



**International Covenant on  
Civil and Political Rights**

Distr.: General  
4 February 2011

Original: English

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**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant**

**Croatia\***

**Information received from the Republic of Croatia on the  
implementation of the concluding observations of the Human Rights  
Committee (CCPR/C/HRV/CO/2)**

[17 January 2011]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

**Response from the Republic of Croatia on the implementation of the Committee's recommendations under paragraphs 5, 10 and 17 of the concluding observations of the Human Rights Committee on the second periodic report of the Republic of Croatia dated 29 October 2009**

1. Pursuant to paragraph 21 of the concluding observations of the Human Rights Committee (CCPR/C/HRV/CO/2) regarding the second periodic report of the Republic of Croatia, the Republic of Croatia submits the relevant information on the implementation of the recommendations of the Committee made in paragraphs 5, 10 and 17 of the concluding observations.

**Reply to the issues raised in paragraph 5**

**Fight against discrimination**

2. Regarding the fight against discrimination, it is necessary to stress that the Republic of Croatia is undertaking intensive measures in order to suppress all forms of discrimination and to overcome prejudice against ethnic minorities.

3. In order to provide better protection and to promote the rights of the members of national minorities, including members of the Serb minority, and to suppress discriminatory behaviour against all members of national minorities, the Government of the Republic of Croatia adopted in 2008 an Action Plan for the Implementation of the Constitutional Act on the Rights of Minorities. The goal of this document is to provide the best and most comprehensive exercise of all the rights of national minorities guaranteed by the Constitutional Act on Protection of the Rights of National Minorities.

4. The Action Plan contains measures divided into 12 chapters (official and public use of languages and script of the national minorities; education in the language and script of national minorities; use of their signs and symbols; cultural autonomy, the right to preserve one's religion and to establish religious communities together with other members of that religion; access to the media; self-organising and association for the purpose of exercising mutual interests; representation in the representative bodies at the state and local level, and in administrative and judicial bodies; participation of members of national minorities in the public life and in management of local affairs through the councils and through representatives of national minorities; protection from any activity which endangers the exercise of rights and freedoms of the members of national minorities - developing tolerance towards differences and suppression of discrimination; Roma National Programme and the Action Plan for the Decade of Roma Inclusion 2005- 2015; general measures for the support of the implementation of the Constitutional Act on the Rights of Minorities and of the Action Plan).

5. In order to successfully follow the implementation of measures stipulated in the Action Plan, an obligation to submit an annual report to the Government of the Republic of Croatia on the implementation of the Action Plan for the Implementation of the Constitutional Act on the Rights of Minorities was introduced. In October 2010, the Government of the Republic of Croatia adopted the Report on the Implementation of the Action Plan for the Implementation of the Constitutional Act on the Rights of Minorities for 2008 and 2009.

6. Former experience in Action Plan implementation showed that the measures have achieved the desired results in many areas (cultural autonomy of national minorities, education in the language and script of national minorities, the right to profess one's religion and to establish religious communities together with other members of that religion, representation in the representative bodies at the state and local level,

implementation of the Roma National Programme and the Action Plan for the Decade of Roma Inclusion 2005-2015). The representatives of the national minorities in the Croatian Parliament gave a large contribution to the realisation of national minorities' rights. Members of national minorities are a constituent part of the ruling majority and they participate in the state affairs.

7. It is important to stress that the analysis of the implementation of measures shows that 48 measures have been fully implemented (51.61%), 33 measures have been continuously implemented (35.48%), 5 measures have been partially implemented (5.38%), and 7 measures have not been implemented (7.53%). The mentioned data shows a high percentage of implementation of the Action Plan measures (92.47%). The majority of measures that have not been implemented are planned for implementation during 2010.

8. As it has been proven that implementation of the Action Plan measures has significantly contributed to the promotion and realization of the rights of the national minorities guaranteed by the Constitutional Act on the Rights of Minorities, however, there is still room for improvement and the Office for National Minorities is preparing a new Action Plan for the Implementation of the Constitutional Act on the Rights of Minorities for the following period. The new Action Plan shall define the new measures for the consistent implementation of the Constitutional Act on the Rights of Minorities, that is, it shall continue with the implementation of those measures that are continuously implemented, as well as intensify the activities for more efficient implementation.

9. The Republic of Croatia's progress in realizing the rights of national minorities is also confirmed by the opinion of the Council of Europe Advisory Board on the Third Report of the Republic of Croatia on the Implementation of the Framework Convention for the Protection of National Minorities. The Council of Europe has recognised the high standards that the Republic of Croatia has incorporated into the legislative framework.

10. Furthermore, the Office for National Minorities of the Government of the Republic of Croatia in cooperation with the Council for National Minorities of the Republic of Croatia and the Faculty of Political Science in Zagreb organised a workshop entitled "Media and national minorities in the Republic Croatia" for journalists of both electronic and printed media. Regarding the recommendations and guidelines for reporting on subjects concerning the minorities it was stressed that the representation of the minorities in daily newspapers and news broadcasts needs to be improved. The goal of the workshop was to help develop the sensitivity of journalists and editors when reporting on subjects and events connected to the members of national minorities. Thus pointing out the need to reduce the stereotypes and prejudice against national minorities, especially against Roma people.

11. Also, in 2008 the Republic of Croatia joined the Council of Europe campaign entitled "Dosta!" (Enough), against discrimination of Roma national minority in Europe. In accordance with the Council of Europe recommendation and the obligations of the Republic of Croatia as a participating country in the "Dosta!" campaign, in 2009 the Office for National Minorities of the Government of the Republic of Croatia, in cooperation with NGO, Fade In from Zagreb, conceived and financed a TV spot for the promotion of the "Dosta!" campaign that was aired on Croatian television station, HRT.

12. In co-organisation with the Human Rights Office of the Government of the Republic of Croatia, the Ombudsman's Office, Centre for Peace Studies and the Judicial Academy, and as part of the project entitled "Support for the implementation of the Anti-Discrimination Law", seminars were held during 2009 in Zagreb, Split and Osijek entitled "Seminar on the implementation of the Anti-Discrimination Law" with altogether 58 participants coming from all over Croatia.

13. In 2009 in Zagreb, Split, Rijeka and Osijek, workshops entitled "Rights of witnesses and victims: providing support" was held with altogether 75 participants (judges and State attorneys) coming from various regions of the Republic of Croatia.

14. Also, social care institutions were provided with clear instructions on the implementation of positive regulations regarding human rights and fight against discrimination, that is on actions to be taken in cases of any kind of intolerance and/or verbal or physical attacks on the members of national minorities.

### **Hate Crimes**

15. The Republic of Croatia pays special attention to the issue of hate crimes. By means of analytical follow-up of the situation, it should be emphasized that in the Republic of Croatia there were no registered cases of organized violence towards particular groups. Collecting and analysing information on hate crimes is also directed towards possible undertaking of appropriate preventive measures in case there are clear parameters indicating higher level of danger for any ethnic group in any way, time or space.

16. Indisputably there are occasional cases, but they are becoming less frequent, of tensions remaining from the Homeland war, especially with the population that was involved in wartime activities and where material and human casualties were considerable. However, it needs to be mentioned that no escalation of conflict or of organised attacks on members of other ethnic groups or their property was noted. Mostly the cases in question are individual, momentary and sporadic conflicts that have no shared characteristics that would indicate planning, organising and conducting of the attacks by certain groups or individuals.

17. At the same time, we would like to mention that the conclusion on the slowness of investigations in cases of hate crimes, that is, in cases of ethnically motivated incidents is not completely founded. Besides the special attention given to hate crime investigations, the high percentage of solved cases of this kind (80.43% in 2007, 72.41% in 2008, and over 90% in 2009) point to such conclusion.

18. The Ministry of Interior is especially dedicated to dealing with this issue which is evident through adoption and implementation of the OSCE/ODIHR fight against hate crimes training programme for police officers. 25 police officers completed this training and gained the status of training teachers, while parts of the programme are integrated into the basic police training curriculum as well as in specialist courses curriculum. Procedure in cases of hate crimes is clearly defined for all the organisational units within the Police Directorate and proscribed by special instruction forwarded to all the organisational units for implementation, following the entry into force of the Amendments of the Criminal Code (1 October 2006).

19. In order to process hate crimes as soon as possible, the State Attorney's Office of the Republic of Croatia, in accordance with its authority within the criminal prosecution framework for crimes of this type, issued an instruction to all State Attorney Offices pursuant to which in cases where there is a suspicion of a hate crime being committed urgent investigation measures and actions need to be conducted in coordination with the police and other state bodies in order to have a prompt investigation and indictment in such cases. Special records are kept regarding this, and such crimes are followed up with special statistics. In this way, through the instructive and supervisory function of the State Attorney's Office, adequate, urgent and encompassing processing of these crimes is ensured, as well as the protection of the injured party, that is, the victims of such crimes, all of which is part of the scope of work of the State Attorney's Office.

**Sustainable return**

20. Regarding the recommendation that the State needs to continue with its efforts in the sense of social and economic development of the regions populated with Serb returnees, we would like to mention that the Government of the Republic of Croatia has intensified its efforts with regard to social and economic development of areas lagging behind other areas in the Republic of Croatia. Among others, this refers to areas of special State concern where the majority of returnees of Serb ethnicity are coming back to live.

21. For that reason, in 2008, a new Ministry of Regional Development, Forestry and Water Management was formed. As the basic document for governing regional development, in December 2009, the Law on Regional Development was adopted. The law determines the goals and principles governing regional development in the Republic of Croatia, as well as the strategic planning for the development of assisted areas, the institutional framework for governing, assessing and sorting regional and local self-governing units according to the level of development of assisted areas. The assessment of the development level of regional and local self-governing units is based on the social and economic development index.

22. In June 2010 the Regional Development Strategy of the Republic of Croatia for 2011-2013 was adopted. Also several implementing regulations were passed pursuant to the Law on Regional Development, and it is expected that the Law on Assisted Areas will be passed by the end of this year.

23. The above-mentioned measures and documents from the institutions determine the measures that will contribute to a more even development of all the areas of the Republic of Croatia. They also support the demographic and economic progress, the return of the pre-war population and permanent housing solutions. First and foremost, this implies the contribution to the development of those areas that are developmentally lagging behind the Republic of Croatia average, meaning the areas of special state concern where the majority of returnees of Serb ethnicity are coming back to live.

**Reply to issues raised in paragraph 10**

24. The Republic of Croatia pays special attention to the war crime trials. The effort invested in working on issues of war crimes was stressed in the report of the Organization for Security and Co-operation in Europe (hereinafter OSCE), dated 27 October 2009, where it is stressed that there are significant improvements noticed with regard to the war crimes issues. Regarding the monitoring of war crime trials it was stressed that NGOs in Croatia today are capable of handling this demanding task. The Republic of Croatia is addressing all of the war crimes, using equal and objective criteria on all perpetrators of war crimes

**War crime trials**

25. In order to determine whether the courts are biased when it comes to war crime trials, considering the fact that some of the accused persons are members of the Croatian Army (hereinafter HV) or the so-called Yugoslav People's Army (hereinafter JNA) and paramilitary formations, the Ministry of Justice conducted an "Analysis of proceedings in war crime cases before the county courts in the Republic of Croatia for the period 2005-2009."

26. The period was considered adequate in order to provide clear indicators of the attitude of the Croatian judiciary towards perpetrators of war crimes. The processed data represents a sample large enough to show growth and decline trends, as well as the comparison of certain parameters.

27. The analysis gave the following data:

28. Of the total number of 195 defendants, 124 persons (64%) stood trial, and 71 persons (36%) were tried in absentia. As a rule, the persons in question were mostly members of the JNA. In fact, an incomparably large number of JNA members were unreachable by the judicial authorities (92% of members of the JNA were tried in absentia). It needs to be mentioned that in 2005, 2007, 2008 and 2009, all indicted members of the HV stood trial and none was tried in absentia.

29. With respect to 47 members of the HV, 41 members stood trial, while 6 members (or 13%) were tried in absentia (2 (33%) of whom were acquitted and 4 (64%) were found guilty on all the charges laid against them). As such, 87% of the persons were present during their trials.

30. With respect to 148 members of the JNA, 83 members stood trial, while 65 members (or 43%) were tried in absentia (11(17%) of whom were acquitted and 54 (83%) were convicted of crimes). As such, 56% of the persons were present during their trials.

31. Therefore, we can conclude that more members of the HV were present during their trials, and consequently more members of the HV faced the consequences for the crimes they committed.

32. As a large number of in absentia criminal proceedings had been held at the beginning of the 1990s during the war, it was concluded that in certain cases individuals were convicted on insufficient evidence and therefore those convictions do not comply with the legal standards for the trials. In all of those cases in which subsequent investigations provided bases for the claim that the "in absentia" conviction, in full force and effect, needs to be changed according to the new facts and evidence (likely to result in the acquittal of the convicted person or to his conviction according to the more lenient criminal code) - it was concluded that these proceedings need to be revised.

33. Hence, the State Attorney's Office of the Republic of Croatia (hereinafter DORH) created the Action Plan for the implementation of Instruction No. O-4/08 regarding the work on war crimes cases, No. A-223/08, dated 12 December 2008, allowing the renewal of certain criminal proceedings (pursuant to the Criminal Procedure Act, Official Gazette (hereinafter NN) No. 152/08) for which it was concluded that based on new-found facts or evidence the court might render a different judgement in relation to in absentia judgement.

34. Pursuant to the mentioned Action Plan, the State Attorney's Office of the Republic of Croatia inspected the cases where the accused persons were convicted in absentia for war crimes. 117 in absentia convictions in full force and effect against 465 persons were identified.

35. According to the data from September 2010 pursuant to the 2008 Criminal Procedure Act and Criminal Procedure Amendment Act (2009), requests for the renewal of proceedings in 17 war crime trial cases were submitted in relation to 94 persons, and requests were accepted with regard to 90 persons, while for 2 persons the courts rejected the requests, and for 2 persons no decision has yet been made. Regarding the other cases, in future, DORH, in accordance with the law, shall continue to submit requests for the renewal of proceedings when there are legal grounds for such an action.

36. The above-mentioned Act and its Amendments gave more possibilities for the State Attorney's Office to initiate renewals of proceedings thus enabling the removal of noted shortcomings of procedures with final judgements rendered in absentia.

37. On 27 and 28 May 2010, the 4th Regional Conference of Chief State Prosecutors was held on Brijuni. The Conference proved to be a very useful medium for bilateral cooperation and acquisition of positive experiences and proposals for the continuation of processing of war criminals from the area of the former Yugoslavia. The Conference addressed the war crimes proceedings, with the presentation of the War Crimes Data Base

created by the State Attorney's Office of the Republic of Croatia, which has been in use since June 2010. The War Crimes Data Base contains data related to war crimes, description of the crime, information on victims and witnesses, evidence data and other relevant information. The State Attorney's Office of the Republic of Croatia is coordinating the police and other State bodies' procedures leading to investigation against unknown perpetrators, and to this end conducts the exchange of information and evidence with prosecutions of other countries pursuant to the signed Protocols on Co-operation.

38. It is important to mention that representatives of the War Crimes' Prosecutor's Office of the Republic of Serbia, Office of the Prosecutor of the BiH, Chief State Prosecutor's Office of Montenegro, Office of the Federal Prosecutor of the BiH Republic Prosecutor's Office of the Republic of Srpska, and representatives of Brčko District Prosecutor's Office in BiH also participated.

#### **Impartiality of Croatian courts**

39. The above mentioned analysis of the number of convictions in cases of war crimes leads to the following findings:

40. Out of 146 persons with **final** convictions, 24 are members of the HV (16%), while 122 persons are members of the JNA (84%).

41. Out of 49 persons with **pending** convictions, 23 are members of the HV (47%), while 26 of them are members of the JNA (53%).

42. There is continuity with regard to the number of verdicts rendered during the years. In fact, in 2005, 14 verdicts were passed, in 2006 - 19 verdicts, in 2007 - 11 verdicts, in 2008 - 10 verdicts and in 2009 - 24 verdicts. The ratio of the listed convictions was stabilised as 35% of the HV members and 65% of the JNA members.

43. The actions of the Croatian judicial bodies show that every person who is reasonably suspected of committing war crimes has to be brought before the court to answer for his/hers actions, regardless of whether the person in question was a member of the aggressor forces or the defence forces.

44. If the data is put into context of the situation during the Homeland war, whereby the HV were the defenders and the JNA was the aggressor, then the larger number of convictions for the members of the JNA is both logical and expected.

45. Furthermore, in the above-mentioned analysis, the determined categories are members of the JNA and members of the HV, and not their ethnic background. In fact, during the observed period, of the HV members that stood trial, three declared themselves as Muslims, one was of the Albanian minority, and one was Slovenian (all citizens of the Republic of Croatia). From the foregoing, it is evident that it is inappropriate to talk about the ethnicity of the war crimes perpetrators with regard to this specific analysis because ethnicity had no influence what so ever on any part of the decision-making during the war crimes proceedings.

46. During the last five years, war crimes proceedings were held before 16 county courts, in the same community and environment where the crimes was committed, which indicates the readiness and maturity in processing of all the war crimes regardless of the ethnicity of the perpetrators. See table below.

**Number of persons convicted according to ethnicity and years in which the judgements were rendered (1992-2009), pursuant to the relevant articles of the Criminal Code (hereinafter CC)**

*PERPETRATORS CONVICTED FOR WAR CRIMES ACCORDING TO ETHNICITY*

	Total	Croats	Serbs	Bosnians	Albanians	Other	Unknown
2009							
Article 158, paragraph 1 of the CC <sup>1</sup>	29	5	18	-	-	4	2
2008							
Article 158, paragraph 1 of the CC	8	2	4	-	-	2	-
Article 160 of the CC <sup>2</sup>	2	-	2	-	-	-	-
2007							
Article 158, paragraph 1 of the CC	21	8	12	-	-	-	1

<sup>1</sup> War Crimes Against the Civilian Population - Whoever violates the rules of international law in time of war, armed conflict or occupation and orders an attack against the civilian population, settlements, individual civilians or those hors de combat resulting in death, severe bodily harm or serious damage to people's health, orders an indiscriminate attack harming the civilian population, orders the killing, torturing or inhuman treatment of civilians, orders civilians to be subjected to biological, medical or other scientific experiments, their tissues or organs taken for transplantation, orders civilians to be subjected to great suffering impairing the integrity of their bodies or health, or orders their resettlement, displacement or forceful loss of ethnic identity or conversion to another religion, orders rape, sexual oppression, forced prostitution, pregnancy or sterilization or other sexual abuse, orders measures of intimidation or terror, hostage taking, collective punishment, unlawful deportations to concentration camps or illegal detention, deprives people of the rights to a just and unbiased trial, forces them to serve in hostile armed forces or in the information services or administration of hostile power, subjects them to forced labour, starvation, confiscates property or orders that the population's property be plundered or illegally and wantonly destroyed or its large-scale appropriation where there is no justification by military needs, or imposes illegal and disproportionately large contributions and requisitions, or decreases the value of the domestic currency or unlawfully issues it, or orders an attack against persons, equipment, materials, units or vehicles involved in humanitarian aid or a peace mission pursuant to the Charter of the United Nations, or orders that the rights and actions of the citizens of a hostile country be prohibited, suspended or pronounced unlawful in court proceedings, or injures personal dignity or orders civilians and other protected persons to be used to shield certain places, areas or military forces from military operations, or orders the recruitment of children under fifteen years of age for the national armed forces or their active participation in hostilities, or whoever commits any of the foregoing acts shall be punished by imprisonment for not less than five years or by long-term imprisonment.

<sup>2</sup> War Crime Against Prisoners of War -Whoever, in violation of the rules of international law, orders the killing, torturing or inhuman treatment of prisoners of war and their subjection to biological, medical or other scientific experiments, their tissues or organs taken for transplantation, orders prisoners of war to be subjected to great suffering, impairing the integrity of their bodies and health, or whoever compels prisoners of war to serve in hostile armed forces or deprives them of their right to a fair and unbiased trial, or whoever commits any of the foregoing acts shall be punished by imprisonment for not less than five years or by long-term imprisonment.



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 PERPETRATORS CONVICTED FOR WAR CRIMES ACCORDING TO ETHNICITY
 

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2006

Article 158, paragraph 1 of the CC	20	1	18	-	-	1	-
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Article 160 of the CC	1	-	1	-	-	-	-
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2005

Article 158, paragraph 1 of the CC.	28	-	26	1	-	1	-
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Article 160 of the CC	3	1	2	-	-	-	-
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2004

Article 156 of the CC <sup>3</sup>	4	-	3	-	-	-	1
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Article 158, paragraph 1 of the CC	8	5	1	-	-	1	1
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2003

Article 158, paragraph 1 of the CC	10	-	10	-	-	-	-
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Article 158, paragraph 2 of the CC <sup>4</sup>	1	-	-	-	-	-	1
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Article 160 of the CC.	1	-	1	-	-	-	-
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2002

Article 158, paragraph 1 of the CC	23	1	21	-	-	1	-
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Article 165 of the CC <sup>5</sup>	1	-	1	-	-	-	-
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<sup>3</sup> Genocide- Whoever, with intent to destroy in whole or in part a national, ethnic, racial or religious group, orders the killing of members of such a group, or orders serious bodily injury to be inflicted on them, or orders the physical or mental health of the members of such a group to be impaired, or orders the forcible displacement of the population, or conditions of life to be inflicted on the group which are calculated to bring about its physical destruction in whole or in part, or orders measures to be imposed which are intended to prevent births within the group, or orders the forcible transfer of children of the group to another group, or whoever with the same intent commits any of the foregoing acts, shall be punished by imprisonment for not less than ten years or by long-term imprisonment.

<sup>4</sup> War Crimes Against the Civilian Population -The same punishment as referred to in paragraph 1 of this Article shall be imposed on whoever violates the rules of international law in time of war, armed conflict or occupation by ordering an attack against objects protected by international law, against works or powerful installations such as dams, dykes and nuclear power plants, indiscriminate attacks against civilian objects protected by international law, against undefended places and demilitarized zones or orders an attack which results in an extensive and long-lasting damage to the environment and may impair the population's health or survival, or whoever commits any of the foregoing acts.

<sup>5</sup> Brutal Treatment of the Wounded, Sick and Prisoners of War - Whoever, in violation of the rules of international law, brutally treats the wounded, sick or prisoners of war or restricts or prevents the realization of the rights granted to them under these rules shall be punished by imprisonment for six months to five years.

*PERPETRATORS CONVICTED FOR WAR CRIMES ACCORDING TO ETHNICITY*

## 2001

Article 156 of the CC	2	-	2	-	-	-	-
Article 158, paragraph 1 of the CC	20	-	20	-	-	-	-
Article 160 of the CC	3	-	3	-	-	-	-
Article 165 of the CC	2	-	2	-	-	-	-

## 2000

Article 158, paragraph 1 of the CC	51	1	49	-	-	-	1
Article 158, paragraph 2 of the CC	12	-	12	-	-	-	-
Article 160 of the CC	10	-	6	-	-	-	4
Article 165 of the CC	1	-	1	-	-	-	-

## 1999

Article 156 of the CC	2	-	2	-	-	-	-
Article 158, paragraph 1 of the CC	22	-	10	-	-	2	10
Article 158, paragraph 2 of the CC	4	1	3	-	-	-	-
Article 160 of the CC	5	-	5	-	-	-	-

## 1998

Article 156 of the CC	8	-	8	-	-	-	-
Article 158, paragraph 1 of the CC	26	1	19	-	-	-	6
Article 160 of the CC	1	-	1	-	-	-	-

## 1997

Article 120, paragraph 1 of the BCC <sup>6</sup>	29	1	28	-	-	-	-
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<sup>6</sup> War Crimes Against the Civilian Population, paragraph 1 - Whoever violates the rules of international law in time of war, armed conflict or occupation and orders an attack against the civilian population, settlements, individual civilians or those hors de combat resulting in death, severe bodily harm or serious damage to people's health, orders an indiscriminate attack harming the civilian population, orders the killing, torturing or inhuman treatment of civilians, orders civilians to be subjected to biological, medical or other scientific experiments, their tissues or organs taken for transplantation, orders civilians to be subjected to great suffering impairing the integrity of their bodies or health, or orders their resettlement, displacement or forceful loss of ethnic identity or conversion to another religion, orders rape, sexual oppression, forced prostitution, pregnancy or sterilization or other sexual abuse, orders measures of intimidation or terror, hostage taking, collective punishment, unlawful

*PERPETRATORS CONVICTED FOR WAR CRIMES ACCORDING TO ETHNICITY*

Article 120, paragraph 2 of the BCC <sup>7</sup>	1	-	1	-	-	-	-
Article 121 of the BCC <sup>8</sup>	1	-	1	-	-	-	-
Article 122 of the BCC <sup>9</sup>	9	-	7	-	-	2	-
Article 128 of the BCC <sup>10</sup>	1	-	1	-	-	-	-

deportations to concentration camps or illegal detention, deprives people of the rights to a just and unbiased trial, forces them to serve in hostile armed forces or in the information services or administration of hostile power, subjects them to forced labour, starvation, confiscates property or orders that the population's property be plundered or illegally and wantonly destroyed or its large-scale appropriation where there is no justification by military needs, or imposes illegal and disproportionately large contributions and requisitions, or decreases the value of the domestic currency or unlawfully issues it, or orders an attack against persons, equipment, materials, units or vehicles involved in humanitarian aid or a peace mission pursuant to the Charter of the United Nations, or orders that the rights and actions of the citizens of a hostile country be prohibited, suspended or pronounced unlawful in court proceedings, or injures personal dignity or orders civilians and other protected persons to be used to shield certain places, areas or military forces from military operations, or orders the recruitment of children under fifteen years of age for the national armed forces or their active participation in hostilities, or whoever commits any of the foregoing acts shall be punished by imprisonment for not less than five years or by 20 years imprisonment.

<sup>7</sup> War Crimes Against the Civilian Population, paragraph 2- The same punishment as referred to in paragraph 1 of this Article shall be imposed on whoever violates the rules of international law in time of war, armed conflict or occupation by ordering an attack against objects protected by international law, against works or powerful installations such as dams, dykes and nuclear power plants, indiscriminate attacks against civilian objects protected by international law, against undefended places and demilitarized zones or orders an attack which results in an extensive and long-lasting damage to the environment and may impair the population's health or survival, or whoever commits any of the foregoing acts.

<sup>8</sup> War Crimes Against the Wounded and Sick- Whoever, in violation of the rules of international law, in time of war or armed conflict, orders the killing, torturing or inhuman treatment of the wounded, sick, shipwrecked persons or of medical or religious personnel, orders that they be subjected to biological and other scientific experiments, their tissues or organs taken for transplantation, orders civilians to be subjected to great suffering, impairing the integrity of their bodies or health or orders an illegal and wanton, large-scale destruction or appropriation of materials, medical vehicles or supplies of medical institutions or units when there is no justification by military needs or whoever commits any of the foregoing acts shall be punished by imprisonment for not less than five years or by 20 years imprisonment.

<sup>9</sup> War Crime Against Prisoners of War -Whoever, in violation of the rules of international law, orders the killing, torturing or inhuman treatment of prisoners of war and their subjection to biological, medical or other scientific experiments, their tissues or organs taken for transplantation, orders prisoners of war to be subjected to great suffering, impairing the integrity of their bodies and health, or whoever compels prisoners of war to serve in hostile armed forces or deprives them of their right to a fair and unbiased trial, or whoever commits any of the foregoing acts shall be punished by imprisonment for not less than five years or by 20 years imprisonment.

<sup>10</sup> Brutal Treatment of the Wounded, Sick and Prisoners of War - Whoever, in violation of the rules of international law, brutally treats the wounded, sick or prisoners of war or restricts or prevents the realization of the rights granted to them under these rules shall be punished by imprisonment for six months to five years.

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 PERPETRATORS CONVICTED FOR WAR CRIMES ACCORDING TO ETHNICITY
 

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1996

Article 120, paragraph 1 of the BCC	48	1	46	-	-	-	1
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Article 122 of the BCC	7	2	5	-	-	-	-
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Article 128 of the BCC	1	-	-	-	-	1	-
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1995

Article 120, paragraph 1 of the BCC	55	3	30	1	-	1	20
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Article 122 of the BCC	1	-	1	-	-	-	-
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Article 128 of the BCC	3	-	3	-	-	-	-
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1994

Article 119 of the BCC <sup>11</sup>	1	1	-	-	-	-	-
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Article 120, paragraph 1 of the BCC	144	8	117	-	1	4	14
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Article 120, paragraph 2 of the BCC	1	-	1	-	-	-	-
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Article 121 of the BCC	1	1	-	-	-	-	-
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Article 122 of the BCC	6	-	6	-	-	-	-
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Article 128 of the BCC	5	1	3	-	-	-	1
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1993

Article 142, paragraph 1 of the (Criminal Code of Yugoslavia) (CCY) (same as Article 120, paragraph 1 of the BCCRH)	32	-	14	1	-	-	17
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Article 144 of the CCY (same as Article 122 of the BCCRH)	1	-	-	-	-	-	1
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Article 150 of the CCY	1	-	1	-	-	-	-
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<sup>11</sup> Genocide- Whoever, with intent to destroy in whole or in part a national, ethnic, racial or religious group, orders the killing of members of such a group, or orders serious bodily injury to be inflicted on them, or orders the physical or mental health of the members of such a group to be impaired, or orders the forcible displacement of the population, or conditions of life to be inflicted on the group which are calculated to bring about its physical destruction in whole or in part, or orders measures to be imposed which are intended to prevent births within the group, or orders the forcible transfer of children of the group to another group, or whoever with the same intent commits any of the foregoing acts, shall be punished by imprisonment for not less than ten years or by 20 years imprisonment.

*PERPETRATORS CONVICTED FOR WAR CRIMES ACCORDING TO ETHNICITY*

(same as Article 128 of the BCC)

1992

Article 144 of the CCY (same as Article 122 of the BCCRH)	1	1	-	-	-	-	-
TOTAL	678	45	528	3	1	20	81

47. Regarding the table, it needs to be mentioned that the persons included stood trial pursuant to the law in force at the time that the crime was committed. Therefore, in order to render judgements during the period 1992-1993, the provisions of the Criminal Code of Yugoslavia were used. From 1993, judgements were rendered pursuant to the Criminal Code of the Republic of Croatia.

**War Crimes Justice Project of the Office for Democratic Institutions and Human Rights (hereinafter ODIHR)**

48. Education of personnel involved in war crime proceedings is conducted as part of the ODIHR project War Crimes Justice Project. During the last few years, training in the mentioned area of legal expertise was organised for attorneys, judges and State attorneys. Also one regional conference on war crimes was held.

49. During 2008, Croatian Bar Association (hereinafter CBA) and the Ministry of Justice drew up a list of attorneys with previous experience and interest in additional education to act as defence counsels in cases of this type. The list of attorneys was published on the CBA website and submitted to all county courts. Also, a practice was established of appointing attorneys that are on the list as defence counsels. On 14 April 2009, an education for attorneys interested in acting as defence counsels in such cases was held at the CBA premises in cooperation with the Judicial Academy.

50. Continuous training for war crime trials is held for judges and State attorneys. Since 2004, several seminars and workshops were held at the Judicial Academy in which judges and State attorneys were familiarised with the peculiarities of war crime trials. The events were held as follows:

a) During 2004

Workshop entitled "Croatia and International Crime Law" in co-organization with the Judicial Academy and the Ministry of Foreign Affairs of the Kingdom of the Netherlands:

- in Stubičke toplice on 21 and 22 May, on 11 and 12 June, and on 2 and 3 July 2004
- In Opatija on 24 and 25 September 2004
- In Trogir on 15 and 16, and on 29 and 30 October 2004

60 judges and State attorneys from all over Croatia participated in the workshop.

b) During 2007

Seminar entitled "Organisation and handling of the main hearing: the role of the court in providing appropriate defence and use of evidence in the context of the right

to a fair trial in cases of war crime trials” co-organised by the Judicial Academy and the OSCE:

- In Zadar on 8 and 9 November 2007
- In Tuhelj on 29 and 30 November 2007

59 judges and State attorneys from all over Croatia participated in the seminar.

c) During 2009

Seminar entitled “War crimes: renewal of criminal proceedings for trials in absentia pursuant to new provisions of the Criminal Procedure Act, in force since 1 January 2009” organised by the Judicial Academy:

- In Požega on 26 January 2009
- In Osijek on 30 January 2009
- In Šibenik on 5 February 2009
- In Zadar on 6 February 2009
- In Zagreb on 9 February 2009

78 judges and State attorneys from all over Croatia participated in the seminar.

51. In June 2007, a regional conference entitled "Heritage of the International Criminal Tribunal for the Former Yugoslavia and its influence on the states in the region" was held in Dubrovnik. The Conference was jointly organised by the Faculty of Law of the University in Zagreb, civil society associations and the Judicial Academy; altogether, there were 51 participants, of which 17 came from the neighbouring states, and 34 from various parts of Croatia.

52. ODIHR prepared a project which will include the translations into Croatian language of verdicts of the International Criminal Tribunal for the former Yugoslavia (hereinafter ICTY). Implementation of a video link was planned as part of the project and this was accomplished.

53. Legal framework for the use of a video link exists in the Criminal Procedure Act of the Republic of Croatia. Five county courts in the Republic of Croatia (Osijek, Rijeka, Split, Vukovar and Zagreb), competent to try cases referred pursuant to 11*bis* rule of the ICTY Rules of Procedure and Evidence, are fully technically equipped to conduct witness examinations in such a way. During 2009, testifying through a video link was used in Zagreb, Rijeka and Vukovar county courts:

- in five proceedings with the Republic of Serbia
- in a single proceeding with Bosnia and Herzegovina
- in two proceedings with the Kingdom of Norway.

54. War crimes proceedings are held before all competent county courts, in accordance with Article 12 of the Law on the Implementation of the Statute of the International Criminal Court and Prosecution of Crimes against International Law of War and Humanitarian Law (NN No. 175/03) which states that for war crimes criminal proceedings, beside competent local courts, county courts in Zagreb, Osijek, Rijeka and Split are also competent. These courts were given the special status and role of Specialized Courts for War Crimes. The mentioned law also makes it possible, for the Chief State Attorney of the Republic of Croatia to request, in cases where deficiencies are noticed, the approval of the President of the Supreme Court to transfer the proceedings to specialized court for war crimes instead of competent local court.

55. Therefore, specialized courts for war crimes should not be perceived as a necessity in order to efficiently process the perpetrators of war crimes for all the cases appearing before the local courts. They should be viewed as an additional option available to the State Attorney's Office of the Republic of Croatia, with the support of the Supreme Court of the Republic of Croatia, for cases in which there is doubt that the trial is not adhering to the prescribed rules of procedure for whatever reason.

56. Up to 30 September 2010, the State Attorney's Office of the Republic of Croatia submitted eight requests to the Supreme Court for the transfer of war crime cases to a specialized court. The Supreme Court granted the request in 4 cases:

- 1 case from the County Court in Gospić was transferred to the County Court in Rijeka
- 1 case from the County Court in Karlovac was transferred to the County Court in Zagreb
- 2 cases from the County Court in Šibenik were transferred to the County Court in Split

57. For the remaining 4 requests for transfer the Supreme Court has not yet rendered the decision.

58. Through the ICTY Liaison Officer, the State Attorney's offices are collecting additional data and evidence in order to discover and process war crimes in cases where direct perpetrators are not yet discovered. With the same goal in mind, the evidence is being intensively collected for cases in which the direct perpetrators are still undetermined, in order to process the cases pursuant to so called guarantee command responsibility of the unit commanders either from the Croatian or Serbian side.

59. Regarding the cooperation with the ICTY, specifically regarding the submission of documents related to Croatian military operations requested by the said Tribunal, it is necessary to mention that *54bis* procedure regarding the artillery documents was completed on 27 July 2010. The ICTY Trial Chamber in the *Gotovina, Čermak and Markač* case rendered the decision denying the Prosecution request to issue a court order to the Croatian Government to submit documents or information regarding the missing artillery documents, because according to the Trial Chamber's assessment, it is impossible to determine with certainty the existence of documents in question. In fact, after an intensive proceeding that lasted more than two years, the ICTY Trial Chamber recognised the proactive role and efforts of the Government of the Republic of Croatia in their search for the requested documents, and decided against issuing such court order to the Republic of Croatia.

60. Furthermore, the interdepartmental Task Force, formed by the President of the Government of the Republic of Croatia at the end of September 2009 to improve the administrative investigation conducted regarding the artillery documents, has so far submitted 10 reports to the Trial Chamber in the *Gotovina, Čermak and Markač* case. The Task Force continues with its work and is currently working on a new report.

#### **War crimes that were not processed**

61. Beside the convictions made in absentia, another challenge that remains regards unprosecuted war crimes.

62. In December 2008, the State Attorney's Office of the Republic of Croatia (hereinafter DORH) and the Ministry of the Interior (hereinafter MUP) developed action plans defining the unique approach to solving of war crimes that were not processed. The Plans are complimentary and compatible in terms of content.

63. DORH and MUP jointly assessed the condition of cases with unknown perpetrators in order to determine the priorities regarding the measures to be undertaken in order to identify the direct perpetrators.

64. Criteria used for determining the priority cases are first and foremost the number of victims, the extent of property damage, manner in which crime was committed, circumstances and time when the crime was committed, availability of the perpetrators, witnesses and victims. These are all continuous activities.

65. The aggravated circumstance in this case is the fact that the mentioned events happened almost 20 years ago, which is a very long period of time from the viewpoint of obtaining quality evidence, ability to determine the objective situation and achieve a quality reconstruction of an event included in a criminal proceeding before a local or a foreign court.

66. Regardless of the possible difficulties, the State Attorney's Office of the Republic of Croatia and the police are intensely cooperating in identifying cases of war crimes that were not processed and in locating the responsible perpetrators regardless of their ethnicity.

67. In July 2010, the Chief State Attorney of the Republic of Croatia held a working meeting with the county state attorneys regarding the preparations for the development of the Work strategy for war crimes cases, which refers specially to cases in which the perpetrators are still unknown. Deadline for the completion of the Strategy is mid November 2010.

68. During August 2010, the county state attorney's offices submitted to the State Attorney's Office of the Republic of Croatia their assessment on the difficulty of cases and actions that need to be taken in certain cases with unknown perpetrators. In accordance with the instruction, the state attorneys have arranged the cases according to importance, that is, the difficulty of the said cases, and the assessment of the circumstances for additional investigations to discover the perpetrators.

69. The State Attorney's Office of the Republic of Croatia consolidated these reports into a single document, and provided its own assessment of the priorities. On 24 September 2010, the document was submitted to the Police Directorate so that the police could, pursuant to the state attorney's offices assessment, create a concrete work plan for these cases.

#### **Act on General Pardon and the inappropriate statute of limitations**

70. Regarding the recommendation to ensure that the General Pardon Act (NN No. 80/96) is not applied to cases of serious violations of human rights or violations related to a crime against humanity or war crimes, we would like to stress that Article 3 of the General Pardon Act lists the criminal offences from the Criminal Code catalogue that are exempt from pardon. The said article states that the crimes of genocide, war crimes and other crimes that constitute serious violations of human rights are exempt from pardon. It also states that criminal offences of terrorism regulated with provisions of the international law are exempt from pardon.

71. Regarding the recommendation on the need to ensure that the statute of limitations is not applicable for the time period of the conflict, in order to enable processing of serious cases of murder and torture, in the Criminal Code certain criminal offences are exempt from the general provisions on the statute of limitations. Therefore, the statute of limitations is not applicable to crimes of genocide, aggressive war, crimes against humanity, war crimes and other criminal offences for which the statute of limitations cannot be applied pursuant to International Law. The non-applicability of the statute of limitations is based on



the UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity from 1968.

**Reply to issues raised in paragraph 17**

72. It is indisputable that no journalist should, due to his/her work, become a target for the attacks by persons unhappy with their writing. The competent bodies of the Republic of Croatia are undertaking all available preventive and repressive activities in order to further prevent and process all forms of attacks and intimidation against journalists.

73. Attacks on journalist, regardless of which media they work for, are a priority when it comes to the work of police officers. However, the perpetrators of these crimes, as a rule, attack journalists using either physical force or blunt objects (most frequently bats/sticks) and are usually masked (wearing a motorbike helmet, caps or sunglasses). Taking this into consideration, as well as the fact that the police are usually informed after the fact, these are the circumstances that are making it more difficult for the police to identify and find the direct perpetrators as well as the originators of these attacks.

74. Nevertheless, in cases of grievous attacks on journalists, those that are classified as major criminal offences against life and limb, all legal prerequisites for special investigation measures were met and in accordance with the issued court orders certain persons on whom information was received that they could be responsible for an attack on journalists, were put under surveillance. Unfortunately, in certain cases, even such activities did not result in finding of the perpetrator and the police have to continue and intensify its work on these cases.

75. Also, in order to prevent possible attacks on certain vocal journalists, who obtained information from sources that they could be attacked, or if the police itself obtained such information, parallel with the search for the possible perpetrator, the police provides protection for these journalists unless they specifically decline said protection.

76. When analysing the statistics on the attacks on journalists it is noticeable that there is an increase in the number of criminal and offence charges. However, the indisputable fact is that journalists must not be attacked by other persons because of their work and in that sense the police has a clear task of having to conduct a detailed criminal investigation of every attack on journalists in order to bring the perpetrators before the court without delay. Regarding the attacks on journalists, D. Miljuš and H. Appelt, the police are conducting an investigation pursuant to the request of the competent State Attorney's Office.

77. The State Attorney's Office in cooperation with the police and other bodies, after receiving a report, or any other form of information, that a criminal offence of attack, threat or some other criminal offence against a journalist was committed, shall undertake all necessary investigative measures and activities in order to discover and process the perpetrator. Subsequently, in the last few years, approximately 30 persons were indicted after conducted investigations (including the persons indicted for the murders of journalists, I. Pukanić and Z. Franjić), and the courts have so far convicted 20 persons.