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Croatia

Shortchanging Justice -- The "Šodolovci" group

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Amnesty International considers it to be of the utmost importance that individual criminal responsibility is established for the grave violations of international humanitarian law committed in Croatia during the 1991-1995 armed conflict. For justice to be done, and seen to be done, it is equally imperative that trials of those accused of these crimes meet internationally recognized standards of fairness. The organization is concerned that trials in Croatian courts of persons suspected of having committed war crimes have in many cases not been fair. Amnesty International believes that trials which do not meet internationally recognized standards of fairness will only add to the number of human rights violations in the region and do not serve the purposes of justice.

This paper examines the retrial of five Croatian Serb men from the Eastern Slavonian village of Šodolovci on charges of war crimes. On 24 November 1999, the Croatian Supreme Court ruled that their retrial before the Osijek County Court had been tainted by serious procedural violations. The Supreme Court quashed the Osijek County Court's verdict and sent the case back for retrial. The men had been convicted and sentenced to imprisonment in May 1999 by the Osijek County Court after a retrial which was ordered following their earlier conviction by the same court *in absentia* during the armed conflict in Croatia.

In this case, Amnesty International is concerned about the independence and impartiality of the trial court. The organization furthermore believes that the men's right to be presumed innocent until proven guilty was violated and that they were restricted in presenting a full defence.

Amnesty International welcomes the decision by the Supreme Court to send the case back for retrial. Should the prosecution decide to pursue the charges against the men, then Amnesty International urges that the case be heard by a differently-composed independent and impartial panel of judges in proceedings which meet international standards of fairness.

Furthermore, in the interest of objectivity and fairness in all war crimes prosecutions before Croatian courts, Amnesty International recommends that the Croatian Government reconsiders its objections to engaging in the exchange of files on war crimes cases with the Office of the Prosecutor at the International Criminal Tribunal for former Yugoslavia (Tribunal).

KEYWORDS: TRIALS1 / RE-TRIALS1 / ARMED CONFLICT / WAR CRIMES / CRIMES AGAINST HUMANITY / WITNESSES / INDEPENDENCE OF JUDICIARY

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Shortchanging Justice -- the "Šodolovci" group[1]

Introduction

The armed conflicts in former Yugoslavia were accompanied by massive and grave human rights violations, including serious violations of international humanitarian law.[2] It is imperative that those who perpetrated these crimes be brought to justice. The cycle of impunity with which these crimes were committed in the region must be broken and the victims and their families must be afforded a remedy. In addition, establishing and apportioning individual responsibility for these crimes is a vital factor in challenging the pervading notion throughout the region that national or ethnic groups are collectively to blame for all the suffering that was caused by the wars in former Yugoslavia. The misconception of collective responsibility is one of the most serious obstacles to rebuilding mutual trust, reconciliation and reintegration of the various peoples in the region. Furthermore it undermines the rule of law.

With the aim of establishing individual criminal responsibility for grave human rights violations committed during the war in the course of trials which meet the highest standards of fairness, Amnesty International has welcomed the establishment of the *ad hoc* International Criminal Tribunal for former Yugoslavia (the Tribunal). The organization has furthermore for years lobbied states supplying troops to the multi-national peace-keeping force deployed in Bosnia-Herzegovina, and more recently in Kosovo in the Federal Republic of Yugoslavia, to seek out and arrest those indicted by the Tribunal. Furthermore the organization has urged all UN member states to cooperate effectively with the Tribunal, including the national governments of the countries of former Yugoslavia.[3]

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[1]This is the second external report by Amnesty International in this series, following *Croatia: Mirko Graorac, Shortchanging Justice -- War crimes trials in former Yugoslavia*, AI Index: EUR 64/10/99, December 1998.

[2]For further information please see *Yugoslavia: Torture and deliberate and arbitrary killings in war zones* (AI Index: EUR/48/26/91) of November 1991, and *Yugoslavia: Further reports of torture and deliberate and arbitrary killings in war zones* (AI Index: EUR 48/13/92) of March 1992.

[3]For example, Amnesty International has on many occasions appealed to the Government of the Federal Republic of Yugoslavia (FRY) to transfer to the jurisdiction of the Tribunal three of its citizens who have been publicly indicted by the Tribunal for their alleged involvement in the killing of hundreds of unarmed men in the Croatian town of Vukovar in November 1991. The Federal Yugoslav authorities have

Amnesty International believes that the investigation and prosecution of these suspected violations should also, where appropriate, be undertaken by national courts, whose jurisdiction on this matter is concurrent with the Tribunal's Statute, in as far as such proceedings meet international standards of fairness and do not result in the imposition of the death penalty.

However, the organization is concerned that many trials of persons charged with nationally-defined war crimes in Croatia, Bosnia-Herzegovina and the Federal Republic of Yugoslavia have been flawed by procedural violations and breaches of internationally recognized standards for fair trials. These war crimes trials have largely been trials of members of the national group with which the current authorities were previously at war. In the case of Croatia, the people tried for war crimes in the national courts have been predominantly Serbs. As a rule such trials have taken place in a highly emotional and politically-charged atmosphere. Thus, the accused often were in effect tried and found guilty by the general public before the trials had even started.

War crimes trials of Croatian Serbs which have been held in Eastern Slavonia are illustrative of this notion of "victor's justice". The region saw intense fighting which led to the arbitrary loss of civilian life and widespread human rights abuses, including war crimes, during the 1991-1992 armed conflict between Croatian Government forces on one side and local Serb armed forces, the former Yugoslav People's Army (*Jugoslovenska Narodna Armija - JNA*) and various paramilitary groups from Serbia proper on the other. To this day, the fate of over a thousand persons from the region is still unknown.

Some of the most notorious war crimes committed in the region have resulted in a public indictment by the Tribunal, although nobody has yet been brought fully to justice for them.[4] In contrast, the Croatian criminal justice system has held a large number of criminal proceedings for war crimes allegedly committed by Croatian Serbs. The majority of these proceedings have been conducted despite the absence of the accused in the period during which the region was outside Croatian Government control.

This paper aims to give a detailed analysis of the retrial of a group of five men from the mainly Serb-populated village of Šodolovci in Eastern Slavonia, and to document the

refused to hand the men over as they argued that this would violate their constitution which prohibits the extradition of FRY citizens. However, guidelines drawn up for the effective cooperation of states with the Tribunal state explicitly that the surrender of arrested suspects to the Tribunal should take place without resort to extradition procedures.

[4]This is the indictment against Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin in connection with the killing of over 200 mostly Croatian unarmed men in Vukovar in November 1991.

violations of the internationally recognized right to a fair trial suffered by the defendants. Criminal proceedings against these men - who were part of a larger group of 19 defendants from Šodolovci and a neighbouring village - have in fact been ongoing since 1994, resulting in their original conviction *in absentia* in 1995 by the Osijek County Court. One of the men, Goran Vušurović, gave himself up to the Croatian authorities in 1996 and was retried and reconvicted in that same year. However, in 1997 the Supreme Court quashed the verdict of the Osijek County Court, having concluded that there had been several procedural violations during his trial, and sent the case back for retrial. Four other men of the group - Željko Keskenović, Pero Kličković, Vujo Halavanja and Marinko Stanković - requested that their cases be retried in their presence. Their retrial was joined with that of Goran Vušurović and all five were found guilty and sentenced to imprisonment terms in May 1999. On 24 November 1999, the Supreme Court again quashed the verdict of the lower court, declaring that the trial had been flawed by serious procedural violations. (At the time of publication of this paper, the full text of the Supreme Court's decision had yet to be made public.)

On the information available to it, Amnesty International is concerned that the 1998-1999 retrial of the five Šodolovci men did not meet internationally guaranteed standards of fairness. In particular the organization is concerned that the men were not tried by an independent and impartial tribunal. In addition, Amnesty International considers that the right of the defendants to be presumed innocent until proven guilty was not respected in this case. Amnesty International is also concerned that the five men did not receive equal treatment before the court. Amnesty International calls on the Croatian authorities to ensure that each man's right to a fair trial, as enshrined in international law, is fully respected in the case of any further criminal proceedings against them..

Chronology of political and legal events

- 25 June 1991: Croatia declares independence. Croatian police and Croatian Serb armed formations start to clash in areas of the country which have large or majority Serb populations.

- August 1991 - May 1992 : The alleged events at issue occur around Šodolovci in Eastern Slavonia.

- 19 November 1991: the Eastern Slavonian town of Vukovar falls to the Yugoslav People's Army and Serb armed paramilitary groups which had besieged the town for over two months.

- 3 January 1992: The United Nations (UN) negotiates a cease-fire in Croatia between the RSK (Croatian Serb) *de facto* authorities and the Croatian Government

- April 1992: UNPROFOR (UN Protection) forces are deployed to four UN Protected Areas (UNPAs) of which Eastern Slavonia is one: Sector East.

- 30 August 1994: The Osijek County Public Prosecutor issues an indictment against Milan Miljković, Zoran Stojčić, Petar Stanić, Željko Keskenović, Djordje Rkman, Sime Utvić, Marinko Kojčinović, Nikola Petrović, Kamenko Milić, Savo Stojčić, Ljubomir Alapović, Milorad Radić, Goran Vušurović, Pero Kličković, Jovan Vicković, Marinko Stanković, Vujo Halavanja, Dordje Vujanović, Zdravko Kojčinovic for having committed war crimes against the civilian population (Article 120 of Basic Criminal Code of Republic of Croatia).

- 25 May 1995: After a trial, at which none of the above named accused were present by the Osijek County Court in 1994 and 1995, all are found guilty of the charges and sentenced to imprisonment terms of up to 20 years.

- 14 February 1996: The Croatian Supreme Court confirms the Osijek County Court's verdict.

- 12 November 1995 : Croatian Government officials and *the de facto* Croatian Serb authorities sign the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium (Erdut Agreement) after negotiations led by UN mediators and the Ambassador of the United States of America to Croatia. The Erdut Agreement stipulates the peaceful integration of the region to Croatian Government control including the two-way return of Croatian and Croatian Serb displaced persons to and from the area. The Erdut Agreement also envisages the deployment of the UN Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) which would oversee its implementation.

- January-April 1996 : UNTAES established by UN Security Council Resolution 1037 (1996) and Jacques Paul Klein is appointed as Transitional Administrator. The 5,000-strong international military component of UNTAES deploys to the region.

- 17 August 1996: Goran Vušurović, one of the accused who had been tried and convicted *in absentia*, crosses from Šodolovci into Croatian Government-controlled territory and gives himself up. He is placed in pre-trial detention in Osijek investigatory prison.

- November 1996: retrial of Goran Vušurović starts (The Croatian Code of Criminal Procedure allows for retrials of persons convicted *in absentia*).

- 25 November 1996 : Goran Vušurović convicted and sentenced to eight years' imprisonment.

- 21 May 1997 : Croatian Supreme Court quashes the verdict against Goran Vušurović by the Osijek County Court as it violates provisions of the Croatian Code of Criminal Procedure. The case is sent back for retrial to Osijek County Court.

- 15 January 1998: the UNTAES mandate ends and the Croatian Government resumes control over the UNTAES region.

- 28 August 1998 : Three more defendants, Pero Kličković, Željko Keskenović, and Vujo Halavanja, are arrested and detained in Osijek. Three days later, on 31 August 1998: they are released (after pressure by international organizations) to stand renewed trial out of custody.

- 10 September 1998: The Osijek County Prosecutor proposes to join Goran Vušurović's (second) retrial to the imminent retrial of the other three defendants for reasons of cost-effectiveness and because the evidence in both cases is the same.

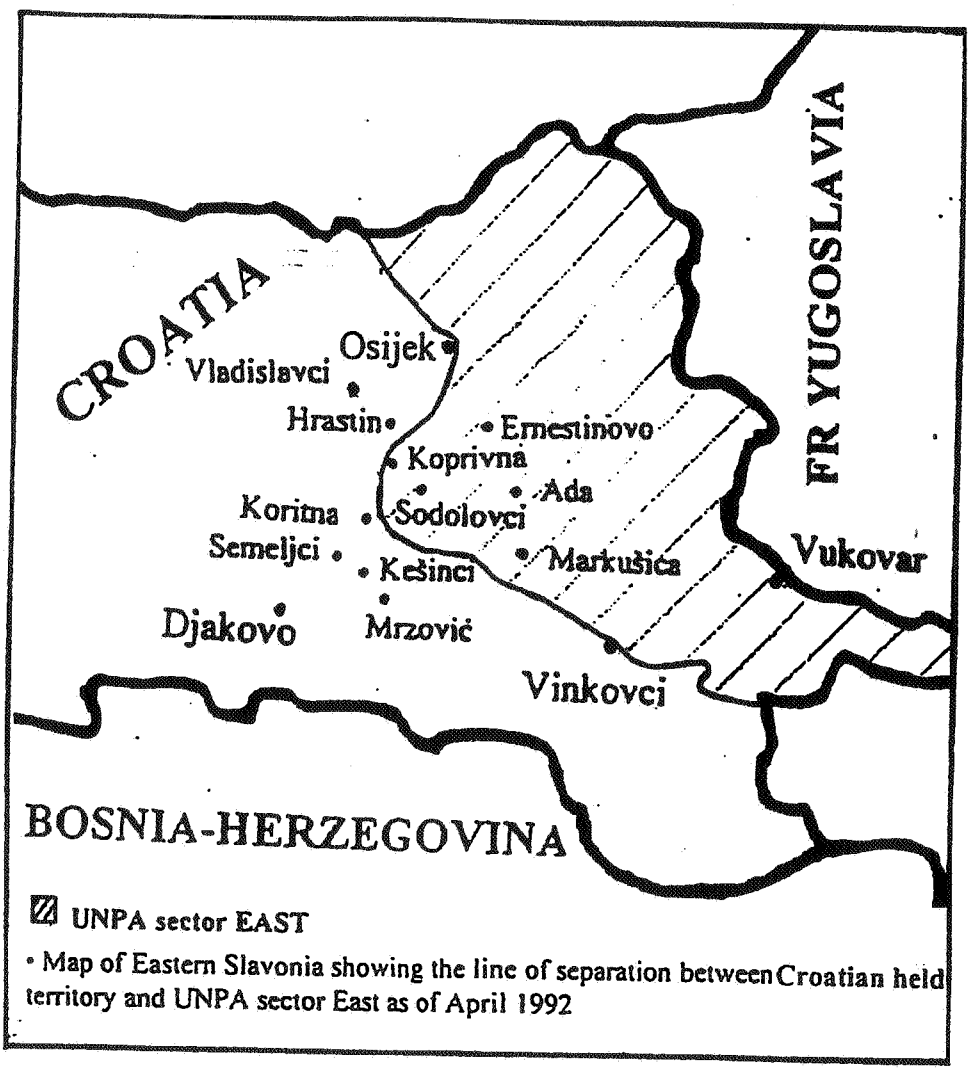
- 11 September 1998: The retrial of Pero Kličković, Željko Keskenović and Vujo Halavanja starts.

- 15 September 1998: Defendant Marinko Stanković is arrested and released one day later to defend himself out of custody along with Pero Kličković, Željko Keskenović, and Vujo Halavanja.

- 7 January 1999: Osijek County Court accepts the Prosecutor's proposal (to include Goran Vušurović's case in the trial of the other four defendants) and the cases are joined.

- 26 April 1999: The Osijek County Public Prosecutor issues an amended indictment, additionally charging Pero Kličković and Željko Keskenović with carrying command responsibility for the indiscriminate shelling as members of the headquarters of the Territorial Defence in Šodolovci.

- 27 May 1999: The Osijek County Court hands down its verdict: Pero Kličković, Željko Keskenović, Marinko Stanković, Vujo Halavanja and Goran Vušurović are all found guilty of committing war crimes against the civilian population (Pero Kličković and Željko Keskenović as members of the command of the Territorial Defence - TO - and the three others as members of the TO), and sentenced to imprisonment terms from eight to 15 years.



• Map of Eastern Slavonia showing the line of separation between Croatian held territory and UNPA sector East as of April 1992

Background

Šodolovci is a small village roughly halfway between Eastern Slavonia's main town, Osijek, and Vinkovci. The majority of the village's population of around 450 inhabitants were Serbs although it was surrounded by predominantly Croat towns and villages.

By July 1991, Eastern Slavonia was on the verge of full-scale war, after several months of skirmishes between Croatian police forces assisted by the newly-formed National Guard (*Zbor Narodne Garde* or ZNG - the predecessor of the Croatian Army) on one side and local Serb militia who were supported by armed volunteers from neighbouring Serbia and, increasingly, the JNA (which had been called on to separate the two fighting parties by the Yugoslav Collective Presidency, but whose commanders in general opposed Croatia's independence) on the other. Armed conflict in Croatia, which erupted in full after the declaration of independence on 25 June, centred on areas with large Serb populations which were mainly concentrated in the Krajina areas, bordering Bosnia-Herzegovina or Serbia proper (so called after the historical term *Vojna Krajina* or military frontier).

The factual circumstances surrounding the outbreak of hostilities in Šodolovci are disputed. On 7 July 1991 a ZNG patrol reportedly entered the village, ostensibly to arrest local Serb extremists suspected of disrupting traffic on the Osijek-Djakovo road. However, at some point violence broke out and the ZNG killed two local Serbs and arrested seven others who were subsequently detained in Osijek prison.[5] After these incidents, the mayor of Šodolovci and his deputy (both of them currently defendants in the trial) reportedly went to Osijek to ask the Osijek mayor, Zlatko Kramarić, to guarantee the safety of the inhabitants of Šodolovci. Considering that this help was not forthcoming or was insufficient, the villagers erected barricades around Šodolovci in early August. It remains unclear who gave the order for the village to be sealed off. By the end of July, paramilitary Serb soldiers reportedly started arriving in the village, and their commander had taken on the military organization of Šodolovci. Around one month later, JNA units entered the village and took over the military command. They mobilized the male Serb villagers of draft age, who in peace time constituted the Territorial Defence (*Teritorijalna Obrana* or TO), into an armed village guard.[6]

[5] *Tanjug* quoting Belgrade radio report of 7 July 1991, *Reuters* press reports of 7 July 1991, *Feral Tribune* (" I novci i Šodolovci"), 7 September 1998.

[6] The TO had been formed in the Socialist Federative Republic of Yugoslavia to defend the country during external invasion, as part of a policy of "Total national defence". Men of draft age who were not subject to call-up into the JNA reserve were liable to serve in the TO or civil defence. TO units were not expected to operate with the same mobility as the JNA and were commanded by local men.

Due to the military superiority of the Serb armed forces who received significant material and direct troop support from the JNA, by the end of the year most of the Krajina - including Eastern Slavonia - was under control of the *de facto* Serbian Krajina authorities (or *Republike Srpske Krajine*, RSK) and the Krajina Serb armed forces (or *Armija Republike Srpske Krajine*, ARSK as they were called after January 1992). Most of the indigenous Croatian population fled these areas and became internally displaced in Croatian Government-held territory.

On 3 January 1992 a comprehensive cease-fire agreement, brokered by the UN was signed by the warring parties, which included the deployment of UN Peacekeeping Forces (UNPROFOR) to Serb-held areas in Croatia with a view to their eventual reintegration. In April 1992, four UN Protected Areas (UNPAs), divided into Sectors South, North, East and West, were created. Sector East comprised the larger part of Eastern Slavonia. Low-intensity armed clashes between Serb forces and the Croatian Army continued in the UNPAs. Sectors South, North and West were brought under Croatian control after two offences by the Croatian armed forces in 1995.[7] However, Eastern Slavonia remained under Serb control until UNTAES took over the administration of the region from January 1996 until 15 January 1998 when the region reverted to Croatian Government control.

Legal proceedings

The following overview and analysis is based on legal documents relating to the case.[8] Additional information was gained from reports of trial observations by international monitors and from the extensive coverage of the pre-trial and trial proceedings in 1998 and 1999 in the Croatian press.

Both the 1996 retrial of Goran Vušurović and the 1999 retrial of five defendants (including Goran Vušurović) are described below. Although it is clear that the 1996 retrial

[7]For human rights violations committed during these offensives and the failure of the Croatian Government to address these, see *Croatia : Impunity for killings after Storm* (AI Index: 48/04/98), of August 1998.

[8]Notably: the indictment by the Osijek County Prosecutor of August 1994, the judgment of the *in absentia* trial by the Osijek County Court of May 1995, the Croatian Supreme Court's decision on the appeal by Goran Vušurović's of May 1997, the amended indictment by the Osijek County Prosecutor against Pero Kličković. Željko Keskenović, Vujo Halavanja, Goran Vušurović and Marinko Stanković of April 1999 and the judgment by the Osijek County Court following the retrial of these five defendants of May 1999. Interviews were also conducted with the Osijek County Prosecutor and officials at the Osijek County Court.

of Goran Vušurović was tainted by violations of fair trial standards, for the sake of clarity this paper concentrates on the shortcomings of the 1999 retrial (which to a large extent perpetuate and repeat the earlier violations).

On 30 August 1994, based on an investigation which had been opened in 1993, the Osijek County Prosecutor charged 19 Serbs, 15 of them Šodolovci inhabitants, with crimes against humanity and violations of international humanitarian law, which constituted war crimes as defined in Article 120, paragraphs 1 and 2 of the Basic Criminal Code of the Republic of Croatia.[9] The indictment accused the 19 men of having, in their capacity as either commander or members of the *Teritorijalna obrana,* in the period between a further unspecified date in July 1991 until 5 May 1992, indiscriminately shelled the villages of Djakovo, Kešinci, Koritna, Mrzovići, Semeljci and Vladislavci (all situated on the part of Eastern Slavonia which remained under Croatian control) , using mortars and heavy artillery guns from positions in villages in RSK territory, specifically Ada, Ernestinovo, Koprivna, Markušica and Šodolovci. As a result 10 civilians lost their lives in several separate incidents of shelling. A further 30 civilians sustained serious or light injuries and a large number of civilian, economic, cultural, municipal and religious objects were substantially damaged or destroyed.

Following a trial before the Osijek County Court which started in 1994, although none were present at the proceedings, all 19 men were convicted of the charges and sentenced to imprisonment terms ranging from 10 to 20 years on 25 May 1995. The verdict was confirmed by the Croatian Supreme Court on 14 February 1996. Copies of the verdict were reportedly handed over to 12 of the defendants or their relatives in November 1997 by a UN Civilian Police (UNCIVPOL) officer.

Amnesty International believes that, except in narrowly described circumstances, the accused shouldbe present in court during a trial in order to hear the full prosecution case and to present a full defence or assist their council in doing so. Should an accused be apprehended after he or she was convicted after a trial held *in absentia*, Amnesty International believes that the verdict rendered *in absentia* should be quashed and that he or she should receive a completely new trial held before a different trial court. (See Amnesty International Fair Trials Manual, AI Index: POL 30/02/98, December 1998, page 110).

[9] Milan Miljković, Zoran Stojčić, Petar Stanić, Željko Keskenović, Djordje Rkman, Sime Utvić, Marinko Kojčinović, Nikola Petrović, Kamenko Milić, Savo Stojčić, Ljubomir Alapović, Milorad Radić, Goran Vušurović, Pero Kličković, Jovan Vicković, Marinko Stanković, Vujo Halavanja, Dordje Vujanović and Zdravko Kojčinovic.

The 1996 retrial of Goran Vušurović

On 18 August 1996, Goran Vušurović, one of the defendants who had been convicted by the Osijek County Court *in absentia* and who had remained in Šodolovci for most of the war, having become aware of his conviction, decided to walk across the (then unguarded) line of separation and give himself up to the Croatian police in Hrastin village. He was immediately detained in Osijek investigational prison. Goran Vušurović's lawyer requested that, in accordance with provisions in the Croatian Criminal Procedures Code his client be retried. Subsequently a retrial was held before the Osijek County Court in November 1996. On 25 November 1996 Goran Vušurović was found guilty of committing war crimes against the civilian population and was sentenced to eight years imprisonment.[10]

Goran Vušurović had pleaded not guilty to the charges against him. and stated in his defence in court that in August 1991 a group of paramilitary volunteers from Serbia had arrived in Šodolovci and started to forcibly mobilize the local Serbs into a village guard. They installed four 60mm mortars and some time later another four 82mm mortars in various positions around the village. The accused had volunteered to participate in a unit which was operating these mortars because this would exempt him from his duty to guard the village. He stated that his function in the unit was to carry ammunition. He further maintained that initially the mortar unit was under the command of the paramilitaries but that around October 1991 the JNA arrived in the village and its officers took over the defence of the village, including the handing down of orders to the mortar unit and giving the unit's marksmen coordinates which reportedly indicated the positions of Croatian Army units stationed in a nearby forest and villages. In December 1991 the unit obtained two 120mm mortars and the defendant was transferred to carrying ammunition to those which were under the command of two JNA officers, who selected targets (which reportedly all included military positions of the Croatian Army) to be shelled. In February 1992 the JNA took over the entire operation of the mortar unit and ordered the local unit members to resume the village guard. In order to evade these orders Goran Vušurović joined the local militia. and later on, the border militia (*pogranična milicija*) where he remained until he developed an ulcer and was hospitalized in Vukovar in the summer of 1993. Afterwards he was too ill to be mobilized and he remained in the village until he decided to cross into Croatian-held territory and give himself in.

[10]He had originally been sentenced in the trial *in absentia* to 11 years' imprisonment. In the sentencing part of verdict rendered after his retrial, the Osijek County Court took into consideration mitigating factors such as the fact that he had given himself up to the Croatian authorities voluntarily, that he was the father of two minor children and that his role in the perpetration of the war crimes had now been established with more clarity.

As in the original trial *in absentia*, the court established the individual criminal responsibility of the defendant virtually on the sole basis of his alleged participation in the Territorial Defence active in Šodolovci during the period in question. In its explanatory section the verdict states that: " .. [I]t is established without argument that the accused was a member of the so-called Territorial Defence of Šodolovci which was an armed formation ... and it is an unarguable and notorious fact that the incriminating period was one in which the severest aggression was waged against Croatia. It is a notorious fact that the rebel Serbs in the summer and autumn of 1991 occupied a significant part of the territory of the Republic of Croatia ... It has been proven ... that in the period from July 1991 until 5 May 1992 the aggressor attacked with artillery armament, such as tanks, heavy guns and mortars the villages of Djakovo, Kešinci, Mrzović, Koritna, Semeljci and Vladislavci."

Goran Vušurović's lawyer appealed against the verdict, by stating that the defendant had been convicted on the basis of mainly circumstantial evidence, much of which was presented to the court through sworn written statements of witnesses who described the specific casualties and damage which had been caused by shelling of the above-mentioned villages during the incriminating period. As these witnesses did not testify in person during the trial there was no possibility for the defence to cross-examine them. No expert evidence was presented in court which would support the charge that the mortar unit in which Goran Vušurović had served during that period of the war was responsible for the inflicted damage nor was his individual role in the various shelling incidents established. Goran Vušurović's lawyer therefore requested that ballistic expertise be sought to determine whether the mortar guns which the unit he had been associated with operated were indeed of sufficiently high calibre to hit targets in some of the villages where the damage and loss of life occurred.

On 21 May 1997 the Croatian Supreme Court ruled on the appeal filed by Goran Vušurović's lawyer, quashing the verdict of the Osijek County Court and sending the case back for retrial. The Supreme Court argued that the judgment was unintelligible as its verdict violated provisions of the Croatian Code of Criminal Procedure by failing to provide a factual or legal description of the criminal acts and therefore the charges against the defendant were unclear, as was the reason for his conviction. Furthermore the Supreme Court questioned the relevance of the various arguments in the court's explanation of the verdict to the case. The Supreme Court also stated that during the trial the Public Prosecutor had changed the factual description of the acts in the indictment and it was not clear whether the court had approved the amended indictment or whether it based its verdict on the earlier indictment, or to which acts of the accused the explanation of the judgment was referring.

The 1998/1999 retrial of five members of the Šodolovci group[11]

In November 1997, 10 men who had been among the 19 convicted after the trial *in absentia* in 1995, filed a request with the Osijek County Court for retrial.[12] The President of the Osijek County Court stated to the local press that the Croatian Code of Criminal Procedure allowed for retrial of proceedings conducted *in absentia* upon the approval of the County Public Prosecutor and confirmation by the police that the defendants were in fact in Šodolovci.[13] In early 1998 an Osijek police investigation revealed that out of the 15 men from Šodolovci who had been tried *in absentia*, eight remained in the village and seven had gone to the Federal Republic of Yugoslavia. Although the President of the Osijek County Court had given verbal assurances to the departing UNTAES representatives that the charges against the Šodolovci group would be reclassified to charges to which the Amnesty Law could be applied to reflect the nature of the criminal offences committed, public pressure was rising to arrest the defendants who remained at liberty in an area now accessible to Croatian law enforcement.[14]

On 21 May 1998 the Osijek County Court rejected the request for retrial on the grounds that the people in question were not in the custody of the court and might abscond. However, on 20 July 1998 the Croatian Supreme Court overruled the Osijek court's decision and ordered the Osijek County Court to retry the eight men who remained in Croatia.[15]

On 28 August the Osijek-Baranja police arrested three of the defendants, **Pero Kličković, Željko Keskenović** (respectively the Mayor of Šodolovci and his deputy) and **Vujo Halavanja** and detained them in the investigational prison of the Osijek County Court. Following international pressure, inlcuding by the Organization for Security and Co-operation in Europe (OSCE) who reminded the authorities that the President of the Court had made verbal commitments to representatives of UNTAES that the remaining Šodolovci

[11]The five defendants are : Pero Kličković, Željko Keskenović, Vujo Halavanja, Marinko Stanković and Goran Vušurović.

[12]Petar Stanić, Željko Keskenović, Djordje Rkman, Marinko Kojčinović, Nikola Petrović, Milorad Radić, Pero Kličković, Marinko Stanković, Vujo Halavanja and Zdravko Kojčinović.

[13]*Glas Slavonije* : "Obnova sudskog postupka u siječnju?", 16 December 1997.

[14]*Večernji List*: " Osam ratnih zločinaca slobodno se šeće Hrvatskom", 19 April 1998.

[15] It had been established that Marinko Kojčinović and Nikola Petrović were now residing in the Federal Republic of Yugoslavia and were therefore not within the court's jurisdiction.

defendants would be allowed to stand retrial out of custody, the three men were released three days later. Their retrial opened on 11 September 1998.

Four days later, on 15 September, another of the remaining defendants, **Marinko Stanković**, was arrested and in turn released the next day to defend himself on retrial from freedom. His case was included in the retrial of Pero Kličković, Željko Keskenović and Vujo Halavanja. Finally, on 17 January 1999 the second retrial proceedings against **Goran Vušurović** were also merged with the retrial of the other four which had started four months earlier. The retrial ended on 27 May 1999 when the Osijek County Court found all five men guilty of having committed war crimes against the civilian population. [16]

Summary of the prosecution case

During the retrial the court heard evidence given by a large number of witnesses for the prosecution. Most of them had testified at the earlier trials, and many were relatives of the persons who died or had been injured as a result of shelling, or were people whose property had been damaged or destroyed by it. A number of witnesses testified about the events immediately prior to and during the period in which Šodolovci was sealed off. The death of 10 civilians and the injuries to 28 other persons were confirmed by a local pathologist. He stated that all injuries suffered had been caused by explosives or by trauma suffered as a result of the victims having jumped out of vehicles trying to find shelter during artillery attacks. Extensive documentation collected by the Djakovo municipal commission for the gathering and estimation of war damage was presented to the court. Evidence was given by local commanders of the Croatian Army who had been stationed in the area at the relevant time and who had kept records of the nature and frequency of shelling incidents in all surrounding villages during the period and in addition provided analyses of the movements of the front-lines in the area during the course of the armed conflict. Witness testimony was also heard from Croats who had remained in Šodolovci during most of the period in question or who had travelled there for work.[17] A number of witnesses for the defence were heard, all of them local Šodolovci Serbs who remained in the village. Finally, the court heard the opinion of a ballistic expert, who had visited the villages of Koritna, Semeljci, Vladislavci and Djakovo, and analysed fragments of missiles and detonators left after the

[16] The Osijek County Court referred to the verdict rendered after the *in absentia* trial of 25 May 1995 which it effectively confirmed.

[17] For example the director of the local electricity board in Osijek several times travelled to Šodolovci to repair faults on the long-distance power lines which continued to be in operation although these lines crossed the front lines of the warring parties.

shelling and photographic evidence as to determine the calibre of shells and armaments used and the range of various armaments.

Testimony of Šodolovci Croats

The prosecution presented the testimony given by three Šodolovci Croats (MŠ, IA and MA), who had remained in Šodolovci until 17 February 1992 (on which date they were expelled and fled to Croatian-held territory), as evidence linking the defendants to the crimes.[18] These witnesses had given testimony during the trial *in absentia* and the statement of one of them (MŠ) had been presented during Goran Vušurović's retrial in 1996. However, during the retrial each of these witnesses changed their statements significantly, stating that some of the information they had presented on earlier occasions as first-hand was in fact hearsay, and alleging that parts of their earlier testimony had been misinterpreted in court.

While testifying at the trial *in absentia*, MA asserted that he had seen the majority of the accused (then a group of 19) wearing military or paramilitary uniforms and carrying arms. According to him Željko Keskenović and Jovan Vicković were the organizers of the rebellion against the Croatian authorities in Šodolovci. He also said that Goran Vušurović and Marinko Stanković were part of a mortar unit. Witness IA stated that Željko Keskenović was a member of the TO headquarters, that Goran Vušurović and Marinko Stanković and three other accused were in a mortar unit and that Vujo Halavanja was in a unit operating a canon (*top*) which was used alternatively in Koprivna and Šodolovci. MŠ similarly alleged that all accused wore uniforms of the "enemy army" and that Željko Keskenović and Pero Kličković were members of the TO headquarters.

During the 1996 retrial of Goran Vušurović, MŠ testified that he had seen the defendant in a uniform of the enemy army in Šodolovci, on which he had not seen any insignia(to determine which military formation he belonged to) and that he did not know which function the defendant had in the army.

During the 1998/1999 retrial, all three witnesses made significant changes to their earlier statements. For example, witness IA stated that virtually all his earlier testimony regarding the command role and activities of Željko Keskenović and Pero Kličković had not been based on his own observations but rather on what he had heard from others. He did not know with any certainty who had in fact given the orders to fire from any

[18] As most of the heaviest shelling incidents took place on Djakovo in April and May 1992, the assertion that these witnesses, who had by then left the village, would be able to provide relevant evidence is even more questionable.

armaments nor who determined the targets. Witness MA denied that he had claimed in his earlier statements that Željko Keskenović and Pero Kličković were the organizers of the armed rebellion against the Croatian authorities. He also said that the Serbs who were involved in the firing at the other sides were not locals. Witness MŠ alleged that his earlier statements had been misinterpreted by the court: he said that when he had testified that Marinko Stanković was a member of a mortar battery, he was in fact referring to what military function the defendant had carried out during his compulsory military service.

Despite the contradictory nature of these testimonies and the relatively small amount of concrete information they provided which could be deemed of relevance to the case, the court in its 1999 judgement considered them as evidence substantiating the criminal responsibility of Marinko Stanković and Vujo Halavanja. The court acknowledged that the three witnesses had altered their statements during the retrial in the presence of the defendants. However it considered as more credible the statements given by the witnesses during the investigation and the *in absentia* trial, as less time had elapsed since the relevant events had occurred. The Court further said that it could be concluded that the witnesses had changed their statements subject to "internal and external pressure" given that each of them owned property and houses in Šodolovci and Koprivna and were planning to return to these although as Croats they would be in the "absolute" minority in these villages (see also below on page 21).

Expert evidence

The prosecution also relied heavily on testimony given by two Croatian Army officers, who were stationed and were on military duty in the nearby area under Croatian control, but whose information on events inside Šodolovci was mostly circumstantial or based on speculation or further unacknowledged sources. Another military expert, IM, explained the structure and functioning of the Territorial Defence to the court, based on his knowledge of the Law on Total National Defence (*Zakon o općenarodnoj obrani*) of 26 June 1991.[19] According to him this law required that "during times of war, the citizens of the local community would organize and lead the resistance, mobilize all forces and means necessary for the defence of the overall population, and secure a unified leadership and command of the Territorial Defence." IM did not give concrete examples of how these provisions had been implemented in Šodolovci, nor did he give any arguments as to why the inhabitants of Šodolovci - who were described on various occasions by the court as having rebelled against the Croatian authorities since the early summer of 1991 - would adhere to a law

[19]This law was passed by the Croatian Parliament one day after the declaration of independence.

which was passed by the Croatian Parliament when armed clashes were already occurring in the area.

Another Croatian Army officer, SŠ, testified that the headquarters of the Territorial Defence in Šodolovci consisted of eight or nine persons and that "on their own admission" (*prema vlastitim saznanjima*) the defendants Milan Miljković, Željko Keskenović, Djordje Rkman, Pero Kličković, Lukić (first name unknown - he was not indicted) and Djordje Vujanović were part of the local command of the Territorial Defence.[20] He stated that, during a telephone conversation with Željko Keskenović on 7 November 1991 which was part of the negotiations to release a number of Croatian Army soldiers who had been taken prisoner in Šodolovci, the latter introduced himself to him as the commander of the TO command. The witness also testified that it became clear form his conversation (with Željko Keskenović) that the command for the local TO lay with a Serbian paramilitary, known by the nickname " the Montenegrin" (*Crnogorac*), and that he [it is unclear from the Croatian text of the verdict whether this refers to Keskenović or to *Crnogorac*] was only a military commander in the area for a short period of time.

Summary of the defence case

Each of the defendants pleaded not guilty to the charges against them. Goran Vušurović repeated most of the testimony he had given during his second trial, but stated that he had never been a *member* of a mortar unit but had only unloaded boxes of ammunition from a lorry.

Željko Keskenović stated that at the beginning of July he had fled to nearby (Serb-held) Markušica where he stayed until 2 August when a group of some 30 Serb paramilitaries came there and ordered him to return to Šodolovci. Upon his return he was given the task of organizing a communal kitchen and later he had to participate in the village guard.

Pero Kličković, the Mayor of Šodolovci, testified that after the start of armed clashes between Serbs and Croats in the region, the formation of local patrols was organized in Šodolovci. After the July attack the majority of inhabitants fled from the village, but he himself stayed and remained in contact with the Osijek mayor, Zlatko Kramarić, to discuss a normalization of relations. He also contacted Serb representatives from the nearby village of Koritna and they had joint meetings with the Osijek mayor. On

[20] It is unclear when and how the majority of these defendants would have made such assertions as, with the exception of Keskenović and Kličković, none of them ever testified in court.

2 August a group of uniformed men from Serbia came, who took over the military command of the village and ordered it to be barricaded off. The Serb paramilitaries handed out uniforms and guns to the villagers who all were enlisted in the village guard and had to dig trenches, stand guard and organize a communal kitchen. Apart from performing these tasks, Pero Kličković claimed that he did not have any other military or civil function in the village.

Vujo Halavanja stated that in July he went to Sremska Mitrovica in the Federal Republic of Yugoslavia for medical treatment in hospital. At the end of August he returned to Šodolovci. At that time JNA formations started arriving in the village. The village was controlled by JNA commanders as the civilian authorities had stopped functioning, and some 200-300 JNA soldiers were stationed in the village, although the numbers subsequently varied. He himself was first ordered to stand guard in trenches but was then transferred for reasons of his bad health to work in the communal kitchen.When UNPROFOR troops were deployed in the region in the spring of 1992 the JNA withdrew, taking their equipment with them.

Marinko Stanković, stated that when the events in early July occurred, he was in Banja Luka in Bosnia-Herzegovina. He decided to leave his family there and returned to Šodolovci which he found virtually empty. After Serbian volunteers arrived in the village in August, he had to dig trenches for two weeks around the village and participate in the village guard. Then JNA soldiers started arriving in the village and took over the command. In mid-September Šodolovci was shelled twice from the direction of Koritna and the Tomin hrast forest. Marinko Stanković continued to participate in the village guard and was never involved in the operation of heavy artillery which was carried out by the JNA, although he saw them transporting recoilless guns and heard that mortars had been stationed near the village graveyard. In the middle of January 1992 he went to Banja Luka where he remained until the end of February because of his father's illness and subsequent death and burial.

The court also heard evidence given by 10 witnesses for the defence, all of them Šodolovci Serbs who stayed in the village during the war, although most of them had not moved around the village much during the relevant period due to the war situation. According to these witnesses, all able-bodied inhabitants of the village served in the village guard and Željko Keskenović and Pero Kličković had specific tasks such as organizing the accommodation of soldiers and the distribution of food. These witnesses confirmed that they had not seen any of the defendants operating or commanding artillery equipment.

Expert evidence

A ballistics expert, engaged by the court on the request of the defence carried out detailed analysis based on the complete court files, and an inspection of the damage that was

sustained by the villages of Koritna, Semeljci, Vladislavci and Djakovo. He also examined parts of projectiles and detonators found during the period in question in Djakovo and studied all photographic evidence.

The expert concluded that the villages of Koritna, Semeljci and Vladislavci had been shelled by 120mm calibre mortars (which have a firing range of 6.3kilometres), which would have been fired from a distance of 5kilometres from the direction of Šodolovci or its surroundings, or in the case of Koritna and Semeljci the shelling could have come from either Šodolovci or Koprivna. The town of Djakovo had been shelled by 130mm calibre mortars (which have a range of around 27.5kilometres), and most likely from the direction of (Serb-held) Markušica.

What is clear from the ballistics expert's testimony is that the heaviest instances of shelling (namely the shelling of Djakovo in the spring of 1992 which resulted in the death of six persons and in the serious injuring of at least four persons) could not have been carried out from Šodolovci where at the relevant time no armament was stationed or in use of the range required to reach targets at such distance. With regards to the majority of the remainder of the shelling incidents, the expert was unable to conclude with certainty the exact location where the shelling originated (that is in most instances in question the shelling could have originated either from Šodolovci or from one or two of the neighbouring villages).

The prosecution did not provide any evidence aimed at proving that each of the defendants had at any time operated or commanded mortar units either in Šodolovci or in the other villages named in the indictment, and indeed the evidence which was provided on the role and activities of each of the defendants in Šodolovci itself was at the very least inconclusive, contradictory and insufficiently substantiated.

Violations of international standards guaranteeing the right to a fair trial and of domestic criminal law

Amnesty International is concerned that the fair trial rights of each of the accused were violated in the course of the retrial.

The right to be heard by an independent tribunal

According to the local press the Croatian Justice Minister, Zvonimir Šeparović visited Osijek two days before the issuing of the final verdict and spoke to judges at the Osijek

County Court about "current legal issues".[21] In a statement to the press, Minister Šeparović commented on another war crimes trial which had just opened before the Vukovar County Court by saying " these judicial procedures prove that Croatia has a functioning legal state, that the worst war crimes will never be subject to the statute of limitations, and that Croatia was a victim of a terrible and brutal aggression, to which Osijek and Vukovar are the best witnesses" (see also below on page 24).

Amnesty International finds the report that a member of the government was seen conferring with judges of the Osijek County Court on the eve of the conclusion of a major political trial disturbing, as it could lead to the appearance of government interference with the functioning of the judiciary. Amnesty International believes that the Minister's actions may have led to inferences that he was not acting in conformity with the UN Basic Principles on the Independence of the Judiciary, which state, in part, that :

" ... It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary" (Principle 1)

" The judiciary shall decide matters before them impartially, on the basis of the facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason." (Principle 2)

The Ombudsperson for Human Rights for Bosnia-Herzegovina[22] has highlighted that, in the interest of public confidence in the judicial system, it is of the utmost importance that courts act as well as *appear to act* independently from the executive powers (that is the government authorities).[23] This is imperative in politically-charged and sensitive trials. In similar circumstances in Bosnia-Herzegovina, the Ombudsperson concluded that the panel of judges of a Bosnian Serb court, who had presided over the trial

[21] *Vjesnik*: "Šeparović: Osijek i Vukovar svjedoće o agresiji na Hrvatsku", 26 May 1999.

[22] The Human Rights Chamber and the Ombudsperson for Human Rights together form the Human Rights Commission of Bosnia-Herzegovina. Both bodies base their decisions and recommendations on the country's obligations under international human rights law, including the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

[23] Human rights ombudsperson for Bosnia and Herzegovina. Special report No. 2650/99, "On the right to a fair hearing by an independent and impartial tribunal and the prohibition of discrimination in the enjoyment of the above right with respect to the criminal proceedings against Nedžad Hasić, Ahmo Harbaš and Behudin Husić addressed to the Supreme Court of the Republic Srpska" (pages 4-6).

of three Bosniac (Bosnian Muslim) men on murder charges, could not be considered to be independent or impartial She based her conclusions on the fact that the presiding judge on the panel had had discussions with the Justice Minister during a professional seminar attended by judges from the Bosnian Serb entity, three days before he was due to render the verdict in this particular case. Furthermore, on the day of the verdict, the legal advisor to the entity's President was seen in the court where he reportedly met the president of the panel of judges and two lay judges on the panel.

The Ombudperson stated in her report :

".... Irrespective of whether Mr Slobodan Cvijetić [the President's legal advisor] actually discussed the case with the lay judges or with judge Željić [the presiding judge], the Ombudsperson cannot but consider the defendants' doubts as to the independence and impartiality of the Panel as fully legitimate."

Furthermore, doubts have been expressed in a more general way with regards to the the perceived lack of independence of the Croatian judicial system. The UN Special Rapporteur on the independence of judges and lawyers has expressed concern that the Croatian State Judicial Council (*Državno Sudbeno Vijeće*, the body selecting and appointing judges and public prosecutors) had relieved several judges from their posts because of their national origin or political views.[24]

The Croatian Helsinki Committee has alleged that the State Judicial Council has violated provisions of the Constitutional Law of Human Rights and the Rights of Ethnic and National Minorities in Croatia by failing to elect a proportional number of non-Croatian personnel in judicial institutions.[25] As an example of what it called the "ethnic cleansing" of the judiciary, the Croatian Helsinki Committee presented statements by President Franjo Tudjman who stated to the press in 1993 that there were "still" seven Serb judges serving in the courts in the town of Karlovac (out of 21 judges). According to the Helsinki Committee the President's statement led to the departure of several Serb judges and prosecutors, as well as one Slovene, in that town.

[24] Report of the UN Special Rapporteur on the independence of judges and lawyers, Mr Param Cumaraswamy, UN Doc: E/CN.4/1998/93, 12 February 1998.

[25] Croatian Helsinki Committee, Statement no. 52, 18 March 1997.

The right to be heard by an impartial tribunal

Amnesty International is concerned that the five men were tried by a panel of judges presided over by the same judge who presided during the first trial *in absentia*. As such, it can be argued that the presiding judge had already formed an opinion on the case from his participation in the earlier proceedings which may have affected his impartiality.

The fact that the same judge presided over the panel of judges both during the *in absentia* trial and the retrial also appears to be in violation of Croatian domestic criminal legislation. In accordance with Article 36, paragraph 5, of the 1998 Code of Criminal Procedures, a judge or lay judge is excluded from carrying out these duties in a criminal case whenever they have participated in the same court in the handing down of a verdict which was subsequently quashed by an extraordinary judicial remedy (*izvanredan pravni lijek*), such as a retrial.

These concerns are heightened in view of the way in which the presiding judge weighed certain pieces of evidence. For example, as has been discussed above (pages 13-15) some witnesses for the prosecution made substantive changes to the statements they gave during the earlier trials. The presiding judge concluded that their earlier testimony was more credible and that the witnesses had changed their statements during the retrial under "pressure". He did not substantiate the basis for this conclusion for which there was no evidence offered at the retrial. The decision to dismiss the later, amended, version of the witnesses' testimony, therefore appears have been made by the court not solely on the basis of the evidence itself.

Amnesty International believes that therefore the retrial may not have been conducted in accordance with UN Basic Principle 2 on the Independence of the Judiciary which requires that:

" The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law ..."

In its judgment the court also stated that the accused "... alongside with others, decided to collaborate in the rebellion against the legitimate authorities of the Republic of Croatia and to take up arms, and because of this reason they stayed in this region [in the summer of 1991]." The court implies this way that the accused's decision to stay on in the village where they had lived all their lives, rather than leave when hostilities broke out, was in itself incriminating evidence.

In Amnesty International's view, the court's interpretation of the behaviour of each of the accused, which appears to amount to lumping them together in the collective group of "the aggressor" could lead to an inference that the court was biassed against the accused because they were Croatian Serbs. This concern is compounded by the fact that the defence was prevented from presenting some witnesses who they believed would testify about the reasons why several of the accused had remained in Šodolovci and their desire to solve the problems between the Serb and Croatian populations in the area peacefully (see below on page 25).

The right to be presumed innocent until proven guilty

According to the Croatian Code of Criminal Procedure nobody can be declared guilty of a crime until this has been established by a final (*pravomoćna*) verdict .[26] The right of every person charged with a criminal offence to be presumed innocent, until and unless proven guilty in the course of a trial which has met all guarantees of fairness is enshrined in Article 14 of the International Covenant on Civil and Political Rights and Article 6 of the Europe Convention on Human Rights. This guarantee means that the burden of proof to establish a person's guilt beyond a reasonable doubt lies with the prosecution throughout the trial.[27]

Likewise, Article 66(3) of the Rome Statute of the International Criminal Court provides that : " In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt." Judges of the International Criminal Tribunal for former Yugoslavia in the Čelebići trial have stated that they would apply the general principle that " ... the Prosecution is bound in law to prove the case alleged against the accused beyond a reasonable doubt. At the conclusion of the case the accused is entitled to the benefit of the doubt as to whether the offence has been proved."[28]

In the Šodolovci trial, the court concluded that the retrial had established the factual situation which had been the basis for the guilty verdict rendered after the trial *in absentia* in 1995 (Osijek County Court judgment of 27 May 1999, page 8). In particular, the court relied on the evidence given by the three Šodolovci Croats who had remained in the village

[26]Article 3 of the Croatian Code of Criminal Procedure of 1998 and Article 28 of the 1990 Croatian Constitution.

[27]Human Rights Committee General Comment 13, paragraph 7.

[28]Čelebići judgment, paragraph 601.

until the middle of February 1992 and on the evidence given by the three Croatian Army officers on the situation in the Serb-occupied areas and on the legal basis and functioning of the Territorial Defence in former Yugoslavia (see also above under "Summary of case for the prosecution").

Thus, the court found that "... [I]t is without doubt that Goran Vušurović, Željko Keskenović, Pero Kličković, Vujo Halavanja and Marinko Stanković, together with others, decided to collaborate in the opposition against the legal authorities of the Republic of Croatia and to take up arms and this is why they stayed on this territory ... The arguments of the defence that the accused, as all inhabitants of Šodolovci acted out of collective self-defence has no factual and legal foundation."

The court further stated :

" ... In this case, contrary to the reasoning of the defence, there is no need to establish that the accused ... were involved in the shelling of each mentioned locality, using every type of heavy armaments, nor that they ordered all these incriminating activities. In the armed aggression against the Republic of Croatia, every structure in the armed forces of the aggressor undertook part of the activities, according to a plan and an agreement, in order to achieve the evil aim. The consequences of these activities as summed up in the indictment .... are all the results of the collective collaboration of separate structures and individuals, whether on the level of commanding them or carrying them out. All this is in violation of the rules of international law."

Expanding further on this line of reasoning the court stated that the commission of war crimes as laid down in Article 120 of the Basic Criminal Code was a coordinated (*sklopni*) criminal act where the perpetrators carried out this act by contributing to it. In other words the crime appears the result of the collaboration of several persons whose acts are coordinated through a plan.

In explaining its guilty verdict, the court stated that there was no need to establish the individual criminal responsibility of the five defendants but that the mere fact that they were to varying degrees involved in the TO structure which was allegedly operating in the village during the incriminating period proved their involvement in the commission of the crimes.

On the basis of the reading of the court's judgment as noted above, Amnesty International is concerned that, rather than establishing the responsibility of each individual for the crimes concerned, the court found the defendants guilty by association, as it had in fact done in its verdict in the *in absentia* trial and in the verdict issued after the retrial of

Goran Vušurović. International intergovernmental bodies have found that legal practices which consider factors such as a defendant's ethnicity or their membership of particular armed forces as evidence of guilt *per se* may violate the right to be presumed innocent.

In addition the court stated that the evidence given by the Šodolovci Serbs for the defence "... did not prove the defendants' innocence ..."(Osijek County Court judgment, page 22). Amnesty International considers that such a conclusion is a further indication of the failure of the court to respect the right of the accused to be presumed innocent, as it is not upon the accused to prove their innocence but upon the prosecution to prove their guilt.

Amnesty International is also concerned by the remarks to the local press by Justice Minister Zvonimir Šeparović during his visit to Eastern Slavonia on the eve of the rendering of the verdict in the Šodolovci trial (see also above pages 18-19). On this occasion the Minister made a statement in which he indirectly referred to the five men on trial. He was quoted in the local press as saying: "We will never allow ourselves to be forced by foreigners to accept that the entire war epic in Croatia and the victims' longing for justice will, as a result of the Amnesty Law, reduce the četnik aggression to just 25 četniks as if they alone are responsible for the destruction of Vukovar and other Croatian towns".[29] By "25 četniks" - a pejorative term used to describe Serbian fascists during the Second World War - the Justice Minister was referring to a list issued by his ministry at the end of 1997, which named 25 persons who had been subject to prosecution for war crimes. This list included the entire Šodolovci group.

Amnesty International is concerned that the Justice Minister's statements on the eve of the conclusion of the Šodolovci trial may have been interpreted as a declaration of the guilt of the defendants, thereby prejudging the assessment of the facts by the competent judicial authority, and may have infringed on the right of the accused to be presumed innocent.

The European Court of Human Rights has ruled that the principle of presumption of innocence imposes obligations not only on the judiciary but also on other authorities. [30] In effect, this principle may be infringed not only by a judge or court but also by other public authorities.

[29] *Vjesnik*: "Šeparović: Osijek i Vukovar svjedoće o agresiji na Hrvatsku", 26 May 1999

[30] *Allenet de Ribemont v. France* (1), 3/1994/450/529, paragraphs 32-41, 23 January 1995.

The principle of "equality of arms"

Amnesty International is concerned that the right of the accused to present a full defence and to be treated with equality may have been violated. In particular, Amnesty International is concerned that the accused were deprived of their right to fully examine witnesses against them and obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them as enshrined in Article 6(3)(d) of the European Convention on Human Rights and Article 14(3)(e) of the International Covenant on Civil and Political Rights.

For example, during the cross-examination of the Croatian Army officers, MŠ and SŠ, by the defence the presiding judge did not allow them to ask these witnesses questions pertaining to the nature of the exchange of mortar fire between the two sides. One of these witnesses also refused to reply when asked by the defence to give more details on the positions, armaments and choosing of targets by the Croatian army, stating that these matters were in his opinion military secrets. The judge did not entertain the defence's challenge to this refusal.

Given that one of the elements of the crimes with which the accused were charged is that they engaged in the indiscriminate shelling of civilian targets, it would be of crucial importance for the court to establish that the shelling by the Serb and JNA forces was indeed of this nature, by using all available sources of information. Furthermore, as the events at issue (the shelling) took place more than eight years from the time of the trial and in the context of an armed conflict which has since been settled by a peace agreement, the argument that some of the information would be classified as a military secret seems similarly unjustified.

In addition the court refused the request of the defence to call some witnesses who they alleged would have provided more information on the events immediately prior to the outbreak of hostilities in and around Šodolovci. In particular, the witnesses the defence sought to examine included the war-time and current mayor of Osijek, Zlatko Kramarić, and other local officials who had been involved in negotiations with the inhabitants of Šodolovci and other Serb villages in the area. In particular with regard to the generalizations made by the court about the collective activities and intentions of all Serb inhabitants who chose to stay in the region, the decision to bar testimony which the defence proposed would dispute such conclusions appears to be significant.

Conclusions and recommendations

Amnesty International is concerned that Goran Vušurović, Željko Keskenović, Pero Kličković, Vujo Halavanja and Marinko Stanković were convicted and sentenced to terms of imprisonment after a trial that failed to meet internationally recognized standards of fairness.

In particular there is reason to believe that the court which tried them may not be considered to be an independent and impartial tribunal. Furthermore the court failed to determine the defendants' individual criminal responsibility for the charges, and even reasoned that there was no need to establish that each of the accused was involved in the incidents set out in the indictment. In this way the court effectively relieved the prosecution of the burden of proof and violated the defendants' right to be presumed innocent. In addition, the organization is concerned that the defendants' rights to present a defence were violated by the courts failure to fully respect their right to examine and call witnesses.

As demonstrated by the departure of many Croatian Serbs from the region in the aftermath of the Šodolovci trial and the reactions to the outcome of the trial in the media in Croatia, the Bosnian Serb entity and the Federal Republic of Yugoslavia, the trial has had an enormous impact on the perception of justice and increased the lack of confidence in the judicial system.

In Amnesty International's opinion war crimes trials before national courts which fail to meet international standards of fairness will only add to the number of victims of human rights violations in the region and do not serve the purposes of justice.

Amnesty International's recommendations:

Amnesty International welcomes the decision by the Croatian Supreme Court to quash the Osijek County Court's verdict of 27 May 1999 for reasons of serious procedural violations and to send the case back for retrial.[31]

- Amnesty International continues to urge the authorities to take all necessary steps to ensure that all trials for war crimes in Croatian courts should meet internationally

[31]The Supreme Court issued its decision on 24 November 1999. No further specification was given as to which criminal procedures the Supreme Court considered to have been violated during the retrial. All five defendants were released from custody.

recognized standards for fair trial. These standards include among others the right to be tried by an independent and impartial tribunal, the right to be presumed innocent until proven guilty beyond a reasonable doubt, the right to be present at trial and the right to be treated with equality.

- If the prosecution decides to pursue the charges against the five men of the Šodolovci group, then Amnesty International considers that their retrial should be held before an entirely different panel of judges, in line with Croatian criminal procedures and in the interest of the right of the defendants to a fair hearing before an impartial and independent tribunal.

- Amnesty International also recommends that the Croatian Government reconsiders its initial objection to engage in the exchange of files on war crimes prosecutions with the Office of the Prosecutor at the Tribunal. A similar agreement exists for Bosnia-Herzegovina, where under the so-called Rules of the Road, files on war crimes case are submitted to the Tribunal which then reviews these in order to determine whether there is sufficient evidence to pursue a prosecution.[32] Amnesty International notes that Croatian Government, through its 1997 Programme on the Establishment of Trust, Accelerated Return and Normalisation of the Living Conditions in the War-Affected Areas of the Republic of Croatia, has undertaken to inform the Tribunal in a timely manner of new war crimes prosecutions.[33] However, in Amnesty International's understanding this procedure does not include a review of case files in order to determine whether the available evidence against a person would warrant their criminal prosecution.

- Recognizing that this would lead to a significant increase in the already overwhelming workload of the Tribunal's Prosecutor, if the Croatian Government would agree to this exchange, the organization would urge UN member states to make available additional funds to the Prosecutor's Office in order to facilitate this much-needed work and expedite the examination of potential war crimes proceedings intended to be brought in the Croatian courts.

[32]The Rules of the Road are part of the Rome Agreement, which was signed by the Presidents of Bosnia-Herzegovina, Croatia and the Federal Republic of Yugoslavia at the Peace Implementation Council in February 1996. The Rules of the Road expand on provisions relating to war crimes from the General Framework Agreement for Peace in Bosnia-Herzegovina (Dayton Agreement).

[33]Fifth Report of the OSCE Mission to the Republic of Croatia on Croatia's progress in meeting international commitments since May 1999, 28 September 1999, pages 8-9.