



## Organization for Security and Co-operation in Europe

### Mission to Croatia

#### Headquarters

## BACKGROUND REPORT ON DOMESTIC WAR CRIME PROSECUTIONS, TRANSFER OF ICTY PROCEEDINGS AND MISSING PERSONS

12 August 2005

The likelihood of the transfer of cases from the International Criminal Tribunal for the Former Yugoslavia (ICTY) heightened attention in the first half of 2005 to the investigation, prosecution, and adjudication of war crimes by Croatian institutions and added to the sense of urgency of implementing reforms and resolving open questions.

### Developments in the Transfer of ICTY Cases to Croatia

Further steps were taken in the first half of 2005 toward the transfer of cases from the ICTY to Croatia as part of the *ICTY's Completion Strategy*. As of mid-August, the Chief Prosecutor's request to transfer the indictment against Mirko Norac and Rahim Ademi remained pending before the Referral Bench<sup>1</sup>. In addition, the Croatian State Attorney has been working closely with the ICTY Prosecutor to prepare a framework for the transfer of investigative materials on unindicted cases.

The political complexity of transfers was underscored in late June by the decision of the Referral Bench to grant the Chief Prosecutor's request to withdraw her proposal to transfer the indictment against the so-called "Vukovar Three" either to Croatia or Serbia and Montenegro<sup>2</sup>, concluding that "the interests of justice appear to be better met by this trial being conducted before this Tribunal". The Referral Bench explained that although it has the authority to transfer on its own initiative, it would be inappropriate to do so in this case, given the "complexity of the issues" and "the intensity of the feelings generated among interested parties by the prospect of referral"<sup>3</sup>.

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<sup>1</sup> Norac and Ademi, former Croatian army officers, are charged with crimes against Serb civilians in the Medak Pocket operation in September 1993. Norac is currently serving a 12-year sentence in Croatia on an unrelated domestic war crime conviction. In September 2004, the Chief Prosecutor submitted a motion to transfer the indictment against Norac and Ademi pursuant to Rule 11 *bis* of the ICTY Rules. The Referral Bench conducted a hearing in mid-February.

<sup>2</sup> Mile Mrksic, Miroslav Radic, and Veselin Sljivancanin, all former officers of the Yugoslav People's Army, are charged with responsibility for the execution of more than 260 Croats and other non-Serbs at the Ovcara farm near Vukovar in Eastern Slavonia in 1991. The ICTY Chief Prosecutor's original motion stated that transfer to Croatia would be appropriate as it was the site of the crime, while transfer to Serbia and Montenegro would be appropriate given on ongoing trial in the special war crime court in Belgrade of 17 lower level perpetrators accused of crimes stemming from the same events as charged in the "Vukovar Three" indictment.

<sup>3</sup> Decision on Prosecutor's Motion to Withdraw Motion and Request for Referral of Indictment under Rule 11 *bis*, Prosecutor v. Mile Mrksic, Miroslav Radic, Veselin Sljivancanin, 30 June 2005, paras. 11, 14, 15. The Referral Bench observed that the intensity of feeling that exists about this particular case "brings into sharp focus the question whether, even today, a trial held in either country would be generally acceptable as reflecting the fair administration of justice."

This case highlights that a final determination of the feasibility of transfer may depend not only on an assessment of general factors applicable to all cases, such as the compatibility of law and possibility for fair trial, but also on a case-by-case assessment of specific variables. It remains to be seen what if any implications this decision may have for the ICTY Completion Strategy that relies in significant part on the transfer of low and mid-level accused to national jurisdictions.<sup>4</sup>

The ICTY has observed that the possibility of *objective monitoring of proceedings in the national courts* will be one consideration in the transfer of cases. In her mid-June report to the UN Security Council, the Chief Prosecutor noted the decision by the OSCE to have its Missions include ICTY transferred cases in their ongoing monitoring activities<sup>5</sup>. In its transfer decisions, the Referral Bench has also highlighted that monitoring by an international organization such as the OSCE would be one means by which it could be better assured that the defendant received a fair trial in the national jurisdictions<sup>6</sup>.

### **Domestic Prosecutions in 2005<sup>7</sup>**

The first seven months of 2005 saw decreased numbers of *domestic war crime proceedings* contrasted to prior periods; nonetheless Serbs continue to represent the vast majority of individuals prosecuted<sup>8</sup>. Prosecutors continue to review pending war crime charges, resulting in the abandonment of unsubstantiated proceedings against Serbs. However, some arrests of Serbs based on unsubstantiated charges continue, including some based on police reports, and further efforts are needed to avoid unwarranted arrests and detention<sup>9</sup>. As in past years, a

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<sup>4</sup> As of mid-August, of 6 decisions on Rule 11 *bis* transfer motions, the Referral Bench granted four requests and denied one request to transfer to Bosnia and Herzegovina in addition to granting the request to withdraw the motion in the “Vukovar Three” case. Six additional motions for transfer are pending before the Referral Bench, including a motion submitted in late July to transfer the indictment against Ivica Rajic, who was surrendered by Croatia in 2003, to Bosnia and Herzegovina.

<sup>5</sup> See PC.DEC/673, 19 May 2005.

<sup>6</sup> See e.g., Prosecutor v. Gojko Jankovic, Decision on Referral under Rule 11 *bis*, 22 July 2005 at para. 103.

“Attention to the procedures for monitoring and reporting is a means by which the Referral Bench may be better assured that the Accused will receive a fair trial. It appears that arrangements have now been made between the Prosecution and the OSCE for these purposes. The standing of the OSCE and the neutrality of its approach ought to ensure that reports it provides will adequately reflect Defence as well as Prosecution issues”.

<sup>7</sup> The ICTY issued two decisions in the first seven months of 2005 related to its prosecutions of war crimes committed in Croatia. In mid-July, the Appeals Chamber upheld the 13-year prison sentence imposed on Milan Babic after his guilty plea entered in 2004 to participation in a joint criminal enterprise in 1991 and 1992, the purpose of which was the permanent forcible removal of the majority of the Croat and other non-Serb population from approximately one-third of the territory of Croatia, in order to make it part of a new Serb-dominated state through commission of crimes against humanity and violations of the law or customs of war. In January, the Trial Chamber convicted and sentenced to eight years imprisonment Pavle Strugar on the basis of command responsibility for crimes committed in December 1991 by the Yugoslav People’s Army during the artillery shelling of Dubrovnik. The Trial Chamber had in March 2004 already convicted and sentenced to seven years imprisonment for the same crimes in Dubrovnik another commander, Miodrag Jokic.

<sup>8</sup> In the first seven months of 2005, all five arrested in Croatia, both indicted, both convicted, and 56 of 85 (66 per cent) persons on trial were Serbs. Four Croats were acquitted, while the war crime charge was dropped against one Serb during a re-trial following an *in absentia* conviction. In 2004, in 76 monitored proceedings involving 211 individuals, 75 per cent (157) were Serbs, 17 percent (37) were Croats and a very small number of other minorities.

<sup>9</sup> Of five Serbs arrested in Croatia in the first seven months of 2005, two were arrested on the basis of police reports rather than court orders. One arrested when he entered Croatia to vote at local elections was released within a few days as no charge was pursued. The second arrested in a police station where he was obtaining identity documents upon return to Croatia was released after three days as no one could identify him as a perpetrator of a war crime. Such arrests and detentions can have a financial impact on the State as demonstrated

number of Serbs wanted by Croatia on war crime charges have also been arrested in third countries<sup>10</sup>. In addition to war crimes from the 1990s conflict, an investigation into allegations of war crimes from World War II was also initiated.<sup>11</sup>

While the number of fully *in absentia* trials remained low, more than two-thirds of all defendants and nearly three-quarters of Serb defendants in 2005 were or are being tried *in absentia*, primarily as a result of several partially *in absentia* trials against large groups in the Vukovar County Court<sup>12</sup>. According to Mission information, in its decisions on appeals issued in the first seven months of 2005, the Supreme Court reversed more than sixty per cent of war crime verdicts<sup>13</sup>. Further, of five convictions upheld by the Supreme Court, it modified the sentence in four<sup>14</sup>. Similar to 2004, there were significant delays in the issuance of some decisions by the Supreme Court, including at least one in which the accused remained in detention<sup>15</sup>. Reductions by the President of the Republic of the court-imposed sentence of several Serbs and a Croat convicted of war crimes drew criticism from various quarters<sup>16</sup>.

The Mission's monitoring indicates that there are still some *disparities on the basis of national origin*. Most noticeable is the difference in the type of conduct for which Serbs and Croats are charged, with Serbs being accused for a wide range of conduct while Croats are

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by the case of Milenko Dabic who in late 2004 was awarded more than €6000 by the Nova Gradiska Municipal Court for six months of illegal detention after the prosecutor dropped the charges for lack of evidence during a re-trial following an *in absentia* conviction.

<sup>10</sup> In July, Austria arrested Stevan Peric who remains in detention pending extradition procedure. In April, Bulgaria arrested Cedomir Brankovic, but ultimately released him on the grounds that he could not be extradited to Croatia because he was part of an official military delegation from Serbia and Montenegro. Also in April, Germany arrested Jovo Begovic. According to Mission information, Begovic was released in late May as no extradition request had been forwarded within the legal deadline, but was re-arrested after a request for extradition was submitted. Bosnia and Herzegovina arrested two suspects, Milovan Zec in April, later releasing him, and Zeljko Milovanovic in May, who escaped from prison in Republika Srpska in mid-June, but was re-arrested in early July.

<sup>11</sup> The State Attorneys of Croatia and Austria confirmed in mid-July that they were investigating Milivoj Asner, a former Ustasha police officer, for war crimes against Jews in Pozega (Western Slavonia) in 1941 and 1942. Asner left Croatia in 2004 following public accusations by the Simon Wiesenthal Centre.

<sup>12</sup> In half of the trials (7 of 14) at least some defendants were tried *in absentia*. For example RH v. Vorkapic and others (1 present defendant tried with 16 *in absentia*); RH v. Stankovic and others (9 present defendants tried with 17 *in absentia*). One fully *in absentia* trial was pending (RH v. Dusan Skoric and others, Zadar County Court). Sixty five percent of all defendants (55 of 85) are being tried *in absentia* and 73 per cent (41 of 56) of Serbs and 42 per cent (8 of 19) of Croats were tried *in absentia*. Of note, 4 of 8 Croats tried *in absentia* were part of large groups in which the majority of accused were Serbs.

<sup>13</sup> Of 13 appealed war crime verdicts on which it issued decisions in 2005, the Supreme Court reversed eight. In 2004, the Supreme Court reversed 55 per cent of war crime verdicts.

<sup>14</sup> In three cases, the Supreme Court increased the sentence, while in the fourth, it reduced the sentence.

<sup>15</sup> E.g., RH v. Savo Grulovic (Zadar County Court) and RH v. Bosko Macura (Sibenik County Court) (in both, prosecution appeals pending since early 2001); RH v. Stokan Sekanic (Osijek County Court) (appeal pending for 9 months (since September 2004), while law mandates decision within three months of transmission of appeal when defendant in detention). In January 2005, the European Court of Human Rights in *Camasso v. Croatia* [15733/02] found that a delayed criminal prosecution, including more than three years by the Supreme Court in issuing a decision in a criminal appeal, violated the right to fair trial in a reasonable time.

<sup>16</sup> Pursuant to the Law on Pardon, the President of the Republic has the authority and discretion to reduce prison sentences, primarily on humanitarian grounds. In 2005, the President reduced the 10 year sentence imposed on Stjepan Grandic in 2003 by the Rijeka County Court to 8 years; the 20 year sentence imposed on Damjan Vukimirovic in 1995 by the Gospić County Court to 17 years; the 20 year sentence imposed on Slobodan Bosanac in 1995 by the Bjelovar County Court to 18 years; and the 20 year sentence imposed on Nikola Dragusin in 1997 by the Pozega County Court to 19 years. Notably, no war crime sentences in excess of 15 years have been upheld by the Supreme Court for at least the past 3 years as noted by the Supreme Court's reduction of Fikret Abdic's 20-year sentence to 15 years in early 2005.

almost exclusively charged for killings. Croatian courts also continue to prosecute Serbs for genocide on the basis of acts that were not of the gravity usually associated with verdicts of international tribunals ascribing genocidal intent and conduct<sup>17</sup>.

In 2005, no new prosecutions have been initiated against members of the Croatian armed forces. A new investigation for a second war crime charge was initiated by the Split County Court in March against some defendants already indicted in the “Lora” case. In addition, in July 2005 the investigation of a prominent public official from Osijek (Eastern Slavonia) was re-invigorated. Some incidents involving Serb victims as well as the effort to cover-up the killing of 19 mostly Serb civilians in Paulin Dvor remain unprosecuted. On the basis of the conviction in the Paulin Dvor case, the Osijek municipal court recently awarded damages to the surviving family members of some of those killed<sup>18</sup>. However, other civil verdicts awarding compensation to Serb survivors for intentional killings perpetrated by members of the army and police for which there are no criminal verdicts suggest that further prosecutions may be warranted<sup>19</sup>.

In June, the Supreme Court president granted the first request to transfer a case to the Zagreb County Court in its capacity as one of four “*special*” courts granted extra-territorial jurisdiction over war crimes<sup>20</sup>. The vast majority of cases continue to be tried in the jurisdiction where the crimes occurred, including the Osijek and Split “special courts”. Previously, a number of cases were transferred from one local court to another due to the lack of the required number (three) of judges to conduct a war crime trial. Only a very few were transferred despite concerns regarding conditions in some cases that significantly complicated the conduct of an impartial trial in a local court, for example the third trial since 1992 of Mihajlo Hrastov in the Karlovac County Court<sup>21</sup>. As a result, trials continue to be conducted primarily in those areas of Croatia most heavily affected by the war where witnesses are most susceptible to intimidation and judges and prosecutors exposed to pressure, particularly in relation to cases against members of the Croatian armed forces. This effect has also been observed in the “special courts” as seen in the early August 2005

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<sup>17</sup> E.g., RH v. Stankovic and others (“Miklusevci”) Vukovar County Court; RH v. Vorkapic (“Lovas”) Vukovar County Court; RH v. Petrovic (“Baranja III”) Osijek County Court. Of note, Croatia instituted proceedings in 1999 at the International Court of Justice against Yugoslavia under the Convention on the Prevention and Punishment of the Crime of Genocide.

<sup>18</sup> Jelic v. RH.

<sup>19</sup> E.g., in early August 2005, the Otocac Municipal Court issued its written decision awarding €95,000 to surviving family members of a Serb who disappeared in November 1991 (declared dead in 1998) while in police custody. Skendzic and others v. RH, P-82/02/51, dated 6 May 2005. To date, no criminal prosecution has been undertaken. On the occasion of the tenth anniversary of Operation Storm in early August 2005, Amnesty International as well as the Croatian Helsinki Committee issued statements urging Croatian authorities to investigate killings and disappearances allegedly committed by Croatian armed forces. The failure to effectively investigate disappearances and deaths and in particular whether they are racially or ethnically motivated, which is an *ex officio* obligation of the state once it has knowledge of the matter, has been determined by the European Court of Human Rights to constitute a violation of the right to life and the right to enjoy Convention protected rights free of discrimination on the basis of race or national origin. See e.g., Grand Chamber Judgment in *Nachova and others v. Bulgaria*, 43577/98 and 43579/98, 5 July 2005.

<sup>20</sup> Four war crime departments in the Zagreb, Osijek, Rijeka, and Split County Courts were established in 2003 by the Law on the Application of the Statute of the International Criminal Court and on the Prosecution of Criminal Acts Against the International Law on War and Humanitarian Law (Official Gazette 175/03). Upon the Chief State Attorney’s request, the Supreme Court President in June granted the transfer of the proceeding against Slobodan Davidovic suspected of war crimes in Bosnia and Herzegovina from the Vukovar to the Zagreb County Court.

<sup>21</sup> Hrastov’s third trial has been suspended since March 2005 based on the grounds that Hrastov is temporarily mentally unfit for trial.

decision by the Supreme Court to allow questioning of witnesses by the Zagreb County Court rather than the Osijek County Court related to the investigation of a prominent Osijek official.

*Security for witnesses* as well as for judicial personnel needs to be improved, as well as action taken against those who exert pressure on witnesses. The need for special protection for victims of sexual violence has recently been brought to light by a non-war crime sexual assault prosecution in Gospić County Court<sup>22</sup>. The impact of the Witness Protection Law that came into force in early 2004 has so far been limited. The United States in June provided training on witness protection issues for officials primarily from the four special courts.

In light of the likely transfer of ICTY cases, the climate created by the media and public officials for the conduct of investigations and trials and in particular for participating as a prosecution witness has become a matter for heightened attention. According to public reports, at least one person was put into the witness protection program in July 2005 related to an investigation of allegations of war crimes against Serb civilians in 1991 in Osijek (Eastern Slavonia) involving a prominent public official. The media frenzy surrounding the investigation within days resulted in public identification of the protected witness, despite an amendment to the Criminal Code in mid-2004 that makes it a crime to reveal the identity of a protected witness.<sup>23</sup> The identification that has resulted from widely reported media interviews given by the witness himself as well as a family member appears to indicate a lack of appreciation on the parts of witnesses, the public, and the media of the importance of formally securing witness testimony. Subsequently, the media also identified several other potential witnesses or speculated as to their identity. It remains to be seen the extent to which such public revelations compromise the investigation or effect the willingness of other witnesses to come forward or place their faith in state witness protection services in this or other cases.

ICTY indictments issued in late April against the former head of the Croatian secret service and three Croatian journalists for *contempt of the Tribunal* for publishing the identity and testimony of an ICTY protected witness further underscore this additional challenge to witness protection that in many cases is key to obtaining their cooperation and testimony<sup>24</sup>. Most media recognized that publication of the identity of the ICTY protected witness exceeded the bounds of responsible journalism, although others found the contempt indictments an infringement of journalistic freedom and the public's right to know. The Croatian Journalists Association (HND) opposed sanctions against the journalists, stating that an apology should be sufficient. The HND also distinguished between the publication of the witness' identity and the publication of the testimony, contending that the latter was in the public interest.

Some political candidates referred to the ICTY protected witness by name during the local election campaign in May 2005. Similarly, by way of explaining his objection to official

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<sup>22</sup> RH v. Mraovic.

<sup>23</sup> Article 305a, Criminal Code (Official Gazette 163/03). The crime of revealing the identity of a protected witness is committed when a person "without authorization announces, gives away or undertakes other activity with the aim of revealing the identity of a person included into a programme of protection on the basis of a special law, [and] will be punished by imprisonment from three months to three years."

<sup>24</sup> All four entered not guilty pleas in mid-June. Two of the four indictees had in December 2004 been ordered by the ICTY to cease and desist publication of the protected witness testimony. Cease and Desist Order of 2 December 2004. Several other journalists who also published this material were interviewed by the ICTY in May and June 2005.

celebrations of the tenth anniversary of the Croatian military Operation Storm, a prominent retired military officer in July 2005 publicly referred to the protected witness by name. A group of retired high-ranking military officers boycotted the official celebrations of Operation Storm expressly due to the Government's cooperation with the ICTY. The President of the Republic was booed during these celebrations when mentioning the need for individual accountability for crimes committed during Operation Storm. Such references indicate that testifying as a prosecution witness in war crime cases against members of the armed forces continues to be viewed in some circles as politically suspect and unpatriotic.

In May, high-ranking officials, including the Prime Minister and President as well as representatives of the opposition, while emphasizing the need for individual criminal responsibility, condemned a proposed revised ICTY indictment against Ivan Cermak and Mladen Markac as criminalizing the Homeland War through its definition of "*joint criminal enterprise*"<sup>25</sup>. These reactions suggest that prosecution of members of the armed forces before the national courts will continue to take place in a politically charged atmosphere.

### **Inter-state judicial cooperation**

The need for *improved inter-state judicial cooperation* between Croatia, Serbia and Montenegro and Bosnia and Herzegovina, as related to war crime investigation and prosecution has become increasingly apparent. The types of cooperation needed if impunity is to be avoided are many and varied, pertaining to information and evidence, access to witnesses, apprehension of suspects, and ultimately in which State an accused will be prosecuted. While examples of cooperation continue, considerable obstacles remain to systematic cooperation. The continued use of *in absentia* trials is but one example of incomplete inter-state cooperation.

At a first OSCE-facilitated meeting in late November 2004, judges and prosecutors identified the need for direct and institutionalized cooperation, particularly as related to obtaining witness testimony<sup>26</sup>. One concrete outcome was that the Chief State Attorney signed protocols with his counterparts in Bosnia and Herzegovina and Serbia and Montenegro in early 2005, establishing mechanisms for *direct co-operation on prosecutorial matters* in the pre-trial stage. These agreements served *inter alia* as the basis for Croatian prosecutors interviewing witnesses in Serbia and Montenegro and Bosnia and Herzegovina related to the "Lora" case. However, significant delays continue in some trial courts due to problems obtaining witness testimony from Serbia and Montenegro and Bosnia and Herzegovina<sup>27</sup>.

The legal impasse reached in a number of cases, where one of the three states arrests its own citizen wanted by one of the others on suspicion of war crimes, demonstrates significant deficits in existing cooperation mechanisms<sup>28</sup>. For example, Bosnia and Herzegovina arrested

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<sup>25</sup> Cermak and Markac, former Croatian army officers, are indicted for crimes against Serbs civilians during and after Operation Storm in August 1995. Based on Government guarantees, the ICTY granted their requests for provisional release in December 2004, pending trial.

<sup>26</sup> See Report, SEC.GAL/279/04, 6 December 2004.

<sup>27</sup> The second trial of Svetozar Karan by the Karlovac County Court was suspended for more than six months awaiting witness testimony from Serbia and Montenegro. Karan has been in detention since late 2002. The case was moved to Karlovac after the Supreme Court reversed a conviction by the Gospić County Court that held Karan accountable individually as well as for 500 years of Serb oppression of Croats. Karan was again convicted and sentenced to seven years in late June.

<sup>28</sup> The Law on International Legal Assistance in Criminal Matters that came into force on 1 July may improve Croatia's ability to engage in inter-state cooperation.

but then refused to extradite three Serbs wanted by Croatia on the grounds that they are citizens and under law cannot be extradited, and no proceedings have been undertaken in Bosnia and Herzegovina<sup>29</sup>. Similarly, Croatia arrested a Croat wanted for crimes in Bosnia and Herzegovina but because he was a citizen would not extradite<sup>30</sup>. The suspect was released and no further proceedings initiated for lack of evidence, while Bosnia and Herzegovina indicates that its law bars transfer of the criminal case to Croatia<sup>31</sup>. Finally, a Serb wanted by Croatia arrested in a third country but returned to Serbia and Montenegro when extradition was denied remains at liberty<sup>32</sup>. Recent arrests of former members of the “Scorpions” paramilitary unit in both Croatia and Serbia and Montenegro on suspicion of war crimes committed in Bosnia and Herzegovina related to Srebrenica again underscore the need for intensive cooperation.

While some cases may no longer warrant continuation, if prosecutions in such cases are to go forward, including some related to the ICTY, the current legal impediments must be overcome. During a second OSCE-facilitated meeting hosted by the Mission in June and in which Ministers of Justice of all three countries participated, judges and prosecutors identified legal obstacles to both the transfer of defendants who are citizens (extradition) as well as the transfer of the criminal case. The only avenue identified as open for cooperation under current legal frameworks was the sharing of criminal files and evidence through mutual legal assistance<sup>33</sup>. Given the inter-linkage between domestic proceedings and the transfer of ICTY cases, the ICTY has played an increasingly constructive role in the efforts of OSCE to facilitate and improve inter-state cooperation.

Some Serbs have voluntarily returned to Croatia, knowing that they would be arrested due to pending war crime charges or *in absentia* convictions, since this is currently the only way to challenge a conviction under the existing legal framework. The outcomes in some of these cases suggest that at least some of the *in absentia* convictions may not be sufficiently substantiated<sup>34</sup>. Particularly in light of the continuing arrests in third countries of citizens of Serbia and Montenegro wanted by Croatia, the Governments of Croatia and Serbia and Montenegro should develop a mechanism for ***systematic review of war crime cases***, in particular *in absentia* convictions. The list of “substantiated” war crime cases given by the Minister of Justice to her counterpart in Serbia and Montenegro in November 2004 could serve as the basis for such a review. In late July 2005, the Government announced that it would provide a similar list to relevant institutions in Serbia and Montenegro as well as to the Croatian Embassy in Belgrade so that persons residing in Serbia and Montenegro could inquire as to whether their name appears on the list.

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<sup>29</sup> Dragoslav Lukic, Miroslav Bogdanovic, and Milovan Zec were arrested in Bosnia and Herzegovina on the basis of international arrest warrants, but were subsequently released after it was determined that as citizens of Bosnia and Herzegovina they could not be extradited. In contrast, in early August 2005, Neven Pupovac was extradited from Bosnia and Herzegovina to Croatia based on a 2003 *in absentia* conviction from the Zadar County Court.

<sup>30</sup> By Constitution and law, Croatia prohibits extradition of citizens. The law and/or Constitution of Serbia and Montenegro and Bosnia and Herzegovina similarly bar extradition of citizens.

<sup>31</sup> Miroslav Anic.

<sup>32</sup> Cedomir Brankovic.

<sup>33</sup> See Report, SEC.GAL/135/05, 13 June 2005.

<sup>34</sup> E.g., Sava Sasic was arrested in April 2005 at a border crossing with Bosnia and Herzegovina based on an arrest warrant issued by the Sibenik County Court in relation to a 1993 *in absentia* conviction together with 29 others. During the re-trial in late June, the prosecutor re-qualified the war crime charge to armed rebellion, subject to the application of the Amnesty Law and Sasic was released after three months in detention.

Transfer of several Serbs convicted of war crimes in Croatia to serve their prison sentences in Serbia and Montenegro was another form of cooperation that occurred in early 2005, pursuant to an inter-governmental agreement reached in November 2004. In early August 2005, a number of additional cases were submitted by the Croatian authorities to their counterparts in Serbia and Montenegro for consideration of further possible transfers.

### **Missing Persons**

As recently noted by the Council of Europe Human Rights Commissioner, the issue of *missing persons* remains a highly sensitive subject on which further information and inter-state cooperation is needed<sup>35</sup>. At the current time, the Government maintains two lists of missing persons that, because they were compiled by different methodologies, the Government contends are of varying degrees of reliability. As of late May, one list deemed by the Government to be the more reliable contains approximately 1,160 persons, mostly Croats, who were reported missing during 1991 and 1992<sup>36</sup>. This figure is routinely reported as the total number of missing persons in Croatia. A second list includes approximately 840 persons, mostly Serbs, reported missing after the 1995 Croatian military operations “Storm” and “Flash”<sup>37</sup>. The Government has expressed an intention to compile the data in this second list by the same standards as the first and possibly to issue a joint registry together with the International Committee for the Red Cross.

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<sup>35</sup> Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, on his Visit to the Republic of Croatia 14-16 June 2004, 4 May 2005 CommDH(2005)3, at para. 63.

<sup>36</sup> According to Government information, of 3,054 persons, mostly Croats, who were reported missing during 1991 and 1992, the fate of 1,894 has been determined. 30 May 2005 letter from Colonel Ivan Grujic, Assistant Minister, Ministry of Family, Veteran Affairs, and Inter-generational Solidarity to Head of Mission.

<sup>37</sup> According to Government information, of 966 persons, mostly Serbs, who were reported missing after the 1995 Croatian army and police operations, the fate of 126 has been determined. 30 May 2005 letter from Colonel Ivan Grujic, Assistant Minister, Ministry of Family, Veteran Affairs, and Inter-generational Solidarity to Head of Mission.