The proceedings in the case were terminated on 24 June 2003.

<sup>3</sup> Organization for Security and Co-operation in Europe. Mission to Croatia. *Background report: domestic war crimes proceedings 2006*. 3 August 2007. 4.

<sup>4</sup> Organization for Security and Co-operation in Europe. Office in Zagreb. *Background Report: War Crimes Proceedings 2007*. 31 July 2008. 11.

<sup>5</sup> Organization for Security and Co-operation in Europe. Office in Zagreb. *Background Report: War Crimes Proceedings 2007*. 31 July 2008. 3.

<sup>6</sup> Ibid.

<sup>7</sup> According to article 19 of the Croatian Criminal Code the status of limitations for common murder is 10 years.

<sup>8</sup> See Concluding observations of the Human Rights Committee: Croatia; CCPR/CO/71/HRV; 30 April 2001; paragraph 10, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.71.HRV.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.71.HRV.En?Opendocument).

<sup>9</sup> Ibid.

<sup>10</sup> Zakon o primjeni Statuta Međunarodnoga kaznenog suda i progona za kaznena djela protiv međunarodnoga ratnog i humanitarnog prava (The Act on the Application of the Statute of the International Criminal Tribunal and on the Prosecution of Criminal Offences against the International Military and Humanitarian Law). Adopted by the Croatian Parliament on 17 October 2003. *Narodne novine*, br. 175/2003, 4 November 2003.

<sup>11</sup> The three cases were: the case of Slobodan Davidović, a member of the Serbian paramilitary unit "Scorpions"; the case against two Croatian Army generals Mirko Norac and Rahim Ademi and the case against Branimir Glavaš. Amnesty International is concerned at the failure to address the obstacles to prosecution of the last two cases.

<sup>12</sup> Prosecution's Application for an Order Pursuant to Rule 54 bis Directing the Government of the Republic of Croatia to Produce Documents or Information, with public and confidential Appendices, 13 June 2008.