

Transitional Justice in Post-Yugoslav Countries

Report for 2006



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Summary

At least 130,000 people lost their lives, millions were forced to leave their homes, and hundreds of thousands of houses were destroyed in the armed conflicts in Croatia (1991–95), Bosnia and Herzegovina (1992–95), and in Kosovo (1998–99). The transition from armed conflict and state repression to a period of peace and democratic institution building demands that these societies take a stand on the mass violations of human rights that occurred in the recent past. Transitional justice comprises a collection of measures, including fact finding, criminal trials, reparations and institutional reform, undertaken by the authorities and civil society in order to deal with the violations of these rights.

This report deals with facing the consequences of war events and crimes committed during the period 1991–99. The report is the product of an initiative of the Humanitarian Law Center (Belgrade), in cooperation with the Research Documentary Center (Sarajevo) and Documenta (Zagreb). It refers to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serbia, – hereinafter: “post-Yugoslav countries”.

During the course of 2006 in almost all post-Yugoslav countries trials for war crimes were well under way, while in other areas of transitional justice there were hardly any substantial steps forward compared to the previous period. The authorities took no concrete steps, which would lead to the establishment of a fact finding body, at state and regional level. Very little was done to make those individuals in public positions, or seeking public appointment, face inquiries

into their actions during the time of armed conflict. Finally, fulfilling the right to reparation – either as the outcome of laws or by means of court proceedings – is still very difficult to achieve for many victims whose rights were violated in the 1990s.

War Crime Trials

From the very end of the war, trials for war crimes present the most important form of transitional justice applied in the post-Yugoslav countries. In the early post-war period the body that instituted legal processing of war crimes in this region was the *International Criminal Tribunal for the former Yugoslavia* (ICTY), primarily because the national judiciaries were not prepared to carry out such a task. Although, this body had failed to prevent some of the gravest mass violations of human rights, such as the genocide in Srebrenica in July 1995, the tribunal did contribute to the curbing of violence in the still unfinished process of the disintegration of the former Yugoslavia, to the legal processing of the accountable who held top military and political positions, and in preparing the judiciaries and the public in the region for trials of war crimes.

Establishing special prosecutors’ offices for war crimes, and specialized chambers or courts of law for this type of cases, during the period 2003–05, led to improved court proceedings and trials for war crimes in Croatia, Serbia, Bosnia and Herzegovina (BiH). In 2006 the positive trend from the previous years continued, which was underlined by further progress in the cooperation of the prosecutors’ offices from

Bosnia and Herzegovina, Croatia and Serbia. What was visible in all three countries, however, were major difficulties in the processing of war crimes, including insufficient support by the political structures for the prosecution of war crimes suspects irrespective of their nationality, and inadequate measures for witness protection.

A total of 23 trials were held before the county courts of Croatia during 2006, with 18 trials against members of Serbian forces and five against the military and police forces of the Republic of Croatia. County courts released five first-instance judgments, and the Supreme Court of the Republic of Croatia confirmed three judgments from an earlier period. The courts in BiH delivered 23 first-instance judgments and 17 final judgments (second-instance judgments). The number of war crimes trials initiated before the State Court of BiH outnumbered the number of the trials before all the other courts. The legal processing of war crimes began in Republika Srpska too, where previously impunity for individuals who had committed war crimes prevailed. During 2006, trials in seven cases were held in Serbia. In 2006 only one trial for war crimes was held in Kosovo – against six Kosovo Albanians indicted with crimes against other Albanians. In August, a chamber consisting exclusively of international judges sentenced three former members of the Kosovo Liberation Army (KLA) to seven years of imprisonment, and after the judgment was read the court released the convicts until the judgment is legally validated. Not a single trial for war crimes was held in Montenegro during the course of 2006, as was the case during the four previous years.

The large gap in the punishment of war crimes results from the fact that many perpetrators of war crimes in BiH now live and have acquired citizenships of Serbia and Croatia, where constitutions or statutes guarantee that they cannot be extradited. At the same time, however, BiH is not willing to hand over trials of these individuals to the judiciaries of Croatia or Serbia.

Fact Finding

There is no official body in the post-Yugoslav countries that deals with fact finding in respect of violations of human rights and humanitarian law during the past, in a systematic way either at individual state level or the regional level. In 2006, the parliamentary parties of Bosnia and Herzegovina participated for

the first time in concrete activities, which potentially led to the forming of a state truth commission, by establishing a working group which drafted a law on commissions. In June, the BiH Government founded a fact-finding commission in respect of hardships undergone by Serbs, Croats, Bosniaks, Jews and others in Sarajevo during the period 1992-95. Although the Government set a one-year deadline for the Commission to finish this task, the work on gathering facts did not begin during the year. In other post-Yugoslav countries, there was no serious discussion in parliament or by the governments to establish any type of truth commissions. At meetings of NGO organizations, instead, the participants discussed the possibility of establishing a regional body for establishing facts about the past, which would make it possible for the victims to directly tell their stories. During 2006, a one-sided nationalist interpretation of events dating from the war was evident in the parliamentary discussions in Serbia and Croatia. This was especially so in Serbia, where the representatives of the moderate parties failed to react to a series of nationalist outbursts made by extremists.

Towards the end of 2006 there were some 17,000 unsolved cases of missing persons in the region. The relations between the representatives of various commissions for the missing, at post-Yugoslav country level, are still burdened with mistrust. Associations of families of the missing publicly display an even harsher and more frequent criticism of the state organs over this issue. All of this has led to the impression that an eminent humanitarian issue is being politicized, and has decreased the efficiency of efforts to find the missing.

During 2006, on the territory of the Republika Srpska, the Commission for Finding the Missing of the Federation BiH (majority Bosniak and Croat entity) exhumed 2,250 posthumous remains, and the Office of the Republika Srpska for Finding the Missing and the Captured, exhumed 126 bodies in the Federation BiH. 180 bodies were exhumed in Croatia in 2006. Towards the end of the year, 2,050 citizens of the Republic of Croatia were still noted as missing, and to add to this, the authorities of Serbia were searching for a more than 400 of its citizens who had gone missing during the conflict in Croatia. Towards the end of 2006, there were 2,137 persons still missing in Kosovo. During the year, the competent agencies exhumed 59 bodies.

Lustration¹

BiH is the only post-Yugoslav country in which the possibility of an individual to perform a public duty depends, although to a limited extent, on the outcome of an inquiry into his or her activities during the armed conflict. Between 1999 and 2002, the UN Mission carried out inquiries into the activities during the former (war) period of 24,000 active policemen; as a result of this process 4 per cent of the policemen were relieved of their duties. Between 2002 and 2004 a judicial reform was carried out in BiH, during which the High Judicial and Prosecutorial Council decided that around 200 judges and prosecutors out of 1,000, should not be re-elected. Although there is a law in Serbia, which prescribes in a comprehensive way that inquiries should be carried out into individual activities during the armed conflicts and in the earlier, communist period, this law was never applied. During the period: 2004-06, the majority of MPs were representatives of the Serbian Radical Party, the Democratic Party of Serbia and the Socialist Party of Serbia, who were against the adoption of the law on accountability for human rights' violation, which was passed in 2003.

Reparations

The following types of reparations were applied in post-Yugoslav countries during 2006: compensations (in line with the law or based on court decisions), restitution, establishing the fate of the missing, and opening memorials. Return and restoration of properties, and financial reparation were mostly provided for members of the majority, i.e. those who had suffered hardships on the side of the winners, while the process for members of the minority is still ongoing, or is yet to begin (in Croatia, tenancy rights were taken away in court proceedings from tens of thousands of Serbs, with the explanation that they had abandoned their flats; the government has not shown willingness to provide them with just restitution or compensation). Memorials are also erected in memory of the victims belonging to majority groups. In drafting and

applying the law on reparation, in all post-Yugoslav countries, army members, and members of their family are noticeably privileged in relation to civilians. In all parts of the former Yugoslavia, a number of civilian victims of war or individuals whose human rights had been gravely violated during the previous period have tried to achieve compensation for damages through court proceedings. In Serbia, human rights non-government organizations have filed compensation lawsuits on their behalf, and in most cases the courts have passed judgments in favour of for the victims. In other countries, the number of lawsuits is relatively small because of the lack of free legal aid and legislative provisions whereby the victims would be exempt from having to pay court fees in the event that they lose the lawsuit.

In all the post-Yugoslav countries, the character of the commemorative monuments and the way in which they are put up clearly reflect the political and social climate in the respective area. In Serbia, commemorative monuments express the need of the majority population to interpret the role of Serbia in the wars of the 1990s as unequivocally positive, while its role is otherwise fiercely criticized by the international community and in other parts of the former Yugoslavia. In Croatia and Kosovo, an almost complete absence of monuments dedicated to the minority (Serbian) population demonstrates a widespread belief that the role of the victim is the exclusive right of the majority (Croatian, or Albanian) population. In BiH there is somewhat greater readiness to accept, through the symbolic form of monuments, the testimonies of the "other side's" hardships, although such examples are the exception to the rule. In Montenegro, the tension between the authorities who have advocated the independence of Montenegro, on the one hand, and those segments of the society who prefer a union with Serbia, on the other, is also reflected in the practice of erecting commemorative monuments. What comes across as common in terms of memorials in all parts of former Yugoslavia is the overall acceptance, at a symbolical level, of the privileged position granted to victims who were members of the military as opposed to civilian victims.

¹ The term "lustration" became generally accepted for use in all parts of the former Yugoslavia, although the initiatives conducted in Bosnia and Herzegovina, as well as the law passed in Serbia, are based on the principle of determining *individual* accountability for violations of human rights for anyone who is a candidate for a public position or a position that entails exercising public authority. This model responds to the concept of *vetting* rather than that of "lustration".

I. War Crimes Trials

Trials of war crimes represent the most important form of transitional justice applied in post-Yugoslav countries. In the early post-war period, the body that instituted legal processing of war crimes in the region was the ICTY, primarily because the national judiciaries were not prepared for such a task. Over a long period of time, trials before domestic courts served rather as instruments of retaliation than instruments of justice. The members of the majority population in a given area were practically exempt from persecution, and proceedings were launched exclusively against members of military, police and paramilitary formations of the opposite party, which was as a rule from another ethnic group. In Croatia, for instance, there were almost no trials of ethnic Croats for war crimes committed against Serbs,² and in Serbia there were no proceedings against Serbian policemen, soldiers, and members of paramilitary formations. The situation started to change substantially in 2001, when the democratic governments in these two countries consolidated power to a certain extent and the influence of nationalists who ruled in the 1990s weakened. During the past few years the number of proceedings launched against members of the majority population in Croatia, Serbia, and BiH has risen. Establishing special prosecutors' offices for war crimes and special court chambers for these types of cases, during the period 2003-05, has led to improved court proceedings and trials for war crimes in these countries.

In 2006 the positive trend from the previous years continued, which was especially underlined by further progress in the cooperation of prosecutors' offices from BiH, Croatia and Serbia. What was visible in all the three countries, however, were major difficulties in the processing of war crimes, including insufficient support by the political structures for prosecution of war crime suspects irrespective of their nationality, and inadequate measures for witness protection. In Montenegro there were no trials for war crimes and in Kosovo only one such trial was held.

Parallel to the trials in domestic courts, an ever increasing number of trials before the ICTY contin-

ued. As authorities of states from the region of the former Yugoslavia played no substantial role in the preparation of Hague cases and court trials, the work of the Tribunal is not the subject of this report.

Croatia

In Croatia, during the period from 1991 until the end of 2005, according to the data of the State Attorneys' Office of the Republic of Croatia, 4,814 individuals have been reported for criminal acts against the values protected by international law (Chapter XIII of the Penal Code), investigations have been launched against 3,280 individuals, and 1,428 have been indicted. During the course of 2004 a revision of all investigation files was carried out, and proceedings were dropped for 448 individuals, either for lack of evidence or because their offences fell into the category of "acts of armed mutiny" and they were acquitted in line with the Amnesty Law. By the end of 2006, 611 individuals had been sentenced, and 245 acquitted.

Most indictments have been filed against members of the Serbian paramilitary formations (out of 611 sentenced individuals, 12 are members of Croatian military or police units). For the most part trials have been conducted in the absence of the indictees, on the basis of insufficiently specified indictments against a great number of individuals. During the past few years approximately 20 trials have been held per year. In almost two thirds of cases, there have been repeat trials on the basis of rulings by the Supreme Court of the Republic of Croatia, most often for insufficiently established facts. Such deficiencies in first-degree proceedings reflect insufficient engagement on the part of the prosecution in the preparation of cases and the reluctance of the judges to bring unpopular decisions (acquittals). The retrials of individuals who had been tried *in absentia*, and who had the legal right to retrial, also revealed that there had been cases of court-appointed defence counsels who had not filed appeals to the Supreme Court, although their defendants had been sentenced with long-term prison sentences.

2 The few exceptions in the 1990s are the indictment against Mihajlo Hrastov in 1991, for the illegal killing and wounding of the enemy soldiers (the proceedings were still ongoing in 2006), and the 1992 indictment for crimes in the Pakrac field, i.e. the killings, illegal arrests and extortion, raised against Igor Mikola, Munib Suljić, Siniša Rimac, Zoran Karlović, Miroslav Bajramović and Branko Šarić (the trial ended with a first-instance judgment in 2005).

Despite special status to try war crimes cases has been conferred on four County Courts (in Osijek, Rijeka, Split and Zagreb), investigations and trials were in practice carried out at county court level depending on the location where the crime had been committed. The trials were most frequently held at district courts in Vukovar, Osijek, Zadar, Šibenik, Sisak and Karlovac. Although it would have been preferable that crimes committed in the local community be processed in the same area, the insufficient human and technical capacities of these courts, and the great pressure of the local community on courts and witnesses, presented a serious obstacle to an unbiased and objective trial.

During the course of 2006, 23 trials for war crimes were held in Croatia, at nine county courts. Out of this, 18 were held against members of Serbian formations, and five against members of military and police forces of the Republic of Croatia.³ A group of leading non-government organizations for human rights systematically followed the trials of 18 cases. In the report for 2006, these organizations assessed the following as positive trends:

- Progress in regional cooperation in processing war crimes, including securing the presence of witnesses from other countries;
- Insistence of the State Attorney that indictees should not be tried *in absentia*;
- Launching investigations for crimes committed against ethnically non-Croat population;
- Gradual opening of the State Attorneys' Office towards the public by greater access to information;
- Absence of substantial violations of the criminal procedure law in the trials;
- Absence of incidents in court corridors, and normal development of proceedings.

Deficiencies pointed out:

- Insufficiently precise indictments;
- Still high percentage of trials *in absentia* (54%);
- Inconsistent practice in ordering pre-trial detention; and

- Insufficient support to the witnesses and the victims.⁴

For a little over half of the indictees, the trials were held *in absentia*, despite the long-term efforts of the Chief State Attorney to put a stop to this practice. Trials *in absentia* do not contribute to the victim's feeling that justice was delivered; they lead to an unnecessary waste of court resources; also, indictees often do not benefit from having a defence to which they are entitled. Out of 38 indictees, present at the trial, 26 had a defence at large and 12 were in custody during the trials.⁵ In view of the fact that war crimes are extremely grave criminal acts, the percentage of indictees defended at large was unusually high. The agreement of the State and Court for the defendants to remain at large suggests that prosecutors often do not believe that they have strong enough evidence against the defendants. This also indicates that raising an indictment was sometimes, in itself, a way of satisfying the need of the local environment to hold a trial for crimes that were most certainly committed, although the evidence against a specific indictee was insufficient.

The only court which systematically applied support to witnesses and victims was the County Court in Vukovar, through a pilot project of the Voluntary Service for Witness Support. At the same time, this court, which held a substantially higher number of trials than the other county courts, had extremely poor physical conditions for the normal functioning of proceedings, mostly due to small courtrooms and waiting rooms.⁶ Generally, in the war crimes trials in Croatia, the witnesses were most often not provided with any psychological support on arrival at court to give testimony.⁷

Due to the decision to place the Department for Support to Witnesses and Participants of Criminal Proceedings for War Crimes of the Ministry of Justice under the authority of the Directorate for International Legal Support, Cooperation and Human Rights, and

3 Osijek Centre for Peace, Non-violence and Human Rights, Documenta, Citizens' Committee for Human Rights and Croatian Helsinki Committee for Human Rights, *Praćenje suđenja za ratne zločine, Izveštaj za 2006 (Monitoring of War Crimes Trials, Report for 2006)* (Osijek, 2006), p. 15.

4 *Ibid.*, p. 9.

5 *Ibid.*, p. 16.

6 *Ibid.*, pp. 13 and 25.

7 *Ibid.*, p. 16.

due to its limited capacity, this Department was mostly oriented towards giving support to witnesses within the international cooperation in processing war crimes. In the second half of the year, however, the Department gave active support to the newly-established Voluntary Service for Witness Support in Vukovar,⁸ and showed intent to support the establishment of voluntary services at other courts.

In ten county courts, the courtrooms have equipment for the transition of picture and sound, but during the course of 2006 this equipment was not used.⁹ The County Court in Split rejected the recommendation of the prosecution to enable the holding of the trial, of the *Lora* case, via video link in Australia.¹⁰

The application of pressure on witnesses and the lack of an efficient programme for witness support and their protection were most noticeable in 2006, in probably the most important war crime proceedings in Croatia after the war. In this case, the indictee was Branimir Glavaš, a former high official of the ruling Croatian Democratic Union (*HDZ*), and former Defence Commander of Osijek. The investigation against Glavaš was launched on the suspicion that he was involved in the killing of Serb civilians in Osijek during 1991. Two investigations were launched against Glavaš and other indictees before the county courts of Zagreb and Osijek. Despite the interference of the indictee in the investigation proceedings through the media, the Investigating Judge of the Zagreb County Court rejected, three times, the recommendations by the State Attorney to put him in custody, and the Non-Trial Chamber of the same Court rejected the appeals of the State Attorney.¹¹ When, towards the end of the year, the investigating judge finally passed

the sentence on specified custody, partly based on the potential danger that the defendant could influence the witnesses, more than four and a half months had passed, during the course of which most of the witnesses of the County State Attorney's Office original investigation request, had already been examined.¹² In these months, the Indictee, Glavaš and his lawyers launched an intensive media campaign that included publishing the names of examined witnesses, their testimonies and even the minutes of the investigation proceedings on the Internet.¹³

Among the trials held, most of the public's attention was attracted by the war crime proceedings against civilian population in the *Lora* Military Prison and the *Korana* Bridge criminal proceedings against Mihajlo Hrastov. Members of the Military Police of the Croatian Army were convicted in the repeat proceedings for the *Lora* crimes.¹⁴ The trial for the *Korana* Bridge crime was led against Mihajlo Hrastov, a former member of the special police, charged with the killing of thirteen captured reserve officers of the then Yugoslav National Army (*JNA*), in 1991 in Karlovac. The trial was launched already in 1992. The Supreme Court annulled the decision on acquittal two times due to incorrectly and insufficiently established facts. The third retrial against Hrastov began on 20 September 2004. The representatives of the injured parties and observers spotted the failure of the prosecution to charge more than one individual¹⁵ for the liquidation of a big number of people, as well as the inability of the court to establish the facts in the case.¹⁶

Guidance from the State Prosecutor's Office to county state prosecutors, of September 2006, that all

8 Voluntary Service for Witness Support is a civil society organization, active at the County Court in Vukovar.

9 *Ibid*, p. 25.

10 Organization for Security and Cooperation in Europe, Mission to Croatia, *Background report: Domestic War Crime Trials 2005*, 13 September 2006, p. 19.

11 Osijek Centre for Peace, Non-violence and Human Rights et al., *Praćenje suđenja za ratne zločine, Izvještaj za 2006 (Monitoring of War Crimes Trials, Report for 2006)* (Osijek, 2006), p. 14, footnote 13.

12 *Ibid*, p. 20.

13 *Ibid*, p. 20.

14 Tomislav Duić and Tonči Vrkić were sentenced to 8 years, Davor Banić to 7 years, and Miljenko Bajić, Josip Bikić, Emilio Bungur, Ante Gudić and Anđelko Botić to 6 years imprisonment.

15 Vladimir Matijanić, "Planirana likvidacija" ("Planned Liquidation"), *Feral* (Split), 29 November 2006. (<http://feral.mediaturtle.com/look/weekly/section3.tpl?IdLanguage=7&IdPublication=1&NrArticle=14841&NrIssue=1106&NrSection=21&x=14&y=1> (interview with Luka Šušak, representative of one of the wounded reserve *JNA* officers).

16 Osijek Centre for Peace, Non-violence and Human Rights et al., *Praćenje suđenja za ratne zločine, Izvještaj za 2006 (Monitoring of War Crimes Trials, Report for 2006)* (Osijek, 2006), p. 12.

unsolved killings from the 1991 to 1995 period should be treated as war crimes, means that no statute of limitation applies in these cases.¹⁷

Amnesty

In 1992 the Croatian Parliament passed the Law on Amnesty from Criminal Prosecution for Criminal Acts Committed in Armed Conflicts and War against the Republic of Croatia,¹⁸ which was modified in 1995. Then the Parliament passed the Law on Amnesty of Perpetrators for Criminal Acts Committed on the Temporarily Occupied parts of the Vukovar-Srijem and Osijek-Baranja counties¹⁹ and Law on General Amnesty (*Zakon o općem oprost*),²⁰ which is in effect today. In accordance with the latter law, amnesty referred to the acts committed within the period 17 August 1990 – 23 August 1996. The law prescribed that proceedings were not to be launched against the perpetrators, and had they been launched, the relevant court would have to drop the proceedings by official duty. Perpetrators of gravest violations of humanitarian law that have the character of war crimes were exempt from amnesty.

These measures created a political and legal framework for the post-war integration of the Serb minority and a normalization of interethnic relations. The application of the law without the genuine political will for normalization did not, however, help bring about reconciliation, and it had negative effects and was open to abuse. Politicians and media did not pinpoint the fact that the amnesty law did not bring amnesty for war crimes. On the contrary, some members of parliament and judicial officials publicly interpreted the application of this law as if it brought amnesty for war crimes. A feeling prevailed among the public that Serbs had been forgiven their crimes while the Croatian authorities were trying their own soldiers for war crimes.

Members of the Serb minority felt this law as an imposition, and that they had been proclaimed out-laws without evidence and non-selectively – including the ones who had not taken part in the conflict, or had been forced to become involved in the conflict.

In judicial practice, a great number of cases had been pre-qualified in the 1990s by the prosecutors from already raised indictments for armed rebellion to indictments for war crimes, without changing the factual description of the criminal acts. On the basis of these altered indictments, numerous trials were held, mostly in absence of the defendants. The State Attorney's Office launched a revision of such cases as of 2001, when there was a shift of ruling power in Croatia.

Although the domineering perception in public is that the law was only used for the amnesty of members of Serb units, in judicial practice this law was used many a time for the amnesty of members of the Croatian units. Such examples include Antun Gudelj, indicted for the murder of the Chief of Police in Osijek, Josip Reihl Kir, on 1 July 1991, and the amnesty of individuals indicted for the killing of Serb civilians in 1991 in Novska.²¹

Bosnia and Herzegovina

The number of war crime trials has risen considerably in BiH during the past few years. While in 2004 in the whole of BiH five proceedings were finalized by passing second degree judgments, and 15 first degree judgments were issued, 9 final judgments and 16 first instance judgments were passed in 2005. In 2006, with the specialized Department for War Crimes of the Bosnia and Herzegovina Prosecution and War Crimes Chamber of the Bosnia and Herzegovina Court working with full capacity, the number of final judgments rose to 17 and the number of first instance judgments to 23 (out of which 8 before the State Court of BiH).²²

17 "Bajićeva akcija" ("Bajić Action"), *Jutarnji list* (Zagreb), 25 September 2006.

18 *Narodne novine* (Official Gazette), No 58/92, of 25 September 1992.

19 *Narodne novine*, No 43/96, of 31 May 1996.

20 *Narodne novine*, No 80/96, of 27 September 1996.

21 Judgments of the Zagreb Military Court acquitted indictees for the murders of Sajka Rašković, Miša Rašković, Mihajlo Šeatović and Ljubana Vujić (K-42/92) and indictees for the murders of Vera Mileusnić, Goranka Mileusnić and Blaženka Slabak (K-44/92).

22 Information obtained courtesy of the Organization for Security and Cooperation in Europe, (OSCE) – Mission to BiH, 5 February 2007

The war crimes trials in Bosnia and Herzegovina are held before two groups of courts: the Court of BiH, on the one hand, and the courts in the entities (Federation BiH and the Republika Srpska), i.e. the Court of District Brčko, on the other. The War Crimes Chamber was established at the Court of BiH in March 2005, and it deals with the so-called especially sensitive cases of war crimes, where the sensitivity is assessed by the gravity of the crime or the rank of the indictee. Some of the cases were transferred to the Court of BiH from the Hague Tribunal, as part of the “exit strategy” which should result in the conclusion of the Tribunal’s operation in 2010.²³ Less sensitive cases are processed before the cantonal courts of the Federation BiH, district courts of Republika Srpska, and the court of the Brčko District.

A major difficulty faced by all these courts is that many of the individuals charged with war crimes no longer live in BiH, but in neighbouring countries of which they have acquired citizenship in the meantime. The Constitution of the Republic of Croatia does not allow the extradition of its citizens to other countries, and thus extraditions to BiH too are not allowed. The new Constitution of the Republic of Serbia, of November 2006, does not contain the provision for banning extradition, but such a ban is set in the Law on Criminal Proceedings. BiH is, at the same time, reluctant to transfer the trials of these individuals to the judiciaries of Croatia and Serbia. This results in a big void in punishing war crimes.

Trials before Local Courts

An important prerequisite for a just and efficient processing of war crimes in an ethnically complex environment such as BiH is the readiness of prosecutors and courts to be led by exclusively professional standards in exercising their duty, i.e. not to be biased towards the victims or indictees of their ethnic identity in passing judgments. Because most charged and convicted individuals before domestic courts during the past few years were members of the majority population, it appears as though the legal reform

implemented between 2002 and 2004 (see chapter below, entitled *Lustration – Bosnia and Herzegovina*) had a positive effect in so much that it narrowed the manoeuvring space for nationalist activity of prosecutors and judges.

There is, however, a series of other factors that affect the capacity of the judiciary in the Federation BiH, or in Republika Srpska, to deal with the complex cases of war crimes. These factors include co-operation of the police with the prosecution, co-operation with the judiciaries of the neighbouring countries where the witnesses and indictees often reside, witness protection, professional competence of subjects in proceedings, and financial and human resources the entities put aside for processing war crimes. There are several crucial problems in connection with every one of these that limit the capacity of the local judiciary to process war crimes.

An analysis conducted in October 2006 by the High Judicial and Prosecutorial Council of BiH, showed that the prosecutorial offices in the Federation BiH, Republika Srpska and Brčko District do not have expert associates or investigators to engage in cases of war crimes at their disposal. Specialized departments for war crimes exist in less than half of the cantonal and district prosecutorial offices. Most prosecutions do not have the necessary equipment (video cameras, dictaphones, mobile equipment), and possess very scarce reference material on war crimes. Neither one of the cantonal ministries of interior nor the organizational units of the Republika Srpska Ministry of Interior have separate organizations units for investigating war crimes. Not one of the courts in the Federation BiH, Republika Srpska or Brčko District has an organized separate department for war crimes. Only the Cantonal Court of Sarajevo has an expert associate (one only) working in the war crimes department. There is no strategy of protection or witness protection programme in the Federation BiH or Republika Srpska.²⁴

23 By the end of 2006 the Hague Tribunal transferred five cases, with nine indictees to the Court of BiH.

24 *Analiza procjene sposobnosti tužilaštava, sudova i policijskih organa u Bosni i Hercegovini za postupanje u predmetima ratnih zločina (Capacity assessment analysis of prosecutorial offices, courts and police in Bosnia and Herzegovina for war crimes proceedings)*, 5 October 2006.

A substantial step forward was made towards the end of 2005 and beginning of 2006, when the number of war crime proceedings rose before the courts in Republika Srpska. Until that stage there was practically a principle of impunity for war crimes perpetrators in this entity. At the end of 2005, the district courts of Banja Luka and Trebinje convicted five indicted Serbs in three trials,²⁵ and during the course of 2006 these two courts passed six first instance judgments in proceedings against a total of eight Serbs and one Bosniak.²⁶

Despite the positive involvement of some prosecutions and courts in the Republika Srpska in cases of war crimes at the end of 2005 and beginning of 2006, observers expressed concern that the positive trend would not continue if Republika Srpska failed to solve the problem of limited prosecution resources, lack of support staff and investigative capacity, insufficient co-operation from the Republika Srpska police and failure to use evidence from alternative sources, as well as intimidation and fatigue of witnesses.²⁷ Already in the second half of 2006 there was a drop in activity and towards the end of the year, out of some thirty trials in the whole of BiH which were undergoing proceedings or were about to begin, only two were run by the courts in Republika Srpska.²⁸ This points to a strong probability that once again an attitude of indifference to establishing responsibility for war crimes prevails in this entity. Before three district courts (Eastern Sarajevo, Bijeljina, and Doboj) not one trial has ever been held, which suggests that these prosecutors are obstructing investigation.

Trials before the War Crimes Chamber of the BiH Court

In 2003, the International Criminal Tribunal for the former Yugoslavia and the Office of the High Representative for BiH initiated establishing a special court chamber for war crimes, as an integral part of the Court of BiH, with the objective of running the

criminal proceedings of the most serious cases of war crimes. The War Crimes Chamber began its operation in March 2005. In November 2006, 12 international judges and six judges from BiH worked on these cases.²⁹ Towards the end of 2006, eight domestic and five international prosecutors worked at the War Crimes Department of the BiH State Prosecutor's Office.³⁰

During 2006, the court passed eight first instance judgments against the same number of individuals. There were ten ongoing proceedings (against 26 individuals), and seven trials were yet to be launched (for 11 indictees).³¹ Towards the end of the year the number of trials launched and waiting to be launched before the BiH Court outnumbered the number of trials before all the other courts in the state. During the course of the year, the first proceedings for the criminal act of genocide were launched before the War Crimes Chamber, the case of *Mitrović et al (Kravice)*. These proceedings are against 11 former members of the Army and the Ministry of Interior of the Republika Srpska, charged with the liquidation of captive Bosniaks in the region of Srebrenica on 13 July 1995. Most of the interrogated witnesses were themselves members of the armed forces of the Republika Srpska, and they seemed upset and frightened when they appeared in court, evading giving replies to many questions.³²

Despite the impressive balance of accounts, in just about over a year's work, in the legal processing of war crimes before the BiH Court, serious problems were noted that needed solving so as to keep the positive trend. The BiH Prosecution did not succeed in presenting convincingly to the public criteria on the basis of which it gave priority to particular cases over others. The associations of victims and the political representatives from various parts of BiH, and especially the Republika Srpska, expressed discontent with the alleged privileges afforded by the prosecution to certain groups of victims and not affording them to others. The public relations department did

25 Human Rights Watch, *a Chance for Justice? War Crime Prosecutions in Bosnia's Serb Republic*, March 2006, pp. 9-10.

26 Information obtained courtesy of the OSCE – Mission to BiH, 5 February 2007.

27 Human Rights Watch, *a Chance for Justice? War Crime Prosecutions in Bosnia's Serb Republic*, March 2006.

28 Information obtained courtesy of the OSCE – Mission to BiH, 5 February 2007.

29 Interview with the staff of the Office of the Registry of the Court of BiH, Sarajevo, 17 November 2006.

30 Human Rights Watch, *Narrowing the Impunity Gap: Trials before Bosnia's War Crimes Chamber*, February 2007, p. 5.

31 Information obtained courtesy of the OSCE – Mission to BiH, 5 February 2007.

32 As per the Humanitarian Law Center's monitoring report, February 2007.

not succeed in maintaining appropriate communication with those citizens who were most affected by armed conflict, in order to familiarize them with the work of the Court of BiH. Frequently closed hearings to the public were also strongly criticized. For all these reasons the public maintained a degree of mistrust towards the Court.

Serbia

During the course of the year, seven cases of war crimes were tried in Serbia – two of them associated with crimes in BiH (*Zvornik* and *Scorpions*), two with crimes in Croatia (cases of *Radak* and *Bulić*, for the crime at the Ovčara farm), and three for crimes in Kosovo (*Suva Reka*, *Bytiji brothers* case, and the *Lekaj* case). All the trials were held before the Belgrade District Court's War Crimes Chamber.

From the establishment of the Chamber and the Office of the War Crimes Prosecutor in 2003 to the end of 2006, only four cases were ended in Serbia in the first instance (three for the crime at Ovčara farm and the *Lekaj* case), and none of the cases resulted in a final judgment. There are many reasons for this inefficiency.

The Serbian Government had an indifferent approach to the activities of the Prosecutor and the War Crimes Chamber. The financial support provided by the Government for the Prosecutor to operate is insufficient. As a result, the Office only employs seven prosecutors, who are supported by only one expert associate.³³ The Prosecution has to provide financial means for travel to other parts of former Yugoslavia from elsewhere, mostly from international organizations and foreign embassies represented in Serbia.

Serbia could make a great contribution to the legal processing of war crimes by solving the crimes committed in Kosovo from 1998-99. However, only two prosecutors are dealing with these cases. Their access to relevant information is limited. The political leadership of Serbia has not expressed in any way that it considers pursuits for war crimes important and that

it expects the police to commit to this task. Co-operation between prosecutors and the Ministry of Interior (*MUP*) Sector for War Crimes Investigation is not satisfactory. Albanian witnesses from Kosovo are not willing to cooperate with the Serbian Prosecutor, even when it is the case of crimes committed against Albanians. The intensifying political debate about the final status of Kosovo has only increased their reserve towards institutions representing the state of Serbia. The United Nations Mission in Kosovo (UNMIK), which could bridge the gap between the Prosecutor and the Albanian witnesses, by encouraging the latter to be more cooperative, has not made sufficient effort to do so, according to the Serbian Prosecutor.³⁴

Observers have criticized the Prosecutor for not raising indictments, several years after launching proceedings before the Special Chamber, against highly positioned members of the police and the army for crimes committed by their immediate subordinates. Some progress was made in this respect in the *Suva Reka* case, where the trial was launched in October 2006. Serving members of the Serbian Ministry of Interior, among them the Commander of the 37th Division of the Special Police Unit of the Serbian Ministry of Interior, were indicted for war crimes against civilian population for the first time, before a domestic court.

A number of legal qualifications in the indictments have caused concern that the Prosecutor has been trying to hide the role played by the state of Serbia in the conflicts on other territories of former Yugoslavia. The Prosecutor qualified the conflict in BiH as "civil war" in indictments raised for the *Zvornik* and *Scorpions* cases. This qualification ignored the fact that the then Federal Republic of Yugoslavia (as well as the Republic of Croatia) were involved in the conflict in Bosnia and Herzegovina to such an extent that the ICTY estimated, in a number of judgments, that all provisions of the Geneva Conventions should be applied in the case of this conflict (these international instruments are only applied in full in the case of international conflicts).

The Humanitarian Law Center (HLC) has also criticized the qualification of the indictment in the

33 Interview with the representatives of the Office of the War Crimes Prosecutor, Belgrade, 16 March 2007.

34 *Ibid.*

Scorpions case, during 2006, where the Prosecution qualified the *Scorpions* unit as a paramilitary formation within the Army of the Republic of Srpska Krajina (in Croatia). According to the indictment, the *Scorpions* were under the command of the officers of the Republika Srpska Army (in BiH), on the Trnovo battlefield. The HLC pointed to ICTY Prosecution's written evidence, which proves that the *Scorpions* operated as a unit of the Serbian Ministry of Interior at the Trnovo territory.³⁵

The position of the Serbian Supreme Court is a further challenge for judges of the War Crimes Chamber and the prosecutors. This Court, as a rule, overrules first instance judgments in war crimes proceedings, which causes further suspicion in observers and families of victims that the Supreme Court judges, who were promoted to these positions during the rule of Slobodan Milošević, tend to make difficult the processing of war crimes for political reasons. On 14 December 2006, the Serbian Supreme Court revoked the first instance judgment for the war crime in the *Ovčara* case and ordered a retrial. The legal analysis of the Supreme Court's decision, conducted by the Belgrade OSCE Mission, concluded that in the case of at least some of the fourteen indictees the Supreme Court could have confirmed the first instance judgment without reversing the case to a retrial.³⁶

Bearing in mind that mostly members of the Serbian police and volunteer groups from Serbia have been indicted in the war crimes trials held so far, it is of great importance to secure efficient protection of witnesses from Serbia, who are to give evidence against the indictees. In the budget of Serbia for 2006, however, there were practically no funds put aside for the protection of witnesses.³⁷ During the year, a Witness and Victim Support Unit was established at the War Crimes Chamber, and a special room was provided for admitting witnesses.³⁸

The role of witnesses living outside Serbia is of crucial importance too for the effective running of war crimes trials. In view of the victims' mistrust in the Serbian institutions and the problem that the prosecutors and the judges face in securing their participation in trials, the HLC has been representing victims in court for the past few years and has encouraged them to take part in trials.³⁹ In the *Zvornik* case, the HLC secured the presence of 38 witnesses, who gave evidence during the course of 2006. Five witnesses, former camp detainees, were under the supervision of the Serbian Ministry of Interior's Witness Protection Unit during their travel and stay in Serbia. Arrival of another five witnesses was organized by the HLC independently from the unit of the Ministry of Interior. In the *Scorpions* case, the representatives of HLC paid a visit to the families of the victims prior to the trial, inviting them to take part in the trial and to describe, in detail, before the court when they had last seen members of their families, who they had recognized on the video material. In addition to three victim witnesses suggested by the prosecutor, three more victim witnesses, identified by the HLC, testified at the trial. The travel and stay in Belgrade of all of the six victim witnesses was organized by the HLC team for support to witnesses and victims.⁴⁰

Serbia's Lack of Co-operation with the Hague Tribunal

In 2006 Serbia failed to deliver to the Hague Tribunal any of the four or five indictees, who are believed to be still residing on its territory. The most notorious of these is the former general of the Republika Srpska Army, Ratko Mladić, charged with genocide in Srebrenica in July 1995 and other grave crimes in BiH. The Hague Prosecutor has claimed, as in previous years, that Mladić is still hiding on the territory of Serbia. While in previous years the Serbian officials denied these claims, during the course of 2006 they

35 Humanitarian Law Center, *Transitional Justice* Bulletin, No 1, 1 January 2007, p. 2.

36 Interview with a representative of the OSCE Mission in Serbia, Belgrade, 13 March 2007.

37 J. Čolak, "Svedoci saradnici su ključ sudenja" ("Witness Collaborators are the Key to a Trial"), *Danas* (Belgrade), 20 May 2006 (statement by Dragan Jovanović, Head of the Witness Protection Unit of the Ministry of Interior of the Republic of Serbia); "Nema para za zaštićene svedoke" ("There are no funds for the protected witnesses"), *B92* website (Belgrade), 26 June 2006. http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=06&dd=26&nav_category=120&nav_id=202596 (Interview with Vida Petrović-Škero, President of the Serbian Supreme Court).

38 Interview with the representatives of the Office of the War Crimes Prosecutor, Belgrade, March 2007.

39 Humanitarian Law Center, *Advising victim witnesses and their representation in court: Support model – Project report*, 21 February 2007.

40 *Ibid.*

said they did not know whether Mladić was in Serbia or elsewhere. In February the then Supreme Council for Defence of Serbia and Montenegro adopted the report of the Military Security Agency, which stated that former officers of the Army of Serbia and Montenegro (SCG) had helped hide Mladić outside military premises, in the previous years.⁴¹ During the first half of the year, a number of former officers of the Army of Serbia and Montenegro and former officers of the Republika Srpska Army, residents of Serbia, were arrested, along with a number of other individuals who had in former years allegedly helped hide Mladić. Criminal proceedings against eleven individuals were launched on 27 September. The observers' impression was that the primary aim of the trial was to lead the international community to believe that Serbia was undertaking serious measures to arrest Mladić.

The Serbian Government's adoption of an "Action Plan" for the arrest of Mladić, in July, also had a palliative role. Vladimir Vukčević, War Crimes Prosecutor, was charged with the task of coordinator of activities in implementing the action plan. Three months after the Government's adoption of the plan, the Chief Prosecutor of the Hague Tribunal, Carla del Ponte, expressed dissatisfaction with the work of the security services in implementing it, and suspicion that the Serbian intelligence services were hiding information from Prosecutor Vukčević.⁴²

Kosovo

In 2006, only one war crime trial was held in Kosovo, against six Kosovo Albanians indicted with crimes against other Albanians. In August, a panel comprised exclusively of international judges convicted each of the three former officers of the Kosovo Liberation

Army (KLA) to seven years' imprisonment. The Prosecutor gave up pursuing two of the three remaining indictees, and the third was acquitted. On delivering the sentence, the Court made a decision to release the sentenced until the judgment became final. One of the sentenced was Selim Krasniqi, who had been a commanding officer in the Kosovo Protection Corps after the war.

The problem of witness protection, which blocks successful prosecution of war crimes and other criminal acts in the province, was drastically manifested in this case. The key witness of the Prosecution was killed on 10 October 2005 in the village market in Zrze/Xërxë, in the municipality of Prizren.⁴³ The fear of people to co-operate with war crimes prosecutors, or the sympathy they had for the indicted Kosovo Albanians, are crucial reasons why investigations of war crimes were practically blocked. The Draft Witness Protection Law was not passed until the end of the year. Western countries were reluctant to grant entry to witnesses who had requested immigration because their safety had been at stake in Kosovo.⁴⁴

Although the trials for criminal acts committed in March 2004 in Kosovo are not war crimes trials, they should be mentioned in this context because of the close connection between the events in March and the ones in 1998 and 1999. The intensity of the March riots gave them the character of violence continued from the end of the 1990s. As is the case of war crimes trials, the balance of accounts for the March riots is far from impressive. According to the report of the UN Secretary-General, of November 2006, 198 indictments were raised for criminal acts committed, which resulted in 134 convictions.⁴⁵ The data of the Judges' Association of Kosovo, which is tasked with providing statistical evidence on trials for the March violence, shows that only 67 individuals were sentenced to imprisonment, and the others to

41 Zoran Preradović, "Zatražena krivična odgovornost zbog skrivanja Mladića" ("Criminal Accountability Requested for Hiding Mladić"), *Radio Free Europe website*, 1 February 2006. (<http://www.slobodnaevropa.org/content/News/658454.html>).

42 Zoran Preradović, "Bezbednosne službe skrivaju informacije?" ("Security Services Hiding Information?"), *Radio Free Europe website*, 5 October 2006. (<http://www.slobodnaevropa.org/content/News/683880.html>).

43 Organization for Security and Co-operation in Europe, Mission in Kosovo, *Review of the Criminal Justice System in Kosovo*, December 2006, p. 14.

44 Human Rights Watch, *World Report 2007*, chapter "Serbia, Events of 2006". (www.hrw.org/englishwr2k7/docs/2007/01/11/serbia14776.htm).

45 *Report of the Secretary-General of the United Nations Interim Administration Mission in Kosovo*, S/2006/906, 20 November 2006, Annex 1, para. 9.

conditional punishments or financial penalty.⁴⁶ There is no data on the number of years of imprisonment, but the annual report of the Human Rights Watch for 2006 concludes that the punishments were mild.⁴⁷ Bearing in mind that 51,000 people took part in the riots,⁴⁸ and that around 940 houses were destroyed,⁴⁹ the resulting balance of several dozen mild imprisonments resembles a travesty of justice, rather than its fulfilment.

Montenegro

In 2006, as in the previous four years, not a single trial for war crimes was held in Montenegro.⁵⁰ The prosecution launched an investigation for war crimes against the civilian population in one case. The investigation concerned the events that happened in May 1992, when the Montenegrin police arrested a large number of Bosniak refugees, who had sought refuge in Montenegro from the armed conflict in BiH. The police handed over these individuals to the Republika Srpska Army and police, allegedly to be able to exchange them for Bosnian Serbs who had been arrested by the Army of BiH. On their arrival in BiH, most of the Bosniaks who had been handed over were killed by members of the armed forces of the Republika Srpska.

According to the reply by the Ministry of Interior of Montenegro, in April 1993, to four members of the Montenegrin Parliament, 49 Bosniaks had been arrested in this action by the Montenegrin police and

handed over to Republika Srpska.⁵¹ But according to Šeki Radončić, the journalist of the Montenegrin weekly “Monitor”, who investigated this case in detail and talked to numerous witnesses, 85 Bosniaks were deported in May 1992, while another 20 were brought in August that same year from Foča to a location near Nikšić (Montenegro) and returned to Foča once again.⁵²

It was only in October 2005, whole 13 years after the crime was committed, that the prosecutor in charge filed a request to launch a criminal investigation into this case. An investigation for the criminal act of “war crime against civilian population” was formally launched on 18 February 2006,⁵³ against the former Head of the Security Center of Herceg Novi (Milorad Ivanović), former Assistant Minister of Interior of Montenegro (Milisav Marković), a former member of the State Security Services (Duško Bakrač), a police commander (Milorad Šljivančanin), former Assistant Head of the Security Center of Herceg Novi (Branko Bujić), and the current Head of the Security Center of Bar (Damjan Turković). The investigation, however, only began in November, by interrogating the witnesses from the territory of Montenegro. By the end of the year, the investigating judge had not made a hearing of a single victim witness.⁵⁴

The State Prosecutor Vesna Medenica placed the responsibility for the delay in launching the proceedings on the relevant court in Podgorica, claiming that she had made several requests to the Higher Court and the President of the Supreme Court of

46 [Secretariat of the Judges’ Association of Kosovo], Data on criminal acts and offences in connection with the March events in 2004 [December 2006/January 2007].

47 Human Rights Watch, World Report 2007, chapter “Serbia, Events of 2006”.

48 Human Rights Watch, *Not on the agenda: the continuing failure to address accountability in Kosovo post-March 2004*, May 2006, p. 1.

49 Central Inter-Ministerial Commission on Distributing the Funds of the Kosovo Government for Repairing Damages, “Frequently Asked Questions on Post-March Restoration”, September 2004, www.ian.org.yu/kosovo-info/zajednicke/FAQ/04-09/FAQSerb.pdf (By September 2004, 414 houses had been reconstructed, mostly the ones that had sustained small damages, and the reconstruction of 407 houses was ongoing; 116 houses remained to be reconstructed).

50 From the beginning of the conflict in the region of former Yugoslavia in 1991, only one war crimes trial was held in Montenegro. In September 2002 the Higher Court in Bijelo Polje convicted Nebojša Ranisavljević to 15 years of imprisonment for his involvement in the murder of 20 civilians (19 Bosniaks and one Croat) in 1992 on the territory of BiH.

51 Reply to MPs’ question No 278/2, of 8 April 1993.

52 Šeki Radončić, *Kobna sloboda: Deportacija bosanskih izbjeglica iz Crne Gore (Fatal Freedom: Deportation of Bosnian refugees from Montenegro)* (Humanitarian Law Center, Belgrade, 2005), p. 140.

53 Amnesty International, *Montenegro: The right to redress and reparation for the families of the ‘disappeared’*. December 2006, p. 6.

54 Interview with the representative of the Prelević Solicitors, 28 February 2007 (Prelević Solicitors represented families of victims in the civil proceedings for reparation before the Basic Court in Podgorica).

Montenegro for the proceedings in this case to be given priority.⁵⁵ There are, however, sound indications that the Prosecution itself was also responsible for the delay. According to the statements by the families' representatives, the Prosecutor had suggested, in her October 2005 motion for the opening of an investigation, that the investigating judge take statements from 15 deceased witnesses. Among the evidence that the Prosecutor had suggested be collected, key documents were missing, such as the Ministry of Interior's reply to the parliamentary question of April 1993.⁵⁶

Regional Co-operation

During the past two years the co-operation between the prosecutors of Croatia, Bosnia and Herzegovina and Serbia that deal with war crime issues has improved. In 2005 these prosecutors signed agreements on direct co-operation,⁵⁷ and this makes it unnecessary, to a great extent, for diplomatic representations to act as mediators in communication. Prosecutors and independent observers welcomed the signed agreements as an encouraging sign of readiness to bring to justice those responsible for war crimes with joint effort. On signing the agreement between the Croatian and Serbian prosecutions offices, the war crime prosecutor and investigating judge in Belgrade took statements from Croatian witnesses on the premises of the Zagreb County Court, in the investigation of the *Ovčara* case. With the support of the Croatian Ministry of Justice and trust in the Humanitarian Law Center, these witnesses testified later in a court trial in Belgrade. The support of

the Belgrade prosecution also helped the successful processing of three trials, held in 2006 in Croatia – for the crime in the Lora camp (by organizing the presence of witnesses), the crime on the Korana bridge in Karlovac (by organizing the presence of witnesses), and the crime in Trnovo (BiH) against Bosniaks from Srebrenica (by submitting evidence).⁵⁸ During the course of the year there was active co-operation between the prosecutorial offices in BiH and the other two countries, primarily Croatia.⁵⁹ Upon the initiative of the HLC, co-operation was established between the Prosecution for War Crimes in Belgrade and the Cantonal Prosecution in Tuzla (BiH), which resulted in the proposal of the War Crime Chamber in Belgrade to the Cantonal Prosecution in Tuzla (BiH) to sign an agreement to establish a joint team for investigating war crimes in the municipality of Zvornik. The agreement signing was first planned on 27 December, but was then postponed for January 2007.⁶⁰

Beside the agreement signed in 2005, the relevant prosecutors from Croatia and Serbia signed an additional agreement in October 2006 on submitting evidence for purposes of criminal prosecution.⁶¹ This would contribute to overcome impunity of war crimes perpetrators in Croatia, who had moved to Serbia, become its citizens, and were making use of the fact that the law prohibited extradition to other countries. By the end of 2006, the Croatian Prosecutor had prepared to hand over a number of cases. BiH did not express readiness to hand over to other countries prosecution cases for crimes committed on its territory, if the investigation had already been launched before the Bosnian courts.

55 Amnesty International, *Montenegro: The right to redress and reparation for the families of the 'disappeared'*, December 2006; Jasna Vukićević, "Tužiocima nezadovoljni istragom o deportacijama Bošnjaka" ("Prosecutors Not Satisfied with the Inquest on the Deportation of Bosniaks"), *Radio Free Europe website*, 18 October 2007 (<http://www.slobodnaevropa.org/content/News/684877.html>).

56 Interview with the representative of the Prelević Solicitors, Podgorica, 28 February 2007.

57 Agreement between state prosecutors' offices of Croatia and BiH was signed on 21 January 2005. The agreement between the State Prosecutor of Croatia and the War Crime Prosecutor of the Republic of Serbia followed, on 5 February 2005. A similar agreement was signed by the relevant prosecutors of Serbia and BiH on 1 July 2005.

58 Centre for Peace, Non-violence and Human Rights Osijek, Documenta, Citizens' Committee for Human Rights and the Croatian Helsinki Committee for Human Rights, *Praćenje suđenja za ratne zločine, Izvještaj za 2006 (Observing war crimes trials, Report for 2006)* (Osijek, 2006), p. 17.

59 Statement by Vasa Milinković, Head of the War Crime Department of the State Prosecutor's Office of BiH, and Josip Čule, the Deputy Chief Prosecutor of the Republic of Croatia, in a meeting to discuss cooperation between the war crime prosecutors, Belgrade, 5 February 2007. See Humanitarian Law Center's report, *Advising Victim Witnesses and their Representation in Court: Support model – Project Report*, 21 February 2007. (http://hlc.org.yu/srpski/Nacionalna_sudjenja_za_ratne_zlocine/Srbija/index.php?file=1601.html).

60 Humanitarian Law Center, *Advising Victim Witnesses and their Representation in Court: Support model – Project Report*.

61 Center for Peace et al., *Praćenje suđenja za ratne zločine, Izvještaj za 2006 (Observing war crimes trials, Report for 2006)*, p. 18.

The State Prosecutor's Office of the Republic of Croatia and the Supreme State Prosecutor of Montenegro also signed a Co-operation Agreement on Prosecution of Perpetrators for War Crimes, Crimes against Humanity and Genocide, on 28 July 2006. The Agreement entailed exchange of evidence, providing legal assistance, and co-operation in collecting evidence which contributes to finding and punishing the perpetrators.⁶²

The County Attorney's Office of Dubrovnik (Croatia) collected during the year documentation about the war crimes in the Morinj camp, to hand it over eventually to the Montenegrin Prosecutor, in accordance with the Agreement signed in July 2006 on the co-operation of the two State Prosecutors.⁶³ The Croatian State Prosecutor's Office, however, failed to forward this documentation by the end of the year.⁶⁴

II. "Lustration"

BiH is the only post-Yugoslav country in which the possibility of an individual to perform a public duty depends, although to a limited extent, on the outcome of an inquiry into his or her activities during armed conflicts. Although there is a law in Serbia, which prescribes in a comprehensive way, that inquiries should be carried out into individual activities during the armed conflicts in the former Yugoslavia, and in the earlier, communist period, it was never applied.

In all parts of the former Yugoslavia, the systematic determining of individual accountability for violations of human rights for individuals performing political, judicial, administrative and other public functions, i.e. performing public authority, and pronouncing non-criminal sanctions related to the determined violations, is defined with the term *lustration*. Strictly

speaking, the use of this term is wrong, because it suggests the application of a collective measure aimed at all individuals who had belonged to a certain organization or structure (most often a political party in power before democratic transition). In reality, initiatives adopted in BiH as well as the law adopted in Serbia, are based on the principle of determining individual accountability. This model responds to the *vetting* concept, rather than "lustration". The term "lustration" has, however, become generally used, probably due to the lack of a word or syntagm in the languages of the people from the region of former Yugoslavia, which could be the adequate translation of the English word "vetting" and because of the influence of a similar model, which has been used in the countries of Eastern and Central Europe.

Bosnia and Herzegovina

The first attempt in Bosnia and Herzegovina to systematically investigate possible violations of human rights by individuals who are part of the state system was made during the period 1999-2002, when the UN Mission looked into the activities of policemen during the war period. The exercise concerned 24,000 active policemen.⁶⁵ According to a report of the United Nations Development Programme, only 4% of the policemen were removed from service as a result of this process.⁶⁶ Some police officers, who would eventually be indicted for war crimes before the BiH courts, continued to work following the U.N.-led vetting endeavour.⁶⁷

A judicial reform was carried out in BiH between 2002 and 2004, during the course of which the High Judicial and Prosecutorial Council decided that some 200 judges and prosecutors, out of 1,000, should not be re-appointed.⁶⁸ There is no reliable information on

⁶² *Ibid.*

⁶³ Information from the Center for Peace, Non-violence and Human Rights Osijek.

⁶⁴ Biljana Jovičević, "Međudržavna saradnja na tri slučaja ratnih zločina" ("Inter-state Cooperation on Three War Crime Cases"), 4 December 2006, *Radio Free Europe website* (<http://www.slobodnaevropa.org/content/Article/689556.html>) (statement by Antun Kvakon, Deputy Chief State Attorney of Croatia).

⁶⁵ International Center for Transitional Justice, *Bosnia and Herzegovina: Selected Developments in Transitional Justice*, October 2004, page 12.

⁶⁶ United Nations Development Programme (UNDP), *Transitional Justice: Assessment survey of conditions in former Yugoslavia* (Beograd, 2006), page 102.

⁶⁷ International Center for Transitional Justice, *Bosnia and Herzegovina: Selected Developments in Transitional Justice*, October 2004, p. 13 (footnote 56).

⁶⁸ *Ibid.*, p. 12; UNDP, *Transitional Justice: Assessment survey of conditions in former Yugoslavia* (Beograd, 2006), p. 102.

which part of this number were not re-appointed for the reasons concerning violations of human rights.

The main task of the agencies in BiH who are checking the eligibility of an individual to be elected for the state parliament or government is to check whether there is possible conflict of interest. Regular checks are also made as to whether an individual was involved in violations of humanitarian law during the armed conflict. The Central Electoral Commission determines whether a candidate is serving a sentence for violation of international humanitarian law, or whether he was indicted and refused to appear in court. In either of these two, the individual would lose the right to be elected.⁶⁹ In addition, the State Investigations and Protection Agency (SIPA) requests from candidates for Prime Minister, Minister or assistant Minister in the BiH Council of Ministers to fill in a form, which includes among other questions, a column with a part on activities during the war. SIPA then double checks the information from the completed form and provides a report for the Board of the Parliamentary Assembly of BiH for Appointing Executive Power Candidates.⁷⁰ If a candidate mentions in the form that he/she had been involved in illegal activity during the war, or if SIPA, during the checking, discovers this sort of information which the candidate failed to mention, there is no legal obstacle to appoint him/her, but it is deemed that such a candidate would not get a positive mark by the relevant parliamentary board.⁷¹

Serbia

The law on accountability for violations of human rights, adopted by the Serbian Parliament in June 2003,⁷² did not come into effect even in 2006. During the period 2004-06, the majority of MPs were representatives of the Serbian Radical Party, the Democratic Party of Serbia and the Socialist Party of Serbia, who were all against the adoption of the law on accountability for human rights' violations, at the time it was

passed. These parties kept a negative attitude, so that the majority of MPs in the newly elected parliament did nothing to elect members of the "lustration" commission, which is a prerequisite for the application of the aforementioned law.

In the context of non-implementation of this law, the only initiative which was assessed by the public as an attempt to introduce "silent lustration" into the judicial system was the announcement of the Finance Minister Mladen Dinkić, at the beginning of 2006, that a re-election of all judges should be carried out in Serbia. At the Government Session of 8 February, there was a discussion about Dinkić's initiative. According to media reports, the Minister suggested that the Ministry of Justice should consider the re-election of judges every five years and that the provision in the Constitution pertaining to the permanent positions of judges should be amended. He singled out here the Commercial Court in the negative sense, for alleged illegal decisions which were damaging for the budget of Serbia.⁷³

The initiative of Minister Dinkić was greeted with disapproval not only in judicial circles, but also among the parties and experts who had previously supported the passing of the "lustration" law. The Civic Alliance of Serbia labelled the announcement by Minister Dinkić as a threat against and pressure on the court administration, and Vesna Rakić Vodinelić, professor of law and former member of the commission for *lustration* (in its founding phase), stressed that the suggested approach would lead to the situation where "there would be hardly or no administration of justice".⁷⁴ In any case, Dinkić's suggestion did not pertain to the violations of human rights by the judges during the former period, but to their corruption or lack of professionalism. The initiative was therefore not an attempt to introduce the mechanisms of transitional justice, although the media frequently used the word *lustration* when referring to it. Following the negative reaction from most of the public, Dinkić no longer mentioned in public the initiative on the re-election of judges.

69 Interview with a member of the Central Elections Commission of BiH, Sarajevo, 28 November 2006.

70 Telephone interview with the representative of the Department for Internal Control of SIPA, 26 February 2007.

71 *Ibid.*

72 Law on Accountability for Human Rights Violations, *Official Gazette of the Republic of Serbia*, No 58/03, 3 June 2003.

73 „Sudstvo: Demontaža ili lustracija?“ (Judiciary: Dismantling or Lustration?), B92 website, 9 February 2006. (www.b92.net/info/vesti/index.php?yyyy=2006&mm=02&dd=09&nav_id=187996).

74 *Ibid.*

The debate on *lustration*, including among the judiciary, came back into focus at the end of the year, on the occasion of adopting the new Serbian Constitution (in November 2006). The Constitution itself does not envisage lustration, or re-election of judges. According to the Constitution the judicial function is permanent, with the exception that an individual elected by the Parliament to be a judge for the first time, is elected for a period of three years.⁷⁵ However, the Constitutional Law for applying the Constitution contains provisions that have been interpreted by legal analysts as a basis for re-electing judges. The Constitutional Law states the first election of judges for the Supreme Court of Cassation “not later than 90 days from the day of establishing the High Judicial Council”, and the election of judges of other courts “not later than one year from the day of establishing the High Judicial Council”.⁷⁶

At the end of 2006 legal experts led an impassioned discussion on whether the new Constitution really gave space for *lustration*. An open question remained as to whether there would be a re-election of all judges in Serbia, or only the judges of newly-founded courts or the old courts whose competencies had changed. The reply to these questions will depend on the law that is yet to be adopted, and with the help of which the organization and competences, election of judges and presiding judges, and the termination of their functions, would be regulated.

While there were speculations in media on possible *lustration*, a number of individuals, for whom there are credible allegations on accountability for violations of human rights, were appointed to public positions in Serbia. At the end of 2005 Slobodan Borisavljević, Chief of Cabinet of the former Head of the Public Security Sector in the Serbian police Vlastimir Đorđević (ICTY indictee) at a time when that sector was trying to hide the evidence on the

killings of Kosovo Albanians in 1999, was appointed to the duty of Head of the War Crimes Department within the Ministry of Interior. Following the requests from the Humanitarian Law Center and then ICTY Chief Prosecutor Carla Del Ponte, in January 2006, to have Borisavljević removed from the service, in April the Minister for Interior had Borisavljević replaced from that position.⁷⁷ At the end of the year, the opposition Liberal-Democratic Party (LDP) protested on account of the appointing of Zoran Simović to the post of Security Commander of the Gendarmerie (Special Police). The public announcement of the LDP states that Simović was the Commander of the Special Anti-terrorist Unit of the police at the time of the opposition’s protest against Slobodan Milošević from 1996-97, and that members of this unit had brutally beaten up the demonstrators.⁷⁸ In October 2006, the State Elections Committee appointed Dobrivoje Glavonjić as President of the Commission for Public Procurement of Technical Amenities of Implementing the referendum on the new Serbian constitution. At the end of the 1990s Glavonjić headed the Belgrade Court for Petty Crimes, a time when this court was entrusted with the implementation of the then-Information Law, under the provisions of which media that opposed Slobodan Milošević were drastically penalized.⁷⁹

Kosovo

In Kosovo there is a ban on the election of a candidate to public office if the candidate is serving a sentence passed by the ICTY, or an indictment has been raised against him/her before the Tribunal and he/she has not appeared before the Tribunal.⁸⁰ Appropriate acts of the Central Electoral Commission do not envisage a similar ban on account of a judgment or proceedings before a domestic court.

75 The Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, No 83/06, art. 146 (1) and (2), and art. 147.

76 The Constitutional Law for the Implementation of the Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, No 98/06, art. 7.

77 “Slobodana Borisavljevića udaljiti iz službe” (“Slobodan Borisavljević Should Be Removed from the Service”), *Danas* website (Belgrade), 23 January 2006 (www.danas.co.yu/20060123/dogadjajdana1.html#2); “Smenjen Slobodan Borisavljević” (“Slobodan Borisavljević Replaced”), *B92 website* (Belgrade), 22 April 2006 (www.b92.net/info/vesti/index.php?yyyy=2006&mm=04&dd=22&nav_id=195654).

78 “LDP o bivšem komandantu SAJ-a” (“LDP on the Former (SAJ) Commander”), *B92 website* (Belgrade), 23 December 2006 (www.b92.net/info/vesti/index.php?yyyy=2006&mm=12&dd=23&nav_category=418&nav_id=224707).

79 “Novinari protiv Glavonjića” (“Journalists Against Glavonjić”), *B92 website* (Belgrade), 11 October 2006 (www.b92.net/info/vesti/index.php?yyyy=2006&mm=10&dd=11&nav_category=11&nav_id=215032).

80 See, e.g., Regulation No 2004/12, on elections for the Kosovo Assembly, 5 May 2004, art.23.1.

Croatia

The opposition Croatian Party of Law (*HSP*) initiated in the Parliament the adopting of the law on lustration, in 1998 and 1999, but the Parliament rejected these initiatives by a majority of votes.⁸¹ During 2005, the Croatian Helsinki Committee for Human Rights, together with another four organizations from the region, drew up a written analysis in which it discussed the “creeping lustration”, i.e. the fact that in Croatia, according to the *Narodne novine* (Official Gazette), 2,200 individuals were dismissed or were not re-elected to judge and prosecutor positions during the period 1990 to 1996,. Out of this total, 361 judges received no explanation for not being re-elected. In view of the fact that staffing reforms in the judiciary were not implemented on the basis of any general criteria, determined by legal proceedings, there is reasonable doubt that they were based on political and ethnic reasons. The Croatian Helsinki Committee warned that lustration should apply not only to the systematic violation of human rights during the communist regime, but also to the 1990s. There is, however, neither political will nor public consensus on this in Croatia, because the violence and violations of human rights during this period are usually attributed to the legitimate defence against the activities of the *JNA* (Yugoslav National Army) and the rebellious Croatian Serbs. The discussions on these topics continued in the media during 2006, but did not lead to the articulation of a draft law.

III. Mechanisms of Fact Finding

In transitional societies truth commissions are a standard way of fact finding about violations of human rights during the previous period. There are other mechanisms of transitional justice, where fact finding is not the primary task, but which indirectly contribute to this goal. The trials before the Hague Tribunal, for example, enabled the public in post-Yugoslav countries to find out a series of important facts which would otherwise have remained filed in archives. The work of commissions for finding the missing, as well as international organizations involved in these activities (International Committee of the Red Cross,

International Commission for Missing Persons) is also of invaluable importance for fact finding, for the families and friends of the identified, and also for the wider public.

In none of the post-Yugoslav countries has a single efficient truth commission been established. Various actors have implemented projects in recent years, which are in a way substitutes for a body which would deal with fact finding on crimes from the past. Compiling detailed lists of victims is typical of these kinds of projects, where the Research and Documentation Center from Sarajevo and the International Committee of the Red Cross (with regard to the missing) have made a great contribution. Projects of so called oral history are to a certain extent a substitute for testimonies before a truth commission, although they only cover part of the activities which are in other transitional countries dealt with by commissions. Unlike the activities of truth commissions, the authority of the state does not stand behind oral history projects.

Truth Commissions

In the successor states to the former Yugoslavia there is no official body which deals, in a systematic way at state or inter-state level, with fact finding about past crimes. One such commission was founded in 2001 in the then Federal Republic of Yugoslavia (Serbia and Montenegro), but the constitution of the commission and the character of political forces standing behind it left an impression within Serbian and regional civil society that the actual goal of the commission was a nationalist distortion of history. Without the support of civil society, the commission was disbanded before it held a single public hearing or undertook any important activity.

The most substantial initiatives towards establishing truth commission at a national level were undertaken for years by the representatives of the non-governmental sector in BiH. At the “Truth and Reconciliation” conference, held in Sarajevo in 2000, more than one hundred non-government organizations from BiH agreed that such a commission should

81 The suggested law envisaged disabling the performing of high official duties for members of the former communist regime.

be established at state level by a decision of the state parliament. No commission was formed, however, due to lack of political will and the fear among the victims that the work of the commission could result in amnesty for war crimes. In 2006 parliamentary parties took part for the first time in concrete activities which could potentially lead to the establishment of a truth commission, when a working group made up of representatives from the parliamentary parties drafted a law on truth commissions.

There were no similar initiatives or even serious debates in other post-Yugoslav countries on establishing a national truth commission. At non-government gatherings, instead, representatives discussed the possible establishing of a regional body for fact finding about the past and enabling victims to give direct testimonies of their experiences.

Bosnia and Herzegovina

Truth Commission of Bosnia and Herzegovina

In the first half of 2006 the representatives of all parliamentary parties of BiH participated in drafting the law on the state truth commission. A working group completed this task in May. After this all activities aiming at the adoption of this law ceased. It remained unclear whether this was only a temporary break, which coincided with the launch of the general election campaigns in October, or a complete suspension of activities reflecting a deeper opposition within the BiH society to the possibility of forming of a truth commission.

The work on drafting the law was coordinated by the NGO “Dayton Project“, which operated closely with the United States Institute of Peace (USIP). At the end of 2005 the USIP offered its expertise to the three members of the Chairing Committee of the BiH Parliamentary Assembly, Šefik Džefarović, Nikola Špirić and Martin Raguž. The Chairmen forwarded a letter to the parliamentary groups with a proposition to appoint representatives for a working group to work on the draft law. The working group was

formed in November 2005, by a decision of the three Chairmen.

The working group held several meetings during the following six months, formally hosted by the “Dayton Project“. The representatives of the USIP and the United Nations Development Programme (UNDP) were present at some of the meetings as observers. The working group met with the representatives of several non-government organizations in a number of towns in Bosnia. There was, however, a public suspicion of the activities of the working group when the meetings began, due to the fact that they had not had prior consultations with victims’ associations and other NGOs. This caused a negative atmosphere during the meetings of the working group with the representatives of NGOs. The discussions in these meetings were concerned rather with why the civil sector had been ignored prior to the formation of the working group, than with proposals of the draft law.⁸²

The last meeting of the working group was held on 17 May 2006, when the group adopted the draft law. Following this, all activities aiming at the enactment of the law and establishing the commission stopped. This was the outcome of the negative reactions of civil society and the media because of the way the working group had been set up and operated, and also of the complete orientation of the political parties towards the October parliamentary elections.

Public opinion polls show that in BiH the majority of the respondents were in favour of forming a truth commission. According to the analysis conducted towards the end of 2005 by the BiH Office of UNDP, 55.7 per cent thought that BiH needed a commission for truth and reconciliation. This percentage is almost identical for Bosniaks and Serbs (56.7 per cent, and 57.6 per cent), and slightly lower for the Croats (49 per cent).⁸³ Around 43 per cent of respondents said they thought the commission should consist exclusively of local members, 10 per cent opted for a commission with representatives exclusively from international organizations, and 40 per cent for a commission of mixed composition.⁸⁴

82 Interview with Besima Borić, Representative of the Social-Democratic Party and Member of Working group for drafting the law.

83 United Nations Development Programme for BiH, *Sistem ranog upozoravanja (Early Warning System)*, December 2006, p. 17 (table 8).

84 *Ibid*, p. 17 (table 9).

There was, however, fear among the public that forming this commission would lead to amnesty for perpetrators of war crimes. The draft law outlined by the working group in May 2006 did not resolve the issue of the relationship between the commission and the agencies for prosecution of war crimes.⁸⁵ During the course of the year, the Office of the BiH Prosecutor expressed a view that the truth commission should not have access to the data in the possession of the Prosecutor, while the Prosecutor should have access to the information obtained by the Commission, following the completion of its work.⁸⁶

Sarajevo Commission

During the course of 2006 a Commission for Establishing Truth on the Fates of Serbs Croats, Bosniaks, Jews and Others in Sarajevo in the Period Between 1992 and 1995 was founded in BiH. Founding the commission was a late implementation of the conclusion adopted by both houses of the Parliamentary assembly of Bosnia and Herzegovina, of 23 January 2004, whereby the Assembly ordered the Government (Council of Ministers) of Bosnia and Herzegovina to form the commission by the end of the year.

The principal initiators for founding the commission were the political representatives and associations of victims of war from Republika Srpska, whose original request was to form a commission dealing with the hardships sustained by Serbs. The Council of Ministers of BiH postponed forming the commission for more than two years. The current Chairman of the Council of Ministers, Adnan Terzić, justified the delay in founding the commission by stating that it was more logical to form a truth commission to deal with the whole of Bosnia and Herzegovina. The political representatives of the Bosnian Serbs claimed that Terzić purposely blocked the forming of the commission because he wanted to prevent the disclosure of facts about the sufferings by Serbs. Stalling the founding of the commission was criticized by the

media and the political representatives even in the Federation BiH.

Dissatisfied by the fact that the decision by the Parliamentary Assembly had not been implemented for two-and-a-half years, the political representatives of the Serbs from Republika Srpska boycotted the work of the Parliamentary Assembly in May and June 2006. On 15 June the Council of Ministers finally passed the decision to found the commission, on condition that during its mandate the commission would investigate all damages suffered in Sarajevo irrespective of the victim's ethnicity. The Commission has 10 members, 3 representatives each of the Bosniak, Serb and Croat people, and 1 representative of "the others". The decisions of the Commission are to be reached by consensus, and in the instance that consensus fails a minimum of 2 positive votes by the representatives from each of the constituent peoples is required.

The composition of the Commission caused dilemmas and dissatisfaction among the public. One of the members, Cvjetko Savić, who had worked as member of the Commission, at the Government Secretariat of Republika Srpska for Relations with the Hague Tribunal, had been dismissed by the High Representative for Bosnia and Herzegovina in 2004 from the Commission for Fact-Finding About the Events in Srebrenica in July 1995, for the alleged obstruction of its operation. On the other hand, there was public disapproval in Republika Srpska over the presence of Amor Mašović in the Commission, the long-time President of the Commission for the Missing Persons of the Federation BiH, due to suspicions about his impartiality.

The decision by the Council of Ministers of 15 June 2006, to found the Commission, does not contain a detailed description of the mandate. Members of the Commission have expressed the opinion that the mandate does not include investigation of broader historical issues, such as the outbreak of the war in BiH, the involvement of neighbouring countries

85 Interview with Besima Borić, Representative of the Social-Democratic Party and Member of Working group for drafting the law on the BiH Truth Commission, Sarajevo, 16 November 2006; interview with Maja Marjanović, representative of the "Dayton Project" organization, Sarajevo, 17 November 2006.

86 *Komentari Tužilaštva BiH na Nacrt zakona o uspostavi Komisije za istinu u Bosni i Hercegovini (BiH Prosecution Commentary to the Draft Law on the Establishment of a Truth Commission in Bosnia and Herzegovina)*, undated memorandum [2006], analysis of article 5 (Co-operation with Court Organs).

into the war events in Sarajevo and in other parts of BiH. The task of the Commission was to arrive, in a concrete way, at data about the victims – the killed, missing, deported, detained, raped and tortured.⁸⁷ Special priority was given to finding out the destiny of the missing and compiling a list of all who were killed during the war in Sarajevo. Information leaked to the public, however, revealed that there were disagreements among the members of the Commission on whether its mandate should include fact finding on damages done to material property in the town. The Bosniak members of the Commission allegedly urged for this issue to be included in the mandate, while the Serb members were against it. (The damages caused to the property were mostly caused by activities from the Serb positions in the town's surroundings).

During the year it remained unclear to what extent, if at all, the Commission would hold public hearings. The other important issue which was left unclear was whether, bearing in mind that the Commission's primary focus were victims, it would gather information about the individuals accountable for violations of humanitarian law, and whether this information would be made part of the final report.

The decision by the Council of Ministers on the founding of the Commission set a one-year limit for the Commission to end its operation, after which it was to present a report and findings. It soon became evident, however, that this time limit was unrealistic. From the moment it was founded until the end of 2006, the work on gathering information had hardly even begun. The Commission was given its working premises only in November, and the furniture and

equipment in December.⁸⁸ During the course of the year the Commission had, therefore, mostly dealt with procedural issues and planning of activities. Special emphasis was given to the drafting of the so-called scientific research project that was supposed to regulate in detail the operation of the Commission and determine its mandate. This project was drawn up in December 2006.⁸⁹

The work of the Sarajevo Commission during the first months that followed its founding aroused little public interest. The silence about the Commission was partly due to the fact that it did not have any public activity which would arouse media interest. Besides, none of the sectors of Bosnian society had high expectations of the Commission. Bosniaks and Croats never showed a great interest, since the main initiators to form the Commission were the Serbs. The interest of Serb associations and Serb politicians dropped when they realized that the Commission would be dealing with the sufferings of non-Serbs too.⁹⁰ However, on 12 November, the Government of the Republika Srpska pledged support to the work of the Sarajevo Commission and requested the relevant authorities and agencies of that entity to co-operate with the Commission.⁹¹

Initiatives for Establishing Truth Commissions on Regional Level

One of the main reasons for the delay in normalizing the relations between the former citizens of a common state is the prevailing feeling that the hardships

87 Interview with Cvjetko Savić, Chairman of the Commission for Establishing Truth on the Fates of Serbs Croats, Bosniaks, Jews and Others in Sarajevo in the Period Between 1992 and 1995, Sarajevo, 15 November 2006.

88 Mirna Buljugić, „No Progress for Sarajevo Truth Commission”, *BIRN Balkan Insight*, 23 February 2007 (www.birn.eu.com/en/71/10/2344/).

89 *Ibid.*

90 Some public figures in the Republika Srpska are of the opinion that founding a commission with a comprehensive mandate was a mistake, which occurred due to the impatience and pressures coming from Serb associations of victims. The critics maintain that, instead, the Serbs should have waited for the Constitutional Court of BiH to bring a decision on the non-implementation of the decision of the BiH Human Rights Commission in the *Šehovac* case by the Federation BiH, following which a commission would be formed with the exclusive mandate to investigate the hardships sustained by the Serbs. Interviews conducted in Banja Luka, January and February 2006. (In the *Šehovac* case, Human Rights Commission – a body that took over the unresolved cases from the Human Rights Chamber following its closure in December 2003 – had found Federation BiH accountable for failing to determine the circumstances in which a large number of Sarajevo Serbs had gone missing during the war (decision of 3 November 2004)).

91 G. Klepić, „Podrška republičke Vlade srpskim članovima Komisije za ispitivanje stradanja u ratnom Sarajevu” (“Support of the Government of the Republic to the Serb members of the Commission for Investigating the Hardships Sustained during the War in Sarajevo”), *Glas Srpske website* (Banja Luka), 13 November 2006 (www.glassrpske.com/latn/?page=&kat=1&vijest=10658).

sustained by the side an individual comes from were particularly great, and that this is not acknowledged by the members of other communities in the region. The domineering feeling among victims is that their voice is not heard outside the community they belong to. This is one of the reasons why, in the past few years, and particularly in 2006, civil society organizations from the post-Yugoslav countries began to address the need to establish a regional body or mechanism where victims from all parts of former Yugoslavia could speak about their suffering in front of representatives of other communities.

The second reason for constituting a regional mechanism lies in the very character of events from the former decade. All armed conflicts had a strong regional dimension – citizens of other countries took part in the conflicts on the territory of one country, the missing individuals had been deported to other countries before they went missing, hundreds of thousands had sought refuge from one country they had lived in before the war to another country.

At a number of gatherings of non-governmental organizations in 2006, and especially at the international conference “Truth-Finding in Post-Conflict Period” (Sarajevo, 5-6 May), the participants gave initial thought to the founding of a body that could provide a platform for fact-finding and for giving the victims an opportunity to speak.⁹² Although the initiatives for establishing such an authority remained at the level of general remarks, during the year they gained importance with the realization in the civil society, and even within party structures, that it is difficult to comprehend events in any country within the region without understanding parallel events in the surroundings. The debate never reached the phase where the activities and means of financing the commission, its composition and other concrete issues would be discussed.

Establishing the Fate of the Missing Persons

At the end of 2006 there were some 17,000 unsolved requests for finding missing persons.⁹³ Activities in finding and identifying the posthumous remains of the missing were undertaken by the state commission for missing persons of Serbia and Croatia, and the commissions founded at the entities (Federation BiH and Republika Srpska) of Bosnia and Herzegovina. For the main part the activities in Kosovo are undertaken by the Office for Missing Persons and Forensics – OMPF.⁹⁴ Among the key contributors to the process of finding and identifying the missing are two international organizations – the International Committee of the Red Cross, ICRC, and the International Commission for Missing Persons, ICMP.

The representatives of the commissions for the missing in Croatia, Serbia and BiH emphasized during the course of 2006 that their activities are part of a unique process undertaken as a result of bilateral talks and formalized by protocols on co-operation.⁹⁵ However, during the research carried out for this report, a vivid dissatisfaction was noted among the representatives of the commissions for the missing by the commissions and government of other countries or, in the case of BiH, by commissions in other parts of the same country. The presidents of the commissions for the missing in Serbia and Republika Srpska criticized the authorities of Croatia for not doing enough to shed light on the fate of the missing Serbs in that country. The President of the Office of the Government of the Republic of Croatia for the Detained and the Missing Persons was equally critical in respect of the authorities in Serbia for doing very little to find the locations where the mortal remains of a large number of missing Croats are still to be found. The relations between the representatives of the two entity commissions in BiH are also burdened with mistrust. Even more fre-

92 Transcript of the two-day conference in Sarajevo, published by the Research and Documentation Center (Sarajevo), Humanitarian Law Center (Belgrade), and Documenta (Zagreb), entitled *Utvrdjivanje istine u post-konfliktnom periodu: Inicijative i perspektive na zapadnom Balkanu (Truth-Finding in Post-Conflict Period: Initiatives and Perspectives in the Western Balkans)*.

93 “Apel srođnicima nestalih da kontaktiraju ICMP” (“Call for Relatives of the Missing to Contact the ICMP”), *Fena website* (Sarajevo), 30 January 2007 (fena.ba/public2/Category.aspx?news_id=FSA473302) (summary of the press release of the International Commission for Missing Persons).

94 There is no commission for the issues of the missing in Montenegro.

95 Slobodan Kostić, “Još uvek je više od 20.000 nestalih...” (“More than 20,000 Missing Persons Still Remain...”), *Radio Free Europe website* (Belgrade), 30 November 2006 (<http://www.slobodnaevropa.org/content/Transcript/689288.html>).

quent and more fervent is criticism made by associations of the missing about the state authorities. All of this gives an impression of politicizing an eminently humanitarian issue, and diminishes the efficiency of the efforts put into finding the missing persons.

Exhumation and identification in Serbia is done by expert teams from this country, with the provision that representatives of Croatia, as the requesting country, have the right to be present.⁹⁶ An analogous rule is applied for exhumations and identifications in Croatia, as well as in the relations of the commissions from Croatia and Serbia with the two entity commissions in BiH.⁹⁷ In BiH the model is somewhat different – the Office of the Republika Srpska performs exhumations of missing Serbs' bodies in the Federation BiH, and the federal commission does the same for missing Bosniaks and Croats in Republika Srpska.

In all the regions which were engulfed by armed conflict during the 1990s, large quantities of mortal remains were found, which remain unidentified. One of the key reasons for this is the lack of blood samples of family members. These samples are necessary to determine the relatedness with the exhumed bone samples.⁹⁸ Also, the state in which some of the exhumed remains were found makes identification even more difficult, especially if the corpses were burnt.

Bosnia and Herzegovina

During the armed conflict in Bosnia and Herzegovina, some 28,000 persons went missing.⁹⁹ Since the end of the war the posthumous remains of some 18,000 persons have been found.¹⁰⁰ Of this number, between four and five thousand persons have still not been identified.¹⁰¹ Two years after the state law on missing persons was passed (in 2004), its application had practically not begun. As a result the activities of domestic organs for finding the missing, at entity level, remained the same as in previous years.

During 2006 the Commission for Tracing Missing Persons in the Federation BiH exhumed 2,251 mortal remains on the territory of Republika Srpska. 1,350 victims had been identified in total, in 2006, in Republika Srpska, including the victims exhumed in previous years. In the municipality of Zvornik, on the Čančari – Kamenica road, the biggest mass grave found in BiH so far was exhumed in August, with 1,153 posthumous remains.¹⁰² Other locations in which the Commission for Tracing Missing Persons in the Federation BiH exhumed several hundred bodies including secondary mass grave in Gorica, near Brčko, from which 258 remains were exhumed during November,¹⁰³ and a mass grave in Snagovo, 50km north of Srebrenica, with posthumous remains of more than 106 persons.¹⁰⁴

96 Interview with Ivan Grujić, President of the Office of the Government of the Republic of Croatia for the Captured and the Missing, Zagreb, 7 February 2007.

97 Talk with the staff of the International Committee of the Red Cross, Belgrade, 9 March 2007.

98 Interview with Milan Bogdanić, Director of the Office for Tracing the Missing and Detained Persons of Republika Srpska, Banja Luka, 6 February 2007; interview with Ivan Grujić, President of the Office of the Government of the Republic of Croatia for the Detained and the Missing, Zagreb, 7 February 2007.

99 J. Lukač, "I groblja kriju tajnu" ("Graves Too Hide Secrets"), *Danas website* (Belgrade), 29 November 2006. (www.danas.co.yu/20061129/hronika3.html) (statement by Marko Jurišić, Co-President of the Commission for Tracing Missing Persons in the Federation BiH, on the number of missing persons being 27,794).

100 "Završene ekshumacije u Beogradu" ("Exhumations in Belgrade Completed"), *B92 website* (Belgrade), 28 November 2006. (www.b92.net/info/vesti/index.php?yyyy=2006&mm=11&dd=28&nav_category=64&nav_id=221652) (statement by Marko Jurišić ("during the conflict in BiH 27,794 persons in total went missing, out of which 10,000 persons are still considered missing")).

101 S. Škuletić, "Nepoznata sudbina još najmanje 12.000 žrtava" ("Fate Still Unknown for at Least 12,000 Victims"), *Dnevni avaz* (Sarajevo), 31 January 2007 (statement by Amor Mašović, Co-President of the Commission for Tracing Missing Persons in the Federation BiH ("around 4,000 remain unidentified yet")); "Completed Exhumations in Belgrade", *B92 website* (Belgrade), 28 November 2006 (statement by Marko Jurišić, Co-President of the Commission for Tracing Missing Persons in the Federation BiH ("around 5,000 posthumous exhumed remains have still not been identified")).

102 S. Škuletić, "Nepoznata sudbina još najmanje 12.000 žrtava" ("Fate Still Unknown for at Least 12,000 Victims"), *Dnevni avaz* (Sarajevo), 31 January 2007. (statement by Amor Mašović, Co-President of the Commission for the Missing of the Federation BiH).

103 "Ekshumirano 258 posmrtnih ostataka" ("258 Posthumous Remains Exhumed"), 8 December 2006, *B92 website* (Belgrade) (www.b92.net/info/vesti/index.php?yyyy=2006&mm=12&dd=08&nav_category=64&nav_id=222807).

104 "Kod Srebrenice ekshumirano 106 tela" ("106 bodies Exhumed near Srebrenica"), 8 December 2006, *B92 website* (Belgrade) (www.b92.net/info/vesti/index.php?yyyy=2006&mm=11&dd=21&nav_category=64&nav_id=220787).

The Office for Tracing the Missing and Detained Persons of Republika Srpska exhumed 126 bodies in 2006, and received 23 bodies from the competent authorities in the region. 136 bodies were identified.¹⁰⁵ At the end of 2006 the Office still held the requests for determining the fate of 2,100 missing persons. Out of this 1,260 persons were not found, while the mortal remains of 856 persons (whole skeletons or individual bones) were kept by the Office for Tracing the Missing and Detained Persons in Banja Luka, Eastern Sarajevo and Nevesinje.¹⁰⁶

The largest number of missing Bosnian Serbs is associated with Sarajevo. The Association of Missing Persons Families in the Sarajevo and Romanija Region stated in May 2006 that it has compiled a complete list with 342 names of Serbs that went missing in Sarajevo, with evidence of names, surnames, father's names, unique registration number and pre-war residential address.¹⁰⁷ The pressure of the families of the missing Sarajevo citizens was, during the first half of the year, aimed at founding a Federation BiH Commission, which would deal with establishing the circumstances in which Serbs in Sarajevo had gone missing, and finding their bodies. In the end the BiH Council of Ministers, on 15 June, established a commission that would not only deal with the missing but also investigate the other forms of suffering of the citizens of Sarajevo during the war, irrespective of their ethnic identity (see above chapter *Mechanisms of Truth Finding – Sarajevo Commission*).

Not Applying the State Law on Missing Persons

By the end of 2006 none of the three main obligations from the State Law on Missing Persons (October 2004) had been fulfilled. These obligations are in respect of initiating the activity of the Missing Persons

Institute and establishing the Fund for Support to the Families of Missing Persons, as well as founding a Central Records of Missing Persons in BiH, the data of which would be used for issuing certificates of disappearance, as a basis for realizing the other rights guaranteed by the Law.

The Missing Persons Institute, which was founded by the BiH Council of Ministers and ICMP,¹⁰⁸ was intended to replace the entity commissions for finding the missing. Within its capacity the Institute would, among other tasks, undertake to:¹⁰⁹

- Collect, process and systematise information on missing persons and on individual and mass graves;
- Establish a central and unique records on missing persons;
- Issue certificates of disappearance and victim identity;
- Find locations of mass and individual graves;
- Participate in digging and exhumations from mass and individual graves, terrain sanitation (*“asanacija”*), autopsy, anthropological handling, identification and other operations performed on missing persons;
- Co-operate with the competent authorities, including the judiciary and other organizations, and the International Criminal Tribunal for the former Yugoslavia – ICTY; and
- Co-operate with international and domestic organizations and institutions dealing with issues of the missing.

The Missing Persons Institute was supposed to start work on 29 September 2006, in accordance with the Agreement between the BiH Council of Ministers and the International Commission for Missing Persons on assuming the role of co-founders of the Institute. On 29 June 2006 the Government of the Republika Srpska brought the decision on handover of competences to the Institute, and so did the Government of

105 G. Klepić, “Kancelarija za traženje nestalih uspješna uprkos brojnim opstrukcijama” (“Success of the Office for Finding the Missing despite the Many Obstructions”), *Glas Srpske website* (Banja Luka), 23 January 2007 (www.glassrpske.com/latn?page=&kat=1&vijest=15987) (antrfile “Figures”).

106 Interview with Milan Bogdanić, 6 February 2007.

107 Srna agency, “Kompletiran spisak sa 342 imena nestalih Srba” (“Complete List of 342 Names of Missing Serbs”), *Nezavisne website* (Banja Luka), 6 May 2006 (www.nezavisne.com/dnevne/dogadjaj/dog05072006-04.php).

108 Institute for Missing Persons was court registered back in July 2000 in Sarajevo, and the founder was the International Commission for Missing Persons – ICMP. The BiH Council of Ministers undertook to act as co-founder in August 2005.

109 Agreement between the BiH Council of Ministers and the International Commission for Missing Persons on Assuming the Role of Co-founders of Missing Persons Institute of BiH, 30 August 2005, art. 4.

the Federation BiH at the end of August.¹¹⁰ However, the Institute did not commence working within the planned timeframe, because out of three organs essential for its functioning, only one - the Board of Directors - was founded, in March 2006. (By the end of the year the Supervisory Board was founded, but not the Steering Board).¹¹¹ Because of this delay, the two entity commissions resumed their work. The decisions of the two entity governments on handover of competences to the Missing Persons Institute contain a provision stipulating that the decisions would come into effect on the date of the founding of the Institute.

By the end of 2006 the Fund for Support to the Families of Missing Persons had not been formed. The authorities of the Federation BiH and Republika Srpska did not agree on the ways of financing the Fund. The Federation BiH's view was that the amount of financial support should be in accordance with the number of the missing in each entity. Before establishing the Central Records of Missing Persons, the source of evidence for determining figures would be the ICRC, according to which there were four times more missing persons on the territory under the control of the Serb forces than on the rest of the country's territory.¹¹² The authorities of the Republika Srpska maintain that it is unacceptable for this entity to put aside the largest sum for the operation of the Fund, and propose that its financing is provided from the budget for common organs, in line with the principle of distribution of value added tax (RS – a little over 31%, Federation BiH – the remaining sum).¹¹³

Decisions by the Human Rights Chamber/ Human Rights Commission

From the end of the war until mid-2006, the Human Rights Chamber and Human Rights Commission¹¹⁴ passed eighteen decisions which ordered the authorities of the Republika Srpska and Federation BiH to resolve specific cases of the missing persons. However, none of the decisions was applied in full. (See further below, chapter *Reparation: Compensation of Damages on the Basis of Court Decisions – Bosnia and Herzegovina, Human Rights Chamber/ Human Rights Commission*).

Croatia

At the end of 2006, 2,050 Croatian citizens were still considered missing, including the 575 persons whose bodies had been exhumed by then, but not identified.¹¹⁵ During the course of the year 180 bodies were exhumed in total. 78 missing were identified.¹¹⁶

In 1991, during the first years of the war in Croatia, the Croatian Red Cross had evidence of some 18,000 missing persons, Croatian citizens. For the most part these were civilians of Croatian ethnicity, forcibly taken from their houses, as well as members of the Croatian army and police, captured by the Yugoslav National Army (JNA) and Serb rebels in Croatia. As a result of exchanges that took place in the months to follow, a large number of the captives were set free, so that by the end of 1993 the Croatian authorities operated with a figure of 7,000 missing. Then in

110 Interview with Milan Bogdanić, 6 February 2007.

111 International Commission for the Missing (ICMP), *Status of Activities Pertaining to the Implementation of the Missing Persons Institute in BiH*, December 2006, paragraphs 65, 67 and 69. Members of the Supervisory Board were appointed by the decision of the Council of Ministers on 12 December 2006.

112 Interview with Milan Bogdanić, 6 February 2007.

113 *Ibid.*

114 Human Rights Chamber was a judicial body, established on the basis of the Dayton Peace Agreement, which decided on cases of violations of the European Convention on Human Rights. The mandate of the Chamber expired on 31 December 2004 and the cases that remained unsolved were taken over by the Human Rights Commission (within the Constitutional Court of Bosnia and Herzegovina). The cases in connection with the alleged violations of the European Convention, initiated after 1 January 2004, are under the jurisdiction of the Constitutional Court itself.

115 Interview with Ivan Grujić, President of the Office of the Republic of Croatia for the Captured and the Missing Persons, Zagreb, 7 February 2007.

116 *Ibid.*

1994, after further checking the lists, the number was brought down to 5,000. That same year, 1994, the authorities conducted a two-month exercise, accompanied by a media campaign, of systematic listing of missing and persons abducted by force. The result of this exercise was that the list was reduced to 3,054 missing persons.¹¹⁷

Twelve years later in 2006, the figure of missing persons from 1991 has been reduced to 1,122.¹¹⁸ The main difficulty in solving their fates is that the Croatian authorities do not have available data on locations in which these persons had been buried. It is most probable that the unexhumed missing persons had been mostly buried in regions of Croatia, which had been under the control of the *JNA* in 1991. Today's authorities in Serbia, however, are not making a genuine effort to arrive at information on the exact locations in Croatia and hand over this information to the Croatian authorities.

Big Discrepancies in the Data of the Croatian Office for the Missing Persons and associations of Serbs

The second largest group of missing persons comprises mostly ethnic Serbs, whose families have lost all traces of them following the “Flash” and “Storm” operations in 1995. At the end of 2006 the Croatian authorities, after a five-year period of collecting information, in co-operation with the Commission of the then FR Yugoslavia, Commission of the Republika Srpska and the ICRC, operated with a figure of 930 missing persons who had not previously been reported to the Croatian authorities.¹¹⁹

Representatives of human rights organizations and Serb associations criticized the Croatian authorities during the course of the year for using two separate lists – one with names of those who went missing in 1991 (mostly Croats) and the other with names of those who went missing in 1995 (mostly Serbs).¹²⁰ The Office for the Search for the Missing denied this criticism arguing that the Croatian authorities had published neither a shared nor a separate list of missing persons.¹²¹

For his accomplishments in 2006, and especially for including data with figures of the missing into the Report of Search for Detained and Missing Persons, the President of the Office Ivan Grujić received an annual award of the Helsinki Committee of Croatia.

Associations of Croatian Serbs, both those now living in Serbia and those still residing in Croatia, claim that the number of Serbs who went missing in Croatia and whose fate still remains unknown is higher than 2,500.¹²² The data on the missing persons in Croatia in the possession of the ICRC supports that of the Croatian authorities, and not the Serb associations. According to the ICRC, at the end of 2006, there were 2,386 missing persons in Croatia.¹²³ This number is more or less equal to the total amount of the Government's figures (1,122 missing from 1991 and 930 missing from 1995) increased by a little over than 400 persons sought by the authorities of Serbia (mostly missing members of the former *JNA* and volunteer groups that participated in the war in Croatia).

It is possible, however, that the data supplied by the Serb associations of Serbs do, to a certain extent, reflect the real state of affairs, despite the fact that

117 *Ibid.*

118 *Ibid.*

119 *Ibid.* Around 15% on this list are Serbs who disappeared between 1991 and 1992 in parts of Croatia under the control of the central authorities. Interview with Ružica Spasić, President of the Association of Families of the Missing and Forcibly Abducted Persons - Vukovar, Belgrade, 5 February 2007.

120 Hina Agency, “Puhovski: Neprijateljstvo je nestale osobe dijeliti po etničkom podrijetlu” (“Puhovski: It Is Improper to Divide the Missing Persons by Ethnic Origin”), *Index.hr website*, 30 August 2006. (www.index.hr/clanak.aspx?id=325873) (statement by Žarko Puhovski, President of the Croatian Helsinki Committee (*HHO*)).

121 Interview with Ivan Grujić, 7 February 2007.

122 Slobodan Kostić, “Još uvek je više od 20.000 nestalih...” (There are still more than 20,000 missing...), *Radio Free Europe website*, 30 November 2006. (<http://www.slobodnaevropa.org/content/Transcript/689288.html>) (statement by Savo Štrbac, Director of the “Veritas” documentation centre from Belgrade); “Nema političke volje za rješavanje sudbine nestalih” (“There is no political will to resolve the outcome of the missing”), *Nezavisne website* (Banja Luka), 24 September 2006. (www.nezavisne.com/vijesti.php?vijest=329&meni=2) (statement by Čedomir Marić, President of the Association of the Missing Persons of Krajina).

123 Data obtained at regional office of the ICRC in Belgrade, 29 January 2007.

the data in the possession of these associations do not comply with international criteria on the basis of which a person can be proclaimed “missing”. The Government’s Office for Issues of the Missing Persons and the ICRC follow the international criteria, which requires as a minimum the existence of an identifiable seeker (family member) and that the circumstances of disappearance are known.¹²⁴ The Associations of Serbs deem, on the contrary, that information obtained on the missing from alternative sources, including fellow army comrades, neighbours, newspaper articles, and television films, is also relevant. Although the number of the missing is certainly lower than the number established by these associations, the actual number could be higher than the official number of persons that are treated as missing. An indirect confirmation of this is the fact that from the mass graves of the so-called Republic of Srpska Krajina, a much higher number of persons were exhumed than had been expected prior to the exhumation on the basis of the evidence provided by the Government of Croatia.¹²⁵ It should be added on top of this that in some cases the family members of the missing had reported their disappearances only to non-government organizations, i.e. they did not contact the ICRC or the Office for the Missing Persons of the Republic of Croatia in either a direct or indirect way, so that these authorities could not register a number of disappearances.

Discontent of the Families Because of the delay in Exhumations and Identifications

The delay in identifying the exhumed bodies has caused discontent among the families of the missing from both main ethnic communities in Croatia. The laboratories in which identification is performed are

located in Zagreb, Split and Osijek,¹²⁶ and identification is also performed at the ICMP facilities in Tuzla. The 575 bodies, exhumed at the end of 2006, remain unidentified because of the difficulty of obtaining the DNA from the mortal remains and the lack of blood samples, which must be taken from family members to enable DNA analyses.¹²⁷

Another serious difficulty is the delay with which the Croatian State is exhuming the bodies of missing Serbs. The locations where Serbs who went missing in 1995 were buried have been known for a long time, as the bodies were buried by the police during terrain sanitation (“*asanacija*”). There are 22 such locations where in 1995 five or more persons were buried together, according to the Serbian Office for Missing Persons, i.e. 21 locations according to the data of the Croatian Office for Missing Persons. The total number of bodies in these graves was, immediately after the war, at least 1,187, according to the Serbian Commission, and at least 904 according to the Croatian. From 1996 onwards only 540 bodies were exhumed from these locations.¹²⁸

The relevant authorities at the Office for the Missing Persons of the Republic of Croatia have explained the delay in exhumations by the limited finances at their disposal and insufficient accommodation spacing for the exhumed bodies – this spacing is for up to 600 bodies, which can be kept in appropriate rooms at any one time on the level of the whole state (in the Zagreb crematory and the town cemetery in Osijek).¹²⁹ Justifications based on technical limitations lose importance when contrasted with the fact that a large number of families have been waiting for almost a decade to receive the bodies of their loved ones, with the whereabouts of their burial place known for years. The burials were carried out in 1995, and three years

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

125 In four locations – Knin (exhumation performed in 2001), Gračac (2002), Korenica (2002) and Žitnik (2006) – the expected numbers of persons lying in the graves was 415, on the basis of former information provided by the Croatian Office for the Missing Persons. In the end, 540 bodies were exhumed. In 2006, on the location of Žitnik, 58 persons were exhumed, although the estimated figure of the Office was that there were 44 bodies lying in the grave. Interview with the representatives of the Commission for the Missing of the Republic of Serbia, 28 February 2007.

126 Interview with Ivan Grujić, 7 February 2007.

127 *Ibid.*

128 The figures mentioned were arrived at by extrapolation from tables available at the Commission for Missing Persons in Belgrade. The tables are based on the data obtained from the Office of the Republic of Croatia for the Detained and the Missing Persons, as well as the data obtained by the Serbian Commission for Missing Persons from other sources.

129 Interview with Ivan Grujić, 7 February 2007.

after that the families in Serbia received from the Croatian authorities “protocols” (police-made photographs and descriptions of bodies, carried out prior to terrain sanitation). The families have been waiting since then for the exhumation and receipt of these bodies, in order to provide them proper burials.

Kosovo

The first lists with names of the missing persons in Kosovo were compiled by the ICRC, in the summer of 1999, and there were 5,982 missing persons on them. Several hundred persons from those lists were actually alive, but their families had no information on them because they were detained in prisons in Serbia. During 1999 and 2000 they were released and returned to Kosovo. When in June 2002 UNMIK established its Office for Missing Persons and Forensics, IMPF, the sifted list of the missing in the possession of the IMPF had 5,236 names on it.¹³⁰

According to the data of the ICRC, at the end of 2006 there were 2,137 persons still sought as missing.¹³¹ The ICRC provided no information on the ethnic identity of the missing, but from the data of the ICRC from the previous years it can be seen that four fifths of the missing persons were Albanians.¹³² In November 2006 the President of the Serbian Commission for Missing Persons, Veljko Odalović stated that there were 620 Serbs and non-Albanians listed as missing in Kosovo,¹³³ which indicates that the outcome of approximately 1,500 Albanians is still unknown.

In two morgues in Kosovo (Priština/Prishtinë and Suva Reka/Suharekë), in which exhumed posthumous remains are kept, there were at least 582 bodies, in

December 2006, which had not been identified.¹³⁴ During 2006, 466 bodies were identified, of which 323 had yet to be returned to the families.¹³⁵

The authority in charge of finding the bodies and carrying out other activities in connection with the missing persons in Kosovo is OMPE, while the identification is carried out on the basis of DNA analysis performed by the ICMP. There is a Commission for Missing Persons within the Kosovo Government, formed in 2003, but the role of the commission in the process of finding the missing persons is of a secondary nature.

Determining the fate of the missing depends to a great extent on the co-operation of the competent authorities in Serbia with the ones in Kosovo. During 2006, Serbia handed over, via UNMIK, 61 bodies altogether (31 in March and 30 in June) to their Albanian families in Kosovo.¹³⁶ At the same time the majority of the 70 non-Albanians, whose bodies had been identified in 2006 in Kosovo, were returned to Serbia where their families now live. Communication between Belgrade and Priština/Prishtinë has been going on for years through UNMIK and the authorities in Serbia, but representatives of Kosovo Albanians have also attended the meetings of the bilateral working group for resolving the issues of the missing.

The quality of co-operation between Serbia and Kosovo will be of crucial importance for resolving the rest of the cases of the missing. The largest number of bodies from the mass graves in Serbia was returned by June 2006 to Kosovo, and it seems that there are no mass graves in Kosovo where a large number of posthumous remains could be found. The number of bodies OMPF manages to find per year on

130 Information obtained from the UNMIK Office for Missing Persons and Forensics (OMPF), Priština, 19 February 2007.

131 Data obtained at the regional office of the ICRC in Belgrade, 29 January 2007.

132 In January 2005, out of 3,108 persons sought as missing, there were 2,384 Albanians, 523 Serbs and 201 others. In November there were 1,700 missing Albanians and around 500 non-Albanians.

133 J. Lukač, “I groblja kriju tajnu” (“Graves Hide Secrets Too”), *Danas website* (Belgrade), 29 November 2006 (www.danas.co.yu/20061129/hronika3.html).

134 Information obtained from OMPF, Priština, 19 February 2007.

135 *Ibid.* In the remaining 143 cases, the main reason for the bodies not being handed over yet is that the families are still waiting for the remains of the remaining family members to be found, so that they could then arrange funerals of all the members of the same families together.

136 Information obtained from OMPF, Priština, 19 February 2007. From 2001 onwards the total number of bodies of Kosovo Albanians returned from Serbia is 800, of which 750 have been identified. “O sudbini nestalih lica” (“On the Fate of the Missing Persons”), 10 March 2007, *B92 website* (Belgrade) (www.b92.net/info/vesti/index.php?yyyy=2007&mm=03&dd=10&nav_category=64&nav_id=235893) (statement by Gvozden Gagić, President of the Serbian Commission for Humanitarian Issues and Missing Persons).

the territory of Kosovo indicates that this number is reduced year after year, from 652 bodies in 2003 to 59 in 2006.¹³⁷ There is, therefore, a real risk of the lack of information from Serbia on individual and mass graves in Kosovo and Serbia itself completely blocking the further activities to find the missing. There are indications that in Serbia, including the region of Raška in the South, there are other mass graves which have still not been found.¹³⁸

Serbia

Serbia is seeking to establish the whereabouts of its citizens who disappeared in the armed conflicts in Croatia, BiH, and Kosovo. At the end of 2006, according to the data disclosed by the then President of the Commission for the Missing, Veljko Odalović, Serbia was looking for some 440 citizens of Serbia noted as missing in Croatia, 102 in BiH, and 620 Serbs and other non-Albanians in Kosovo.¹³⁹

Large numbers of persons were buried on the territory of Serbia from other parts of Former Yugoslavia after the wars in the 1990s. In 2006, 62 bodies were exhumed at two cemeteries in Belgrade – 58 at the Bežanijsko cemetery, and four at the Orlovača cemetery.¹⁴⁰ These are bodies that were carried by the current of the Rivers Danube and Sava to the territory of Serbia, during the period 1991-95, and were buried at that time without headstones. In such cases exhumation of posthumous remains does not carry the potential danger of criminal investigation, because the individuals who discovered the bodies and who organized their burials do not necessarily have to have anything to do with the event that preceded the disappearance. Most other victims, however, were not thrown into the river, but were buried in the region where the crime was committed, or, on occasions, transported to a location in Serbia or territories outside Serbia which were under the control of Serbian forces. Persons who would discover the locations of these graves would, presumably, have to testify at a

later stage about the circumstances under which the forcible death and burial occurred. In an atmosphere of hiding crimes, which still prevails in Serbia, institutions and individuals who possess any such information keep it to themselves. It, therefore, seldom happens in Serbia, or territories outside Serbia proper that used to be under the control of the Yugoslav Army, that bodies of persons who disappeared in Croatia, Bosnia or Kosovo are exhumed.

Montenegro

According to the data of the Montenegrin Ministry of Health, Labour and Social Welfare, ten citizens of Montenegro, at one stage of the conflict on the territory of former Yugoslavia, had the status of missing persons. The posthumous remains of eight of them were in the meantime exhumed and identified; two persons are still noted as missing.¹⁴¹ Until the independence of Montenegro in May 2006, the issue of the missing was in the competence of the Commission for Missing Persons of the State Union of Serbia and Montenegro. At the end of 2006 there was no state commission of Montenegro for missing persons.

The Role of International Organizations

Two important international organizations have a key role in resolving a series of questions associated with the problem of the missing on the territory of the former Yugoslavia: International Commission for Missing Persons, ICMP, and the International Committee of the Red Cross, ICRC.

ICMP is an international governmental organization, seated in Sarajevo. There are ICMP Offices in BiH, Serbia, Kosovo, and in Zagreb. The main activity of ICMP concerns identifying missing persons. ICMP collects blood samples from members of their families and extracts bone samples from the discovered posthumous remains (or receives these samples from local institutions).¹⁴² Blood and bone samples are then compared at the ICMP facilities in Tuzla

137 Office on Missing Persons and Forensics, *OMPF Activity Report: 1 January – December 2006*, p. 4.

138 Information obtained from the OMPE, Priština, 19 February 2007.

139 J. Lukač, "I groblja kriju tajnu" ("Cemeteries Are Also Hiding a Secret"), *Danas website* (Belgrade), 29 November 2006 (www.danas.co.yu/20061129/hronika3.html).

140 *Ibid.*

141 Interview with the representatives of the Ministry of Health, Labour and Social Welfare, Podgorica, 28 February 2007.

142 Telephone interview with a representative of the ICMP, 9 March 2007.

(BiH), to determine the identity of the persons whose remains were discovered. Until the end of 2006, ICMP enabled, in this way, the identification of close to 11,000 persons who went missing during the conflicts on the territory of the former Yugoslavia.¹⁴³

ICMP activity in BiH is also directed towards establishing the Missing Persons Institute (see previous chapter above on BiH). Among other important ICMP activities is its work on forging links between associations of missing persons from different parts of the former Yugoslavia and fostering their mutual co-operation.

Work on the issue of missing persons is one of the many activities of the ICRC, an international non-government organization seated in Geneva. In the post-Yugoslav countries, the ICRC collects ante-mortem data on the missing from their families, which in the large number of cases enables the identification of exhumed bodies even without conducting the expensive DNA analysis. An important aspect of the activities of the ICRC is the periodical publishing of reports containing lists of missing persons. ICRC used to publish such lists in BiH from 1996 onwards and in Kosovo from 2000. In 2006, the ICRC announced the publishing of a report with the names of all Croatian citizens noted as missing, irrespective of their ethnic identity. This would be the first joint list of missing persons in Croatia.

In December 2006, ICRC and the Croatian Red Cross signed an agreement on the basis of which as of beginning of 2007 the ICRC was to close its office in Zagreb and hand over its complete documentation to the Croatian Red Cross. This would have been the first time for ICRC to hand over its documentation to a national organization on the territory of former Yugoslavia.

Parliamentary Debates on War Crimes

In the post-Yugoslav states parliamentary debates on events from the period of armed conflict could be an opportunity to present to the public a vision of the recent past, which could counter the dominant war-propaganda discourse and create a space both for determining facts and for different interpretations of war events. In 2006, however, parliaments served more for the recycling of old myths than for their debunking. In the parliaments of Serbia and Croatia, the agenda of war crimes was monopolized by the deputies whose priority was to assert national identity rather than respect of human rights. This was especially noticeable in Serbia, where representatives of moderate parties failed to react to the numerous bravados of nationalist extremists. In the parliament of BiH, debates on war crimes were very rare in 2006, so that no conclusion could be drawn from these debates on the attitude of the deputies on war events.

The supremacy of exclusivist nationalist discourse in the parliaments of Serbia, and partly Croatia, might suggest that national collectivism was still dominant to such an extent that it forces moderate politicians to take to the defensive. Such an interpretation would, however, be wrong, as moderate parties enjoy significant support of the electorate. The passivity of the liberal and social-democratic parties in parliamentary discourse is less due to the attitude of the public¹⁴⁴ than to the moral indifference of the deputies themselves in relation to the dramatic events from the previous decade.

Serbia

Although there were no sessions in the Serbian parliament with the agenda which included topics directly linked to wars from the 1990s, the deputies often

143 "Apel srođnicima nestalih da kontaktiraju ICMP" ("Appeal to Next-of-Kin of the Missing to Contact the ICMP"), *Fena website* (Sarajevo), 30 January 2007. (www.fena.ba/public2/Category.aspx?news_id=FSA473302).

144 Public opinion analysis, conducted by Documenta in July 2006, showed that 61% of the examined thought that all perpetrators of war crimes should be punished, while 32% think that there are crimes which are justifiable. The analysis has shown that 28% of the examined think that direct executioners of crimes should be punished, 8% think that unit commanders should be punished, and 44% think that both should be punished, while 18% think that this depends from case to case. Documenta. *Suočavanje s prošlošću u Hrvatskoj – interpretacija istraživanja javnog mnijenja (Facing the Past in Croatia – interpretation of the public opinion analysis)* (October 2006), p. 15.

touched upon these issues. It was the representatives of two parties that held power exclusively in Serbia during the wars that spoke about it the most: the Socialist Party of Serbia (SPS) and, most often, the Serbian Radical Party (SRS). During 2006, the Socialists went on supporting the minority government of Prime Minister Koštunica, while the Radicals were in opposition.

Statements by radicals and socialists were dominated by the denial of victims from other ethnic groups and denial and/or relativization of crimes committed by the Serbian forces. The deputies of the SRS and SPS glorified Serbs indicted before the International Criminal Tribunal for the former Yugoslavia, and spoke offensively about the Tribunal and the Serbian war crime prosecutors and judges. The MPs from parties of the coalition supporting Prime Minister Koštunica, as well as the representatives of the opposition Democratic Party, remained non-committal on these subjects.

The favourite subject of the Socialists and the Radicals were hardships endured by the Serbs. Ivica Dačić, deputy and president of the Main Board of the SPS, claimed that Serbs as a people were victims of “genocide [...] all these years, decades”.¹⁴⁵ Zoran Krasić (SRS) located the execution of genocide against Serbs in Croatia in 1991,¹⁴⁶ and Nataša Jovanović (SRS) said that genocide was committed in 1995, during and after the operation “Storm”.¹⁴⁷ Several deputies of the Radical Party labelled today’s Croatia as a country of “ustashas”,¹⁴⁸ which “[is keeping under] occupation the Republic of Srpska Krajina”.¹⁴⁹ According to a deputy of the radicals, 500,000 Serbs fled from

Croatia¹⁵⁰ (the actual figure is 300,000). One of the SRS representatives in Parliament stated that in 1991 “the Serb people was attacked bare-handed in Knin, Vukovar, and at Plitvice lakes”.¹⁵¹

In parliamentary debates during the course of 2006 almost nothing was heard about the crimes committed by Serbs against non-Serbs in Croatia, BiH and Kosovo. During the NATO intervention in 1999, according to Ivica Dačić (SPS), “Serbia did not commit systematic ethnic cleansing” in Kosovo.¹⁵² The deputies of the SRS labelled as a “traitor” Milan Babić, the former leader of the Croatian Serbs who had confessed responsibility for crimes against humanity and expressed sincere remorse in the trial before the Hague Tribunal.¹⁵³ When crimes against Bosniaks in Srebrenica in July 1995 were mentioned in Parliament, what dominated was criticism of the interpretation of this crime as the gravest one on the territory of the former Yugoslavia, committed in the wars of the 1990s. The head of the SPS deputies’ club, Žarko Obradović, did condemn the “events” in Srebrenica in July 1995 on behalf of the Socialists,¹⁵⁴ but at the same time he labelled the apology of Boris Tadić to the Bosniaks as “shameful”.¹⁵⁵ Petar Jojić, representative of the SRS, also criticized “our officials who go there to kneel and greet in Srebrenica those who committed the gravest war crimes against Serbs”.¹⁵⁶ Aleksandar Vučić, MP and Secretary General of the SRS, took it against the state media for showing in their programmes “so much of Srebrenica [and] not even a little of Bratunac”¹⁵⁷ (a place in the vicinity of which, according to the claims of the SRS, Bosniak forces committed numerous crimes against Bosnian Serbs).

145 Ivica Dačić (SPS), transcript of the session of the Serbian Parliament, 12 May 2006, p. 64

146 Zoran Krasić (SRS), transcript of the session of the Serbian Parliament, 13 April 2006, p. 413.

147 Nataša Jovanović (SRS), transcript of the session of the Serbian Parliament, 6 April 2006, p. 400.

148 Nataša Jovanović (SRS), transcript of the session of the Serbian Parliament, 6 April 2006, p. 400; Vjerica Radeta (SRS), transcript of the session of the Serbian Parliament, 6 April 2006, p. 410.

149 Vjerica Radeta (SRS), transcript of the session of the Serbian Parliament, 6 April 2006, p. 410; Bore Kutić (SRS), transcript of the Serbian Parliament session, 13 April 2006, p. 412.

150 Zoran Krasić (SRS), transcript of the session of the Serbian Parliament, 13 April 2006, p. 415.

151 Nataša Jovanović (SRS), transcript of the session of the Serbian Parliament, 13 April 2006, p. 421.

152 Ivica Dačić, (SPS), transcript of the session of the Serbian Parliament, 12 September 2006, p. 24.

153 Nataša Jovanović (SRS), transcript of the session of the Serbian Parliament, 17 May 2006, p. 386.

154 Žarko Obradović (SPS), transcript of the session of the Serbian Parliament, 14 July 2006, p. 282.

155 Žarko Obradović (SPS), transcript of the session of the Serbian Parliament, 4 July 2006, p. 4.

156 Petar Jojić (SRS), transcript of the session of the Serbian Parliament, 4 July 2006, p. 98.

157 Aleksandar Vučić, transcript of the session of the Serbian Parliament, 16 May 2006, p. 100.

When at the parliament's session, in the beginning of June, the Minister of Agriculture, Forestry and Waterways, Ivana Dulić-Marković, a Croat by ethnicity, briefly mentioned the transporting of killed Kosovo Albanians by police trucks in 1999, the deputies of the SRS verbally attacked the Minister, saying that her claims were untrue and that her brother and close family waged war against Serbs.¹⁵⁸ Two weeks later, Aleksandar Vučić (SRS), commented on the speech by Ivana Dulić-Marković, saying "I don't know about these bodies", and condemned the Minister for stating "the gravest possible charges against the state and the people".¹⁵⁹ The transporting and hiding of the bodies have been a notorious fact in Serbia, following the disclosure of mass graves with bodies of Kosovo Albanians in 2001.

Denials and minimizations were also a part of the public statements by the Socialists, when they talked about the violations of human rights prior to the war in Kosovo. According to one representative of the SPS, during the rule of Slobodan Milošević the human rights of Albanians "were never violated".¹⁶⁰

The MPs of the SRS named Ratko Mladić, indicted before the ICTY for crimes against humanity and genocide in Bosnia, a "Serbian hero, and a famous Serbian general",¹⁶¹ i.e. a general who had entered "into legend".¹⁶² The surrender of Ratko Mladić to the

Hague Tribunal would be, in the opinion of the radicals "disgusting".¹⁶³ They stood up fiercely against the arrests of those suspected of hiding Ratko Mladić,¹⁶⁴ and the decision of the Serbian Government to freeze Mladić's assets.¹⁶⁵ One representative of the Radicals warned the authorities that "because of what you are doing to the family of Ratko Mladić"; the people of Serbia will "rise on their feet".¹⁶⁶

After Slobodan Milošević died in the custody of the Hague Tribunal on 11 March, the deputies of the SRS and SPS labelled the death of the former Serbian President "murder".¹⁶⁷ Milošević had allegedly "been poisoned" in custody.¹⁶⁸ The deputies of the SPS also glorified Milošević. Ivica Dačić said that Milošević should have been buried in the alley of heroes in Belgrade, "but, on the other hand, where [ever] he is buried, this will be an alley of heroes".¹⁶⁹

The representatives of the SRS often claimed that the Hague Tribunal was "violating the human rights" of Vojislav Šešelj,¹⁷⁰ President of the SRS, who surrendered to the Hague Tribunal at the beginning of 2003, and whose trial had not yet begun by the end of 2006. The indictment against Šešelj was labelled as "nonsense",¹⁷⁰ "false",¹⁷¹ "without evidence",¹⁷² and "in the realm of science fiction".¹⁷³ The quotes from the indictment, in which Šešelj called for the expulsion of Croats from Vojvodina and persecution of

158 "Ponovo radikalski govor mržnje" ("Radicals' Hate Speech Again"), *B92 website*, (Belgrade), 6 June 2006. (www.b92.net/info/vesti/index.php?yyyy=2006&mm=06&dd=06&nav_category=11&nav_id=200171).

159 Aleksandar Vučić (SRS), transcript of the session of the Serbian Parliament, 21 June 2006, p. 8.

160 Toma Bušetić, transcript of the session of the Serbian Parliament, 4 April 2006, p. 207.

161 Nataša Jovanović (SRS), transcript of the session of the Serbian Parliament, 6 April 2006, p. 350.

162 Momir Marković (SRS), transcript of the session of the Serbian Parliament, 8 May 2006, p. 60.

163 Vjerica Radeta (SRS), transcript of the session of the Serbian Parliament, 6 April 2006, p. 431.

164 Aleksandar Vučić (SRS), transcript of the session of the Serbian Parliament, 8 May 2006, pp. 49-51, and 17 May 2006, p. 307; Nataša Jovanović (SRS), transcript of the session of the Serbian Parliament, 6 April 2006, p. 350.

165 Tomislav Nikolić (SRS), transcript of the session of the Serbian Parliament, 12 May 2006, p. 54.

166 Nataša Jovanović (SRS), transcript of the session of the Serbian Parliament, 6 April 2006, p. 350.

167 Nataša Jovanović (SRS), transcript of the session of the Serbian Parliament, 3 April 2006, p. 11; Gordana Pop-Lazić (SRS), transcript of the session of the Serbian Parliament, 3 April 2006, p. 34; Žarko Obradović (SPS), transcript of the session of the Serbian Parliament, 4 April 2006, p. 142; Nataša Jovanović (SRS), transcript of the session of the Serbian Parliament, 16 May 2006, p. 125.

168 Zoran Krasić (SRS), transcript of the session of the Serbian Parliament, 3 April 2006, p. 5.

169 Ivica Dačić (SPS), transcript of the session of the Serbian Parliament, 4 April 2006, p. 151.

170 Others too spoke along these lines: Zoran Krasić, transcript of the session of the Serbian Parliament, 3 April 2006, p. 5, and 25 September 2006, p. 89; Vojislav Milajić, transcript of the session of the Serbian Parliament, 4 April 2006, p. 180; Petar Jojić, transcript of the session of the Serbian Parliament, 4 April 2006, p. 186; Vjerica Radeta, transcript of the session of the Serbian Parliament, 16 May 2006, p. 113.

171 Nataša Jovanović (SRS), transcript of the session of the Serbian Parliament, 16 May 2006, p. 125.

172 Vjerica Radeta (SRS), transcript of the session of the Serbian Parliament, 16 May 2006, p. 170.

173 Zoran Krasić (SRS), transcript of the session of the Serbian Parliament, 16 May 2006, p. 264.

Bosniaks from Zvornik, after which the crimes actually occurred, were labelled by the radicals as “indictments for verbal offence,”¹⁷⁴ i.e. the prosecution of Šešelj for his speech in which there is “absolutely nothing close [...] to being inflammable.”¹⁷⁵

In addition to expressing contempt for the work of the Hague Tribunal, the deputies of SRS and SPS criticized, from nationalist positions, the Serbian Prosecutor for war crimes and the War Crimes Chamber of the Belgrade District Court. They used against the prosecutor a series of offensive wording, such as “occupation collaborator,”¹⁷⁶ “poor bloke”¹⁷⁷ and “agent.”¹⁷⁸ The radicals were extremely negative about the trial for the war crime perpetrated at Ovčara as a trial which “was aimed at linking the crime with Vojislav Šešelj,”¹⁷⁸ and, in that way “was to help Carla del Ponte [Chief Prosecutor of the ICTY] to indict Vojislav Šešelj, who of course had nothing to do with [the crime], not him nor the volunteers of the SRS.”¹⁸⁰ The SPS Deputy, Toma Bušetić, assessed that “anti-Serbs are trying Serbs” in the war crime trials in Belgrade¹⁸¹ and SRS member Vjerica Radeta accused the judges of passing judgments against the indictees because they were financially bribed by Nataša Kandić, the Executive Director of the Humanitarian Law Center.¹⁸²

Croatia

The attitude of the representatives in the Croatian Parliament towards war crimes was on display in four discussions in 2006.¹⁸³ The tone of the discussions was set by deputies from the smaller opposition par-

ties and by the non-party (“independent”) deputies, all of which except one (Damir Kajin, from the Istra Democratic Assembly (*IDS*), spoke from nationalist positions. These representatives insisted on crimes committed by Serbs in Croatia and BiH against Croats, while ignoring or playing down the crimes against Serbs. The representatives from the biggest opposition parties – the Social-Democratic Party (*SDP*) and Croatian People’s Party (*HNS*) – hardly ever took the floor. The MPs of the ruling Croatian Democratic Union (*HDZ*) mostly refrained, and on the occasions when they expressed their opinion more directly, it was with an extremely “patriotic” tone. The MPs from the *Independent Democratic Serbian Party* did not participate in the debate.

All Croatian representatives agreed that Croatia had been the victim of aggression of the former JNA, and that operation “Storm” from August 1995 was primarily positive in character. This view had been expressed in the *Declaration on the Homeland War*, adopted on the 7th Session of the House of Representatives of the Croatian Parliament, on 13 October 2000.¹⁸⁴

- *Discussion on the Final Proposal of the Law on Verifying the Agreement between the Republic of Croatia and BiH on Co-operation Concerning the Rights of War Victims in BiH - Members of the Croatian Defence Council and their Family Members, 26 & 27 January 2006 (18th Session of the Croatian Parliament)*

The representatives from the ruling *HDZ* and the nationalist opposition parties were especially active during this discussion. They insisted that the members

174 Petar Jojić (SRS), transcript from the session of the Serbian Parliament, 4 July 2006, p. 98.

175 Aleksandar Vučić (SRS), transcript of the session of the Serbian Parliament, 11 May 2006, p. 302.

176 Aleksandar Vučić (SRS), transcript of the session of the Serbian Parliament, 4 April 2006, p. 153.

177 *Ibid.*

178 Aleksandar Vučić (SRS), transcript of the session of the Serbian Parliament, 17 May 2006, p. 309.

179 Vjerica Radeta (SRS), transcript of the session of the Serbian Parliament, 4 April 2006, p. 168.

180 Vjerica Radeta (SRS), transcript of the session of the Serbian Parliament, 10 April 2006, p. 33. The first-instance judgment of the War Crimes Chamber of the Belgrade District Court, of 12 May 2005, for war crime against captives of war at Ovčara, included Milan Lančuzanin, leader of the volunteer unit of the Serbian Radical Party in the region of Vukovar, among the convicted.

181 Toma Bušetić (SPS), transcript of the session of the Serbian Parliament, 8 May 2006, p. 44.

182 Vjerica Radeta (SRS), transcript of the session of the Serbian Parliament, 28 March 2006, p. 50.

183 The representatives were elected for the fifth convening of the Parliament in elections of 23 November 2003.

184 The Declaration states that “an armed aggression was launched on the Republic of Croatia, by Serbia, Montenegro and the *JNA* together with an armed rebellion of the Serbian citizens of the Republic of Croatia”. It further states that “the Republic of Croatia led a just and legitimate war, in defence and freedom, and not an aggressive and invasive war against anyone, in which it was defending its territory from an aggression from Greater Serbia within internationally recognized borders.”

of the Croatian Defence Council (*HVO*)¹⁸⁵ had been “attacked” during the war in BiH (Pero Kovačević, Croatian Party of Law – *HSP*) and that they were only “defending their homes” (Tomislav Čuljak – *HDZ*, Zdenka Babić-Petričević – *HDZ*). They were not sent to war, according to these representatives, by the Croatian Government (Krešimir Čosić – *HDZ*, Josip Đakić – *HDZ*, Vladimir Šeks – *HDZ*), and their main role was to prevent an offensive by units of the former *JNA* via Herzegovina to the South of Croatia (Krešimir Čosić, Zdenka Babić-Petričević, Luka Babić – all from the *HDZ*).

A number of representatives of the non-nationalistic opposition parties pointed out different aspects of the activity of the *HVO* during the war in BiH. Damir Kajin from the *IDS* said that the largest number of *HVO* war invalids had sustained injuries in the conflicts with the Army of BiH, and that they had been sent into this conflict by the Government of Croatia.¹⁸⁶ (President of the Croatian Parliament, Vladimir Šeks, warned Kajin here “not to offend the Croatian Government and the Croatian soldiers”, because “no Government had committed an aggression on BiH”¹⁸⁷. Kajin and representative Nenad Stazić (Social-Democratic Party of Croatia) made mention of locations in which members of the *HVO* had committed war crimes: Ahmići, Stupni Do, Dretelj and Mostar.

• *Discussion on operation “Storm”, 31 March 2006 (19th Session of the Croatian Parliament)*

What lay behind the parliament discussion on the operation “Storm” was concern of the MPs about the statements in the indictment of the Hague Tribunal against Croatian Generals, Ante Gotovina, Ivan Čermak and Mladen Markač. According to the indict-

ment, the three indictees participated, during the period July-November 1995, in the so-called joint criminal enterprise, the objective of which was to remove the Serb citizens from the region of Krajina.¹⁸⁸ The proposal of the Declaration came from Slaven Letica (elected on the list of *HSP*), who stressed that accepting the allegation of joint criminal enterprise would have a negative effect on the international legitimacy of the Croatian state and Croatian self-confidence, and would enable the refugee Serbs from Croatia to claim and receive reparations from the Croatian state. The Declaration proposal, therefore, contained sections on “Storm” as an action with “legitimacy under international law”, an “anti-terrorist action of allies”, a “decisive” and “unforgettable” battle. A number of human rights organizations in Croatia were against the adoption of the Declaration, which may have been the reason why one of the seven clauses of the proposed Declaration contained a statement on the “dark side” of the “Storm”, which was left for journalists, scientists, human rights activists and others to interpret freely.¹⁸⁹

A small number of representatives participated in the discussion, one each from each club of representatives, while the representatives of the *SDSS* and *HNS* did not speak. Most of the speakers from the opposition parties mentioned both positive and negative aspects of “Storm”. Those holding a positive view were in the majority. Damir Kajin, of the *IDS*, confirmed that Serb citizens were retreating during the operation from the attack of the Croatian army, and that General Gotovina cannot be held accountable to that part of the indictment on collective criminal intent to ethnically cleanse Serbs. Kajin, however, added that after the military and police operation ended, crimes were committed in which

185 Croatian Defence Council was an armed formation of BiH Croats during the war in BiH from 1992-95. In line with the inter-state Agreement of December 2005, between Croatia and BiH, Croatia was obliged to pay certain sums of money to members of the Croatian Defence Council and to members of their families who had Croatian citizenship. The sums were supposed to cover the difference between the monthly sums of individual or family disability pension, paid by the competent authority of BiH, and the amounts of monthly compensation for invalids which the same person would be entitled to claim in accordance with Croatian law. The Croatian Parliament adopted the proposal of the law, verifying the agreement between Croatia and BiH with 77 votes “for”, 4 “against” and 16 refrained.

186 Damir Kajin (*IDS*), transcript of the session of the Croatian Parliament, 27 January 2006.

187 Vladimir Šeks, President of the Croatian Parliament, transcript of the session of the Croatian Parliament, 27 January 2006.

188 See *Prosecutor vs. Ante Gotovina, Ivan Čermak and Mladen Markač, Joint Indictment*, 24 July 2006, paragraphs 12-21. Before making a joint indictment, the statements on the joint criminal enterprise were part of separate indictments against Gotovina, Čermak and Markač.

189 Slaven Letica (independent), transcript from the Croatian Parliament session, 31 March 2006.

20,000 buildings were demolished and 600 old people were killed, and that those who committed the crimes should be held accountable.¹⁹⁰ MP Ante Markov from the Croatian Peasants' Party (HSS), agreed there was another side to the otherwise considered "non-questionable" operation "Storm", because "there are problems in every war". Markov thought, however, that that the other side cannot cast a shadow over the first, positive side.¹⁹¹ Zlatko Kramarić, of the Croatian Social-Liberal Party (HSLs), noted "slight discomfort" among the MPs because of the topic of discussion, as the discussion opened a traumatic part of Croatian history, because the events that followed "Storm" overshadowed the positive aspects of the military and police operation itself.¹⁹²

Independent Deputy Ivan Lončar said that *Storm* had been "the most glorious Croatian battle for national, social and state liberation from the enemy".¹⁹³ Luka Bebić spoke very briefly on behalf of the ruling HDZ, stating a positive attitude of his group of representatives towards the proposed text of the Declaration.¹⁹⁴ In the end the Parliament adopted the Declaration with 64 votes "for", ten "against", and five "abstentions".

- *Discussion of the Report of the Immunity Commission on the Request to Authorize the Launching of Criminal Proceedings against Representative Branimir Glavaš, 10 May 2006 (20th Session of the Croatian Parliament)*

On the session of 10 May the Parliament discussed the request to authorize the launch of criminal proceedings against Branimir Glavaš by the State Prosecution in Zagreb.¹⁹⁵ One of the topics in the discussion was whether Croatia had covered up crimes against Serbs in Osijek and other parts of Croatia. Damir Kajin (IDS) stated that ill deeds had been mostly hushed up, and that because of that "this is, in a way, the processing of our 15 years of silence".¹⁹⁶ A similar assessment was made by Josip Leko (SDP) ("there was no political will

to investigate, determine and process the crimes that allegedly happened"). Several MPs were against these interpretations. Silvano Hrelja from the Croatian Party of Pensioners (HSU) reprimanded Kajin for "elaborating the thesis of collective guilt for silence", and Miroslav Rožić from HSP took Kajin's statement as an "insult to all citizens of Croatia". Krešimir Čosić (HDZ) stated that, if Croatia had kept quiet, this was a silence over the crimes of others, and an aggression on Croatia.

Many MPs claimed that Croatia had actually looked after the interests of others after the war while neglecting its own. According to one MP, Croatia gave "generous amnesty to the Chetniks", at the same time "condemning many of its officers from the Homeland war" (Pejo Trgovčević – HSP).

Although the parliamentary discussion was convened to discuss crimes against Serbs, many speakers insisted that the Croats had been the real victims of the events in the 1990s. One of the MPs stated that Croats are a "tragic people" whose tragedy could be compared to that of the Jews or the Kurds (Ivan Lončar, independent candidate). There were other statements that followed the same tone: that the Croatian defenders had been "sentenced", "indicted" or "suspected" guilty of war crime (Ivan Drmić, independent candidate).

- *Discussion on the Abolition of Immunity for Branimir Glavaš, Representative in the Croatian Parliament, 15, 17 and 22 November 2006 (21st Session of the Croatian Parliament)*

The discussion on the abolition of immunity for Branimir Glavaš during the 21st session of the Croatian Parliament was held during a period in which Glavaš went on hunger strike and his health deteriorated seriously. This influenced the increase of tensions in the Croatian Parliament, and there were indications that the ruling HDZ, of which Glavaš had been

190 Damir Kajin (IDS), transcript of the session of the Croatian Parliament, 31 March 2006.

191 Ante Markov (HSS), transcript of the session of the Croatian Parliament, 31 March 2006.

192 Zlatko Kramarić (HSLs), transcript of the session of the Croatian Parliament, 31 March 2006.

193 Ivan Lončar (independent), transcript of the session of the Croatian Parliament, 31 March 2006.

194 Luka Bebić (HDZ), transcript of the session of the Croatian Parliament, 31 March 2006.

195 In the end of the discussion the Parliament granted the launching of the criminal proceedings against Glavaš, with 82 votes "for", 5 "against" and 1 "refrained".

196 Damir Kajin (IDS), transcript of the session of the Croatian Parliament, 10 May 2006.

a member until 2005, was distancing itself from the proceedings against this indictee.¹⁹⁸ The discussion was noted for violent reactions of a large number of representatives to those statements that underlined war crimes committed in Croatia against Serbs.

As in earlier similar encounters, the strongest reactions were caused by the speech of Damir Kajin (IDS), who said that the crimes committed in Osijek should have been sanctioned momentarily, because this would have prevented crimes against Serbs in other parts of Croatia – Sisak, Gospić, Pakrac field, and elsewhere.¹⁹⁹ A number of HDZ representatives reacted to this. Darko Milinović took offence at Kajin mentioning Gospić while not mentioning other locations on the outskirts of this town, where Serb forces had committed crimes against Croats.²⁰⁰ Josip Đakić also pointed out several locations where Croats suffered hardships, which Kajin failed to mention.²⁰¹

Zlatko Kramarić (HSL) noted that the Croatian “intellectual, academic public had not given birth to a Karl Jaspers”, i.e. a personality with moral authority that would speak about the crimes on the Croatian side in war and of different forms of accountability for these crimes. Kramarić added that “we all have to face the darkest sides of our war-ridden not-so-distant past... Our history is actually a history of holding back, which causes a mythologizing of our social [and] historical awareness. It is because of this mythologizing approach that we interpret differently or misinterpret a series of events or actors of our history... We still do not have the courage to start speaking about the victims.”²⁰² Ivan Lončar (the “independent one”) retorted to Kramarić immediately, saying that Croatia has faced the dark side of its past, and that the dark side were crimes committed by Serbs against Croats.²⁰³

Bosnia and Herzegovina

Although the largest number of crimes was committed in Bosnia and Herzegovina, and although there are more trials in this country than in the other of post-Yugoslav countries, parliamentary discussions during 2006 on these topics were rare.

The parliament discussed the establishment of a fact-finding commission that would look into events in Sarajevo during the period 1992-95. In the beginning of the 80th Session of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, on 24 May 2006, the representatives of the Serbian parties from Republika Srpska announced that they would not take part in the working session, with the explanation that they were waiting for the Council of Ministers of BiH (the Government) to bring a decision on the establishing of this commission. Before the representatives of these parties left the session, a brief discussion was led, in which the participants reprimanded the Council of Ministers for not having established the commission.

Zlatko Lagumdžija, President of the main opposition party, the Social Democratic Party (SDP), reminded of the conclusion by both the houses of the Parliamentary Assembly in 2004, which ordered the founding of a commission dealing with the hardships suffered by all the peoples of Sarajevo, and not only the Serbs. Lagumdžija, therefore, criticized the Chairman of the Council of Ministers, Adnan Terzić, for not having founded this commission, because “I want to know in what way I suffered hardships in Sarajevo.”²⁰⁴ Adnan Terzić replied that he thought that a commission should have been founded for the whole of BiH, which could firstly deal with the suffering of civilians in Sarajevo. From the fact that, at the end of

198 HDZ Club of Representatives first decided in November to approve the arrest of Glavaš, as there was potential danger of the witness being influenced should he remain at large. The HDZ did not consider the gravity of his crime as the basis for determining the imprisonment. Statements by Vladimir Šeks (HDZ) and Luka Bebić (HDZ), transcript of the session of the Croatian Parliament, 15 November 2006. A week later, HDZ changed its opinion and approved the arrest of Glavaš on both grounds. Public statement by Luka Bebić (HDZ), transcript of the session of the Croatian Parliament, 22 November 2006.

199 Damir Kajin (IDS), transcript of the session of the Croatian Parliament, 15 November 2006.

200 Darko Milinović (HDZ), transcript of the session of the Croatian Parliament, 15 November 2006.

201 Josip Đakić (HDZ), transcript of the session of the Croatian Parliament, 15 November 2006.

202 Zlatko Kramarić (HDZ), transcript of the session of the Croatian Parliament, 15 November 2007.

203 Ivan Lončar (independent), transcript of the session of the Croatian Parliament, 15 November 2006.

204 Zlatko Lagumdžija (SDP), transcript of the 80th session of the House of Representatives of the Parliamentary Assembly of BiH, 24 May 2006.

2005, the parliamentary parties had allowed their representatives to form an eight-member working group which worked on drafting the law on the truth commission for BiH, Terzić had, as he informed the representatives in the House of Representatives, concluded that the parties had themselves accepted the need to found a state commission and not commissions for certain regions.²⁰⁵ Jelina Đurković from the Party of Democratic Progress (PDP) rejected Terzić's explanation that after 2004 the parliamentary parties had not requested the founding of the Sarajevo Commission. Đurković said that she had posed questions as a member of the parliament three or four times on when this Commission would be founded, but had not received replies from the Council of Ministers.²⁰⁶ Tihomir Gligorić (Socialist Party of Republika Srpska - SPRS) reprimanded Terzić for speculating about the possibility of founding a commission for the whole of BiH, instead of executing the binding conclusion of the Parliamentary Assembly to found the Sarajevo Commission.²⁰⁷

Two weeks later, on 8 June 2006, the MPs continued the 80th working session of the House of Representatives, without the presence of the Serb parties from the Republika Srpska. The Chairman of the Council of Ministers, Adnan Terzić, informed those present that the Council of Ministers had in the meantime founded the Commission, but that its composition was still incomplete because the Government of the Federation BiH had not sent their candidates' names for the Commission.²⁰⁸

At the 81st session of the House of Representatives, on 20 June 2006, Senija Kapetanović (Party for BiH) requested that the agenda include discussion about an instruction the House of Representatives would send to the Council of Ministers to found a nine-member Commission to investigate the hardships endured

by the civilians in the municipality of Prijedor, from 1992-95. Kapetanović explained that, during the war Prijedor was the place where civilians suffered more than in any other part of BiH, except Srebrenica. Within three or four months between three and a half and four thousand people were killed or tortured in camps, and the rest of the non-Serbs had been ethnically cleansed. Kapetanović added that "no representative of the official authorities in Prijedor or in RS wishes to speak up about these events, or help discover the mass graves so that the deceased could be given decent funerals". The Commission should, therefore, help find the posthumous remains of those who have not yet been found.²⁰⁹

The proposal of Senija Kapetanović to found a commission was not put on the agenda of the 81st session, because more than two thirds of the MPs from Republika Srpska were against. Two weeks later, Kapetanović's colleague from the Party for BiH, Azra Hadžiahmedović, also attempted to put on the agenda the commission for Prijedor. This request too was rejected by the votes of the Serb representatives from Republika Srpska.²¹⁰

Unofficial Initiatives for Fact-Finding

During the course of 2006, several important projects were implemented in BiH, Croatia, Serbia and Kosovo, the objective of which was the documentation and analysis of war events of the 1990s, or the events preceding the conflicts. Some of the initiatives fall into the category of oral history, in which victims give detailed accounts about the hardships suffered by them or family members. These oral testimonies are turned into transcripts, and may be later published. NGO Documenta in Croatia and the Office of UNMIK for Missing Persons and Forensics

205 Adnan Terzić (Chairman of the Council of Ministers of BiH, transcript of the 80th session of the House of Representatives of the Parliamentary Assembly of BiH, 24 May 2006.

206 Jelina Đurković (PDP), transcript of the 80th session of the House of Representatives of the Parliamentary Assembly of BiH, 24 May 2006.

207 Tihomir Gligorić (SPRS), transcript of the 80th session of the House of Representatives of the Parliamentary Assembly of BiH, 24 May 2006.

208 Adnan Terzić (Chairman of the Council of Ministers of BiH), transcript of the 80th session of the House of Representatives of the Parliamentary Assembly of BiH, 8 June 2006.

209 Senija Kapetanović (Party for BiH), transcript from the 81st session of the House of Representatives of the Parliamentary Assembly of BiH, 20 June 2006.

210 Transcript of the 82nd session of the House of Representatives of the Parliamentary Assembly of the BiH, 7 July 2006.

(OMPF) in Kosovo implemented these types of projects during 2006. Another way of documenting is by compiling lists of victims by name, so as to determine their correct number and identity. The Research and Documentation Center (in BiH) and Humanitarian Law Center (in Serbia and Kosovo) worked on such a project during the course of the year. The so-called Scholars' Initiative, which is also comprehensive in character, strives to explain the roots, development and consequences of armed conflicts on the territory of former Yugoslavia, and to reach this explanation through the participation and consensus of scholars from the region.

Research and Documentation Center and Humanitarian Law Center – Victims' Listing

The non-government organization Research and Documentation Center (RDC) from Sarajevo was founded in April 2004 in order to continue the collecting of facts on war crimes, which was until then the task of a separate state commission. The mandate of the RDC includes research and collection of documents, facts and information on war crimes and all forms of violating human rights, irrespective of the ethnic, social, religious or racial group to which the victims belong. By the end of 2006, RDC registered by individual, the names of more than 350,000 war victims, out of which 96,000 were killed or missing persons. The data on the number of killed and disappeared (96,000), published by RDC upset one part of the public in BiH, which saw this as diminishing the extent of Bosniak sufferings. RDC also conducted research and collection of data on destructions of cultural heritage and religious objects, as well as other protected civilian objects.²¹¹ In June 2005, the Humanitarian Law Center (HLC) began listing victims of the armed conflict in Kosovo, by following the example of the RDC project "Human Losses in BiH", bearing in mind that the number of victims which is several times smaller than in BiH enables the organization to create documents bearing not only name and surname, but also a personal story about each victim.

OMPF – Oral History in Kosovo

In 2005 the Office of the UNMIK for Missing Persons and Forensics (OMPF) started an Oral History project, through which it collects videotaped interviews with the families of the missing persons and the families of individuals who were, after a certain period, found living. The interviewed individuals talk about how they had lived before the disappearance of their family member, about the events in connection with the disappearance, attempts to determine what had happened and to find the body, and about how they are coping with the present situation.²¹² By the end of 2006, interviews with 147 people had been made within this project, and talks with 10 of them were published in October in a book entitled "Hear What We Are Saying", in Albanian, Serbian and English languages.

Documenta – Oral History on Pakrac and Lipik (Croatia)

Documenta from Zagreb collected, through talks with the citizens of the towns of Pakrac and Lipik, in Western Slavonia, their memories of the war. The interlocutors could choose to speak anonymously or to state their names. By the end of 2006, Documenta had made 44 audio and 11 video interviews, and a publication containing selected testimonies is planned for 2007.

Scholars' Initiative

The Scholars' Initiative project gathered historians, lawyers, sociologists, and political scientists from almost 30 states, with the objective to produce a number of studies on the roots, the course and the consequences of war conflicts on the territory of former Yugoslavia. Scientists from newly-founded states in the region are active participants in the initiative. Some of the research topics are: Autonomy of Kosovo (1974-1990), The Breakdown of Yugoslavia (1986-1991), Ethnic Cleansing and War Crimes (1991-95),

211 Basic data on the activities of the research and Documentation Center can be found on the website of this organization, at <http://www.idc.org.ba/o%20nama.html>.

212 Interview with the representative of UNMIK for Missing Persons and Forensics (OMPF), Priština, 19 February 2007.

War in Croatia (1992-1995), The NATO Intervention (1998-1999), The Hague Tribunal, and others. The project co-coordinator is Charles Ingrao, historian from the University of Perdue (USA).

IV. Reparations

International standards on reparations of victims for grave violations of human rights and international humanitarian law have recently been expressed in a United Nations General Assembly Resolution. By this Resolution, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, drafted by two reputed international lawyers, Theo van Boven and Cherif Bassiouni, have been adopted.²¹³ In the Basic Principles they presented five basic forms of reparation: restitution, compensation, rehabilitation, different forms of satisfaction (cessation of continuing violations of rights, verification of the facts and their full public disclosure, search for the whereabouts of the missing, official restoration of the dignity, the reputation and the rights of the victim, public apology, commemorations and tributes to the victims, introduction of facts on violations of rights into textbooks), and guarantees of non-repetition.

Some of the listed forms of reparation – the founding of truth commissions and establishing the fate of the missing – have been described in the former part of the report. In this section we will present a number of other forms of reparation, to the extent in which they pertain to the events of the 1990s. The types of reparation given out by the authorities on the territory of former Yugoslavia have been compensations (on the basis of the legislation and on the basis of court decisions), restitution, public apology, inter-state compensation of damages, erecting memorials, tributes, and the introduction of facts on rights violations into textbooks. Some of the remaining forms of reparation were not implemented during 2006. Rehabilitation was partly

implemented in Serbia, but it pertains to violations of human rights from the period following the Second World War, which is not the subject of this report.

Authorities providing reparation are in most cases different than the authorities which at a certain stage caused the rights violations, the outcome of which is the right to reparation. For example, in all parts of the former Yugoslavia laws envisage compensation for civilian invalids of war and for the families of the civilians who lost their lives, although the authorities paying out the compensations were not the cause (at least not a direct one) of the injuries or deaths of these persons. Restitution, in the form of repair of destroyed property, in some countries means that the authorities set aside from the budget financial means for the repair of property destroyed by soldiers or policemen against which these authorities have fought. Memorials are, as a rule, put up by the authorities on the side of which the victims fought, or to which they belonged as civilians.

There are several reasons why states provide certain means of reparations, although they are not directly accountable for violations of rights of concrete victims. One of the reasons is that to a certain extent states bear the responsibility to provide victims adequate protection from those who directly caused the violations. In addition, reparations by authorities who are not directly accountable for violations of rights represent a means of solidarity of society as a whole and the state towards its own victims. This is why one of the recommendations of the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation calls on states to “endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.”²¹⁴

At the same time, there is a lack of solidarity on the part of the authorities and the society towards victims of war crimes – members of minorities, who were an opposing side during the conflict, or were perceived as the enemy even though they did not take part in

213 United Nations General Assembly Resolution, A/RES/60/147, 21 March 2006.

214 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Annex to the United Nations General Assembly Resolution, A/RES/60/147, 21 March 2006, para. 16.

the hostilities. Members of these minority groups exercise their right to return of property and reparation with years-long delay, which has for more than a decade been one of the main obstacles for the return and integration of the displaced and refugees. There is also a complete lack of solidarity for the victim in the cases where the war crimes were committed by the army or police of the state, in so much that the victims must sue the state accountable for the crime in order to obtain reparation for material or non-material damages inflicted, instead of the state offering them at least symbolic reparation.

The term “victims” in the laws in the region mostly corresponds to the meaning as determined by the Basic Principles. In other words, in addition to pertaining to the persons who have suffered harm, loss or suffering, as individuals or collectively, the term “victim” also includes the members of their immediate family.

Reparations on the Basis of Statute

The content and the implementation of the laws on reparation, in all parts of former Yugoslavia, favour members of the military and their family members, as well as members of ethnic groups representing the majority population in the given area. The laws explicitly give civilians substantially less rights than military personnel, and all laws have in practice a discriminatory effect on members of minorities, even if the texts themselves do not make a distinction between beneficiaries by ethnic criteria.

Croatia

During 2006 in Croatia there were around 3,100 civilians in the receipt of monthly compensations from the state, on the basis of individual or family disability

allowances.²¹⁵ In addition, invalids and persons who had lost a next-of-kin enjoyed a large number of other rights, on the basis of material and other needs.²¹⁶

Among the beneficiaries of these compensations and other benefits there are very few Serb returnees in Croatia, which they fled from during the war. Very few have approached the relevant Croatian authorities for acknowledgement of their status as civilian victims of war, because they lacked medical documentation or other written evidence stating that the cause of injury, sickness, death or disappearance was connected with the war events.²¹⁷ These difficulties prevent Croatian Serbs who reside outside Croatia – in most cases in Serbia – to exercise their rights as victims of war. At the same time, Serbia does not acknowledge these individuals the status of civilian victims of war either.²¹⁸

The Rights of War Invalids

During 2006, 30,320 war invalids received disability pensions.²¹⁹ Persons with a minimum of 20% of disability, and persons whose illness was the result of confinement but their bodily infirmity does not exceed more than 60%, have the right to monthly personal disability pensions. Invalids with 100% infirmity, who need the care of another person, are in receipt of financial compensation intended for care and help, as well as compensation for orthopaedic aids. War invalids who were minors during the war experience difficulties in exercising the right to disability pensions, because their status of Croatian defenders is often not acknowledged.

Associations of civilian invalids are not satisfied because of differences in calculating the amount of personal disability pensions for them and for military invalids. While civilian invalids with 100% infirmity received by the end of the year disability pensions

215 Interview with the representative of the Ministry of Health and Social Affairs of the Republic of Croatia, Zagreb, 25 January 2007.

216 Among the rights used by invalids of wars and family members of the deceased, or missing persons, are the following: receipt of social help (so-called *opskrbnina*), aid for house work, receipt of free textbooks, separate allotment for children, students' scholarships, advantage in finding accommodation in pupils' i.e. students' homes, privileged treatment in employment and in finding accommodation in social protection institutions, and the reimbursement of transportation and funeral costs.

217 Interview with the representative of the Ministry of Health and Social Affairs of the Republic of Croatia, Zagreb, 25 January 2007.

218 Interview with the representative of the Ministry for Social Affairs of the Republic of Serbia, Belgrade, 2 February 2007. Such a decree is contained in the Government's law proposal from 2006.

219 The Government of the Republic of Croatia, *Izvešće o provedbi Zakona o pravima Hrvatskih branitelja iz Domovinskog rata i članova njihove obitelji* (Report of the Implementation of Law on Rights of Croatian Defenders from the Homeland War and their Family Members), March 2007, p. 44.

amounting to 100% of the so-called calculation base pay (3,326 Kuna or 450 Euros), the personal disability pensions of first category military invalids was 115 per cent of the calculation base pay (3,800 Kuna or 515 Euros).²²⁰ The amount of compensation for lower category invalids was also proportionately different. The Constitutional Court of Croatia concluded in May 2005 that this practice was in line with the Constitution, and that the Parliament was entitled to prescribe different amounts of money for different groups.²²¹ In January 2006 the Union of Associations of Civilian Victims of War filed an application with the European Court of Human Rights, claiming that the Croatian legislature was, in this way, making discrimination on the basis of status, in contradiction with Article 14 of the European Convention on the Protection of Human Rights and Basic Freedoms. By the end of the year, the applicants had not received notification from the European Court of Human Rights as to whether their claim had been accepted as admissible, i.e. whether the Court would decide on the merits of the application.²²²

While military invalids, and even war veterans who are not invalids, have the right, on the basis of the law, to state aid for provision of a flat and a personal car, civilian invalids do not.²²³

The next difference is that servicemen who spent a minimum of 3 days in a camp are automatically considered as invalids with 20% infirmity,²²⁴ while this rule does not apply for civilians who had been detained in camps, irrespective of the length of imprisonment. Civilians therefore need to prove with

medical documentation that they sustained a bodily injury. The documentation for this had to be obtained immediately on release from camp, or no later than three months after the end of the war. A large number of people of Croatian ethnicity, who spent some time in prison camps in Serbia, have not exercised their rights to personal disability pensions because they did not have the necessary documentation.²²⁵

Family Disability Pensions

A family disability pension is, under certain conditions, received by members of the immediate family of the deceased or missing civilian. If these conditions are met, one family member gets 1,100 Kuna (150 Euros) per month, and every next one in line 550 Kuna (75 Euros). The spouse of the deceased/missing civilian has the right to a family disability pension if incapable of earning a living.²²⁶ If the spouse has young children or children of students' age who are younger than 26, they can exercise their rights provided they are unemployed (irrespective of whether they are considered fit for employment). The children of the deceased/missing civilian receive funds until the age of 15, and if they are students, until the end of their studies, with the provision that this is waived once they turn 26.²²⁷

The family disability pensions for family members of deceased/missing servicemen are substantially higher than for family members of deceased/missing civilians.²²⁸ In addition, they also have the right to state-provided housing.²²⁹

220 Interview with Julijana Rosandić, President of the Union of Associations of Civilian War Victims, Slavonski Brod, 22 January 2007; interview with the representative of the Ministry of Health and Social Affairs of the Republic of Croatia, Zagreb, 25 January 2007. The average salary in Croatia, mid-2006 was around 4,500 Kuna (610 Euros). "The Cost of Living Drops in June Compared to May", *Croatian Radio Television website*, 11 July 2006. (www.vijesti.hrt.hr/ShowArticles.aspx?ArticleId=12345).

221 Decision of the Constitutional Court of Croatia No U-I-2362/2001, 5 May 2005, *Narodne novine (Official Gazette)*, No 64/05.

222 Interview with the legal representative of the Union of Associations of Civilian War Victims, Zagreb, 26 January 2007.

223 Interview with the representative of the Ministry of Health and Social Affairs of the Republic of Croatia, Zagreb, 25 January 2007.

224 Law on the Rights of Croatian Defenders of the Homeland War and Their Family Members, *Narodne novine*, No 174/04, arts. 4 (1) and 5 (1).

225 Interview with the representative of the Ministry of Health and Social Affairs of the Republic of Croatia, Zagreb, 25 January 2007.

226 If the husband has turned 65 years of age, and wife 55, they are considered incapable of earning a living and have the right to a family disability pension.

227 Interview with the representative of the Ministry of Health and Social Affairs of the Republic of Croatia, Zagreb, 25 January 2007.

228 While family disability allowance for deceased civilians, for one beneficiary, amounts to 25% of the monthly sum provided as personal disability allowance for first-category invalids, family disability allowance for a deceased serviceman amounts to 40% of the monthly sum. The Law on the Protection of Military and Civilian Invalids of War, *Narodne novine*, numbers 33/92, 77/92, 27/93, 58/93, 2/94, 76/94, 108/85, 108/96, 82/01 and 103/03, art. 27.

229 Law on the Rights of Croatian Defenders from the Homeland War and Their Family Members, art. 36.

Social Aid (opskrbnina)

In addition to personal and family disability pensions, civilian victims have the right to social aid amounting to 1,100 Kuna a month (150 Euros).²³⁰ This is paid providing that the individual is unemployed and that the wages per every member of the household do not exceed 1,100 Kuna (The family disability pension is not considered as wages).

Bosnia and Herzegovina

In Bosnia and Herzegovina there are several types of reparation for victims of wars between 1992 and 1996. During the course of 2006, there were important changes in respect of some of these.

Federation BiH

Until October 2006, there were around 98,000 military invalids and family members of deceased/missing soldiers in BiH, in receipt of compensations from the state. Contrary to this, there were only 8,746 persons who had the status of civilian war victims.²³¹ As in other parts of the former Yugoslavia, the legislation in the Federation BiH affords higher rights to military than to civilian war victims.

The Federal Law on Civilian War Victims was adopted in 1999.²³² According to the original text, civilian victims of war were only persons with bodily infirmity of a minimum of 60%, or persons deceased, killed or went missing during the state of war or in association with war events. (For an acknowledgment of the status of war invalid, only 20% of bodily infirmity is enough.²³³) Deteriorated health, caused by war events,

was not legally recognized as a basis for disability pensions if there was no bodily infirmity. This is why persons with post-traumatic stress disorder (PTSD), as a result of torture or camp imprisonment, were not acknowledged as civilian victims of war. Because of the narrow definition and the fact that many war victims now reside outside BiH, there was a relatively small number of persons who had the status of civilian war victim in the Federation BiH, 8,746, prior to change of the law towards the end of 2006.

The cantons have the possibility of widening by regulations the protection for civilian victims of war, to exceed the limits envisaged by the federal law. In practice only the Sarajevo Canton provided some additional rights, for women who had been the victims of sexual violence.²³⁴

On 1 September 2006, changes to the Law from 1999 came into effect, pertaining to substantial improvements for civilian victims. The status of victim was acknowledged to all persons who had, due to war events, suffered substantial health deterioration, even if the health deterioration was not expressed in bodily infirmity. Former camp prisoners, who put in requests for compensation, need to approach the commission that determines substantial health deterioration, although the Union of Camp Prisoners had requested, during the preparations of amendments to this law that the mere fact that someone had been in camp should suffice for the acknowledgement of the status of war victim.²³⁵

The second broadening of the victim category pertains to the persons who suffered severe sexual abuse and rape. This category of victims was specially entered into the law and acknowledged as a separate group altogether.²³⁶ The victims of sexual abuse had

230 Interview with the representative of the Ministry of Health and Social Affairs of the Republic of Croatia, Zagreb, 25 January 2007; Law on the Protection of Military and Civilian War Invalids, art. 36.

231 OSCE Mission to BiH, "Civilne žrtve rata u BiH dobile bitku da zadrže povlastice" ("Civilian War Victims in BiH Win Battle to Keep Privileges"), *OSCE Thematic Story*, 26 October 2006 (www.oscebih.org/public/cro/print_news.asp?id=1926).

232 The full title of this law is the Law on Basics of Social Protection, Protection of Civilian War Victims and the Protection of Families with Children ("Official Gazette of the Federation BiH", numbers 36/99 and 54/04).

233 Law on the Rights of Defenders and their Family Members, *Official Gazette of the Federation BiH*, numbers 33/04 and 56/05, art. 3.

234 Interview with Murat Tahirović, President of the Union of Camp Prisoners of BiH, Sarajevo, 15 November 2006.

235 *Ibid.*

236 Law on Amendments and Additions of the Law on Basics of Social Protection, Protection of Civilian War Victims and Protection of Families with Children, *Official Gazette of the Federation BiH*, No 39/06, art. 6 (amending article 54 of the Law [on Basics of Social Protection, Protection of Civilian War Victims]).

the right to the highest compensations (540 convertible marks (CM), which equals some 280 Euros).²³⁷

During the period from 1 September 2006, when amendments to the law came into effect, until the end of the year, 2,000 former camp prisoners received the status of civilian war victims.²³⁸

Amendments to the law on civilian war victims prescribe the sum for personal disability pensions amounting to 70% of the monthly amount of personal disability pensions of military war invalids. Out of this, the Government of the Federation BiH is obliged to provide 50% of the funds, and the remaining 20% needs to be provided from the cantonal budget.²³⁹ There are, however, cantons whose economic power is so small that they are unable to fulfil their obligations.²⁴⁰

Persons who have accomplished their rights to compensation risk losing the right if they are to return to Republika Srpska and register as its residents. According to statements of non-government organizations, municipalities of the Federation in which persons lived before returning to Republika Srpska discontinue payments to civilian war victims. For this reason, some returnees register as their residence an address in the Federation, although they actually keep living in the place of their return, in Republika Srpska.²⁴¹ By re-registering in the Federation these persons lose some of their rights – such as the right to a vote at elections - in Republika Srpska.²⁴²

Military war invalids, who had been members of the Croatian Defence Council (HVO), as well as family members of the deceased, captured or missing HVO members in the war turmoil, are in a substantially better position than other victims, providing they have Croatian citizenship. These persons, on the

basis of the inter-state agreement between BiH and Croatia, which came into effect on 1 July 2006, have the right to get from Croatia the difference between the compensation they receive from the state of BiH and the compensation they would be entitled to receive on the same basis in Croatia. In view of the fact that compensation is higher in the economically more powerful Croatia than in BiH, the beneficiaries in receipt of these receive monthly compensation which is substantially higher than that which is paid out to other war victims in BiH.

Republika Srpska

At the end of 2006, 1,838 civilians had the right to a personal disability pension in Republika Srpska, on the basis of the Law on Civilian War Victims. At the same time, some 35,000 persons received personal military disability pension. Some 1,600 family members of deceased civilians received family disability pensions, as opposed to 35,000 family members of deceased servicemen.²⁴³

The Law on the Protection of Civilian war Victims, from December 1993, recognizes the status of civilian victims to civilian invalids with a minimum of 60% of bodily infirmity. The law explicitly includes victims of rape, as well as persons who sustained ‘bodily infirmity’ by spending time in prisons, i.e. concentration camps, among the civilian war victims. The relevant provision does not mention the word ‘illness’, so it is not clear from the text whether the post-traumatic stress disorder (PTSD) can be a basis for obtaining the status for bodily infirmity. According to officials in the competent ministry, medical commissions only very rarely recognize psychological disturbances as a basis for the recognition of disability.²⁴⁴

237 Interview with Murat Tahirović, President of the Union of Camp Prisoners of BiH, Sarajevo, 15 November 2006.

238 Telephone interview with Murat Tahirović, President of the Union of Camp Prisoners of BiH, 3 February 2007.

239 Law on Amendments and Additions to the Law on the Basics of Social Protection, Protection of Civilian War Victims and Protection of Families with Children, *Official Gazette of the Federation BiH*, No 39/06, art. 59 [on the basics of civilian victims of war protection]).

240 Interview with Murat Tahirović, President of the Union of Camp Prisoners of BiH, Sarajevo, 15 November 2006.

241 Telephone interview with Seida Karabašić, President of the Association of Prijedor Women ‘Izvor’, 7 March 2007; interview with representatives of the Association of the Families of Captured and Missing Persons of the Municipality of Zvornik, Belgrade, 28 March 2007.

242 *Ibid.*

243 Interview with the representatives of the Republika Srpska Ministry of Labour and Military-Invalid Protection, Banja Luka, 23 January 2007.

244 *Ibid.*

Rights on the basis of the Law on Protection of Civilian War Victims are exercised by family members of the killed in combat, deceased, missing, or murdered person, if this person lost life or went missing under the circumstances mentioned by the law (ill-treatment, rape, deprivation of freedom, displacement, war operations, effect of left over military material, or diversions).²⁴⁵

Different Treatment Depending On Ethnic Identity and Status

Although there are no provisions in the current law that explicitly discriminate against non-Serbs, in practice the law has discriminatory consequences inasmuch as Bosniaks and Croats have not managed to obtain status of civilian war victims. The law envisages that the request for recognition of rights can be filed within five years from the date when the individual sustained bodily injuries or was killed, died or went missing, or – if this is more favourable for the person filing the request – within a period of five years from the date the law came into effect.²⁴⁶ The time limits for filing requests expired on 19 June 2001, except for persons wounded or killed in explosions of explosives leftover after June 1996. In practice this means that Bosniaks and Croats who had not returned to their homes in Republika Srpska, by June 2001, could not exercise their rights, although this was possible in theory by filing requests by post within the set time limit.²⁴⁷ According to the relevant authorities from the Ministry of Labour and Military-Invalid Protection, there is also a large number of

Serbs who failed to meet this deadline, and who – like returnee Bosniaks and returnee Croats – therefore have no civilian war victim status.

Claimants need to file, in addition to the request for acknowledgement of rights, medical documentation about treatment following the injuries sustained. The documentation must have been obtained immediately after the event.²⁴⁸ This legal provision prevented a certain number of camp prisoners from obtaining the status of civilian war victims. Former prisoners often left BiH on being released and never requested a doctor's help. On return to the Republika Srpska they, therefore, had no medical documentation. Although the Government of Republika Srpska extended the time limit for filing requests until June 2001, medical commissions would often conclude that it was impossible to ascertain whether the injuries were sustained in camps, or if the infirmities were higher than 60%.²⁴⁹ The Association of Camp Prisoners requested from Republika Srpska, during 2006, to bring a separate law on camp prisoners, because a considerable number of civilian camp prisoners were not in receipt of compensation. The new law was supposed to bring the enlargement of the number of beneficiaries of state compensation.²⁵⁰

The legislation in Republika Srpska does not treat civilian and military victims equally. Military personnel's disability pension was recognized for bodily infirmity of 20% (from wound, injury, or damage), or for 40% (if the infirmity was the result of illness), while bodily infirmity of civilians has to be at least 60%.²⁵¹ First-category military invalids have the right

245 Law of the Protection of Civilian War Victims, *Official Gazette of the Republika Srpska*, No 25/93, 30 December 1993, arts. 2 and 3.

In July 2005, one house in the Republika Srpska Assembly adopted a new Law on the Protection of Civilian War Victims, but the other house (Council of Peoples) overruled it, as the Bosniak and Croat parliamentarians invoked a provision to protect their national (ethnic) interest. The law was sent back to the Government to re-drafting. Interview with the representatives of the Republika Srpska Ministry of Labour and Military-Invalid Protection, Banja Luka, 23 January 2007.

246 Law on Protection of Victims of War, art. 37 (1). In practice 19 June is taken as the date the law came into effect, because the state of war was abolished on that date. Interview with the representatives of the Republika Srpska Ministry of Labour and Military-Invalid Protection, Banja Luka, 23 January 2007.

247 Interview with the representatives of the Ministry of Labour and Military-Invalid Protection of the Republika Srpska, Banja Luka, 23 January 2007. Another provision in the law, which presents a potential basis for denying non-Serbs their rights to compensation, had no bearing in practice. In accordance with Article 4 of the Law, persons who were members of enemy formations, or collaborated with the enemy, cannot exercise their rights under the law. The burden of proving that a person was an enemy collaborator lies with the Ministry. There were no such cases in practice.

248 Law on the Protection of Civilian War Victims, art. 37 (2).

249 Interview with the representatives of the Ministry of Labour and Military-Invalid Protection of the Republika Srpska, Banja Luka, 23 January 2007.

250 *Ibid*; interview with Branislav Dukić, President of the Union of Camp Prisoners of the Republika Srpska, Banja Luka, 23 January 2007.

251 Law on the Rights of Servicemen, Military Invalids and Families of the Deceased Servicemen of the Defence of Motherland War in Republika Srpska, *Official Gazette of the Republika Srpska*, numbers 46/04 and 53/04, art. 4; Law on the Protection of Civilian War Victims, art. 2.

to a monthly compensation of 468 KM (240 Euros).²⁵² (Second-category military invalids – 73% of the mentioned base; third category – 55% of the base, etc.) First-category civilian invalids received twice less – 233 KM (120 Euros) a month.²⁵³ In addition, first-category military war invalids get a substantially higher amount as supplements for care and help (end of 2006 – 86% of the base amount of 468 KM) than the first-category civilian war invalids get for the same (80% of the base amount of 233 KM).²⁵⁴ Despite the relatively low amounts of the base figures for invalidities of civilians, the authorities did not even pay out the full amounts of these compensations, because since 2000 they have not revalued the legal base,²⁵⁵ although they are bound by the law to do so every month.²⁵⁶

Rights of the Families of the Missing

The legislature of the Republika Srpska explicitly treats the missing persons as civilian victims, and recognizes the right to family disability pensions of the families of the missing. Instances of persons going missing had to occur, according to the law, in connection with military operations. The assessments to that effect were carried out by the Ministry for Labour and Military-Invalid Protection. However, according to the President of the Association of the Missing Persons of RS, the families of missing civilians of the Republika Srpska do not get family disability pension, unlike the families of missing servicemen.²⁵⁷ In view

of the fact that, according to the Government data, at the end of 2006 only 1,600 persons received civilian family disability pension pay in Republika Srpska,²⁵⁸ the statement that the families of the missing persons do not receive such compensation is credible.

State Level

The disproportionate budgetary allocations that BiH makes for war veterans, on the one hand, and for civilian victims of war, on the other, urged the United Nations Committee for Economic, Cultural and Social Rights to request at the end of 2005 that BiH decrease this disparity.²⁵⁹ The World Bank too, in its report of September 2006, concluded that BiH was setting aside enormous funds for war veterans,²⁶⁰ three times more than it spent on social welfare and protection of civilian victims of war and families with children.²⁶¹

In February 2006 the Council of Ministers established a working group for drafting the Law on Civilian Victims of War and Victims of Torture.²⁶² The working group was composed of representatives of several ministries at state and entity level, and the representatives of associations of camp prisoners and women-victims of war also took part in the activities of the working group. From February to May 2006, the working group held meetings twice a month.²⁶³ In May the government representatives and the non-government representatives of Republika Srpska stopped partici-

252 Law on the Rights of Servicemen, art. 16.

253 Interview with the representatives of the Ministry of Labour and Military Officers Protection of the Republika Srpska, Banja Luka, 23 January 2007.

254 Law on Rights of Servicemen, art. 44; Law on Rights of Civilian Victims of War, art. 11.

255 Interview with the representatives of the Ministry of Labour and Military-Invalid Protection of the Republika Srpska, Banja Luka, 23 January 2007.

256 Law on the Protection of Civilian Victims of War, art. 10 (2).

257 Interview with Milijana Bojić, President of the Association of Families of Missing and Captured Persons of Republika Srpska, Banja Luka, 23 January 2007.

258 Interview with the representatives of the Ministry of Labour and Military-Invalid Protection of the Republika Srpska, Banja Luka, 23 January 2007.

259 Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by State Parties Under Articles 16 and 17 of the Covenant: Bosnia and Herzegovina, Concluding Observations of the Committee on Economic, Social and Cultural Rights*, Thirty-fifth session, 7-25 November 2005, para. 39.

260 World Bank, *Bosnia and Herzegovina: Addressing Fiscal Challenges and Enhancing Growth Prospects – A Public Expenditure and Institutional Review*, September 2006, p. ix, para. 22 (due to funds put aside for the former servicemen, funds were missing for the system of social protection and protection of children, with the exception of the Children's Fund of the RS).

261 *Ibid.*, p. 26 (table 2.6).

262 Interview with Murat Tahirović, President of the Union of Camp Prisoners of BiH, Sarajevo, 15 November 2006.

263 *Ibid.*

pating in the activities of the working group, whereby its operations were practically discontinued.²⁶⁴

After the Parliamentary elections on 1 October, the BiH Council of Ministers, by the regulation of 26 October, appointed twelve representatives for the new working group, which was supposed to draft a law on the rights of civilian victims of war and victims of torture. The regulation also left space for the participation of victims' associations in the activities of the working group. Not even after the elections had been held did the associations from Republika Srpska express an interest in joint activities with associations from the Federation BiH, or in re-joining the work of the working group in drafting the state law on civilian war victims.²⁶⁵ The Association of Camp Prisoners of Republika Srpska even requested that the Ministry of Labour and Military Officers Protection of RS withdraw its representative from the working group.²⁶⁶

The Council of Ministers, in its decision of 9 November, set a time frame until the end of March 2007, for the working group to finish the draft law. The law was to regulate the categories of victims, state procedures and criteria for determining the status of victims, and to state their rights. The laws of the entities needed changing to the extent in which the regulations of the existing entity laws on civilian war victims differed from the content of the state law. The rights of military victims of war would keep being regulated at entity level only.²⁶⁷

The Law would pertain to three groups of people: invalids, persons who had been convicted in camps, and victims of sexual violence.²⁶⁸ Although the new law would include missing persons, i.e. their family members, among the civilian victims of war, the rights of the family members would still be regulated

by the existing Law on Missing Persons (of October 2004), as a *lex specialis*.²⁶⁹

Serbia

At the end of 2006 there was no systematic data in Serbia on the number of beneficiaries of civilian disability pensions, personal or family ones. The number of beneficiaries of military personal disability pensions was around 50,000, with two thirds of beneficiaries being members of the Partisan Movement from the Second World War. The number of beneficiaries of military family disability pensions pay was around 27,000 towards the end of the year.²⁷⁰

The rights of invalids of war and civilian victims are regulated by a series of laws and regulations, some of which date back to the mid 1960s. This is why in 2006 the Government forwarded to the National Assembly a proposal of a unique Law on the Protection of Servicemen and Invalids, for the codification of legislature in this area. Until the end of the year the proposed law remained unadopted, because the Deputies of the Socialist Party of Serbia (SPS), who on other matters supported the minority coalitional Government, were against the proposed text. They thought it was unacceptable for the law to make equal the rights of the Yugoslav Army in the Motherland and the "Ravna Gora Movement" from the Second World War with the rights of the members of the Partisan Movement.

In addition to the SPS, members of associations of servicemen and invalids expressed discontent with some of the provisions in the drafted law. One of the reasons the Government withdrew the proposed

264 *Ibid.* Slavko Jovičić, Vice President of the Association of Camp Prisoners of Republika Srpska and active participant in the work of the working group, at that time became active in politics, and the President of the Association Branislav Dukić showed no interest in participating in the joint activities with the representatives of the Federation BiH. The working group therefore failed to create the draft. Interview with the representatives of the Office of the United Nations High Commissioner for Human Rights, Sarajevo, 17 November 2006.

265 Interview with the staff of the Ministry for Human Rights and Rights of Refugees of BiH, Sarajevo, 16 November 2006.

266 Interview with the representatives of the Ministry of Labour and Military-Invalid Protection of Republika Srpska, Banja Luka, 23 January 2007.

267 Interview with the staff of the Ministry for Human Rights and Rights of Refugees of BiH, Sarajevo, 16 November 2006.

268 *Ibid.*

269 *Ibid.*

270 Interview with a representative of the Ministry for Social Affairs of the Republic of Serbia, Belgrade, 2 February 2007.

law from procedure in October was the need for additional consultations with the associations on the disputed parts of the text, pertaining to the setting of base amounts for determining disability pensions. The model suggested by the Government resulted in salaries and cost of living to rise faster than the revaluation of the disability pensions.²⁷¹ Associations of servicemen, invalids and civilian war victims reproached the relevant Ministries that they had not consulted them in the process of drafting the law.²⁷²

During the hyperinflation period, at the beginning of the 1990s, as in the period from 1999 to 2002, the authorities did not pay out the full sum of personal and family disability pensions pay. The remaining debts were not paid out even in 2006.²⁷³

The Rights of War Invalids

In accordance with the present laws, a military war invalid is a person that sustained a wound, injury, accident or illness, due to which the person suffered bodily infirmity of a minimum of 20%.²⁷⁴ A civilian war invalid is a person with bodily infirmity, which is the result of wound, injury or accident, of a minimum of 50%.²⁷⁵ Victims of sexual violence, therefore, do not have the right to compensation, unless during the act of rape there was an injury of an internal organ, i.e. other bodily injury was sustained. Unlike military invalids, civilians do not have the right to a personal disability pension, if their bodily infirmity was the result of illness. Although the law recognizes disability pensions to military invalids on the basis of psycho-somatic disturbances, those suffering from

psycho-somatic disturbances are dissatisfied with having to pay the full price for medications.²⁷⁶

The amount of money that military and civilian invalids receive for damages sustained from a wound, injury or accident is equal.²⁷⁷ First-category invalids receive amounts of average pay in the country, increased for 80%.²⁷⁸ At the end of 2006 this amounted to a little above 50,000 dinars (620 Euros).²⁷⁹ Lower categories received lower amounts, depending on the percentage of disability.

Although the Law on the rights of civilian war invalids does not contain a specific provision on the basis of which status of civilian war invalids can be acknowledged only to persons who sustained damages on the territory of Serbia, the Ministry for Social Affairs interprets the law in this way – that damages sustained on the territories of other parts of former Yugoslavia are unacceptable as a basis for acknowledging disability.²⁸⁰ This is why, for example, a Serb civilian from Croatia, who sustained injuries during operation “Storm” in 1995 and became an invalid, is not acknowledged the status of civilian war invalid in Serbia.

Contrary to this, the authorities of the Republic of Serbia recognized the status of military war invalid to persons from Croatia and Bosnia and Herzegovina, who sustained war injuries, as members of the local Serbian armed forces in the first half of the 1990s and then fled to Serbia as refugees. The recognition of status pertaining to this category of people was a form of humanitarian aid, and was based on a decree by the Government of Serbia²⁸¹ Then in 2000, the

271 In accordance with the current law, the base amount is set in accordance with the average net pay in Serbia, for the previous month. In the proposal of the new law, it was envisaged that the base pay is changed every three months on the basis of the changes in the amount of the average net pay for the past six months in the trade sector, and on the basis of the same average amount increased for the retail price increase if this increase is higher than 5%.

272 Interview with Dragomir Vasić, President of the Assembly of Associations of Military War Invalids of the City of Belgrade, Belgrade, 29 January 2007.

273 Interview with a representative of the Ministry for Social Affairs of the Republic of Serbia, Belgrade, 2 February 2007.

274 *Law on the Basic Rights of Servicemen, Military Invalids and Families of Deceased Servicemen, Official Gazette of the SRJ*, numbers 24/98, 29/98 and 25/2000, art. 3.

275 *Law on the Rights of Civilian War Invalids, Official Gazette of the RS*, No 52/96, art. 2.

276 Interview with Dragomir Vasić, President of the Assembly of Associations of Military War Invalids of the City of Belgrade, Belgrade, 29 January 2007.

277 This unusual leveling of pay occurred following the demonstrations of the civilian war invalids in 1996.

278 *Law on the Basic Rights of Servicemen, Military Invalids and Families of Fallen Servicemen, Official Gazette of the SRJ*, numbers 24/98, 29/98 and 25/2000, art. 28.

279 Interview with the representative of the Ministry of Social Affairs of the Republic of Serbia, Belgrade, 2 February 2007.

280 *Ibid.* Such a provision is also contained in the Government's draft law of 2006.

281 *Ibid.* The decree was abolished in 2006.

Governments of FR Yugoslavia and Republika Srpska signed a protocol on the basis of which Republika Srpska undertook to provide compensation and help to those beneficiaries resident in FR Yugoslavia, who had, as servicemen, been wounded after 19 May 1992 (the date of the withdrawal of the former Yugoslav National Army from BiH). FR Yugoslavia kept on looking after those military invalids who had been wounded before 19 May.²⁸²

The status of a military war invalid is also conferred on citizens of Serbia who became invalids by fighting in Croatia and Bosnia and Herzegovina until April 1992 “in order to preserve the sovereignty and territorial integrity of SFR Yugoslavia.”²⁸³ In view of the fact that in April that year SR Yugoslavia was founded, participation in fighting in Croatia and Bosnia and Herzegovina after that period was not considered as fighting to preserve the territorial integrity of the new state of Serbia and Montenegro. For this reason the law does not recognize the status of military invalids to all those who were wounded during the subsequent years outside the territory of Serbia.²⁸⁴

Family Disability Allowances and Monthly Income

Family members of killed or missing military personnel have the right to family disability pensions, i.e. in the event that a military invalid died as a result of wounds or injuries. Family members of killed civilians and civilians that died as a result of wounds or inju-

ries, have the right to monthly income. Both military and civilian disability pensions are determined in accordance with material needs.²⁸⁵

Family members of the deceased civilian or deceased servicemen have, more or less, the same rights in enjoying these rights. While, however, families of *missing* servicemen also have the right to compensation, this right is denied to family members of missing civilians, unless the missing person is declared dead (see below, chapter entitled *The Rights of Families of Missing Persons*).

Family disability pensions on account of death in combat of a family member amounted to some 30,200 Dinars (380 Euros) towards the end of the year for one beneficiary, and 50% of this amount for every next beneficiary in line. (In this way, a family of three would receive 60,000 Dinars (750 Euros) on behalf of family disability pensions pay.) If a military, or civilian invalid died, the amount was much lower – 5,000 Dinars (65 Euros) for the first family member.²⁸⁶

The Rights of Families of Missing Persons

Families of missing servicemen have the right to family disability pensions, but the families of missing civilians do not have the same or similar right.²⁸⁷ One should bear in mind that out of the total number of missing persons, the majority are civilians.²⁸⁸ In order to exercise their rights to monthly income, the families of missing civilians had to launch proceedings for

282 *Ibid.*

283 Law on Basic Rights of Servicemen, Military Invalids and Families of Fallen Servicemen, *Official Gazette of SRJ*, numbers 24/98, 29/98 and 25/2000, art. 2 (1) (point 5).

284 Interview with the representative of the Ministry for Social Affairs of the Republic of Serbia, Belgrade 2 February 2007.

285 It is considered that there is material need if the family member is incapable of earning a living and is not in receipt of other income higher than the census prescribed by the law. Women older than the age of 50, i.e. men older than the age of 60, as well as children of school age, also fulfil the condition for receiving compensation. Interview with the representative of the Ministry for Social Affairs of the Republic of Serbia, Belgrade 2 February 2007.

286 *Ibid.*

287 “The family of the fallen serviceman is the family of a person who was killed in combat, died or *disappeared* under circumstances described in articles 2 and 3 of this law or died as a result of wounding, injury, accident or illness, sustained under these conditions within one year from the date when bodily injury occurs.” Law on Basic Rights of Servicemen, Military Invalids and Families of Fallen Servicemen, *Official Gazette of SRJ*, numbers 24/98, 29/98 and 25/2000, art. 13 (1). On the other hand “a family member of a civilian victim of war is a family member of a person who was killed in combat, or died under these circumstances [during the execution of war operations, or from the effects of leftover combat material]. Law on the Rights of Civilian Victims of War, *Official Gazette of the Republic of Serbia*, number 52/96, art. 3 (2).

288 According to the state in 2004, out of 1,488 missing persons whose families lived in Serbia and Montenegro, 1,446 were civilians, and only 42 were warriors. International Committee of Red Cross, *Legal Study: The families of the missing in Serbia and Montenegro* (2004), page 42.

declaring the missing dead. In the largest number of cases, family members do not know about the legal possibility of receiving monthly compensation should the missing person be declared dead,²⁸⁹ or do not wish to launch these proceedings out of respect for the victim.²⁹⁰

Kosovo

During the course of 2006, compensations for the death or disability sustained during the conflict of 1998-99 were received in Kosovo, according to the data of the Ministry of Labour and Social Protection, by 7,528 persons, out of which a little lower than 3,000 were civilians.²⁹¹ The legal basis for paying compensation was UNMIK's Regulation 2000/66, of December 2000. On 23 February 2006, the Parliament of Kosovo adopted the Law on the Rights of War Invalids, Servicemen-Former Members of the KLA, and Civilian Victims. The Social Representative of the UN Secretary General, however, postponed the coming into effect of this law until January 2007, under the condition that by that time the Kosovo authorities manage to secure sufficient funds for the implementation of the law.

Regulation 2000/66 and the accompanying Administrative Instruction of the Social Representative of the UN Secretary General (2001) foresees that a person who sustained a minimum of 40 per cent physical infirmity in connection with the armed conflict in Kosovo has the right to compensation. So do family members of

KLA members and civilians who had lost their lives in connection with the armed conflict.²⁹² The Regulation does not include Serbian policemen or soldiers,²⁹³ but when it is a matter of civilians, enjoying the rights in accordance with the Regulation is not dependant on membership in certain ethnic group. In practice, however, the number of non-Albanians who have requested compensations on the basis of this Regulation was negligible. In 2006 out of 7,528 compensation beneficiaries, only 27 were non-Albanians.²⁹⁴

Compensation paid in accordance with the 2000/66 Regulation was modest. Monthly compensation on any basis could not exceed 75 Euros. To compare, the minimum salary in state services amounted to 120 Euros, and the average salary 199 Euros. The compensation in accordance with the law of 23 February 2006 is three times higher than the current one.²⁹⁵ In addition to this, the number of persons in receipt of compensation will grow, because the right to personal disability pension will also be enjoyed by military invalids with bodily infirmity of 10%²⁹⁶ (according to the Regulation, the minimum was 40%), as well as the families of the missing.²⁹⁷ The increase in the number of beneficiaries and the height of the compensation was an additional burden for the Kosovo budget. This is why the then Special Representative of the UN Secretary General, Soren Jessen-Petersen, in the Regulation of 2 May 2006, on passing the law, conditioned putting the law into effect with the confirmation from the appropriate authority that there are sufficient financial means to implement the law.²⁹⁸

289 *Ibid.*

290 Interview with the representative of the Ministry for Social Affairs of the Republic of Serbia, Belgrade 2 February 2007.

291 Interview with Muhamed Gjocaj, Director of the Department for Social Welfare at the Ministry of Labour and Social Welfare, Priština, 20 February 2007.

292 The 2000/66 Decree on the Privileges for War Invalids in Kosovo and for Next-of-Kin of Persons who Lost Their Lives Because of the Armed Conflict in Kosovo, 21 December 2000, art. 2 (1); Administrative Instruction No 2001/19 for the Implementation of Decree 2000/66 on the Privileges of War Invalids in Kosovo for Next-of-Kin of Persons who Lost Their Lives Because of the Armed Conflict in Kosovo, 28 November 2001, section 2.

293 International Committee of Red Cross, *Legal Study: The families of the missing in Serbia and Montenegro* (2004), p. 56.

294 Interview with Muhamed Gjocaj, Director of the Department for Social Welfare at the Ministry of Labour and Social Welfare, Priština, 20 February 2007.

295 *Ibid.*

296 *Law on the Status and the Rights of the Families of Martyrs, Invalids, Veterans and Members of the KLA and of the Families of Civilian Victims of the Armed Conflict in Kosovo*, 23 February 2006, art. 8 (1).

297 *Ibid.*, arts. 6 (5) and 11 (6).

298 *Regulation No 2006/29, On the Promulgation of the Law on the Status and the Rights of the Families of Martyrs, Invalids, Veterans and Members of the KLA and of the Families of Civilian Victims of the Armed Conflict in Kosovo Adopted by the Assembly of Kosovo*, 2 May 2006, point C.

Another disputable issue, concerning the law adopted by the Kosovo Assembly on 23 February 2006, is the use of legal terminology with political connotation. In the original title of the law,²⁹⁹ and several places in the text, the word “hero” is used as a denomination for a deceased member of the KLA. The text adopted by the Assembly, also denominates events between February 1998 and June 1999 by the term “war”, with an implication that this was an armed conflict between two states. The period between December 1991 and September 1999 is denominated as “occupation”.³⁰⁰ In the regulation of May 2006 on the law’s promulgation, the Special Representative of the UN Secretary General exercised his right to make some changes in the text, so that the word “war” was replaced by a neutral term “armed conflict” (which can pertain to an internal conflict but also a conflict between states). The Special Representative removed the word “occupation” from the law, and the term “hero” was replaced by the term “martyr”, although the latter does not sound any less ideological than the term it replaces. In any case, the reaction of the war veterans to the changes Petersen made in the text was negative, and the Kosovo Prime Minister Agim Çeku had to make a public explanation about the government’s initial acceptance of the law containing Petersen’s amendments.³⁰¹

As the date of 1 January 2007, which was envisaged as the date the law would come into effect, approached, the war veterans expressed greater readiness to accept it despite the modifications made to the text. (The Law envisages higher compensations for veterans than the one they enjoyed by Regulation 2000/66.) The Government of Kosovo, therefore, passed a deci-

sion at the end of the year, in accordance with which the law should start being used with effect from 1 January 2007, bearing in mind that – due to limited resources – only the part on military invalids and families of individuals killed in combat or missing servicemen would be implemented.³⁰² Civilian victims of war, including civilian war invalids, would, in line with this decision, continue to receive smaller amounts of compensation, based on Regulation 2000/66.³⁰³ This approach is contrary to the opinion of the Special Representative of the UN Secretary General that the law could come into effect only providing there were financial means for its implementation.

The law adopted by the Assembly in 2006 and conditionally approved by the Special Representative provides higher personal disability pensions pay for military invalids in comparison to the civilian ones,³⁰⁴ and almost twice higher family compensations for members of KLA who died in combat (during the course of armed conflict) than for civilians.³⁰⁵ Military invalids are also privileged as it suffices for them to have a bodily infirmity of only 10% in order to have the right to a disability pension, while the requirement for civilians is to have an infirmity of at least 40%.³⁰⁶ Differences are particularly conspicuous in the legal treatment of civilian invalids and next-of-kin of killed civilians, on the one hand, and former members of KLA, who were not victims of war at all, on the other. For KLA veterans and members of their families, the law envisaged certain privileges – as is a privileged position for employment and enrolment into educational institutions – which are not afforded to civilian victims of war.³⁰⁷

299 The name of the act adopted by the Assembly was “Law on the Status and the Rights of the Families of Heroes, Invalids, Veterans and Members of the KLA and of the Families of Civilian Victims of War.”

300 Law on the Status and the Rights of the Families of Martyrs, Invalids, Veterans and Members of the KLA and of the Families of Civilian Victims of War, 23 February 2006, art. 2.

301 Law on the Status and the Rights of the Families of Martyrs, Invalids, Veterans and Members of the KLA and of the Families of Civilian Victims of War, 23 February 2006, art. 2.

302 Interview with Muhamed Gjocaj, Director of the Department for Social Welfare at the Ministry of Labour and Social Welfare, Priština, 20 February 2007.

303 *Ibid.*

304 The calculation base pay for military disability pensions is 140% of the minimum salary in Kosovo during the previous year (art. 8 (3)), while the amount of the base pay for civilian disability pensions is 100% of the minimum salary (art. 12 (2)).

304 The base pay for family pension for a family member who died in combat is 180% of the minimum salary in Kosovo (art. 6(6)), while the base pay for a civilian who died in combat is 100% (art. 11(%)).

305 The base pay for family pension for a family member who died in combat is 180% of the minimum salary in Kosovo (art. 6(6)), while the base pay for a civilian who died in combat is 100% (art. 11(%)).

306 Arts. 8(1) and 12(1).

307 See arts. 10 (1), 10 (2) and 11.

Rights of the Families of the Missing

In line with UNMIK Regulation 2000/66, the families of killed civilians could exercise their rights to monthly income.³⁰⁸ The Regulation does not mention explicitly the families of the missing, from which it transpires that the families of the missing would be able to receive the monthly compensation only after the missing are declared dead. Only a small number of Kosovo Albanians was ready to make the formal declaration.³⁰⁹ Bearing in mind that the Regulation only pertains to the period until 20 June 1999,³¹⁰ and the largest number of non-Albanians disappeared following this date, the rights on the basis of this Regulation were mostly at the disposal of Kosovo Albanians. In practice this meant that after identifying the missing person, the Government bore the costs of the funeral (including the purchase of a coffin), and it also paid a modest sum of one-time compensation.³¹¹

In accordance with the new law on the rights of servicemen, invalids and civilian victims of war, of February 2006, families do not have to declare a member of their family dead so as to gain the right to a disability pension.³¹² As explained above, the law did not come into effect by the end of the year.

Montenegro

In Montenegro the number of war invalids and civilian victims of war is substantially smaller than in the other parts of the former Yugoslavia. There was no armed conflict on the territory of Montenegro, with the exception of the NATO bombing in 1999. Citizens of Montenegro were killed in combat and went missing in other theatres of war conflict of former Yugoslavia,

and the right to receive state compensation springs from those events. At the end of 2006, the Ministry of Health, Labour and Social welfare was paying compensation to 258 military invalids, five civilian invalids, and to the families of 184 former members of Yugoslav People's Army (JNA).³¹³ The other distinction of Montenegro, concerning the rights of the victims of war, is that the law does not envisage compensations for families of killed and missing civilians. This omission partly results from the fact that the number of killed and missing civilians, who are the residents of Montenegro, is relatively small, so that the omission of this category from the law, in present circumstances, does not have great practical value. However, as a matter of principle, provisions on the families of civilians who lost their lives during the war conflict should be included in the law.

Personal War Disability Pensions (Military and Civilian)

As is the case in other parts of the former Yugoslavia, in Montenegro too, the percentage of disability required to obtain the status of *military* war invalid is lower (20%) than the percentage required to obtain the status of *civilian* war invalid (50%).³¹⁴ One of the bases for the recognition of disability is an illness of psychosomatic origin, although in practice the number of persons who have been recognized disability on this basis does not exceed 3 per cent of the total number of war invalids.³¹⁵ First-category invalids were receiving, at the end of the year, 360 Euros (average salary in Montenegro amounted to 250 Euros), and the sum was proportionately smaller for every next category. For first category invalids compensation for care and help, and orthopaedic aids, was also envisaged.

308 Regulation 2000/66 on the Privileges for War Invalids in Kosovo and for Next-of-Kin of Persons Who Lost Their Lives Because of the Armed Conflict in Kosovo, 21 December 2000, art. 2 (1).

309 Information obtained from the OMPE, Priština, 19 February 2007. The Study of the International Committee of the Red Cross, from 2004, showed that there were less than 12% of the families of the missing in Kosovo who would have their member declared dead. International Committee of Red Cross, Legal Study: The Families of the Missing in Serbia and Montenegro (2004), p. 116, footnote 156.

310 Regulation 2000/66 on the Privileges for War Invalids in Kosovo and For Next-of-Kin of Persons Who Lost Their Lives Because of the Armed Conflict in Kosovo, 21 December 2000, art. 1 (5).

311 Information obtained from the OMPE, Priština, 19 February 2007.

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

313 Interview with the representatives of the Ministry of Health, Labour and Social welfare, Podgorica, 28 February 2007.

314 Law on Protection of Servicemen and Invalids (2003), arts. 8 and 18.

315 Interviews with the representatives of the Ministry of Health, Labour and Social welfare, Podgorica, 28 February 2007.

Family Disability Pensions for Family Members of Servicemen Killed in Combat

At the end of 2006, families of servicemen killed in combat received family disability pensions in the amount of 220 Euros per one immediate member of family and 50 per cent of this amount for every other family member. Children also have the right to a smaller sum of the material provisions, and for every child of school age the law envisages the so-called increased family disability pensions. Bearing in mind all these different bases of pay, a mother and two children of a serviceman who died in combat can get a monthly income of 800 Euros.³¹⁶ These are substantial amounts, bearing in mind that the average salary in Montenegro, at the end of 2006, was 250 Euros. In addition, the state has provided housing for almost all the families of servicemen killed in combat, although there is no mention in the law of this provision.³¹⁷

Reparations Based on Court Decisions

In all the post-Yugoslav countries this report covers, a certain number of civilian victims of war and persons whose human rights had been seriously violated in the past are trying to obtain reparations through court proceedings. As a rule, laws forbid the receipt of compensation on two bases, so that the ones who resort to court proceedings for seeking justice are the ones who did not succeed in obtaining compensations on the basis of statute. A single exception to this are the Kosovo Serbs who are trying, through the court, to make the authorities pay them in full the damages caused by destruction of their houses in March 2004; the Kosovo Government has already restored these houses, but not to the extent and in a way that would fully compensate for the destruction. The courts did not reach decisions, by the end of 2006, on the lawsuits filed by applicant Kosovo Serbs.

The lawsuits of applicants in post-Yugoslav countries refer to compensation of material damages (e.g. for destroyed property), and compensation for illegal arrest, bodily infirmity, and mental suffering, including suffering over the death and disappearance of a family member. In some cases, the lawsuits can be

launched both against the direct perpetrators and against the state, but there are also numerous situations where lawsuits are possible only against direct perpetrators.

The number of applicants is relatively small, even in countries in which the armed conflicts lasted longest and the consequences of demolitions are extremely grave (Croatia and BiH). There are several reasons why victims rarely resort to seeking compensation through court proceedings:

- Persons testifying at war crime trials against individuals indicted for torture and inhuman behaviour often do not know that they have the right to launch separate, civil suits in which they would request that the indictee compensate their damages.
- There is no efficient system of free legal aid, nor are there legal provisions on the basis of which victims would be exempt from having to pay court fees and costs of the proceedings in the event that they lost the lawsuit.
- The proceedings last long, and the odds of a positive ending are uncertain, because the states have introduced such changes to the laws whereby they have narrowed the legal framework in which claimants have prospects for success. In some of the countries, supreme courts – the decisions of which are binding for the lower courts – are influenced by the executive to restrictively interpret the legal provisions, especially with regard to the statute of limitation, so that victims practically remain without the possibility of courts bringing decisions on their claims.
- In the cases where the claimants have succeeded in obtaining reparations, the sums received are, as a rule, smaller than they would have been had the individual received compensation on the basis of statute (reparation programmes) through a longer period of time.

Bosnia and Herzegovina

Bearing in mind the number of crimes committed during the war from 1992 to 1995, the number of launched proceedings for reparation in BiH is proportionately small. In BiH war victims are discouraged

316 *Ibid.*

317 *Ibid.*

from becoming involved in court proceedings by the complex institutional system and the unclear legal norms. Victims often do not know whom to sue – the direct perpetrator or the state. If they elect to sue the latter, they are uncertain which entity to sue, and whether they should additionally sue the state of BiH.

Within Republika Srpska a small number of members of former servicemen and their family members managed to obtain reparations through court proceedings. In the second half of the 1990s, they sued the Ministry of Defence of Republika Srpska, on the basis of the Law on Obligations, as the authority which sent servicemen to war. Their claims concerned compensation for bodily infirmities or for death of a family member in combat. However, only a small number of applicants – some 190 of them – managed to implement the judgments.³¹⁸ A much bigger number of individuals – allegedly 15,000 – won the lawsuits, but these decisions were not implemented due to lack of funds.³¹⁹

Lawsuits against Republika Srpska were also filed by a number of Bosniaks. Some 20 Bosniak applicants tried, during the previous years, to get reparation of damages before the Municipal Court in Foča for the killing of their family members, demolition of houses (which have not been restored by the state), and destruction of movable property. In written replies to the charges, the Republika Srpska Public Defender stated that the charges could be filed only against the direct perpetrators, that this was the matter of war damages for which Republika Srpska, as an entity, cannot be held responsible, and that, in any event, the statute of limitation has expired.³²⁰ In a number of cases, the claimants, who mainly live in Sarajevo, were not in a position to appear in court, because the hearings were scheduled during the winter months when Foča, due to heavy snowfall, is practically cut off from the rest of the country. In these situations,

the Court mostly brought judgments to the victim's disadvantage, due to their non-appearance in court, and ordered the claimants to pay high sums in respect of proceedings expenses.³²¹ Due to the position of the Public Defender's Office and the risks that they might have to pay costs should they lose the case, at the end of 2006 several other claimants considered withdrawing their charges.³²²

According to the information of the BiH Union of Camp Prisoners, the members of which are mostly Bosniaks, one former camp prisoner managed to win a lawsuit against Republika Srpska for illegal imprisonment. The first-instance decision in Banja Luka, reached in March 2003, was confirmed by the decision of the second-instance court in October 2005, and Republika Srpska was obliged to pay the applicant 4,500 Convertible Marks (2,300 Euros).³²³ By the end of 2006, however, this judgment remained unexecuted.³²⁴

Human Rights Chamber and Human Rights Commission

Due to the difficulties in obtaining compensation of damages before the relevant courts, a large number of civilian victims of war – families of killed and missing persons – have since the end of the war used a specific mechanism, which exists in BiH, and which is not available to other victims from former Yugoslavia. It is the Human Rights Chamber, a body constituting international and domestic judges and established by the Dayton Peace Accords, and the Human Rights Commission and Constitutional Court of BiH, which took over the function of the Chamber after it ceased operating at the end of 2003.³²⁵ There is the possibility of launching proceedings on human rights violations before these organizations, if all legal

318 Interview with the representatives of the Ministry of Labour and Military-Invalid Protection of the Republika Srpska, Banja Luka, 23 January 2007.

319 Interview with Milorad Kalamanda, Secretary General of the Veterans' Organization of Republika Srpska, Banja Luka, 23 January 2007.

320 Telephone interview with Hasan Balić, former Judge of the BiH Human Rights Chamber, one of the claimants in a reparations case before the Municipal Court in Foča, 3 March 2007.

321 *Ibid.*

322 *Ibid.*

323 Telephone interview with Murat Tahirović, President of the BiH Union of Camp Prisoners, 3 February 2007.

324 *Ibid.*

325 Human Rights Commission took over the cases that were initiated before the Human Rights Chamber but remained pending by the end of 2003. The Constitutional Court is investigating the cases of human rights violations, the requests of which were filed after 1 January 2004.

remedies within the regular judicial system have been exhausted. In view of the fact that the Human Rights Chamber had jurisdiction for violations committed after the Dayton Agreement came into effect, it was not possible to get compensation of damages before this body for wartime violations. However, in the cases where the authorities failed to undertake the necessary measures after the war to find the bodies of missing persons, this was a matter of continued violations where the families of the missing could still receive compensation.

In some cases, the Human Rights Chamber or the Human Rights Commission ruled individual compensations to the claimants—members of close family of the missing. While in the first such case, *Avdo and Esma Palić vs. Republika Srpska*, the amount of compensation was 50,000 KM (around 25,000 Euros by today's exchange rate),³²⁶ the later amounts determined by the Commission were significantly lower (5,000 KM per claimant).³²⁷ In another group of decisions, the authorities were ordered to pay collective compensation. In the *Srebrenica* case (*Selimović et al vs. Republika Srpska*) (2003), the Human Rights Chamber ordered the authorities of Republika Srpska to pay 4 million KM (a little over 2 million Euros) to the Foundation Srebrenica – Potočari memorial.³²⁸ The decisions on forced disappearances in Foča, Višegrad, Vlasenica, and Rogatica, obliged the authorities of Republika Srpska to pay 100,000 KM each into the account of the BiH Institute for the Missing Persons, for the collection of information on the whereabouts of the the missing.³²⁹

In all the ten cases in which, from January 2001 to November 2006, the Human Rights Chamber or the Human Rights Commission ordered Republika Srpska to pay individual reparations for not undertaking measures to establish the whereabouts of the missing persons, Republika Srpska fulfilled these obligations. The authorities of the Federation BiH

did the same in the five cases in which the House or the Human Rights Commission found the Federation accountable on the same charges. However, in none of these fifteen cases, nor in the remaining three cases (in which the Human Rights Commission did not find that the respondent had to pay the applicant financial damages) did Republika Srpska, Federation BiH nor the State of Bosnia and Herzegovina completely fulfil their obligations in respect of conducting thorough investigations to find information on the fate of the missing and bringing the responsible to justice.

Serbia

As the respective legislation in Serbia does not give the possibility for receiving reparations in those cases where the physical infirmity of the civilian was caused by activities of the state authorities of Serbia,³³⁰ nor in those cases where the bodily infirmity was caused by illness sustained during the armed conflict, civilians from these categories of victims can obtain compensation only in court. In Serbia there is no state programme of reparations for victims of mass human rights violations by the regime of Slobodan Milošević, during the period 1987-2000, so the victims of these violations are forced to seek justice by means of individual court proceedings. Court proceedings of cases for reparation of damages in Serbia are characterized by a greater diversity than in other parts of former Yugoslavia, and the number of proceedings launched and judgments reached is higher than elsewhere.

On behalf of 780 Serb refugees from Croatia, who fled to Serbia in 1995, after the Operation Storm, the Humanitarian Law Center has filed charges against the Republic of Serbia for illegal deprivation of freedom, as well as violations of the Convention on the Status of Refugees and the Serbian Law on Refugees. The victims were arrested in Serbia in 1995 and deported to

326 Human Rights Chamber, *Avdo and Esma Palić vs. Republika Srpska*, 11 January 2001, para. 91 (point 11).

327 Human Rights Commission, *Šehovac and Samardžić vs. Federation BiH*, and *Gojković et al vs BiH and Federation BiH*, 3 November 2004 (paras. 115 and 118 (point 8)). The same amount was ruled in favour of the applicants in the case that was decided on the very same day, *Zuban et al vs. Republika Srpska*, 3 November 2004 (para. 104 (points 8-10)), as well as the applicant in the case *Vištica vs. BiH and Republika Srpska*, 9 March 2004 (para. 90 (point 8)).

328 Human Rights Chamber, *Selimović et al vs. Republika Srpska*, 7 November 2003, para. 220 (point 10).

329 Human Rights Chamber, *Pašović et al vs. Republika Srpska*, 7 November 2003 (Foča); *Smajić et al vs. Republika Srpska*, 5 December 2003 (Višegrad); *Malkić et al vs. Republika Srpska*, 22 December 2003 (Vlasenica); *M.Ć. et al vs. Republika Srpska*, 22 December 2003 (Rogatica).

the war zones. These individuals faced inhuman treatment there by the commanding structures of the Serb units, or sustained bodily injuries in war operations. The damages sustained by these individuals were a consequence of the illegal activities of the authorities in Serbia, and on this basis the relevant court in Belgrade ruled reparations of damages to the applicants.

However, due to the position taken by the Supreme Court of Serbia, in February 2004, on the issue of statute of limitation, the victims that had not by then obtained compensation through court proceedings were no longer in a position to exercise this right. The court concluded that the state could be held responsible only within the general statute of limitation in matters of reparation of damages (the deadline is five years from the time the damages occurred), and the deadline for the forceful mobilization of refugees had expired, as the arrests had occurred in 1995. Prior to the Supreme Court decision, if the damages were caused by commission of criminal acts such as illegal detention, the statute of limitation for claims against the state expired within considerably longer periods of time, i.e. the period in which the statute of limitation expired for prosecuting the criminal act itself. According to the new opinion of the Supreme Court, however, within these longer periods of time only identified individuals—perpetrators of the criminal acts can be sued for compensation in civil cases.³³¹ Refugees who were forcefully mobilized do not know the identity of the policemen and the soldiers who made the arrests. At the same time, launching proceedings against the state is not possible, due to statute of limitation. Proceedings against individuals who headed political and police structures in the mid 1990s are not possible either, because they are no longer alive or cannot be reached because they are being tried by the International Criminal Tribunal for the former Yugoslavia.

On behalf of victims of torture and other violations of human rights during the rule of Slobodan Milošević, HLC and other human rights organizations have filed a large number of charges for reparations against the state. The case in which the applicant is Ljiljana Đuknić, a victim of police beating during opposition demonstrations in February 1997 when she was 62 years old, remained pending almost ten years after proceedings were launched. The trial commenced on 5 December 1997.³³² After the fall of Slobodan Milošević, HLC launched proceedings, on behalf of dozens of former activists of the *Otpor* movement and other individuals, demanding that the state pay them non-material damages for the mental suffering sustained from arrests and maltreatment in 1999 and 2000.³³³ In three second-instance judgments in 2006, where the applicants were represented by the HLC, the District Courts held the state liable and ordered it to pay the applicants damages ranging from 60,000 to 150,000 Dinars (from 770 to 1,920 Euros).

Kosovo Albanians, whom the authorities of Serbia had illegally deprived of their freedom during 1998 and 1999, are another category of applicants in the proceedings for compensation. During 2006, three such cases were being held. In February, the First Municipal Court in Belgrade found the state responsible for the illegal detention of four Kosovo Albanians. The victims were paid 700,000 Dinars each by the State, in respect of material compensation of damages for illegal arrests.³³⁴

Nineteen women and minors at the time, Croats from Vukovar, filed a charge for compensation of damages against the Republic of Serbia, for being illegally imprisoned in camps in Begejci and Sremska Mitrovica, in Vojvodina, in 1991.³³⁵ Unless there is a change in the position of the Supreme Court of Serbia on the statute of limitation of claims for compensa-

330 The law recognizes the status of civilian war invalid only to those individuals who sustained bodily infirmity by the activities of enemy formations. The Law on the Rights of Civilian Invalids of War, Official Gazette of the Republic of Serbia, No 52/96, art. 2.

331 Legal opinion of the Citizens Department of the Supreme Court of Serbia, taken at the session on 10 February 2004.

332 Data in the possession of the Humanitarian Law Center.

333 During 2000 and 2001, the Humanitarian Law Center filed 60 charges on behalf of 86 members of *Otpor*. All proceedings ended with decisions in favor of the claimants, except in two cases where, following the decision of the Supreme Court of Serbia, the claims were dismissed on revision. The amounts of compensation ranged between 10,000 and 200,000 Dinars (from 130 to 2,560 Euros, by the exchange rate end of 2006).

334 Data in the possession of the Humanitarian Law Center, which represented the applicants in this case.

335 Humanitarian Law Center, "Tužba protiv Srbije zbog odvođenja hrvatskih civila u logore na teritoriji Vojvodine nakon pada Vukovara 1991. godine" ("Charge against Serbia for Putting Away Croatian Civilians into Camps on the Territory of Vojvodina, after the Fall of Vukovar in 1991"), *HLC Press Release*, 16 November 2006. (http://www.hlc.org.yu/srpski/Nacionalna_sudjenja_za_ratne_zlocine/index.php?file=1562.html).

tion of damages, these lawsuits could be rejected and former camp prisoners could remain without compensation for violations of their human rights.

The citizens of Serbia, who sustained damages by Albanians in Kosovo have the possibility to exercise their rights to compensation of damages before the courts in Serbia, on the basis of the provision of the Law on Obligations and the obligation of the state in the case of terrorist acts, public demonstrations or manifestations.³³⁶ The accountability here is for the obligation of the state to prevent the damage. It is for the claimant to decide whether to sue the state alone, or the state together with the perpetrator. Despite this legal possibility, the victims of Serbian nationality are mostly not interested in suing the state of Serbia, and during research carried out for this report not one such case was registered.

Croatia

Claims for compensation of damages against the Croatian state were raised by a number of persons during the past few years, in the cases where damages were inflicted during the wartime period (1991-95) by members of the Croatian police and army, as well as for damages inflicted by members of the Serbian armed formations. The courts denied the requests of most applicants, with few exceptions.

On 12 June 2006, the Municipal Court in Drniš brought a judgment where a compensation of 2.5 million Kuna were to be paid to the families of four Croats from the village of Čitluk, near Drniš, who had been killed in January 1993. Four elderly men had

been killed by unidentified members of the units of the so-called Republic of Srpska Krajina. The Court in Drniš took a position that the killings of civilians on the territory of Croatia under Serbian control are treated as terrorist acts, and not war operations.³³⁷ In cases of terrorist acts, the state is obliged to pay compensations in line with the Law on Responsibility for Damage Caused by Terrorist Acts and Public Demonstrations (2003).³³⁸ The opinion of the State Prosecutor's Office, which represents the sued state in proceedings of compensations of damages, was that the responsibility of the state for terrorism cannot be associated with war events. The State Attorneys Office, therefore, filed an appeal against the judgment, claiming that this was a matter of war damages for which the state cannot be held responsible.³³⁹ During the previous years, when applicants requested compensation of damages for killings committed by Serb forces, the municipal courts in Benkovac, Vojnić and Gospić declined these requests.³⁴⁰

Serbs in Croatia also put in requests for compensations of non-material damages for the deaths of their families during the war. In a number of cases, in which the courts had initially determined criminal accountability of the indicted for war crimes (Paulin Dvor, Gospić), the family members who survived – the victims, received compensation in subsequently launched civil proceedings.³⁴¹ In addition to this, in some cases the courts ruled decisions on compensation of damages to family members of killed Serbs, although no individual criminal responsibility for the crime was determined.³⁴² However, more numerous are cases in which courts denied claimants' requests, with the explanation that the statute of limitation has

336 Art. 180 of the Law on Obligations. The state has the right to demand compensation for the amount of money paid out, from the individual who caused the damage.

337 Ivanka Toma, "Hrvatska ne može plaćati odštetu za zločine Martićevaca" ("Croatia Cannot Pay Compensations for Crimes of Followers of Martić"), *Jutarnji list website* (Zagreb) (www.jutarnji.hr/dogadjaji_dana/clanak/art-2006,8,17ratni_zlocini,39349,jl), 17 August 2006.

338 *Narodne novine (Official Gazette)*, No 117/2003, 23 July 2003.

339 By the end of the year, the higher court did not bring a judgment on the appeal of the State Attorneys' Office on the judgment by the Municipal Court in Drniš.

340 Frane Šarić, "Prva presuda za ubijene Hrvate" ("The first judgment for killed Croats"), *Večernji list website* (Zagreb) (www.vecernji-list.hr/newsroom/news/croatia/611543/index.do?show=all), 16 August 2006.

341 In accordance with the report of the OSCE Mission in Croatia, in May 2005, the Municipal Court in Osijek ruled a compensation of 28,000 Euros to Nenad Jelić, son of the spouse who had been killed in Paulin Dvor in 1991 by members of the Croatian army. In June 2006, Darinka Vujnović was also granted by the Municipal Court in Gospić compensation of damages amounting to 39,000 Euros. Her husband had been killed end of 1991, after he had been seen in police and military custody. Organization for Security and Co-operation in Europe, Mission to Croatia, *Background report: Domestic War Crime Trials* 2005, 13 September 2006, p. 27, footnote 88.

342 Beginning of August, the Municipal Court in Osijek ruled a compensation of 95,000 Euros to family members of a Serb who had gone missing, after being in police custody from 1991. *Ibid.*, p. 27, footnote 89.

expired or that the property of the civilians had been destroyed due to war activities in the zone, so that this was actually a war damage (which the State is not responsible for), and not claim for damages caused by commission of war crimes.³⁴³ In a number of cases the Courts requested the family members of the victims to pay the expenses of the proceedings.³⁴⁴

Compensation of material damages by the Law on Accountability for Damages Caused by Terrorist Activities and Public Demonstrations (2003) encompasses damages caused by death, physical injury or deteriorated health. Material damages are compensated in the form of reconstruction of damaged or destroyed material goods in line with the Law on Reconstruction.³⁴⁵ In these cases, the greatest difficulty is if the claimant does not fulfil the conditions from the Law on Reconstruction. The most frequently registered problem is that the destroyed or damaged property was not the property where the claimant requesting reconstruction had a registered residence (e.g. when one had a cottage, an inherited house, etc), which is a precondition for accomplishing the right to reconstruction.

Montenegro

During 2006 a large number of civil proceedings were held in Podgorica, in which dozens of Bosniaks from BiH sued the state of Montenegro for compensation of damages for the deportation of Bosnian refugees in 1992 from Montenegro to Republika Srpska, where many of them were then killed. (See text above, chapter entitled *War Crime Trials – Montenegro*). In 30 proceedings launched in 2006 the claimants are the family members. In addition to this, six proceedings

were launched in which the surviving individuals sued the state of Montenegro for hardships suffered.

In all the proceedings the State Prosecutor's Office of Montenegro, in the role of the representative of the state, requested an adjournment in the proceedings until it was determined in a parallel criminal proceeding whether a war crime had actually been committed. Some of the chambers of the competent court in Podgorica (the Basic Court) first met the request of the State Prosecutor's Office but the Higher Court in Podgorica overruled the decision on adjournment of proceedings on 28 June 2006, and the proceedings were resumed.³⁴⁶

The state sued in the proceedings for compensation of damages was represented by the Chief State Prosecutor, who played the opposite role in the criminal proceedings at the same time – she was in charge of presenting evidence on the involvement of state officials in commission of war crimes. Representatives of the Council of Europe, who in 2006 investigated the conformity of the Montenegrin legislature with the standards of the Council of Europe, concluded that the conflict of interests, which results from the constitutionally-defined competences of the State Prosecutors' Office, should be overcome by amending the relevant provisions of the Constitution.³⁴⁷

In 2006, eight proceedings were finalized. In seven cases the Chambers partially granted the requests of applicants for the compensation of damages already sustained and future emotional distress resulting from the death of a close member of family. The amounts approved range from 20,000 to 25,000 Euros per immediate family member.³⁴⁸ The Chambers denied the applicants' requests concerning the fear

343 Interview with attorney Luka Šušak, the representative of families of Croatian Serbs in several cases in which the claimants requested from the state compensation of damages inflicted by the Croatian army or police, Zagreb, 24 January 2007.

344 These decisions were passed by the courts in the cases of *Marica Šeatović vs. Republic of Croatia* (judgment of the Municipal Court in Novska from 2004, which was supported by the verdict of the County court in Sisak, on 18 May 2006, so that the claimant, Šeatović had to compensate to the sued state of Republic of Croatia the proceedings expenses, amounting to 7,500 Kuna), and *Petar Mileusnić and Goran Mileusnić vs. Republic of Croatia* (judgment of the Municipal Court in Novska, September 2005), in which the claimants requested that the state compensates them for damages of killing their family members in 1991 in Novska.

345 Law on Accountability for Damages Inflicted by Terrorist Acts and Public Demonstrations, *Narodne novine* No 117/2003, art. 7 (1) and 8.

346 Amnesty International, *Montenegro: The Right to Redress and Reparation for the Families of the 'Disappeared'*, December 2006, p. 6.

347 *Report of the Conformity of the Legal Order of the Republic of Montenegro with the Council of Europe Standards, Submitted by Mr Anthony Bradley, Substitute Member of the European Commission for Democracy through Law (the Venice Commission) and Mr Kaarlo Tuori, Member of the Venice Commission*, Strasbourg, September 2006, paras. 67 and 122.

348 Šeki Radončić, "Tuda patnja ne boli" ("Other People's Suffering Does Not Hurt"), *Monitor* (Podgorica), 19 January 2007; "Porodici Borovac 160.000 eura" („160,000 Euros to the Borovac Family“), *Vijesti website* (Podgorica), 2 December 2006 (www.vijesti.cg.yu/naslovna.php?akcija=advview&id=220169).

experienced by the applicants and violation of their individual rights. The applicants, therefore, lodged appeals against the first-instance judgments. The state also appealed with the argument that there was no causative relation between the operations of the Montenegrin police and the latter deaths.

In view of the probability that in the proceedings for compensation of damages upon the requests of Bosniaks there would be an annulment of first-instance judgments and the launching of retrials, which is likely to prolonged agony for the family members, their legal representatives proposed to the Prime Minister of Montenegro, Željko Šturanović, in December, to reach settlements in all the 36 court proceedings.³⁴⁹

Another large group of proceedings for compensation of damages in Montenegro relate to crimes committed on the border between Montenegro and Kosovo during the NATO bombing in the spring of 1999. In the Kaluđerski Laz village, on 18 April 1999, persons who are presumed to be members of the Yugoslav Army killed seven persons from a line of 32 refugees who had fled from Kosovo seeking refuge in Montenegro. By mid-June a total of 21 persons had been killed in this area, among them several elderly, children and women. After six years in which these killings were hardly ever mentioned in public, the Montenegrin Lawyers Committee for Human Rights and the Kosovo Council for Human Rights filed in 2005 a criminal charge with the relevant Prosecutors' Offices in Montenegro.

At the same time, families of the killed persons, during 2005 and 2006, brought 12 lawsuits for compensation of damages against the State Union of Serbia and Montenegro and the Army of Serbia and Montenegro, as chief indictees. The second indictee in these cases is the Republic of Montenegro, because its Ministry

of Interior allegedly failed to protect the lives of the deceased. In addition to these cases, 36 families from several villages in the borderline region between Montenegro and Kosovo also sued the State Union of Serbia and Montenegro and the Army of Serbia and Montenegro for destruction and damage inflicted on their property in April 1999.

In May 2006 a referendum was held in Montenegro in which most of the citizens opted for the state independence of Montenegro. The Board of Judges of the Legal Proceedings Department of the Main Court in Podgorica took a stand, at the beginning of June, that the proceedings in connection with the Kaluđerski Laz case should be adjourned until it is determined which of the two now independent states was the legal successor of the State Union of Serbia and Montenegro (Federal Republic of Yugoslavia, as it was called at the time the crime was committed).³⁵⁰ Proceedings in the lawsuits of families from the village of Gornji Bukelj, near Rožaje, for damages to their houses and auxiliary buildings inflicted by members of the Yugoslav Army in 1999, was adjourned on 6 June 2006.³⁵¹ On 9 October, the Main Court in Podgorica brought the decision on court adjournment in all the six proceedings, where the families of killed Kosovo Albanians tried to obtain compensation of damages.³⁵² Some decisions relate to the adjournments of the whole proceedings and the other only to the adjournment of proceedings in respect of some of the respondents.³⁵³

Kosovo

From 1999 to 2006 the Kosovo Serbs filed more than 10,000 requests to the Kosovo courts for compensation of damages done to properties immediately after the end of the war in 1999, and between 4-5,000

349 The letter from the Prelević Attorney's Office to the President of the Government of Montenegro, Željko Šturanović (initiative for settlement in requests of compensation of damages to the victims of deportation of Bosnian refugees in 1992), Podgorica, 13 December 2006.

350 D.B. "Nema rješenja dok se ne utvrdi nasljednik" ("There Cannot be an Outcome before Determining Which of the Two is the Successor"), *Vijesti website* (Podgorica), 7 June 2006 (www.vijesti.cg.yu/naslovna.php?akcija=advview&id=202399).

351 *Ibid.*

352 A.S., "Murić: Država zataškava zločine" ("Murić: The State is Hushing Up Crimes"), *Vijesti website* (Podgorica), 10 October 2006 (www.vijesti.cg.yu/naslovna.php?akcija=advview&id=214911).

353 Telephone interview with Velija Mirić, President of the Montenegrin Lawyers' Committee for Human Rights and legal representatives of the claimants, 2 March 2007.

cases for movable property and assets destroyed in the March 2004 outburst of violence.³⁵⁴ The property owners sued the Government of Kosovo and the municipal authorities, and often the UNMIK and KFOR (international armed forces in Kosovo) as well. As UNMIK and KFOR are protected by immunity from these lawsuits. In the second half of 1999, no municipal authorities or Government of Kosovo were in place, which could be held accountable for not preventing the above destructions. The remaining contentious issue thus is whether the courts should order the municipal authorities and the Government of Kosovo to pay the applicants compensation of damages for property destroyed in March 2004.

There is a programme of reconstruction of destroyed housing in Kosovo, similar to such programmes in other parts of the former Yugoslavia. The reconstruction, as a rule, includes only a small part of destroyed property. In view of the general rule that it is not possible to get from the State reparation for the same damage two times or more, and bearing in mind the unfavourable economic situation in Kosovo, the beneficiaries of the reconstruction are unlikely to obtain compensation through court proceedings. On the other hand, there are no reparation programmes in Kosovo which cover destroyed auxiliary buildings and movable property (machines, cars, etc).

Court practice did not provide replies to the question whether and to what extent the applicants have the right to demand compensations for the described types of damages. According to the information of the UNMIK Office for Liaison with Courts, which was established to facilitate interaction between non-Albanians and Kosovo judiciary, most courts have still not considered the charges, because of the huge caseload. In the few cases where they have considered the charges, the courts have not scheduled hearing because the claimants (mostly displaced persons) were not prepared to appear in court, nor did they engage legal representatives to appear instead. As an efficient network of free legal aid in Kosovo does not exist, at the end of 2006 there are still no signs that the obstacles for applicants' participation (in person

or through representatives) in proceedings would be removed.³⁵⁵

Reparations between States

In 2006 Montenegro provided financial reparation to Croatia for the plundered cattle-rearing farm in Konavle in 1991, amounting to 375,000 Euros. This action was the result of the *Memorandum of the Inter-State Council of Croatia and Montenegro*, signed in July 2005, which among other things states the intention of Montenegro to give moral and material satisfaction, on the basis of moral responsibility, to the region of Dubrovnik.

Return and Reconstruction of Property

Croatia

The issue of return and reconstruction of property in Croatia has, for a longer period of time, been considered primarily members of the Serb ethnic minority. The Croats who were forced to leave their flats in parts of Croatia under Serb control during the war, returned to their domiciles immediately after the war, with the partial exception of the region of Eastern Slavonia, where the return process is still ongoing. Reconstruction of property belonging to Croats was completed, for the most part, by 2003 and 2004. Return of abandoned private property, owned by Croatian Serbs, in which ethnic Croats lived for years after the war as temporary users, came to an end in 2006. However, the issue of flats over which Serbs used to have tenancy rights before the Croatian authorities took those rights away by introducing discriminatory measures during and after the war, remained almost untouched

Before the war, tens of thousands of Serbs, residing in urban settlements, lived in flats that belonged to the state and state companies, in which they had the so-called tenancy rights. This was a property right that by most of its characteristics was equal to ownership, except that the beneficiary of tenancy rights was not

354 Interview with Trifun Jovanović, Head of the Office for Liaison with Courts at the Department of Court Integration, Department of Law, UNMIK, Gračanica, 21 February 2007.

355 *Ibid.*

entitled to sell these rights, and the state could cancel it under specific, restricted circumstances. During the war and immediately after, the authorities took away tens of thousands of tenancy rights which had belonged to Serb refugees. From then until today, it has been practically impossible for these persons to get these flats back, or to get alternative accommodation or financial compensation for not being able to use the flat.³⁵⁶

Some 23,700 tenancy rights, which had belonged to Croatian Serbs, were cancelled in court proceedings during and after the war. These are flats from the regions which had been controlled during the war by Croatian authorities. In addition, thousands of tenancy rights in the regions which were under the rule of Serb rebel forces (Krajina), ceased to exist on the basis of the law passed in September 1995, after the Croatian Government took over the control over this part of the country.³⁵⁷

In the regions which had been under the control of the State during the war, the decisions on cancelling tenancy rights were usually passed on the basis of provisions of the Law on Housing, whereby tenancy rights ceased to exist if the beneficiary of the law is absent from the flat for six months “without a justifiable reason”. Although most of the refugees left because of a genuine threat, the Croatian courts refused to accept the argument that this was a justifiable reason for absence longer than six months.³⁵⁸ The groundlessness of such court rulings is vividly illustrated by the frequent trials of and investigations into war crimes against Serbs in urban areas (Osijek, Split, Sisak, and Gospić) during the past years in Croatia.

The law from September 1995, pertaining to the regions which had until then been under the control of Serbs, determined that tenancy rights would cease to exist should the tenant fail to return to the flat within 90 days after the passing of the law. One month before that, hundreds of thousands of Serbs fled Croatia as the Croatian forces were taking over the control, A number of elderly Serbs who stayed

were killed. At the time of the adoption of the law, it was obvious that a well-founded fear would prevent the Serb refugees from returning within 90 days to take possession of their flats.³⁵⁹

The proceedings for cancelling tenancy rights that have been held before the European Court for Human Rights did not provide the expected satisfaction to the former beneficiaries of tenancy rights. The reason is formal in nature, i.e. the fact that the Republic of Croatia ratified the European Convention on Human Rights only on 24 October 1997, while all cases before the European Court concerning tenancy rights had been concluded before Croatian courts prior to the ratification. The European Court, therefore, proclaimed lack of jurisdiction and did not go further into the merits of this case.

Providing housing for returnees, and solving the cases of former tenancy rights holders in the regions which had been controlled by the Serbs during the war (areas of special state interest – ASSI in further text) can be done by one of the following models envisaged by the Law on the ASSI, and depending on material means and the choice of the beneficiary: renting a state-owned flat on the basis of ASSI; renting a state-owned house; providing basic building material to a person to build a house on their own land; and providing a person a land-plot and basic building material to build a house. As of end-2006, according to the state statistics, the state had provided accommodation to 3,305 former tenancy rights holders in these areas.³⁶⁰ However, a negligibly small number of these cases pertain to the Serbs who had fled their flats in 1995 and had then lost tenancy rights, on the basis of the law of 1995. A large number of solved cases are in respect of Croats, who had left during the war the area now considered ASSI, and after the war returned to the flats they had lived in before the war. When in 1996 the Croatian Parliament passed a law which completely annulled the category of tenancy rights, these persons also lost their tenancy rights. By being provided “housing care” (*stambeno zbrinjavanje*) they acquired a different legal status, but in reality went

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

357 *Ibid.*

358 *Ibid.*

359 *Ibid.*, page 5

360 Ministry of Maritime, Tourism, Transport and Development, *Return of Deportees and Refugees to Croatia*, 15 January 2007.

on living in the flats they had already been living in.³⁶¹ Similarly, in the region of Vukovar, the Croatian authorities changed, during the past few years, the status of the tenancy rights holders to lessors, after the government had repaired and reconstructed the flats in which Croat returnees had lived after the war, and the flats of Serbs who had never left this region.³⁶² According to the data provided by the government from end 2006, there were 4,060 unresolved requests for “housing care” in the ASSI.³⁶³ This figure mostly relates to ethnic Serbs.

For areas which had been under the control of the State during the war (areas outside the areas of special state interest), the Croatian Government adopted in June 2003 a Conclusion on the Methods of Provided Housing to Returnees – Former Tenancy Rights Holders in State-Owned Flats, which would give the former tenancy rights holders the possibility of renting accommodation or purchasing of state-owned flats at special rates. However, by the end of 2006, not more than a couple of hundred former tenancy rights holders, out of a total of 4,425 who had filed requests, were provided housing on the basis of the three-year old programme. State statistics from December show that the state had purchased 114 flats for former tenancy rights holders,³⁶⁴ but it is unclear how many of them actually moved into these flats. The state intends to provide most of the flats for the other applicants by entering into a partnership with private companies. The companies are expected to build some 3,600 flats, which they will become owners of in the next 20 or 30 years. The state would be paying the price to the owners during that period, and only on the expiry of this

period would it become the new owner. This is why it remained unclear how the state would be able to sell the flats, before the expiry of the 20 or 30 years period, to tenancy rights holders who had opted to purchase a flat instead of renting it.³⁶⁵ The second big problem is that the purchasing price, although a bit lower than the market price, would still be very high, i.e. above the purchasing power of most of the returnees.³⁶⁶

By the end of 2006, a total of 142,144 destroyed and damaged houses and flats in Croatia had been reconstructed. Although government’s assistance for the reconstruction of the Serb houses only began in 2002, substantial progress has been made since. Between January 2004 and January 2006 the State reconstructed 4,139 houses,³⁶⁷ and during 2006 another 2,600 houses. Approximately four fifth of the beneficiaries of the reconstruction process are now Serbs.³⁶⁸ But a large number of requests filed by the Serbs – around 13,500 – were rejected due to incomplete documentation and other reasons.³⁶⁹ The appeals proceedings for applicants last for years, and during that period they remain without possibility to receive the reconstruction assistance or to request “housing care” from the state on some other basis.

Bosnia and Herzegovina

By the end of 2006, 99.7% of occupied properties in Bosnia and Herzegovina have been returned.³⁷⁰ Close to 200,000 houses and flats were returned to their pre-war owners, i.e. tenancy rights holders.³⁷¹ The situation is different with the reconstruction of

361 Interview with a member of the Organization for Security and Co-Operation in Europe (OSCE) – Mission in Croatia, Zagreb, 26 January 2006.

362 Human Rights Watch, *Croatia: A Decade of Disappointment: Continuing Obstacles for the Reintegration of Serb Returnees*, September 2006, p. 6.

363 Ministry of Maritime, Tourism, Transport and Development, *Povratak prognanika i izbjeglica u Hrvatskoj (Return of Deportees and Refugees to Croatia)*, 15 January 2007.

364 *Ibid.*

365 Interview with a member of the OSCE – Mission in Croatia, Zagreb, 26 January 2006.

366 *Ibid.*

367 Nenad Jovanović, “Elektrifikacija će trajati još pet do šest godina” (“Electrification Will Last for Another Five to Six Years”) (interview with Stanko Janić, Assistant Minister of the Ministry of Maritime, Tourism, Transport and Development), *Novosti* (Zagreb), 24 February 2006.

368 Ministry of Maritime, Tourism, Transport and Development, *Povratak prognanika i izbjeglica u Hrvatskoj (Return of the Deportees and Refugees to Croatia)*, 15 January 2007.

369 Interview with a member of the OSCE – Mission in Zagreb, Zagreb, 26 January 2006

370 Gordana Sandić-Hadžihasanović, “Pri kraju proces vraćanja imovine” (“The Process of Property Return Coming to an End”), *Radio Free Europe website*, 7 January 2007. (www.slobodnaevropa.org/articleprint/2007/01/07/c79120f2-a7a3-4e66-b3df-7b00d8d0a260.html).

371 Ministry of Human Rights and Refugees of BiH – Sector for Refugees, Displaced Persons, and Housing Policy, *Stambeni i urbani profil Bosne i Hercegovine: Slika razaranja, oporavka i razvojnih perspektiva (Housing and Urban Profile of Bosnia and Herzegovina: the Survey of Destructions, Revival, and Development Perspectives)*, May 2006, page 8.

demolished or damaged property. By the end of 2006, 260,000 flat units were reconstructed, and there still remains the need to reconstruct a further 40,000.³⁷² According to the estimate of the Ministry for human rights and refugees of BiH, it is necessary to obtain some 600 million KM (305 million Euros).³⁷³ At the end of 2006, 5,500 housing units were under reconstruction.³⁷⁴

Until 2003, reconstruction was mostly financed with foreign donations.³⁷⁵ This was understandable, in view of the limited economic power of the local authorities in the post-war period and the importance the international community attached to the reconstruction of the country destroyed by war. With time donors left BiH, and the local authorities took over the ever important role in financing the reconstruction. At the end of 2003, the Return and Reconstruction Task Force of the Office of the High Representative was closed and its competences were transferred to the Ministry for Human Rights and Refugees of BiH. From 2003-06, 70 per cent of the reconstruction was financed from local funds.³⁷⁶

Bearing in mind the extent of the damages on the properties which remain to be reconstructed, the costs of the reconstruction are growing by the unit. With the present level of investment, according to the Ministry for Human Rights and Refugees of BiH, in the coming four years a sustainable return can be expected of some 20,000 families, out of 40,000 which requested reconstruction in order to return.³⁷⁷

Kosovo

The Housing and Property Directorate – HPD was founded as part of the UNMIK mission, established in 1999. It was tasked with the protection and return of property rights. HPD received, until July 2003, requests for return of property and for resolution of the legal status of disputed property. In March 2006, HPD was replaced by the Kosovo Property Agency – KPA. While the mandate of the HPD related only to houses and flats, by founding the KPA a mechanism was put into place which was to enable the return of office space and land-plots too. KPA is an independent administrative agency, with the provision that its decisions are verified in the last instance by the Supreme Court of Kosovo. In contrast to this, the final decisions on the requests filed with HPD were brought by HPD itself.³⁷⁸

HPD had received some 29,000 requests by the time of the expiry of the deadline for filing requests (July 2003).³⁷⁹ The largest number of requests (a little over 27,000) belonged to the “C” group, i.e. it concerned the return of property which the owners – mostly non-Albanians – had left during and after the NATO bombing (March-June 1999). The requests from the “A” category are directed to the confirmation of owner’s property rights, which had by application of discriminatory measures been taken from Kosovo Albanians during the rule of Slobodan Milošević; 1,212 such requests were filed with HPD.³⁸⁰ Finally,

372 The estimate is based on the number of requests filed by potential beneficiaries of aid on the basis of a public tender of the Ministry for Human Rights and Refugees of BiH, launched mid-2004.

373 Ministry for Human Rights and Refugees of BiH, *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 (Assessment of the Conditions Concerning the Destroyed Housing Fund, Refugees from BiH, and Displaced Persons, and the Reconstruction Implemented So Far, With an Estimate of Funds Necessary for the Reconstruction of the Remaining Housing Units for the Purpose of Return to BiH)*, February 2007, p. 1.

374 *Ibid.*, p. 5.

375 Out of 260,000 housing units reconstructed in total by the end of 2006, more than two thirds were reconstructed by donated funds. Ministry for Human Rights and Refugees of BiH, *Assessment of the Conditions Concerning the Destroyed Housing Fund*, p. 5.

376 *Ibid.*, p. 5.

377 *Ibid.*, p. 6.

378 Interview with a public relations officer of the KPA, Priština, 21 February 2007.

379 According to UNMIK’s website, the number of requests received by July 2003 was 28,439. At the same time the Kosovo Property Agency - authority established in March 2006 to succeed the HPD – operates with a figure of 29,160 received requests. See www.hpdkosovo.org/serbian/statistics_m.asp.

380 These cases mostly concern the legal verification of the existing factual situation, as in practice the majority of applicants – Kosovo Albanians – already live in a housing unit for which a request for recognition of ownership rights has been filed.

requests from the “B” category (766 in total) relate to verification of ownership rights in the cases of unregistered property transactions between 1991-1999, when the Serbian authorities, in an attempt to prevent the sale of Serb property and thus encourage as large a number of Serbs as possible to remain in the province, conditioned sale of immovable property by issuing a special permit, and the parties did not request or did not get the permit.³⁸¹ In relation to the requests from the “A” and “B” groups (less than 2,000 cases in total), a positive solution consists of the HPD/KPA verifying that the applicant had ownership of property on 24 March 1999.³⁸²

By the end of 2006, HPD and its successor KPA had brought decisions on 25,750 requests. In almost 10,000 cases, the property in question had been destroyed, so that there had been no reason for the owners to file a request with the Directorate/Agency whose mandate was to enable the return of occupied property.³⁸³ Among the resolved requests there were a little over 2,000 requests rejected by the HPD/KPA because the applicant had not succeeded in proving that he/she had ownership rights of the property on 24 March 1999. In a little over 4,000 cases, owners withdrew their requests for several reasons, though mostly because of selling the property.³⁸⁴

A real challenge are the remaining cases, from the “C” category, in which the HPD/KPA was to enable restitution of property ownership rights, or temporarily manage this property if the owner did not wish to return immediately. As of the end of 2006, 3,675 of these cases were finalized, in that the owners assumed possession of the property; 3,554 units were under the management of the KPA; and, in the remaining 2,020

cases the decisions passed were for the temporary occupants to move out immediately, but these persons have not yet moved out.³⁸⁵

As for the 3,675 housing units which were returned to the original owners, most of the applicants never returned to live in the property, out of security and other reasons that have prevented displaced persons from returning to Kosovo in a percentage higher than 6.5 per cent,³⁸⁶ six and a half years after the resolution of the conflict in Kosovo. A large number of returned houses and flats were subsequently sold by the owners.³⁸⁷

The model of managing a property by the KPA foresees that the temporary beneficiary can still live in the flat, or house, with the agreement of the owner. The substantial novelty, introduced in March 2006, is in the obligation of the temporary beneficiary to pay to the owner a monthly compensation, amounting to a sum prescribed by the municipality. The temporary beneficiary must present to the Agency, every month, the bill of paid rent.³⁸⁸ In order to receive the compensation, the owners need to open a bank account in Kosovo or any other location in which they are living, and many did not do this by the end of the year.³⁸⁹ By November 2006, 111 owners signed a contract with the KPA giving consent to this arrangement, and 28 beneficiaries paid compensation.³⁹⁰

Concerning occupied land and office space, between March and October the KPA received 2,573 requests for the return of property,³⁹¹ and by the end of the year the number of requests had increased to 7,555.³⁹² The number of requests received and the growing trend show the enormous range of usurped commercial

381 Interview with a public relations officer of the KPA, Priština, 21 February 2007.

382 “Misinterpretation of facts relating to property ownership in Kosovo”, *UNMIK Press Release*, 4 January 2007.

383 The role of HPD/KPA in these cases consisted of stating that the applicant used to own a house or a flat at the eve of the NATO bombing (24 March 1999). *Ibid.*

384 Statistics for 2006, received courtesy of Kosovo Property Agency, 7 March 2007.

385 *Ibid.*

386 From 2000 to 31 October 2006, out of 250,000 refugees, according to the data of the United Nations Commissariat for Refugees – UNHCR, some 15,939 have returned to their pre-war homes. From January-December 2006, UNHCR registered the return of 1,173 persons. Report of the Secretary General of the United Nations Interim Administration Mission in Kosovo, S/2006/906, 20 November 2006, paragraph 18.a.

387 E.g., in Orahovac/ALBANIAN close to 90% of the 128 Serbian housing units in the town’s center (Ablanian part) were sold. Research conducted by the Humanitarian Law Center, August 2006.

388 Telephone interview with the KPA public relations officer, Priština, 21 February 2007.

389 *Ibid.*

390 Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2006/906, 20 November 2006.

391 “Kosovo in October 2006”, UNMIK Fact Sheet, p. 7 (www.unmikonline.org/docs/2006/Fact_Sheet_Oct_2006.pdf).

392 “Misinterpretation of facts relating to property ownership in Kosovo”, UNMIK press release, 4 January 2007.

property. During 2006, the KPA only received requests for the return of such property into ownership, and it left the resolution of cases for the forthcoming period.

Some of the problems, which burdened, during the previous years, the return of property were also present in 2006. In a substantial number of cases, if the owner or person he trusted did not move into the unit immediately the displaced squatter broke into the flat/house once again. This occurred in every third or fourth case in which the Agency displaced a squatter.³⁹³ The owners, for fear or other reasons, often do not wish to start living in their own house/flat, and are incapable of finding another person who would do so. Even turning the property over to be managed by the KPA does not guarantee that another break-in attempt would not happen, as the KPA is not always in a position to find tenants who would be willing to pay the rent and thus, by living in the flat, thus preventing someone moving in illegally.

The other problem is that temporary users often refuse to leave the taken property.³⁹⁴ In some cases temporary users, with links with the criminal structures or who had positions in the KLA, prevent the employees of the HPD/KPA and policemen, by verbal or physical threat, from executing the removal order.³⁹⁵ The OSCE Report from December described the case in which the nominee – a former commander of the KLA – threatened the court executive, who tried to execute the removal order, and the third party physically attacked the court executive.³⁹⁶ The refusal

of temporary users to stop using someone else's property could be an especially big challenge when the KPA starts executing the decisions on returning ownership of farm land and office space. During 2006, when the KPA was still not bringing these decisions, many acts of violence were noted, including murder, caused by disputes over the use of land.³⁹⁷

While the process of property return is in the hands of one agency (the KPA, and before that the HPD), the reconstruction of destroyed or damaged property is the result of an independent activity of several different actors: Kosovo and Municipal authorities, international government organizations, individual states, and non-government organizations. None of the organizations nor institutions in Kosovo, local or international has precise data on the overall number of destroyed or damaged housing units, which remain unpublished.³⁹⁸ During the conflict from 1998-99, around 100,000 houses of Kosovo Albanians were destroyed or damaged, and in the months after that an undetermined number of houses owned by refugee non-Albanians.³⁹⁹ By 2002, the restoration of houses, owned by Albanians, was mostly finished.⁴⁰⁰ The restoration of property of non-Albanians is still ongoing. In the last two years, the Kosovo Government has become the biggest individual source of financing return projects, including reconstruction, while during previous years the European Agency for Reconstruction (EAR) did this.⁴⁰¹ Funds for reconstruction are still far from enough. In the regular three-monthly reports of the UN Secretary-General on the situation in Kosovo,

393 Telephone interview with the KPA public relations officer, Priština, 21 February 2007.

394 According to the Report of the UN Secretary-General, only in 13.6% cases were the temporary users prepared to leave the taken property on getting an order to move out. In the remaining 86.4% cases, the KPA must carry out the move-out. *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, S/2006/906, 20 November 2006, Annex 1, paragraph 73.

395 Interview with the KPA public relations officer, Priština, 21 February 2007.

396 OSCE Mission in Kosovo, Review of the criminal justice system in Kosovo: The protection of witnesses in the criminal justice system. The administration of justice in minor offences courts, Juveniles in criminal proceedings (14 December 2006), pp. 13-14.

397 "OSCE Mission condemns property rights-related violence", *OSCE press release*, 3 May 2006 (Vezir Bajrami, Deputy of the President of the municipality of Štimlje, killed on 22 April 2006 in skirmish over a plot of land; two persons were killed on 1 May in a similar incident in Podujevo).

398 E-mail communication with the Minister for Communities and Return, 5 March 2007; telephone interviews with the representatives in the Priština UN Commissariat for Refugees, European Agency for Reconstruction, UN Development Programme, and the UNMIK Office for Returns and Communities, 2-5 March 2007.

399 The data on the number of destroyed houses in Kosovo was found in "Kosovo: The human rights situation and the fate of persons displayed from their homes", *Report by Alvar Gill-Robles, Commissioner for Human Rights, to the Parliamentary Assembly and the Council of Ministers of the Council of Europe*, 16 October 2002, paragraph 109.

400 "Kosovo: The human rights situation and the fate of persons displayed from their homes", *Report by Alvar Gill-Robles, Commissioner for Human Rights, to the Parliamentary Assembly and the Council of Ministers of the Council of Europe*, 16 October 2002, paragraph 180.

401 Telephone interview with Eva Kitzler, Co-ordinator for Spontaneous Returns, United Nations Development Programme (UNDP) Kosovo Mission, 1 March 2007.

lack of funding is stated as the main reason for a low rate of returns of the displaced and the refugees.⁴⁰²

When talking about the property of Serbs and Roma, destroyed in the outburst of violence in March 2004, the reconstruction was fully funded by the Government of Kosovo, and the process was co-ordinated by the Central Inter-Ministerial Commission. The Commission documents of 2004 state that 937 houses were damaged or destroyed in the outbreak of violence.⁴⁰³ Although most of the houses had been reconstructed by the end of that year,⁴⁰⁴ the reconstruction of housing units had not been completely finished even in 2006.⁴⁰⁵ The reconstruction of 33 destroyed or heavily damaged objects of the Serbian Orthodox Church began two years after the reconstruction of private property.⁴⁰⁶ The first phase of consolidation and urgent works on 30 objects was completed in December 2005.⁴⁰⁷ The complete reconstruction of seven places of worship began at the end of August 2006, under the management of the Commission for Reconstruction, Chaired by the Council of Europe.⁴⁰⁸

Apologies

During 2006 the President of the Government of Montenegro, Milo Đukanović forwarded an apology to the Croatian public in a press interview pub-

lished in Croatia, for the role Montenegro played in 1991 in the military operation on the territory of Dubrovnik.⁴⁰⁹ Đukanović had given a first similar apology six years earlier, in July 2000, following the meeting with the Croatian President, Stjepan Mesić. In September 2003 apologies were exchanged by state presidents, Svetozar Marović, President of the State Union of Serbia and Montenegro, and Stjepan Mesić.

Memorials

In each post-Yugoslav country the character of memorials and the way in which they are raised reflects the political and social climate in the given environment. In Serbia, memorials are an expression of the need of the majority population to interpret the role of Serbia in the wars of the 1990s, otherwise fiercely criticized within the international community and in other parts of former Yugoslavia, as unequivocally positive. In Croatia and Kosovo, an almost complete absence of memorials on the hardships suffered by the minority (Serbian) people is indicative of a widespread belief that the true victimhood is exclusively the right of the majority (Croatian, or Albanian) population. In BiH there is somewhat greater readiness to accept, through the symbolic form of memorials, the testimonies of the “other side’s” hardships, although such examples are exceptions to the rule. In Montenegro, the tension between the authorities who have advocated the inde-

402 Telephone interview with Eva Kitzler, Co-ordinator for Spontaneous Returns, United Nations Development Programme (UNDP) Kosovo Mission, 1 March 2007.

403 Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2006/707, 1 September 2006, Annex 1, paragraph 53; Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2006/906, 20 November 2006, Annex 1, paragraph 50.

404 Central Inter-Ministerial Commission on Management of Funds of the Government of Kosovo for Repair of Damages, “Frequently asked questions about the March Repairs”, 1 September 2004, www.ian.org.yu/kosovo-info/zajednicke/FAQ/04-09/FAQSerb.pdf. (by September 2004 414 houses had been reconstructed, mostly the ones that had sustained small damage, and the reconstruction of 407 houses was ongoing; 116 houses remained to be reconstructed).

405 By end of 2004, Temporary Institutions of Self-Government (PISG) reconstructed around 90% of damaged property. The Coordinators of the Working Groups, Shadow report on the implementation of the Framework Convention for the Protection of National Minorities in Kosovo, September 2005. ([www.minelres.lv/reports/S&M/Shadow%20Report%20FCNM%20in%20Kosovo%20\(edited%20Jan%202006\).pdf](http://www.minelres.lv/reports/S&M/Shadow%20Report%20FCNM%20in%20Kosovo%20(edited%20Jan%202006).pdf)), p. 22.

406 *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, S/2006/361, 5 June 2006, Annex 1, paragraph 57.

407 The figure of 33 destroyed churches is based on the report of the European Agency for Reconstruction, “Assessment of Communities and the Returns Situation in Kosovo”, February 2006, p. 56 (source: Serbian Orthodox Church).

408 Commission of the European Communities, *Kosovo (under UNSCR 1244) 2006 Progress Report*, 8 November 2006, p. 15.

409 *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, S/2006/906, 20 November 2006, paragraph 15.

pendence of Montenegro, on the one hand, and those segments of the society who are in favour of a common state with Serbia, on the other, is also reflected in the practice of putting up commemorative monuments. What is common to all memorials in all parts of the former Yugoslavia is the overall acceptance, at a symbolical level, of the privileged position of military victims as opposed to civilian ones.

Municipalities, veterans' associations, and families of soldiers and civilians who died in combat often erect commemorative monuments without seeking the approval of the relevant ministries, so that the authorities, as a rule, do not have a complete insight into the practice of erecting monuments. For this reason it is difficult to obtain information on the number and the type of monuments in these countries.

Bosnia and Herzegovina

In BiH the largest number of memorials was put up by the ethnic group that represents the majority population in a given area. There are a couple of exceptions to this rule, and the best-known is in Potočari (Republika Srpska), where a memorial center dedicated to the victims of the Srebrenica genocide was opened in 2003.

In the Federation BiH, cantonal and municipal authorities are financing the erection and maintenance of commemorative monuments for civilians who died in that area. Concerning dead servicemen, in areas with a Bosniak majority population, memorial monuments are put up for the members of the BiH Army. In areas in which the majority of the population are Croats, these are monuments in memory of the deceased members of the Croatian Defence Council (HVO). The federal authorities finance the erection of memorial monuments for killed members of both the peoples, either separately or monuments put up together for both the peoples.⁴¹⁰ Throughout the

Federation BiH several hundred monuments were put up for these groups of victims. There is not a single commemorative monument for Bosnian Serbs who died at the hand of the Bosnian or Croatian military formations.

Memorial monuments dedicated to former camp detainees were erected by the Association of Camp Prisoners of BiH, at locations which were determined in court as the sites where the prisons were located. The Association has thus put up monuments in locations in Sarajevo and Velika Kladuša, as well as the former camp "Luka" in Brčko.⁴¹¹

In the canton of Sarajevo, monuments to civilians in the main locations of the mass killings (Markale, Ferhadija, Pivnica, etc) were erected immediately after the war, by the civilian authorities. The names of the victims are not inscribed on the monuments.⁴¹² Monuments to military victims are financed by the separate Canton Sarajevo Fund for the Protection and Upkeep of Cemeteries of Shehids (Martyrs) and Servicemen Killed in Combat.

In Republika Srpska there is a large number of commemorative monuments for Bosnian Serbs who lost their lives in the war from 1992-95. The Veterans' Organization started collecting data, in 2006, on drawing up a register of all monuments and memorials, including the memorials in honour of non-Serb victims.⁴¹³ It is noticeable that the commemorative monuments, with the names of the deceased inscribed on them, are erected beside primary and secondary schools, so that the children are made aware of the hardships suffered by the Serbian people. Such a monument has been erected beside the primary school in the Trnopolje village, near Prijedor, on the location where in 1992 the notorious camp for Bosniaks was located. Prijedor Bosniaks perceive the existence of this monument as extremely offensive, but have not succeeded in persuading the municipality to remove it.⁴¹⁴

410 See, e.g., the Decision of the Federation BiH Approving the Funds from the Budget of the Federation BiH for 2006 for Financing Memorial Monuments for the Killed Defenders of the HVO, 6 July 2006 (www.fbihvlada.gov.ba/bosanski/zakoni/2006/odluke/190hrv.htm).

411 Telephone interview with Murat Tahirović, President of the Association of Camp Prisoners of BiH, 3 March 2007.

412 Telephone interview with Šukrija Gavranović, retired President of the Commission for the Commemoration, Preserving and Cherishing Historical Events and Personalities of the Canton of Sarajevo, 9 March 2007.

413 Interview with Milorad Kalamanda, the Secretary General of the Veterans' Organization of Republika Srpska, 23 January 2007.

414 Telephone interview with Seida Karabašić, the President of the Association of Prijedor Women "Izvor", 7 March 2007.

The Bosniak returnees have put up on a number of locations in Republika Srpska commemorative monuments to killed local citizens. The authorities of Republika Srpska tolerate this practice, maybe because the commemorative monuments in villages and smaller settlements, populated exclusively by the Bosniaks, remain invisible for the majority Serb population. In 2006, the memorial fountain in Žepa, the municipality of Rogatica, was opened. The construction of the memorial fountain was financed by the Canton Sarajevo Fund for the Protection and Upkeep of Cemeteries of Shehids and Servicemen Killed in Combat, and the municipal (Serb) authorities of Rogatica did not participate in the project in any way.⁴¹⁵ The returnee population too built a Turkish bath with memorial stones, in memory of the deceased local population, in 2006 in the area of Prijedor - the Kozaruša village.⁴¹⁶

The Bosniaks – former camp prisoners in Prijedor (Republika Srpska) and its vicinity have tried during the past few years to mark the places of suffering, but their efforts have borne little fruit. In the space within the former *Keraterm* camp, in Prijedor, which now belongs to a private company, *Vatrostalna*, in 2003 the former camp prisoners erected a small memorial stone.⁴¹⁷ However, the former camp prisoners of *Omarska*, the most notorious camp on the territory of BiH during the period 1992-95, have not succeeded in realizing their initiative to turn one of the buildings of the camp (the so-called White House) into a memorial center. This space is now part of the New Mines of Ljubija, whose majority owner is the multinational company *Mittal Steel*. The Mines' managing board has taken the position that it would support a decision upon which both the Serbian and the Bosniak communities are agreed. The talks, mediated by the

English non-government organization *Soul of Europe*, have not resulted in an agreement. The Mayor of Prijedor is against this memorial center initiative, arguing that the presence of the center would only increase tensions between the Serbs and the Bosniaks in the municipality. In February 2006, the *Mittal Steel* Company announced that it would temporarily abandon plans for building a memorial center, until the citizens of Prijedor found a solution, agreeable to all.⁴¹⁸

A rare example of a joint initiative of different peoples to commemorate their sufferings was the agreement between the authorities of Kneževo-Skender Vakuf (in Republika Srpska) and the authorities of Travnik (in the Federation BiH) to build a monument for the victims of war crime in the Korićanske Stijene. On 21 August 1992, the policemen of Republika Srpska killed more than 200 Bosniaks, who had previously been brought from the camp in Prijedor, on that location. At the end of 2005, the Head of the Municipal Council in Kneževo, Boro Škeljić, initiated the construction of a memorial monument on the site of the crime. The project was joined by the authorities of Travnik, which has a majority Bosniak population.⁴¹⁹ A joint commission was constituted to collect project documentation and put out a tender for the designing of the monument. The members of the victims' families also took part in the work of the commission. The original idea of the initiator was to build a monument by mid-2006, but project implementation stopped somewhere in the second half of the year. The families of the deceased insisted that, before the monument is erected, the authorities of Republika Srpska make a real effort to find the bodies of the deceased, because only a small number of victims had been found and identified by then.⁴²⁰

415 Telephone interview with Mustafa Omanović, President of the Žepa Municipal Council, 8 March 2007.

416 Telephone interview with Seida Karabašić, the President of the Association of Prijedor Women "Izvor", 7 March 2007.

417 The text on the slab is as follows: "In this place in May 1992 the death camp of 'Keraterm' was established. Over 3,000 innocent people from Prijedor were detained, tortured and killed in it. By August 1992, over 300 innocent people were killed in 'Keraterm' or were taken away from it in an unknown direction."

418 Massimo Moratti, "Il memoriale di Omarska: un'occasione da non sprecare", *Osservatoriobalcani.org webpage*, 21 April 2006 (www.osservatoriobalcani.org/article/articleview/5583).

419 "L'importanza del primo passo", *Osservatoriobalcani.org website*, 27 January 2006 (www.osservatoriobalcani.org/article/articleview/5190); Eldin Hadžović, "Spomenik, ali tek poslije dženaze" ("Monument, But Only After the *Dzenaza*"), *BH Dani*, 17 February 2006.

420 Telephone interview with Seida Karabašić, the President of the Association of Prijedor Women "Izvor", 7 March 2007; telephone interview with Vladimir Gojković, Head of the Department for Trade, Finances and Urban Planning of the municipality of Kneževo-Skender Vakuf, 7 March 2007.

Croatia

In Croatia, the putting up of commemorative monuments for civilians and soldiers who lost their lives in the war from 1992-95 was regulated by the Law on Marking the Places of Mass Graves of the Victims of the Homeland War. By the end of 2006, 132 graves of this type had been found. Some memorials are for two or more locations of mass killings, when these are located in the same geographic area.⁴²¹ By the end of 2006, 46 monuments had been erected, in memory of victims in 85 mass graves.⁴²²

Especially important during 2006 was the opening of a memorial home in Vukovar, on the 15th anniversary of the killing of around 200 persons by the members of the Serbian forces, following the conquest of the town in November 1991.⁴²³ Several monuments were raised during 2006 in memory of the killed servicemen. Examples of these include the monuments in Nova Gradiška,⁴²⁴ and Osijek.⁴²⁵

In practice, the monuments put up on the basis of the Law on Marking the Places of Mass Graves are identical in form, and do not have the names of the victims inscribed on them. Inscription of names is not forbidden by law, but the authorities were of the opinion that it was inappropriate to inscribe names since it was realistic to expect that the lists of victims would be incomplete.

Individuals and local governments also erected commemorative monuments during and after the war throughout Croatia, and were not bound by the afore-mentioned law. The so-called Wall of Pain was a unique monument, made of several thousand bricks, which the citizens of Zagreb had laid during the war at the corner of Ilica and Selska streets in Zagreb. The names of the killed and missing persons were written on the bricks.⁴²⁶ This monument was taken down by the City's authorities in June 2005, and in October 2006 a memorial park was opened instead at the Zagreb cemetery Mirogoj, with a monument entitled The Voice of the Croatian Victim – The Wall of Pain. 13,500 names of killed and missing persons were inscribed on the new monument. The bricks from the Wall of Pain were included at the foot of the monument.⁴²⁷ The other best known monument that was not put up by the state is located at the cemetery of Vukovar.

In addition to monuments in memory of killed civilians and members of the Croatian Army and Police, the authorities of the City of Zagreb and the State of Croatia expressed a wish for one of the Zagreb squares to bear the name of the former Croatian President Franjo Tuđman. The city authorities, comprising parties which are in opposition on state level, and the state authorities, with the prevailing majority of representatives of the Croatian Democratic Union, disagreed on the location which should be given Tuđman's name.⁴²⁸ The very idea of naming a city

421 Interview with Ivan Grujić, President of the Office of the Government of the Republic of Croatia for the Detained and the Disappeared Persons, Zagreb, 7 February 2007.

422 *Ibid.*

423 Tomislav Jurilj, "Otvoren Spomen-dom 'Ovčara'", ("Opening of Memorial Home 'Ovčara'"), *Jutarnji list website* (Zagreb), 20 November 2006 (www.jutarnji.hr/dogadjaji_dana/clanak/art-2006,11,20,ovcara_spomendom.51110.jl).

424 "Potpredsjednica Vlade na otkrivanju spomenika poginulim braniteljima u Novoj Gradišci" ("Government Deputy Prime Minister at the Opening of the Monument in Nova Gradiška, in Honour of Defenders Killed in Combat"), press release of the Government of the Republic of Croatia, 8 December 2006 (www.otvorena.vlada.hr/default.asp?ru=530&gl=200612080000007&sid=&jezik=1) (opening of a monument in memory of 357 servicemen who died or were killed in the region of Nova Gradiška and other parts of the Republic of Croatia).

425 D. Đurović, "Mali spomenik za velike ljude iz 106. brigade" ("A small monument for great people of the 106th brigade"), *Glas Slavonije website* (Osijek), 30 September 2006 (www.glas-slavonije.hr/trazi2.asp?ID=63677). (opening of memorial slab in memory of killed members of the 1st company of the 1st battalion of the 106th brigade of the Croatian Army, civilian and people's protection forces, and participants of the Homeland war).

426 The bricks were laid in front of the then seat of UNPROFOR (United Nations peacekeeping forces) in Zagreb, partly as a sign of protest for the way the international forces operated in Croatia.

427 Vanja Vesić, "Heroji na Zidu boli" ("Heroes on the Wall of Pain"), *Glas Slavonije website* (Osijek), 15 October 2006. (www.glas-slavonije.hr/trazi2.asp?ID=64407).

428 L. Mindoljević, A. Plišić, B. Blašković, "HDZ: Tuđman dobio najobičniju ledinu" ("HDZ: Tuđman gets a mere turf"), *Jutarnji list website* (Zagreb), 13 December 2006, (www.jutarnji.hr/dogadjaji_dana/clanak/art-2006,12,13,tudjman_trg.54473.jl); Hina, "Sanader nezadovoljan lokacijom Trga Franje Tuđmana u Zagrebu" ("Sanader unhappy with the location for the Square of Franjo Tuđman in Zagreb"), *Večernji list website* (Zagreb), 22 December 2006 (www.vecernji-list.hr/newsroom/news/croatia/704494/index.do).

square after Tuđman was undisputed, although there are serious allegations about Tuđman's extremely nationalist attitude towards Serbs, and although one of the indictments of the Hague Tribunal states Tuđman's participation in a joint criminal enterprise, the goal of which was to expel the Serbian population from parts of Croatia.⁴²⁹

At the same time the Croatian authorities showed no interest in putting up monuments in memory of Croatian Serbs – several hundreds of them – who were killed by members of the Croatian units in operations “Medački džep” (1993), “Flash” (1995) and “Storm” (1995), or were killed in Sisak, Osijek, Split and Gospić. There are only two memorial monuments of this type in the villages of Gošić and Varivode (Berić settlement), in which 17 elderly civilians were killed in August 1995, immediately after operation “Storm”. The monuments were raised in August 2003 by the Council of the Serbian Minority from Kistanje, the municipality to which Varivode and Gošić belong. Both monuments consist of a wooden cross and wooden memorial slab on which the names of the victims are inscribed in brass Cyrillic lettering.⁴³⁰

Serbia

Throughout Serbia, according to the data of the Ministry for Social Affairs, there are hundreds of commemorative monuments dedicated to the participants and victims of the armed conflicts during the past decade. Although the municipalities are obliged by law to forward requests for erecting monuments and the accompanying documentation to the Ministry of Social Affairs for approval, this is not done in practice. Memorials are mostly raised by associations of veterans, associations of military war invalids, and associations of families of killed servicemen, with the financial support of the municipal authorities in some cases. These are usually monuments similar to those in town cemeteries, of small dimensions and without great artistic value. As a rule, the names of the victims

are inscribed on the monuments, and on occasion their photographs are also included.⁴³¹

One of the groups of monuments is dedicated to victims of the NATO bombing in 1999. The largest number of monuments from this group is located in the Park of Peace and Friendship in New Belgrade, erected in memory of all victims of the bombing. It is 27 meters tall, and at the top of it is an obelisk where a flame burnt after the opening of the monument until the fall of Slobodan Milošević from power on 5 October 2000.⁴³² On 13 June 2000 it was formerly opened by the then President of the Republic of Serbia, Milan Milutinović, who is at present tried before the Hague Tribunal for war crimes and crimes against humanity committed on Kosovo.

The monuments associated with the NATO bombing have been put up in several locations in which a large number of civilians had been killed, including Aleksinac, Varvarin, Niš, Grdelica and Surdulica. In Belgrade, in the Tašmajdan Park, in the vicinity of the Radio Television Serbia (RTS) building, a monument was put up in memory of 16 employees of the RTS who died during the bombing of the television building, in the early morning of 23 April 1999. Beside the names of the employees, in the front, the question “WHY?” is inscribed. At the foot of the monument is a photograph, made immediately after the bombing of the RTS building. The monument was raised by the families of the victims, on 23 December 1999.

Commemorative monuments put up in memory of servicemen from the local community, who were killed in the wars in Croatia, BiH, and Kosovo, are mostly raised beside existing monuments in honour of those who died in the Balkan Wars (1912-13) and the First World War (1914-18), and are often imitating the form of these.⁴³³ There is a consensus in society on the justness of the goals and the character of Serbia's war efforts in the First Balkan War and the First World War, and through the similar forms and the proximity in which the new monuments are erected there is an attempt to symbolically assert the justness of the recent wars in which Serbs partici-

429 *Prosecutor vs. Ante Gotovina, Ivan Čermak and Mladen Markač, Joint Indictment*, 21 July 2006, para. 16.

430 Telephone interview with a representative of the Council of the Serbian Minority – Kistanje, 2 March 2007.

431 Interview with a representative of the Ministry of Social Affairs, Belgrade, 6 March 2007.

432 Data of the Humanitarian Law Center.

433 *Ibid.*

pated. Commemorative monuments have rarely been raised beside monuments that honour the victims of the Second World War, because the social divisions from that period into followers of the partisan, Chetnik and other movements, as well as crimes committed in internal conflicts, prevent society from having an exclusively positive outlook to the events of the Second World War.

There are no monuments in Serbia that commemorate the hardships suffered by the non-Serbs in the armed conflicts during the 1990s. Recently an initiative was launched to put up a monument in memory of the 17 Sandžak Muslims, who were abducted on 22 October 1992 from the bus on the Sjeverin-Priboj line (Serbia) and then killed on the territory of Višegrad (BiH). On 21 September 2005, the Municipal Assembly of Priboj unanimously adopted the decision to begin building a monument to this memory from official, municipal funds. The families of the victims, however, expressed a wish for this monument to be put up in Mioče (BiH), where the abduction was committed. At the beginning of 2006, the delegation of the municipality of Priboj visited the assembly of Rudo, on the territory of which Mioče is located. The representatives of the municipality of Rudo apparently agreed with the proposal to build a commemorative monument there. However, the representatives of the “Bosna šume” public company, which owns the land where the abduction of passengers occurred, were not cooperative. The municipality of Priboj proposed to the families of the victims to raise this monument on the territory of the Priboj municipality. The families had not replied to this proposal by the end of the year.⁴³⁴

Kosovo

Following June 1999 a large number of commemorative monuments were erected in Kosovo. During 2006 the Humanitarian Law Center took photographs of 211 commemorative monuments, but the overall number is certainly higher, since the Center has not started to collect information on memorials in some

parts of Kosovo. Monuments exclusively commemorate Albanian victims. They are mostly dedicated to the members of the Kosovo Liberation Army (KLA) who were killed in combat, and in some cases to civilian victims.⁴³⁵

There are many examples of collective monuments (Hoča Zagradaska/Hoçë e Gjytetit, municipality of Prizren/Prizren; Lešane/Leshane and Slapuzhane/Sllaphuzhan, municipality of Suva Reka/Suharekë Krajište/Krajishte, Mali Alas/Hallac i Vogel municipality of Lipljan/Lipjan being put up in the same village for members of the KLA and for civilians, where there is a photograph beside each individual name of a killed member of the KLA. Beneath this, in small lettering and without photographs, are the names of the killed civilians.

In memory of some of the KLA members, monuments are put up in two or more places; in the place of birth, the place of their death and the municipal center to which the place of death or the place of birth belong.

Commemorative monuments primarily dedicated to civilians can be found only in a small number of those places in which mass killings were carried out. The examples include: Suva reka/Suharekë, village of Graštica/Grashticë (municipality of Priština/Prishtinë, Zahač/Zahaq (municipality of Peć/Pejë, Karašinderđ/Karashëngjergj, Koriše/Korishe and Tusuz/Tusuz (municipality of Prizren/Prizren), Vrševc/Vershec, Veliko Ribare/Ribar e Madh (municipality of Lipljan/Lipjan), Dvorane/Dvoran and Dragačina/Dragačinë (municipality of Suva Reka/Suharekë). In most cases, the erection of commemorative monuments was partly financed by the municipality. As a rule, however, the monuments which commemorate civilians are erected by the local citizens themselves, and exclusively from their own funds.

The two largest monuments erected in Kosovo so far are located in the villages of Klečka/Kleçkë and Đeneral Janković/Hani i Elezit. In both cases the monuments were put up in memory of members of

434 Telephone interview with Dragomir Minić, president of the municipal assembly of Priboj and the president of the municipal commission for building monuments in memory of the abducted citizens of Sjeverin, 9 February 2007.

435 The data from this chapter is based on field research conducted during the course of 2006 by the Humanitarian Law Center.

the KLA. In Priština/Prishtinë there is no monument of similar dimension, nor any other larger monument in memory of members of the KLA or killed civilians. The monuments in Priština/Prishtinë were mostly raised in memory of individuals or small groups of killed servicemen.

For the moment, the only memorial center in Kosovo is the Adem Jašari/Adem Jashari Center in the village of Donje Prekaze/Prekazi i Poshtem, in the municipality of Srbica/Skënderaj, where at the beginning of 1998 Jašari was killed by members of the Serbian police in the first large-scale incident involving Serbian forces and KLA members. There is an enclosed space on the Priština/Prishtinë -Podujevo/Podujevë road, where a memorial center in memory of Albanians from this part of Kosovo is planned to be built in the future.

Montenegro

Commemorative monuments in Montenegro, associated with the armed conflicts during the 1990s, are mostly dedicated to the citizens of Montenegro who, as servicemen of the former Yugoslav National Army (JNA) and the Army of Yugoslavia (VJ), lost their lives in Croatia, BiH and Kosovo. In view of the fact that the Montenegrin authorities began distancing themselves in the mid-1990s from the then authorities of Serbia and from the Army of Yugoslavia, over which the Serbian authorities had control, the Montenegrin authorities did not participate in the erection of monuments which even implicitly express a positive attitude towards the role of the federal army the armed formations of Serbia. Most monuments have been therefore erected by the associations of Montenegrin war veterans. Although, in accordance with the Law on Monuments and Commemorative Monuments, Historical Events and Personalities (1971), the approval of the Montenegrin Ministry of Culture is required for erecting a monument, the present commemorative monuments were built without requesting such approval.⁴³⁶

The Association of Veterans of Wars from 1991 erected a memorial monument for the killed servicemen in Golubovci (near Podgorica), Andrijevića, Masline army barracks in Podgorica, Mojkovac, Grnčarevo (near Bijelo polje), Nikšić and Berane.⁴³⁷ The only commemorative monument erected in 2006 is the one in Berane. Some months earlier, in December 2005, in Nikšić the Association built the largest commemorative monument so far, with the names of 61 killed participant of wars from 1992 inscribed in it. During the opening ceremony, a wreath was laid by the President of Montenegro, Filip Vujanović, which was the first such occasion ever.⁴³⁸

The Government of the former FR Yugoslavia financed the raising of a monument in 2000, in the village of Murino, in memory of six civilian victims of the NATO bombing in April 1999.⁴³⁹ In the settlement Suturina, near Herceg Novi, the Association of Veterans of the Second World War erected a monument in memory of four servicemen who were killed during the wars of the 1990s.⁴⁴⁰

Conclusion

In almost all of the post-Yugoslav countries, a twofold discrimination is hindering the application of different mechanisms of transitional justice. The authorities are, firstly, affording privileges to the members of the majority ethnic population in relation to minorities, especially when applying the legislation concerning reparation (in the widest possible sense), and in some areas also in the prosecution of war crimes. Within the majority ethnic community, the authorities are affording a privileged status to the members of military and police structures in relation to civilians, including a privileged status of military victims in relation to the civilian ones. The year 2006 was no exception, in respect of shortcomings in the application of the different mechanisms of transitional justice on the territory of the former Yugoslavia.

436 Telephone interview with the representative of the Montenegrin Ministry of Culture, 5 March 2007.

437 Telephone interview with Radan Nikolić, President of the Montenegrin War Veterans Association for Wars from 1990, 6 March 2007.

438 *Ibid.*

439 Telephone interview with the representative of the Cultural Club of Murino, 5 March 2007. Two of the victims were displaced persons from Kosovo, and four of them the citizens of Murino. The names and photographs of the victims are engraved on the memorial monument.

440 Information received from the Town Council in Suturina, 6 March 2007.

Practically all forms of transitional justice, known in parallel practice, have been used following the armed conflicts in some, or all, of the post-Yugoslav countries. The effects, however, remain modest. The prevailing feeling among all ethnic communities in BiH, Croatia, Kosovo, Montenegro and Serbia is that justice has not been done and myths about the wars still, to a great extent, set the tone of public discourse. This, however, does not mean that the traditional pillars of transitional justice, in the post-Yugoslav coun-

tries, are compromised. An opposite conclusion could be drawn here: that the relative failure of transitional justice is the result of an insufficient or inappropriate application of the different mechanisms. Transitional justice is facing great challenges in all the parts of the former Yugoslavia, and it will only be possible to overcome these if the victims and their partners in politics and civil society take a firmer stand than before in insisting on the rule of law and the re-establishing of basic moral principles.