

FORMER YUGOSLAVIA

WAR CRIMES TRIALS IN THE FORMER YUGOSLAVIA

INTRODUCTION	2
RECOMMENDATIONS	6
Recommendations to the Croatian Government	6
Recommendations to the Croatian Serb Authorities, the Bosnian Government and the Yugoslav Government	7
Recommendations to the Bosnian Croat Authorities and the Bosnian Serb Authorities. . .	8
Recommendations to the International Community	8
WAR CRIMES TRIALS IN CROATIA	9
War Crimes Trials in Croatian Government-Controlled Areas	9
Overview of Local War Crimes Cases	11
Problems with Prosecution	13
Note on the "Law of Forgiveness"	20
A Summary of Selected Cases	22
War Crimes Trials in Serbian-Controlled parts of Croatia	32
WAR CRIMES TRIALS IN BOSNIA-HERCEGOVINA	34
War Crimes Trials in Bosnian Croat-Controlled Areas and in the Muslim-Croat Federation	34
War Crimes Trials in Bosnian-Croat-Controlled Areas and in Bosnian Serb-Controlled Areas	37
WAR CRIMES TRIALS IN THE FEDERAL REPUBLIC OF YUGOSLAVIA (I.E., SERBIA AND MONTENEGRO)	38
Misuse of Military Courts, Coerced Confessions and Use of the Death Penalty: Defendants from Vukovar	38
Extradition of an Alleged War Criminal to the Bosnian Serb Authorities: The Lukić Case	39
Trial of a Serbian Paramilitary: The Case of Dušan Vučković	41

INTRODUCTION

By early 1995, the international tribunal established by the United Nations to adjudicate war crimes and crimes against humanity in the former Yugoslavia¹ had indicted twenty-two individuals for serious violations of humanitarian law, including the crime of genocide.² Yet despite these indictments, cooperation with international efforts to achieve justice in the former Yugoslavia have been obstructed, particularly by the Federal Republic of Yugoslavia (i.e., Serbia and Montenegro). Serbian, Yugoslav, Croatian and Bosnian authorities all claim that they will try members of their own forces for human rights violations, but few such trials have taken place. Those trials that have taken place are rarely prosecuted properly. For example, in a recent trial in Serbia proper against Dušan Vučković, a Serbian paramilitary responsible for gross human rights violations in Bosnia-Herzegovina, the prosecution's line of questioning did more to assist the defense than its own side. Domestic trials of alleged war criminals are politicized and due process rights are not always respected.

This report demonstrates the limitations of local war crimes prosecutions in Croatia, Bosnia-Herzegovina and the Federal Republic of Yugoslavia, thereby illustrating why the work of the international war crimes tribunal is so necessary, particularly for the indictment and prosecution of high-ranking political and military officials bearing command responsibility for the commission of genocide, crimes against humanity and war crimes by local authorities and soldiers. However, in order for justice to be served, the international community must retain some leverage with which to pressure governments or authorities to extradite those indicted by the tribunal, preferably through the imposition or retention of sanctions against governments that refuse to cooperate with international efforts to ensure accountability for egregious crimes.

The international community must not offer amnesty from prosecution for genocide, war crimes and crimes against humanity as part of a proposed peace plan or yield to demands for such an amnesty as a condition for acceptance of any peace proposal. Nor should international negotiators accept a government's claim that it will try members of its own forces for such crimes; this is simply another form of impunity. As this report illustrates few such trials have taken place and those trials that have taken place are deficient in due process terms or are not adequately prosecuted.

¹ Established by Security Council Resolution 808 of February 22, 1993. Referred to hereinafter as "the international war crimes tribunal" or "the tribunal."

² On November 7, 1994, the tribunal issued an indictment against Dragan Nikolić, the commander of the Sušica detention camp, near the Bosnian Serb-controlled town of Vlasenica, in southeastern Bosnia. On February 13, 1995, the tribunal issued indictments and arrest warrants against twenty-one individuals responsible for serious violations of humanitarian law in Serbian-held areas of Bosnia-Herzegovina.

The offer or acceptance of a peace accord that treats justice as irrelevant undercuts the tribunal's work, threatening the leverage it needs to ensure a state's cooperation in bringing alleged murderers to justice. The granting of amnesty to such alleged criminals -- either explicitly or under the guise of promised domestic prosecution -- would be a recipe for continued war and an ever-widening cycle of retribution in the Balkans. It would signal the international community's willingness to accept "ethnic cleansing" as a legitimate vehicle for territorial expansion and the creation of "ethnically pure" states elsewhere in the region or in the wider world. Accepting impunity or offering amnesties to those responsible for these crimes would make a mockery of justice and negates the suffering of thousands who have been victims of the most egregious human rights abuses in Europe since the Holocaust.

* * *

This report focuses principally on war crimes trials in Croatia, for two reasons: first, the vast majority of such prosecutions have taken place in Croatian government-controlled areas, and secondly, few such trials have taken place in Serbian-controlled areas and Serbian authorities in Croatia, Bosnia and the FRY have generally refused to cooperate with or provide information to international human rights monitors, including Human Rights Watch/Helsinki. Despite the paucity of such trials outside Croatia, the report nevertheless summarizes the status of trials, or lack thereof, in Bosnian government- and Bosnian Croat-controlled areas of Bosnia-Herzegovina, in the FRY, and in Serbian-controlled areas of Bosnia and Croatia.

Because the governments involved have not been eager to try members of their own forces for war crimes,³ most of the trials involve members of opposing forces. This is especially true in Croatia, where thousands of persons — primarily Serbs — have been tried, most *in absentia*, for war crimes. Bosnia and the FRY also have brought to trial persons belonging to enemy forces, but to a far lesser extent than in Croatia. In almost all such cases, the defendant's right to due process has been violated and the victim's right to justice has not been properly served.

- The Bosnian government has expressed its willingness to try members of its army for violations of the rules of war but, to date, it has not conducted many trials of its own troops.
- The Croatian government has disciplined members of its police force and a few Croatian Army soldiers for human rights abuses. However, while some Croatian police officers have been indicted for serious crimes, many police officers and most Croatian Army soldiers have not been properly brought to justice. When such persons are disciplined for abusive behavior, they are most frequently transferred to another area, demoted or relieved of their duties — few are prosecuted, convicted or made to serve their full sentences.
- Our research indicates that, authorities of the Croatian Union of Herceg-Bosna (Hrvatska Zajednica Herceg-Bosne - HZHB), the self-proclaimed Croatian "state" in Bosnia, have neither disciplined nor prosecuted members of the Bosnian Croat militia (known as the Croatian Defense Council or Hrvatsko Vijeće Obrane - HVO) responsible for war crimes and crimes against humanity. To the best of our

³ Nor have such trials taken place in the so-called "Republic of Serbian Krajina" (Republika Srpske Krajine - RSK) in Croatia, nor the self-proclaimed Serbian and Croatian "states" in Bosnia, "Srpska Republika" (SR) or the "Croatian Union of Herceg-Bosna" (Hrvatska Zajednica Herceg-Bosne - HZHB), respectively.

knowledge, the Bosnian Serb authorities have neither disciplined nor prosecuted members of the Bosnian Serb Army for violations of the laws of war.

- With one reported exception, Serbian authorities in the self-proclaimed Serbian "state" in Croatia, the Republic of Serbian Krajina (Republika Srpske Krajine - RSK), have not held accountable members of their armed forces for war crimes. A recently concluded trial convicted an RSK soldier of war crimes against six non-Serbs in the Vukovar area.
- Our research indicates that, only two trials of alleged war criminals have taken place in the FRY; one such trial involved members of the Croatian Army who were later released as part of a prisoner exchange. As of this writing, the other trial of a member of a Serbian paramilitary group has been postponed twice in Serbia. No other trials of paramilitaries based in Serbia or members of the Yugoslav People's Army (Jugoslavenska Narodna Armija - JNA) responsible for violations of the rules of laws have taken place in the FRY.

Because of the general unwillingness of the governments and authorities in the former Yugoslavia to prosecute abusive members of their own armed forces and the violations of due process that taint those trials of enemy troops that have taken place, there is an overwhelming need for international prosecutions and court monitoring by international observers. Given its limited resources, the international war crimes tribunal at the Hague should focus on indicting and prosecuting high-ranking political and military officials who bear command responsibility for the commission of crimes by lower-ranking officials and soldiers. There is also a need for fair local trials since not all cases can be heard in an international forum. In Croatian government- and Bosnian government-controlled areas where the respective authorities have generally permitted outside human rights observation, trial monitors from the tribunal or the international community could have a positive impact in ensuring that prosecutions of enemy forces are fair and impartial.

The Yugoslav government and Serbian authorities in Croatia and Bosnia have been hostile or resistant to outside human rights monitoring and prosecution of Serbian or Yugoslav Army troops. The Yugoslav and Serbian authorities claim they will indict and try their own for war crimes and crimes against humanity, at their own discretion, within their own courts. However, on the basis of our research, we consider it unlikely that any of the governments or authorities party to the conflict in the former Yugoslavia, but particularly the Yugoslav and Serbian authorities, will adequately try members of their own armed forces for war crimes and crimes against humanity within their own courts. Nor is there any indication that high-ranking members of the governments involved will allow themselves or their close associates to be prosecuted appropriately by courts in their own countries or territories. If prosecutions were to occur, there is reason to believe that defendants might be acquitted, given inappropriately light penalties or released before they fully serve their sentences. Yet the Yugoslav government has tried to preempt the jurisdiction of the international tribunal by demanding to try its own troops. Other governments in the region may follow suit.

In order for the international tribunal to issue indictments and ultimately prosecute defendants, states will have to cooperate with the tribunal's need to conduct investigations, collect testimonial, forensic and other evidence, and obtain custody of those indicted by its chief prosecutor, South African Judge Richard Goldstone. If a government or quasi-state refuses to cooperate with the tribunal, the international community should impose sanctions or refuse to ease or lift existing sanctions against the resistant government or authority. Both the Croatian and Bosnian governments have expressed their willingness to cooperate with the international war crimes tribunal. In 1993, the Croatian government cooperated with international efforts to exhume nine separate graves containing the remains of nineteen persons — all presumed to be Serbs — summarily executed by Croatian forces in 1991 in the Pakrac area of Croatia. Both the Bosnian and Croatian governments have

established government liaisons with the tribunal and its prosecutor. While such cooperation is to be commended, the international community must demand that the Bosnian and Croatian governments and the Bosnian Croat authorities facilitate investigations of and extradite members of their military or police forces who may be indicted by the tribunal in the future.

The Serbian authorities in Bosnia and Croatia have refused to cooperate with the international war crimes tribunal. Serbian authorities controlling the Vukovar area of Croatia have repeatedly thwarted efforts by international forensic scientists to exhume the remains of approximately 180 persons — mostly Croats — summarily executed after Vukovar's destruction by and fall to Serbian paramilitary forces and the Yugoslav Army (JNA). Bosnian Serb forces have been hostile to any international human rights monitoring or investigation.

The FRY has repeatedly questioned the legitimacy of the tribunal and has refused to extend its full cooperation to the tribunal's prosecutorial efforts. During his meetings in Belgrade in October 1993, Judge Goldstone reported that the Yugoslav government regarded the tribunal "as an act of discrimination" and refused to extend its full cooperation. More recently, while promising to provide a limited set of relevant documents, the FRY suggested that it still would not extradite alleged war criminals if these persons can be tried before the Yugoslav courts. In a December 20, 1994 letter to Judge Goldstone, the FRY agreed to allow the tribunal to have one permanent representative based with the United Nations Protection Force (UNPROFOR) in Belgrade so long as he/she did not "display the title" of the tribunal or prosecutor. The letter also questioned the need for the tribunal to conduct any investigations in the FRY, claiming that because no armed conflict took place on FRY territory, violations of humanitarian law could not have occurred there. Lastly, the FRY questions the tribunal's impartiality (because its indicted defendants, to date, have been Serbs), stating that such "questionable" impartiality "may adversely affect" the FRY's future cooperation with the tribunal.

The Yugoslav government's implied commitment to try alleged war criminals in its own courts rings hollow when, to date, Belgrade has not convicted a single person for the many atrocities committed by its own troops and by forces armed and trained by the Serbian government and Yugoslav Army. The constraints put upon the prosecutor's staff with regard to conducting investigations within the FRY seem designed to obstruct revelation of Belgrade's deep complicity in atrocities in Bosnia and Croatia.

In January 1994, Madeline Albright, U.S. ambassador to the U.N., stated that "the U.S. government will not support easing or lifting of sanctions by the Security Council if, for example, Serb elements obstruct" the work of the international tribunal established to adjudicate war crimes and crimes against humanity in the former Yugoslavia. "Nor will the U.S. recognize an amnesty for war criminals," according to Albright.⁴ In late 1994, the Clinton administration reaffirmed its position that those responsible for war crimes and crimes against humanity should be held accountable, but it failed to articulate Ambassador Albright's previous

⁴ Ambassador Madeline Albright, Departure Statements and Question/Answer, Pleso Airport, Zagreb, Croatia, January 7, 1994.

position opposing amnesty for indicted war criminals and making cooperation with the tribunal a prerequisite to the lifting or easing of sanctions.⁵

Although Ambassador Albright stated that the U.S. would support imposition or maintenance of sanctions against a state that does not cooperate with the tribunal, Clinton administration officials also have stated that they would agree to lift some sanctions against the FRY if that state recognized Croatia and Bosnia-Herzegovina within their internationally recognized borders. France, Britain and Russia support easing U.N.-imposed sanctions against Belgrade in exchange for its cooperation with the peace process. This approach, however, would do nothing to prevent the "ethnic cleansing" that continues in Serb-held areas of Bosnia. Nor does it ensure accountability for war crimes and crimes against humanity, for whose commission the Serbian government and Yugoslav Army are heavily responsible.

RECOMMENDATIONS

Recommendations to the Croatian Government

Croatia's Deputy Minister of Justice Josip Kardum has allowed international observers to attend war crimes trials in Croatia. Human Rights Watch/Helsinki acknowledges this important step, as well as the general cooperation of the Croatian authorities in allowing fact-finding investigations and international human rights groups access to prisons.

However, almost all of the war crimes proceedings in Croatia have involved Serbs, and few Croats or members of the Croatian police and military have been held accountable for their war crimes. Human Rights Watch/Helsinki urges the Croatian government to investigate crimes allegedly committed by Croats against Serbs in Gospić, Packračka Poljana and other areas and to bring full and fair trials against whoever may be responsible.

HRW/Helsinki also urges the Croatian police, military and judicial authorities to:

- Cease the practice of routinely holding trials without the presence of the accused;
- Reprimand and bring charges against police officers or members of the military who beat or mistreat suspects upon arrest or during interrogation, and take steps to ensure that prisoners are not mistreated during any stage of their detention;
- Continue to provide counsel to defendants in war crimes cases in both civilian and military courts; allow defense counsel to have access to the accused earlier in the investigative process than is now the case; mandate that the accused be apprised of his/her right to remain silent without prejudice to his/her case until he/she is able to see a lawyer;

⁵ Statement by U.S. Department of State Spokesperson Michael McCurry, December 28, 1994.

- Explain the proper application of the "law of forgiveness" and then apply the law in a fair and consistent manner by immediately dismissing pending and past charges against all individuals for whom the "law of forgiveness" should apply;
- Respect freedom of association and refrain from bringing, or immediately dismiss, cases that are based solely on a person's legitimate association with other individuals or his/her membership in a group;
- Respect the right of ethnic groups to be free from discrimination and to enjoy due process of the law; refrain from bringing cases based exclusively upon the defendant's ethnicity and immediately dismiss all cases that have been so brought;
- Respect the freedom of persons to travel and refrain from bringing cases merely because an individual has traveled to Serbia or to a Serbian-controlled area; immediately dismiss all cases that have been brought solely on this basis;
- Investigate the practice of prisoner exchanges and make clear to all involved that no one is to be exchanged against his/her will;
- Conduct all trials before an impartial and independent court. Civilians should not be tried in military courts. Although enemy soldiers may be tried before military courts for war crimes, Human Rights Watch/Helsinki recommends that such cases be heard rather by independent civilian courts or by international tribunals. Military courts should not try members of their nation's own troops for human rights abuses because such trials can be as an excuse for impunity. The jurisdiction of military courts should be limited to specified military offenses (e.g., disobedience, cowardice, etc.) committed by members of their nation's own troops.
- Issue final verdicts and certifications in all fully adjudicated matters without undue delay;
- Revise the practice allowing police to issue search warrants. Only judges should be permitted to issue warrants at the request of the police, who must prove sufficient cause for such a search.

Recommendations to the Croatian Serb Authorities, the Bosnian Government and the Yugoslav Government

- Arrest, prosecute and punish members of their own military and police forces for war crimes, crimes against humanity, genocide or other violations of human rights;
- Reprimand and bring charges against police officers or members of the military who beat or mistreat suspects upon arrest or during interrogation, and take steps to ensure that prisoners are not mistreated during any stage of their detention;
- Ensure that all trials are open and that international and independent domestic monitors are allowed to observe the trials of all defendants;
- Provide independent counsel to defendants in "war crimes" cases in both civilian and military courts; allow defense counsel to have access to the accused earlier in the investigative process than is now the case; mandate that the accused be apprised of his/her right to remain silent without prejudice to his/her case until he/she is able to see a lawyer;

- Respect freedom of association and refrain from bringing, or immediately dismiss, cases that are based solely on a person's legitimate association with other individuals or their membership in a group;
- Respect the right of ethnic groups to be free from discrimination and to enjoy due process of the law; refrain from bringing cases based exclusively upon the defendant's ethnicity and immediately dismiss all cases that have been so brought;
- Conduct all trials before an impartial and independent court. Civilians should not be tried in military courts. Although enemy soldiers may be tried before military courts for war crimes, Human Rights Watch/Helsinki recommends that such cases be heard by rather independent civilian courts or by international tribunals. Military courts should not try members of their nation's own troops for human rights abuses because such trials can be used as an excuse for impunity. The jurisdiction of military courts should be limited to specified military offenses (e.g., disobedience, cowardice, etc.) committed by members of their own troops.

Recommendations to the Bosnian Croat Authorities and the Bosnian Serb Authorities

- Arrest, prosecute and punish members of one's own military and police forces for war crimes, crimes against humanity, genocide or other violations of human rights;
- Reprimand and bring charges against police officers or members of the military who beat or mistreat suspects upon arrest or during interrogation, and take steps to ensure that prisoners are not mistreated during any stage of their detention;
- Guarantee, in any future trials of alleged war criminals in areas under Bosnian Serb or Bosnian Croat control, the defendant's right to due process and that such trials be open to international and domestic observers.

Recommendations to the International Community

The international community should not ease or lift sanctions against the FRY until it — and the Serbian troops it armed, trained and continues to support in Bosnia and Croatia — cooperate with the tribunal by facilitating investigations and extraditing indicted defendants.

The international community must provide financial, material and political support to the tribunal. To date, the U.N. has funded the tribunal on a short-term basis. On December 23, 1993, the tribunal was allotted US \$5.6 million for the first six months of 1994. In early 1994, although the U.N. Secretary General estimated that approximately US \$33 million would be needed to fund the work of the tribunal in 1994-1995, U.N. budgetary bodies recommended and the General Assembly approved a net increase of only US \$5.4 million for the remainder of 1994.⁶ In December 1994, U.N. budgetary bodies recommended that another US \$7 million dollars be authorized to fund the tribunal until March 31, 1995. In early April 1995, the U.N. General Assembly authorized the Secretary-General to enter into commitments of an additional U.S. \$7,095,000 to fund the Tribunal for the period from April 15 to July 14, 1995. U.N. budgetary bodies are scheduled to meet again in June 1995 to consider future funding for the tribunal. This piece-meal approach to funding the

⁶ A total of US \$11 million was authorized for all of 1994, but this included the US \$5.6 million previously authorized for the first six months of the year.

tribunal implies a lack of commitment to the tribunal and its aim of ensuring accountability for egregious crimes and justice to the victims of such crimes. In order for the tribunal to function properly, the U.N. must be willing to fund its work from the U.N. general budget for a longer time period. Also, future authorization of funds for the tribunal should correct the consistently low allocations for witness identification, interviewing, and protection and for necessary forensic and medical expertise (including the exhumation of mass graves).

Individual governments must support the work of the tribunal both financially and politically. To date, the U.S. has been supportive of the tribunal's work. According to the U.S. Department of State, since the tribunal's creation, the U.S. has contributed \$13 million in resources⁷, "including the services, at a cost of up to \$6 million, of over twenty experienced prosecutors, investigators, and other experts to assist the investigation of atrocities.⁸ Cambodia, Canada, Hungary, Ireland, Italy, Liechtenstein, Malaysia, Namibia, New Zealand, Norway, Pakistan, Spain and Switzerland have also made voluntary financial contributions to the tribunal ranging from US \$500 to US \$2 million.⁹

WAR CRIMES TRIALS IN CROATIA

War Crimes Trials in Croatian Government-Controlled Areas

By mid-1994, over 2,200 individuals, mainly Serbs, had been charged in Croatian courts with violations of domestic and international humanitarian law and crimes against humanity. While Croatia is to be applauded for its attempts to prosecute accused war criminals, these cases for the most part fall short of internationally accepted standards of fairness and due process. This report highlights specific problems with current prosecutions in Croatia and suggests steps for improvement. Although Human Rights Watch/Helsinki is not in a position to determine the guilt or innocence of each defendant, we seek to assure that defendants are given a fair trial by an impartial court or jury and that they are afforded all other due process guarantees. While Croatia has taken many steps in this regard, many more are needed to fulfill international guarantees.

Serbs in Croatia rebelled against the Croatian government in August 1990, erecting barricades and taking control of towns such as Knin and other areas where Serbs constituted a majority or significant minority. After Croatia declared its independence in late June 1991, all-out war broke out between rebel Serb forces and Croatian government forces. Serbian forces, with the help of the federal Yugoslav Army (Jugoslavenska

⁷ The tribunal estimates that, as of March 13, 1995, the U.S. had voluntarily contributed \$700,000 in cash to the tribunal. See International Criminal Tribunal for the Former Yugoslavia, "Provisional List of Voluntary Financial Contributions to the Tribunal," March 13, 1995.

⁸ Statement by U.S. Department of State Spokesperson Michael McCurry, December 28, 1994.

⁹ International Criminal Tribunal for the Former Yugoslavia, "Provisional List of Voluntary Financial Contributions to the Tribunal," March 13, 1995.

Narodna Armija - JNA) and Serbian paramilitary groups from Serbia proper, eventually captured 30 percent of Croatia.

Both Croatian and Serbian/Yugoslav forces are guilty of serious abuses in the war, although the abuses perpetrated by Serbian forces were more systematic and wider in scale. Serbian abuses in Croatia included massacres in which scores — in some cases hundreds — of civilians and disarmed combatants were summarily executed and bodies were mutilated. Entire villages, towns and cities (such as Vukovar) were completely destroyed, and the environs of other cities (such as Dubrovnik, Zadar, Sisak and others) also were demolished. Mistreatment in detention was common, and thousands of Croats and other non-Serbs have been disappeared from Serbian-controlled areas. Indeed, the abuses perpetrated by Serbian-controlled areas of Croatia were as brutal as those that have been perpetrated by Serbian forces in Bosnia-Herzegovina.¹⁰

The most egregious abuses by Croatian forces included the summary execution of at least twenty-three Serbian civilians in the town of Gospić and at least nineteen unidentified persons in the Pakrac area in late 1991. Croatian Army forces also are responsible for the wanton destruction of Serbian villages during a Croatian Army offensive in the Medak pocket, near Gospić, in September 1993. Croatian forces also destroyed Serbian villages, disappeared and murdered individual Serbs and mistreated prisoners in their custody.¹¹

Given the particularly brutal character of the war in Croatia and the unresolved status of hundreds of thousands of persons who have been displaced from their homes as a result of the war, prosecutors in war-torn sections of Croatia are under intense pressure to bring "war crimes" cases — any cases — against enemy soldiers quickly, in order to demonstrate to the local population that war criminals will be brought to justice. "We bring these cases and hope that [local Croats] don't take justice into their own hands," one exasperated Croatian official explained. Local prosecutors believe that they cannot wait for an international tribunal to begin prosecutions. But their efforts do not always meet internationally recognized due process standards.

In such cases, the Croatian courts have appointed defense counsel for accused war criminals. However, trials are regularly held in the absence of the accused, with prisoners who prefer to remain in Croatia often being exchanged against their will; their cases continue and they are frequently convicted in absentia. Although defense counsel seldom register complaints about their clients' treatment in prison, the arresting military and police officers reportedly mistreat their charges frequently.

Some prisoners have been accused of committing horrible acts. For example, one prisoner in jail in Osijek, Ivica Vuletić (nicknamed "Rambo"), at one time confessed to slaughtering over fifty wounded patients from the hospital in Vukovar. But most of the persons standing trial as alleged war criminals in Croatia are "small fish" — the ground troops or persons who simply happen to be ethnic Serbs. Those who actually orchestrated and ordered such gross human rights violations have escaped untouched.

¹⁰ Violations of the laws of war by Serbian and Yugoslav Army forces during the war in Croatia are documented in a twenty-six page Helsinki Watch letter to Slobodan Milošević, President of the Republic of Serbia, and Gen. Blagoje Adžić, then acting minister of defense and chief of staff of the Yugoslav People's Army, January 21, 1992.

¹¹ Violations of the laws of war by Croatian forces and abuses of civil and political rights by the Croatian government during the war in Croatia are documented in a thirty-four page Helsinki Watch letter to Croatian President Franjo Tuđman, February 13, 1992.

Moreover, Croatia on the whole is not trying its own. With few exceptions, the only Croats facing war crimes charges are former Yugoslav Army officers accused of attacking Croatia. Members of the Croatian military or police force who have been accused of criminal wrongdoing are sometimes disciplined or dismissed. For example, the commander of the Croatian Army unit responsible for the "scorched earth" activity during the Croatian Army offensive in the Medak pocket reportedly was dismissed. But few of those accused are prosecuted and imprisoned for their abuses. Croatia must live up to its obligations to control the behavior of its own troops and to prosecute grave breaches of international humanitarian law in order to ensure accountability and respect for the rule of law.

Overview of Local War Crimes Cases

Number of Cases

According to Oskar Pole, the public prosecutor for Croatia, from the onset of the conflict in June 1991 to early 1994, international humanitarian law¹² has been invoked against over 2,200 individuals, as follows:

war crimes against the civilian population: 1,446 cases;

genocide: 177 cases;

war crimes against prisoners of war: sixty-four cases; and

crimes against the wounded: eleven cases.¹³

In marked contrast to the number of cases initiated, the official figure on convictions is quite low. According to an official statement issued by the Supreme Court of Croatia, as of the end of 1993, only thirty-eight people (in fourteen separate cases) had been tried and convicted for crimes against humanity and other violations of international law, and 685 people were in the investigatory stage and had yet to be tried.¹⁴ The names officially listed as "convicted" include few of the cases discussed in this report. Milan Vuković, the president of Croatia's Supreme Court, explained that the official accounting of thirty-eight convictions does not include cases that have only begun or cases that are still on appeal.¹⁵

Ethnicity of the Accused

The vast majority of all cases are against ethnic Serbs. According to Pole, 94 percent of the cases have been against Serbs, 3 percent against Croats, and 3 percent against "others."¹⁶ Of the thirty-eight individuals officially listed as "convicted of war crimes," only one is a Croat, twenty are Serbs and seventeen are listed as

¹² The main provisions of the Geneva Conventions of 1949 are codified in Croatian criminal law at Chapter 15 of the Criminal Code, articles 119 to 137. (Genocide, for example, falls under article 119, war crimes against civilians under article 120, and confiscation of property from the killed or wounded under article 125.)

¹³ Human Rights Watch/Helsinki interview with Oskar Pole in Zagreb, March 1994.

¹⁴ Office of the President, The Supreme Court of the Republic of Croatia, "Information About Validly Convicted Persons," January 8, 1994 (on file with Human Rights Watch/Helsinki).

¹⁵ Human Rights Watch/Helsinki interview with Milan Vuković in Zagreb, March 1994.

¹⁶ Human Rights Watch/Helsinki interview with Oskar Pole in Zagreb, March 1994.

being of "unknown" nationality. The very few cases against Croats generally involve former members of the Yugoslav Army.¹⁷

Use of Civilian vs. Military Courts

In Croatia, crimes committed in the context of war are usually tried in civilian district courts. However, military courts adjudicate cases involving members of a military force and civilians charged with offenses related to national security. In addition, as the following sample of cases indicates, some civilians are tried in military courts as "combatants" or as "collaborators," although little evidence exists to support such charges. In any event, both military courts and civilian courts have jurisdiction over cases involving war crimes and crimes against humanity.

Geographical Breakdown

Courts throughout Croatia have heard war crimes cases. Nevertheless, most cases have been brought in the Osijek region, where there has been some of the most intense conflict. Cases are also found (in descending order of frequency) in Dubrovnik, Bjelovar, Split, Šibenik and Sisak.

Frequency of Trials in Absentia

¹⁷ The thirty-eight individuals officially listed by the Croatian government as convicted for crimes against humanity and violations of humanitarian law are: Boro Ercegovic (convicted in Karlovac); Jovo Savić (Osijek); Petar Jovanović (Osijek); Marko Živković (Požega); Nenad Čokorac (Požega); Rajko Dreković (Požega); Miodrag Simeunović (Požega); Luka Nikodinović (Požega); Luka Ponorac (Požega); Bogdan Delić (Požega); Stevan Šteković (Požega); Borislav Mikelić (Sisak); Dušan Jović (Sisak); Milan Mudiža (Sisak); Dušan Kačar (Sisak); Ilija Nišević (Sisak); Milan Milanković (Sisak); Ilija Bjelajac (Sisak); Simo Karaica (Sisak); Stanko Divjakinja (Sisak); Stanko Palančan (Sisak); Branko Pralica (Sisak); Milan Korač (Sisak); Dragan Roksandić (Sisak); Simo Podunavac (Sisak); Jovo Begović (Sisak); Budimir Jovanovski (Sisak); Ranko Tarbuk (Sisak); Milorad Babić (Sisak); Dušan Kojić (Sisak); Špiro Ninković (Šibenik); Marko Sunarić (Šibenik); Momčilo Milosav (Šibenik); Đuro Karajlović (Šibenik); Božo Iglendža (Šibenik); Milan Pavlović (Šibenik); Svemir Crnobrnja (Zadar); and Ratko Mladić (Šibenik). Mladić, who is widely known as the commander of the Bosnian Serb Army, commanded Croatian Serb forces during the war in Croatia and generally is regarded as the commander of all Serbian forces outside the FRY.

Government lawyers readily concede that over 80 percent of the cases have proceeded without the presence of the accused, primarily because those accused have always been in Serbian-controlled areas of Croatia or other parts of the former Yugoslavia or because those accused have been exchanged for Croatian prisoners held by Serbian forces during prisoner exchanges. Based on Vuković's information about "final convictions," only one man out of the thirty-eight "finally convicted" of war crimes by late 1993 was present during the court proceedings.¹⁸

¹⁸ In this context, "final convictions" refer to convictions that are not subject to further appeal or review, i.e., the final verdict reached in a case after the appeals process has been exhausted.

Some government-employed and other attorneys defend the trials *in absentia*, explaining that in their view "it would be impermissible to stop a trial simply because the prisoner has been exchanged" and that "if the accused returns to Croatia, he/she can then defend himself/herself in a new proceeding."¹⁹ Others readily admit that *in absentia* trials are a violation of due process standards but cite the need to hold such trials to appease an aggrieved public, particularly the victims of such abuses. These critics — among whom are government and military officials — also claim that if the accused returns to territory controlled by the Croatian government, the verdict reached in the trial conducted in the defendant's absence would be invalidated and the defendant would be given a new trial.²⁰ Ironically, as the cases below indicate, since most accused Serbs are not living in Croatian-controlled territory, the few prisoners who actually sit in jail awaiting trial are Croats or other non-Serbs, such as Albanians.

Human Rights Watch/Helsinki believes that *in absentia* trials violate internationally recognized standards of due process. We can contemplate some narrow exceptions, as when the defendant has every right to confront evidence and defend himself but chooses to jump bail and boycott the proceedings; otherwise, trials *in absentia* negate the fundamental right of every criminal defendant to confront the evidence presented against him/her, to present his/her own evidence and to be properly and effectively represented by counsel. The fact that the defendant can always defend himself/herself at a new proceeding if he/she ever returns to Croatia is meaningful only if: (1) he/she deliberately boycotted the proceedings so that they proceeded without him/her because of his/her own fault; or (2) the new proceeding in effect constitutes a whole new trial. If the new trial is a repetition of earlier proceedings, the first trial conducted *in absentia* can be very prejudicial to the defendant's right to a fair trial.

Problems With Prosecutions

Members of the bar in Croatia have called into question the ability of the Croatian justice system to investigate and try war crimes cases in line with international standards of due process. A survey of the problems inherent in recent cases indicates that the legal system in Croatia may indeed have come increasingly under the control of the governing political party. In interviews with Human Rights Watch/Helsinki in March and April 1994,²¹ defense attorneys registered the following concerns, all of which are evident in the cases surveyed below.

Politicization of Decisions to Prosecute

¹⁹ Human Rights Watch/Helsinki interview with Milan Vuković in Zagreb, March 1994.

²⁰ Interviews with members of the military prosecutor's office and other government officials in Zagreb and Osijek during the summer of 1993.

²¹ Human Rights Watch/Helsinki representatives interviewed more than a dozen lawyers in Croatia for this section.

From the disparate cases brought against Serbs for crimes against Croats, it appears that ethnicity weighs heavily in the determination to prosecute. Attorneys complain that they face great difficulty in obtaining full and fair investigations into the disappearances of Serbian individuals or the destruction of property belonging to Serbs. According to Slobodan Budak, a Zagreb attorney, Serbian civilians have disappeared and the property of Serbs has been destroyed in many cities, including Karlobag, Gospić, Osijek, Split and Sisak. Budak contends that members of the Croatian Army and police have been involved in the kidnapping and murder of civilians.²²

²² Human Rights Watch/Helsinki interview with Slobodan Budak in Zagreb, April 1994. Budak suggests that if Croatia is to be a free democratic state, it must learn to deal with problems through a legal framework, regardless of nationality, religion or political party. Slobodan Budak, "Mrak Jede Ljude," *Nedjeljna Dalmacija*, January 2, 1992.

In December 1991, Budak filed a complaint against Stipe Hečimović, a policeman in Karlobag, and three unidentified members of the Croatian Army on behalf of family members of three disappeared persons. The complaint alleges that the defendants arrested three Serbs, took them away and eventually murdered them.²³ According to Budak, the public prosecutor's office has steadfastly refused to investigate the case fully and to bring charges as requested.²⁴

Some defense attorneys also contend that the justice system considers influential politicians to be immune from prosecution. Human Rights Watch/Helsinki has heard several complaints by human rights attorneys and defense counsel that influential politicians and their families act as if they are above the law, and that charges against them are quickly dropped or buried.²⁵ For example, international human rights workers, individual witnesses and others have identified evidence which implicates Tomislav Mrčep, current advisor to the minister of Interior Affairs and member of the Chamber of Counties of the Croatian Parliament, in the 1991 massacre of Serbs in the area of Packračka Poljana in Croatia. The independent press in Croatia also has written extensively about Mrčep's involvement in the Packračka Poljana area, asserting that his role in the area should be investigated by Croatia's public prosecutor and that he should be held accountable for his alleged crimes. Despite the abundance of such information and public pressure, the Croatian government, to date, has refused to investigate Mrčep for war crimes. Rather, he continues in his position as adviser in the Croatian Interior Ministry.

Politicization of the Judiciary

According to several members of the Croatian bar, many judges and state prosecutors have been released from their duties, at times summarily and without any proceedings; at other times judges are

²³ Claim filed by Ljiljana Mandić and L. Bogdanović, dated December 12, 1991 (on file with Human Rights Watch/Helsinki).

²⁴ Human Rights Watch/Helsinki interview with Slobodan Budak in Zagreb, March 1994.

²⁵ Human Rights Watch/Helsinki interviews with attorneys in Zagreb, Osijek and Dubrovnik, March and April, 1994. For a discussion of whether influential politicians are above the law and whether the justice department is independent, see Marinko Jursić, "Ima li u Hrvatskoj Nedodirljivih?" *Večernji List*, January 15, 1994.

reportedly coerced to retire "voluntarily".²⁶ In some instances, the dismissals appear to be linked to the judges' ethnic or political background.²⁷ At other times, judges and prosecutors are dismissed or have quit under pressure because they refused to obey the political authorities when adjudicating a case, choosing to follow the letter of the law. For example, V. Grubeša, a Yugoslav Army (JNA) pilot, was given a fair trial and found not guilty of bombing Croatian towns and villages in 1991 by a Rijeka court in 1993. Soon thereafter, Croatia's public prosecutor forced the local district attorney to reopen the case, despite the legal precept of *non bis in idem* (double jeopardy). During his second trial, Grubeša was found guilty and sentenced to a jail term. The judges and prosecutors involved in the second case reportedly were threatened with dismissal from their jobs if they absolved Grubeša a second time. In addition to interference with the independence of the judiciary in this case, the defendant's right to be free from double jeopardy was violated, despite the fact that that right and other due process rights are guaranteed in Croatia's Constitution.²⁸

²⁶ Human Rights Watch/Helsinki interviews with attorneys in Zagreb, Osijek and Dubrovnik, March and April 1994.

²⁷ Josip Šmidt, "Razrješenja Bez Objašnjenja," *Slobodna Dalmacija*, February 6, 1993.

²⁸ Article 31 of the Croatian Constitution does not allow for the retroactive application of laws i.e., *ex post facto* and guarantees a defendant's right to be free from double jeopardy. Habeas corpus and other due process rights are protected in article 29 of the Croatian Constitution. See Jadranko Crnić, *Ustav Republike Hrvatske*, (Zagreb: Narodne novine, 1993) pp. 24-27.

Some judges who have openly disapproved of the politicization of the judicial system have been either dismissed summarily or reprimanded.²⁹ For example, Vjekoslav Vidović, former president of the Supreme Court of Croatia, retired after he disapproved of the release of Dobroslav Paraga, the former leader of the right-wing Croatian Party of Rights. Vidović also disapproved of the mass prisoner exchanges that occurred in 1992, refusing to release prisoners who had not been tried because, he contended, the exchanges were politically motivated. Upon his retirement, Vidović publicly stated that he refused to participate in the politicization of the law and that there was no respect for the principle that law should be independent from politics.³⁰ In a similar fashion, Vladimir Primorac resigned from the bench and entered private practice, claiming that there was no separation of powers between the executive and judicial branches of the government and that the former frequently interfered with the workings of the latter.³¹ Primorac asserted that judges and prosecutors in Croatia are under direct government pressure, threatened with the loss of their jobs if they do not follow orders from the political authorities.³²

Broad Exercise of Power By Military Courts

After the outbreak of war, the Croatian government established special military courts with broad prosecutorial power over civilians. Human Rights Watch/Helsinki fundamentally objects to military courts trying civilians. Military courts by their nature are not independent. Their procedures generally afford very limited due process guarantees. Military courts are suitable only when they try military officers for offenses of a military nature. Thus, Human Rights Watch/Helsinki cautions the Croatian government against what appears to be the random and inappropriate use of military courts.

²⁹ Helsinki Watch interview with attorney Silvije Degan in Zagreb, April 1994.

³⁰ Zoran Daskalović, "Pravo i Država: Sudcima Se Sudi Bez Suda," *Danas*, February 25, 1992. Earlier, Human Rights Watch/Helsinki expressed its concern that a district court judge in Zagreb, Emir Midžić, had been drafted for combat duty in order to punish him for reducing charges against Mile Dedaković, the former commander of Croatian forces in Vukovar, who was later charged with "attacking the constitutional order of the Republic of Croatia," abuse of his official position and embezzlement. Many considered the charges against Dedaković to have been politically motivated and suspected that Dedaković was being used as a scapegoat by the Croatian government to justify the fall of Vukovar to Serbian forces. While in custody, Dedaković was beaten by the military police. For a further explanation of Dedaković's case, see Helsinki Watch letter to Franjo Tudjman, President of the Republic of Croatia, February 13, 1992.

³¹ *Erasmus*, No. 7, Zagreb, 1994.

³² *Ibid.*

Failure to Observe Due Process Guarantees in Military Court

The president of the Supreme Court of Croatia, Milan Vuković, denies that any great differences exist between the due process rights of the accused in military courts and in civilian courts.³³ Nevertheless, many members of the Croatian bar have complained that in practice defendants receive fewer due process guarantees in military court. In military courts, a military officer and not an attorney has the power to interrogate defendants. Often, the bar contends, this is done without the presence of counsel. In addition, testimony is acceptable in military court in the form of affidavits under circumstances in which civilian courts would normally compel the witness to be present at the trial.³⁴ Accepting incriminating evidence in the form of an affidavit is a serious breach of due process because it conflicts with the right to confront, and to be able to contest effectively, evidence of any sort.

Failure to Observe Due Process in Civilian Courts

The bar and the accused themselves have few complaints about the appointment of counsel for those facing charges in civilian courts. Courts routinely appoint counsel for accused from lists of available members of the local bar.³⁵ Still, due process is not observed. Some arresting military police officers have beaten detainees, particularly in the Lora military barracks in Split. In particular, Serbs and former Yugoslav Army officers are held even when there is no evidence of wrongdoing.³⁶ Human Rights Watch/Helsinki objects to any mistreatment of the accused. To its credit, Croatia has rarely used confessions as evidence in cases involving war crimes and crimes against humanity. Human Rights Watch/Helsinki objects to the use of confessions unless they are freely given in circumstances that are non-coercive ; we urge that they be admitted only if rendered before a magistrate and after the defendant is duly advised of his/her right to remain silent.

Moreover, defense attorneys usually do not have access to the accused during the early investigatory process and before defendants appear in front of the investigatory judge. While some defense lawyers find their way around the constraints, many lawyers have complained about blocked access to their clients at the early stages.

The Croatian Lawyers' Association is urging amendments to the code of criminal procedure to improve due process guarantees. As is the case in Napoleonic legal systems, the police in Croatia may detain the accused for three days in investigatory detention before the accused is seen by the investigating magistrate.

³³ Human Rights Watch/Helsinki interview with Milan Vuković in Zagreb, March 1994.

³⁴ Human Rights Watch/Helsinki interview with Slobodan Budak in Zagreb, March 1994.

³⁵ As in other countries, the diligence and experience of court-appointed attorneys vary.

³⁶ Human Rights Watch/Helsinki interviews with members of Croatian Defense Bar in Zagreb, Osijek and Dubrovnik, March and April 1994. See also "U Vrtlogu Političkog Trilera," *Nedjeljna Dalmacija*, December 26, 1991.

Although the police can permit the accused to see his or her lawyer during the three-day detention period, the automatic right to counsel at the time of arrest is not guaranteed until such time as the accused is brought before the magistrate. Current proposals within the government and the bar would provide counsel access to his or her client at the time of arrest, as in the Anglo-American legal system. Human Rights Watch/Helsinki supports efforts of defense counsel to change the law in this regard. Access to counsel at an early stage in the proceeding is important, because it contributes to the prevention of mistreatment during interrogation, and because it is integral to the notion of effective assistance of counsel.

The Croatian Lawyers' Association has proposed a new law under which only district courts would be empowered to issue search warrants, not police departments as is current practice under existing law.³⁷ We support this proposal. Since investigatory measures in most cases have a considerable impact on the civil liberties of the persons affected by these measures, safeguards are necessary to ensure that the legal requirements of these measures are met and that the civil rights of those affected are not violated. The more severe the investigatory measure is, the greater the need for such effective safeguards becomes. Therefore, the most serious investigatory powers (such as arrest and search warrants) are preferably not to be left entirely to the police as a part of the executive branch as this would entail the danger that the police will use them routinely and without respect for basic civil rights, simply to facilitate their work. Rather, they have to be subject to surveillance by the judicial branch with its legal expertise even before the beginning of a trial, during the investigation and prosecution, to guarantee the protection of those whose rights are at stake. Thus, the power to issue a search warrant - following a request by the police - is reserved for judges in most democracies, because a search is an act that impinges on the right to privacy in one's home or work place. Usually, exceptions to this rule do exist and prosecutors or the police can issue search warrants in case of urgency, for example, if evidence would be destroyed or removed if judicial decision had to be awaited. The conditions to be fulfilled for such an exception, however, have to be very rigid in order to prevent the undermining of judicial control by means of overly frequent application of the exceptions.

The "Small Fish" Are Tried While the "Big Fish" Get Away

Several members of the bar have expressed their concern that their clients are merely scapegoats. An illustration of the "small fish" mentality of some of the so-called war crimes cases is the case against Novak Sajić. Sajić was arrested on May 29, 1992 and charged with "collaborating with the members of the former JNA [Yugoslav Army] in the areas of Dubrovnik and Konavle with the intent that they become part of Serbia-Montenegro" and in assisting "others to participate in the military uprising against the Republic of Croatia."³⁸ While charging Sajić with war crimes, the indictment actually only claims that Sajić "stole carnations from a carnation field intending to sell them in Bosnia and killed Croatian cows to feed the JNA." For this, he was sentenced to one year and six months in jail.³⁹

³⁷ Nataša Bakotić, "Državni Odvjetnik 'Pretresa' Stanove?" *Slobodna Dalmacija*, December 5, 1993. Since the mid-sixties, search warrants in the former Socialist Federal Republic of Yugoslavia (SFRY) have been issued by police authorities or investigating judges. This practice remains in effect in many of the former Yugoslav republics, including Croatia.

³⁸ He was charged under articles 236(f)(m) and 131(1)(4) of the Croatian Criminal Code. Indictment against Novak Sajić, Military Court, Split, dated June 12, 1992 (on file with Human Rights Watch/Helsinki).

³⁹ His appeal was later rejected. See Decision of the Supreme Court of Croatia, dated December 24, 1992 (on file with Human Rights Watch/Helsinki).

Delay of Verdicts

Courts delay or fail to issue final verdicts in many war crimes cases. Acquitted persons and their defense counsel have pointed out that this can create substantial problems for them, such as being prevented from buying land and continued harassment by neighbors.⁴⁰ The president of the Supreme Court, Milan Vuković, acknowledged that there has been a delay, but he attributed it to war-time conditions which necessarily overtax the judicial system.⁴¹

Lack of Evidence of Wrongdoing

⁴⁰ Human Rights Watch/Helsinki interviews with accused and defense counsel in Dubrovnik, March 1994.

⁴¹ Human Rights Watch/Helsinki interview with Milan Vuković in Zagreb, March 1994.

In most cases where a defendant is present for trial, little or no evidence supports charges of the accused's commission of war crimes. Many cases are based solely on the accused's admission to being a member of the Yugoslav Army during its attack on parts of Croatia. When questioned about the lack of evidence in such cases, the president of the supreme court, Milan Vuković, responded, "Yes, but they were with the army that committed horrible crimes ... What can we do, let them go? If you started shooting civilians outside the window right now, I would have an obligation to jump out the window and risk being shot; if I didn't, I would be guilty."⁴²

Human Rights Watch/Helsinki strongly condemns this kind of reasoning. Under international human rights standards binding on Croatia and under Croatia's "Law of Forgiveness" described below, one cannot be accused of a crime simply for being in the "enemy army." The soldier who knowingly and deliberately shells civilian targets is definitely subject to prosecution for war crimes, but he/she should be tried on the evidence that he/she actually launched the shells, not on the basis that he/she belonged to a force that committed the crime. Criminal liability, even in war time, is individual, not collective; a soldier cannot be punished for guilt by association.

A soldier's affiliation with an abusive force may be an element of the evidence, but it is by no means dispositive of the issue of culpability. Precisely in the case of a foot soldier, a court must be careful in examining the evidence, because the guilt or innocence of a soldier depends on whether he/she actually had control of the act or, in other words, on whether he/she had a realistic moral choice not to act on an order he/she is otherwise obliged to obey. An individual soldier may have refused to commit the abuses and may have been the only member of a force that did not commit war crimes. A greater exercise of judgment is expected of military officers and the fact that atrocities were committed under a particular officer's command raises more of an inference of criminal liability. Still, even if such an inference rose to the level of a presumption, it could plausibly be rebutted in the absence of further evidence of wrongdoing.

With regard to war crimes and crimes against humanity, those who gave the orders to commit the crimes must be the first focus of any prosecution. Those who executed the immoral and illegal orders should also be prosecuted. The defense of obedience to orders is not completely unavailable, but it should be much more restrictive in cases involving war crimes and crimes against humanity than in ordinary criminal cases. A soldier can be accused of such crimes if, under the circumstances, he/she acted in ignorance of the illegality of the order or did not have a moral choice to resist it. For example, an order to shell a target a soldier does not clearly see from a distance may not be manifestly illegal; the soldier's liability depends on the circumstances of the individual case. In this context, it does not matter whether orders are specific or generic. Conversely, a general order to fire on all civilian objects is manifestly illegal; the fact that the force usually fires in that fashion is the equivalent to an "order" in that regard. Soldiers cannot excuse their role in that case by pleading ignorance of the illegality of the order.

The degree to which a soldier can actually examine the legality of an order under the circumstances can and should be considered in determining his/her punishment. The person who gave the order should be punished more severely than the one who obeyed it. Under some extreme circumstances, following orders can

⁴² Human Rights Watch/Helsinki interview with Milan Vuković in Zagreb, March 1994.

be a complete defense. For example, if a soldier will be shot on the spot if he/she refuses to obey an order that he/she knows is wrong, no court can reasonably expect the soldier to resist that order under the circumstances. However, if the risk in refusing to obey an order is to lose one's rank or suffer disciplinary sanction, the soldier is obliged to resist.

In other cases, the evidence proves only that the accused associated with non-Croats, people with anti-Croatian sentiments, or with "pro-Yugoslav" organizations. However, the Croatian Constitution and international obligations binding on Croatia guarantee freedom of association.⁴³ Simply associating with people who advocate a controversial political goal is no evidence of wrongdoing.

In addition, some cases seem to be brought against a person merely for being a Serb in the wrong place at the wrong time. The main "evidence" may be the defendant's admission of traveling before or during the conflict to Serbia or Serbian-controlled areas. In such cases, defendants often claim that they traveled to Serbia to escape discrimination,⁴⁴ fear of attack, to look for employment, or simply to visit relatives. Then, upon their return, they were arrested and charged with spying or with joining the Serbian insurgency in Croatia despite the fact that little evidence exists to support the charges.

Failure to Try "One's Own"

⁴³ Freedom of political association is guaranteed under section 2(6) of the Croatian Constitution. Section 3 further protects individual freedom of expression and equality under the law.

⁴⁴ For a discussion of the status of Serbs in Croatia in 1990-1991, see Helsinki Watch letter to Croatian President Franjo Tudjman, February 13, 1992. Treatment of Serbs in Croatia will also be addressed with in a forthcoming Human Rights Watch/Helsinki report concerning civil and political rights in Croatia.

The cases summarized below also demonstrate general failure of the Croatian justice system to try Croatian soldiers who have committed war crimes or crimes against humanity in the course of the fighting. With few exceptions, the Croats who have been brought to trial for war crimes are either former Yugoslav Army officers who attacked Croatia, or citizens or soldiers who committed crimes in private disputes that should not be tried as war crimes.⁴⁵ For more than three years, Human Rights Watch/Helsinki has been calling for investigations into the murder by Croatian forces of at least twenty-three Serbs in the town of Gospić in late 1991.⁴⁶ We have documented additional cases of murder, destruction of property and disappearances for which private individuals or Croatian military, police or civilian authorities appear to be responsible. We have called upon the Croatian government to conduct thorough investigations in numerous cases.⁴⁷ Although the Croatian government has, in some cases, disciplined members of the Croatian police and Army accused of criminal wrongdoing, in general, there has been little desire within the Croatian government to investigate cases and prosecute for war crimes individual Croats and members of the Croatian Army or police.

Note on the "Law of Forgiveness"

Those who fought with the Yugoslav Army or Serbian insurgent forces against Croatia but who otherwise are not guilty of committing war crimes or crimes against humanity can be pardoned under Croatia's "law of forgiveness."⁴⁸ Indeed, in the past two years, pardons have been granted to, and charges have been dropped or proceedings have been cancelled against, thousands of persons — most of them Serbs — who had been charged with crimes against the state. Still, many of the cases described below give the impression of having been brought spuriously as war crimes or crimes against humanity solely as a way of getting around the "law of forgiveness." Moreover, the law is ambiguous in some respects, allowing broad discretion to prosecutors bringing cases.

With several important exceptions, the "law of forgiveness" pardons all those "who committed criminal acts during the course of armed conflict in Croatia." The pardon is applicable to crimes committed between August 17, 1990 and the date the law went into effect (i.e., September 25, 1992).⁴⁹ Therefore, those persons who committed crimes after September 25, 1992, would not be exempt from criminal prosecution.

⁴⁵ For example, a representative of Human Rights Watch/Helsinki interviewed a man in prison in Osijek who had been charged with war crimes for murdering his family. He had returned from fighting in Bosnia because he had "heard a voice" in his ear telling him to kill his father, mother, and wife. His crime is not properly classified as a war crime.

⁴⁶ See Helsinki Watch letter to Croatian President Franjo Tudjman, February 13, 1992, and Helsinki Watch, *War Crimes in Bosnia-Herzegovina, Volume I*, (New York: Human Rights Watch, August 1992), p. 7.

⁴⁷ See Helsinki Watch letter to Croatian President Franjo Tudjman, February 13, 1992.

⁴⁸ Original is cited as "Zakon o oprostima od krivičnog progona i postupka za krivična djela počinjena u oružanim sukobima i u ratu protiv Republike Hrvatske," (i.e., "Law of Forgiveness from Criminal Prosecution or Proceedings for Crimes Committed in the Course of Armed Conflicts and the War Against the Republic of Croatia"), *Narodne Novine Republike Hrvatske*, No. 58, September 25, 1992, pp. 1305-06. A forthcoming Human Rights Watch/Helsinki report on civil and political rights in Croatia will provide a detailed discussion of the "law of forgiveness" and other relevant legislation.

⁴⁹ The law was signed by President Tudjman on September 25, 1992 and was published in the country's legal register *Narodne Novine* on the same day. The date of publication in the *Narodne Novine* is the day the law went into effect.

This section of the law was aimed at pardoning those who participated in an armed rebellion against the Croatian government — almost exclusively Serbs from the Serbian-controlled Krajina region and parts of eastern and western Slavonia.⁵⁰ In practical terms, the law pardons all those who joined rebel Serbian forces in Croatia between August 17, 1990 and September 25, 1992. Therefore, those who took up arms after September 25, 1992 would not be pardoned. The mechanism through which one determines when a person joined the Serbian armed forces, and is therefore eligible for a pardon, remains ambiguous.

⁵⁰ In August 1990, Serbs in the city of Knin rebelled against the new government, which it considered as nationalistic and anti-Serbian. Serbs in Knin held a referendum to proclaim an autonomous region, "Krajina," and in subsequent months other Serbian-populated areas in Croatia followed suit. These towns also declared themselves to be part of Krajina, and called themselves the Independent Autonomous Region of Krajina (Samostalna Autonomna Oblast Krajina — SAOK). Full-scale war between rebel Serbs and Croatian armed forces broke out after Croatia declared its independence from Yugoslavia on June 25, 1991. By January 1992, Serbian rebel forces assumed control of 30 percent of Croatia's territory. As of this writing, Serbian forces control the so-called Krajina region and parts of western and eastern Slavonia. United Nations troops currently are deployed in these areas and the mandate of their mission has been revised but their role in Croatia remains ambiguous and is being negotiated by U.N. officials in consultations with the Croatian government rebel Serb authorities.

In addition to providing an amnesty for those who joined the Serbian insurgency, the "law of forgiveness" also pardons persons who committed "crimes *related to* the armed conflict in Croatia."⁵¹ However, the law does not delineate which other "crimes related to the ... conflict" can be pardoned. Insofar as an individual had been indicted and was being prosecuted for having joined the Serbian insurgency or for having committed "crimes related to ... the conflict" at the time of the law's promulgation, the "law of forgiveness" required an end to the court proceedings. Furthermore, if someone had already been incarcerated for his or her participation in the rebellion or for the commission of crimes related to the conflict, he or she was to be released from prison. The state prosecutor may appeal, within twenty-four hours, the pardon of a person whom the prosecutor considers guilty of violating international law.⁵²

As stated above, article 2 of the "law of forgiveness" specifically prohibits pardoning those who violate international humanitarian law, much of which has been codified in domestic Croatian law.⁵³ Human Rights Watch/Helsinki agrees with this position. Indeed, an emerging principle of international law requires investigation, prosecution and punishment in cases alleging crimes against humanity. Moreover, the Geneva Conventions spell out an obligation to prosecute "grave breaches"⁵⁴ of international law and thus in such cases, state pardons *cannot* be given.

⁵¹ Author's emphasis.

⁵² Article 3 of the "law of forgiveness."

⁵³ Many of the provisions of the 1949 Geneva Conventions and their Protocols are codified in Croatia's Criminal Code. See glava petnaesta: Krivična Djela Protiv Čovječnosti i Međunarodnoga Prava, (clanci 119 do 137), "Osnovni Krivični Zakon Republike Hrvatske (s pojmovnim kazalom)," Zbirka Zakona Kaznenog Prava Republike Hrvatske (pročišćeni tekstovi), (Zagreb: Informator, 1993), pp. 41-47.

⁵⁴ See article 50 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949 [hereinafter First Geneva Convention]; article 51 of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea of August 2, 1949 [hereinafter Second Geneva Convention]; article 130 of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 [hereinafter Third Geneva Convention]; article 147 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 [hereinafter Fourth Geneva Convention]; and articles 11 (4) and 85 of Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflict [hereinafter Protocol I].

The "law of forgiveness" therefore, does not apply to the cases discussed in this report when they rest on international humanitarian law, as codified in Croatian law. Nevertheless, in many of the cases alleging the commission of war crimes described below, there is no evidence directly linking the defendant to a violation of international law. In such cases it appears as if the accused are charged merely for being in the "enemy army." Such cases appear to fall squarely under the "law of forgiveness" as long as the timing requirements are met. When questioned about whether the "law of forgiveness" should apply in some of the cases discussed in this report, prosecutors and defense attorneys alike routinely dismissed the actual importance of the "law of forgiveness."

A Summary of Selected Cases

The general trends and problems in the Croatian judicial system described above are illustrated in the following cases.⁵⁵ While Human Rights Watch/Helsinki may not consider all of these cases to present real claims of "war crimes" or "crimes against humanity," they are considered as such in Croatia and thus are included together in this section. These examples show that many cases are brought against "small fish" with little or no evidence of wrongdoing. The charges in many of these cases rest on the accused being a member of the enemy army or of the "wrong" ethnic or political group.

Recruits in the Yugoslav Army: Combatants Accused of War Crimes During the Siege of Dubrovnik: The case of Ahmet Ališani; An Albanian Recruit in the Yugoslav Army

Ahmet Ališani, a former soldier with the Yugoslav Army, is one of the few accused war criminals actually sitting in jail. At the urging of the International Committee of the Red Cross, Croatia has exchanged most prisoners with Serbia. As an Albanian, however, Ališani is not high on Serbia's list. Thus, like his Croatian counterparts who also are not sought after by the Serbian authorities, Ališani had been sitting in prison in Dubrovnik since July 1993 at the time of our interview in March 1994.

Ališani's indictment charges him with "participating in the organization of aggression and attack on the Dubrovnik area."⁵⁶ The indictment charges Ališani with being a captain of the Yugoslav Army and with using military force in an attempt to make the area of Konavle a part of Serbia-Montenegro. He is further charged with organizing an attack on Dubrovnik from December 15, 1991 to February 2, 1992, which resulted in the "destruction of Dubrovnik and the deaths of many individuals."⁵⁷

⁵⁵ This survey is a random sample of cases, and is not necessarily representative of the total universe of cases. On the contrary, many cases are discussed in detail because the accused is actually still in prison, which is rather exceptional. In addition, the sample might be skewed because the cases are drawn from Osijek and Dubrovnik courts. The Croatian Ministry of Justice allowed Human Rights Watch/Helsinki to interview any and all of the accused who were still in prison.

⁵⁶ Indictment against Ahmet Ališani, Military Court, Split, dated August 6, 1993 (on file with Human Rights Watch/Helsinki).

⁵⁷ *Ibid.*

However, the indictment fails to offer evidence linking Ališani directly to any criminal wrongdoing. Ališani admits that he was assigned to one of the Yugoslav Army units that attacked Dubrovnik in December 1991, but he claims he was assigned to the barracks and never took part in the attack. Two months after the worst bombing of Dubrovnik, Ališani went "absent without leave," escaping first to Kosovo and then to Albania. From there, Ališani claims, he attempted to enter the Croatian Army at the invitation of the commander of the southern flank.

In the summer of 1993, Ališani traveled to Dubrovnik, where he promptly testified against his former Yugoslav Army commanders. Ališani believed that he would then be commissioned in the Croatian Army. Instead, the local authorities attempted to deport him to Albania. When the ship failed to sail to Albania, Ališani took a boat to Rijeka and then made it on his own to Zagreb.

After an unsuccessful attempt to flee to Germany through Slovenia, Ališani was arrested by police in Zagreb for having invalid immigration papers. According to Ališani, the authorities then sent him in custody to Dubrovnik to stand trial for war crimes.⁵⁸

In a prison interview,⁵⁹ Ališani told Human Rights Watch/ Helsinki that the policemen who had arrested him in Zagreb had beaten him. However, he had no complaints about his treatment in Dubrovnik. Human Rights Watch's own inspection of the prison facilities in Dubrovnik found exceptionally high standards.⁶⁰ Ališani also told Human Rights Watch/Helsinki that he was satisfied with his court-appointed lawyer, Srdj Jakšić. He was primarily concerned about his inability to support his family, which lives outside Croatia, while he remained in prison. Because Ališani testified against his Yugoslav Army commanders, he was unlikely to be welcome by the Serbs after his release. Since he would be unwelcome in Croatia now as well, Ališani hoped to be guaranteed access to a third country for himself and his family.

When Human Rights Watch/Helsinki asked Milan Vuković, the President of the Supreme Court, about Ališani's case, Vuković made a few phone calls and then assured a representative of Human Rights Watch/Helsinki that the case was "political" and that Ališani might soon be released.

Ališani's case is marked by arbitrariness and politicization. He appears to have been used as a scapegoat by the Croatian authorities as a means through which to show the public that some of the crimes perpetrated during the siege of Dubrovnik had been atoned for.

Ališani's "crime" appears to have been his membership in the Yugoslav Army at the time it attacked Dubrovnik. Commanders of the Yugoslav Army responsible for the siege of Dubrovnik and the destruction of its environs are to be held accountable for their actions. Recruits in the Yugoslav Army who were combatants during a battle should not be tried for war crimes unless specific evidence exists to support such accusations. Indeed, there is an apparent lack of evidence linking Ališani to the commission of war crimes. Moreover, under

⁵⁸ Human Rights Watch/Helsinki interview with Ahmet Ališani in prison, Dubrovnik, March 1994.

⁵⁹ Human Rights Watch/Helsinki asked specifically to speak to Ališani and, having received approval from Deputy Minister of Justice Josip Kardum, prison officials complied.

⁶⁰ The Dubrovnik prison is small, clean and well- equipped facility. It is only a temporary holding facility for pending military and civil court cases. After sentencing, prisoners are sent from that building to larger prisons elsewhere.

the terms of Croatia's "law of forgiveness," Ališani should be pardoned if in fact his only crime was participation in battle on the enemy side.

The Croatian Ministry of Justice should immediately review the case against Ališani and, if indeed no evidence exists against him, his conviction should be overturned and he should immediately be released from custody. Human Rights Watch/Helsinki also urges the Croatian Ministry of Justice to examine whether Ališani's case falls under the "law of forgiveness;" if the law applies — as appears to be the case — then Ališani should be pardoned for his membership in the Yugoslav Army.

Inadequate Legal Representation: The Case of Ivica Vuletić

One of the few Serbian prisoners actually held in jail in Croatia at the time of our mission was Ivica Vuletić, nicknamed "Rambo" in the Croatian press. Vuletić, originally from Pančevo, a city near Belgrade, was arrested in the summer of 1993 and accused of killing over fifty of the wounded from the Vukovar hospital and with murdering several additional unarmed civilians. According to the prosecutor, from September through December 1991, Vuletić attacked the villages of Bijelo Brdo and Sarvaš and the city of Vukovar as a member of a Serbian paramilitary group.⁶¹

In July 1993, when he was brought before the investigatory judge, Vuletić confessed to killing civilians and wounded soldiers in Vukovar. According to his lawyer, who was not able to speak to him until after the initial hearing before the investigating judge (as is common practice and part of ordinary criminal procedure in Croatia and elsewhere in the former Yugoslavia), Vuletić not only admitted to murdering civilians but also testified about the mass grave site at Ovčara, where the remains of at least 180 Croatian civilians and disarmed combatants were later discovered.⁶² Vuletić then confessed a second time after he had been imprisoned for a month, writing and signing a long letter detailing his crimes.⁶³ Later, however, Vuletić denied the charges, contending that his confession had been forced.

On December 31, 1993, the District Court in Osijek issued an indictment against Vuletić, charging him with violations of Croatian criminal law and the provisions of the Geneva Conventions pertaining to the treatment of the sick and wounded, the handling of war prisoners, and the treatment of civilians. Among the various accusations, the indictment contends the following:

On November 20, 1991, in Vukovar, having entered the hospital of the Vukovar Medical Centre together with Borislav Kostić and Jovan Pešić, and having found a number of wounded and sick in the basement of the hospital, they together shot with their firearms a number of unidentified wounded and sick; after that he shot three unidentified severely

⁶¹ Mirko Sajler, "Ubijao Vukovarske Ranjenike?" *Vjesnik*, February 26, 1994. Indictment against Ivica Vuletić, dated December 31, 1993 (on file with Human Rights Watch/Helsinki).

⁶² For an account of the Ovčara massacre, see Helsinki Watch, *War Crimes in Bosnia-Herzegovina*, Volume I, (New York: Human Rights Watch, August 1992), pp.77-79.

⁶³ Human Rights Watch/Helsinki is in possession of a copy of the letter. During a prison interview, Vuletić confirmed that the confession was indeed his.

wounded persons with his M-70 automatic gun in the hospital yard near the ambulance building where the above-mentioned wounded were brought out from the hospital.

After November 20, 1991, in a forest near Vukovar, together with [...several others...], when a group of 250 to 300 civilians and imprisoned members of the Croatian Army and police were brought from the city of Vukovar in three convoys of four trucks and were killed and thrown in prepared pits immediately after being brought to the place, he himself killed about fifty individuals...⁶⁴

According to the public prosecutor, the evidence against Vuletić includes his confession, a private diary which reportedly describes his participation in armed conflict around Vukovar, and numerous witnesses who have given statements identifying him as a guard for prisoners of Vukovar. The indictment itself notes that "none of the witnesses can recognize the accused as the executor of the described crimes" but contends that "their testimonies are supported by the statement of the accused."

⁶⁴ Indictment against Ivica Vuletić, dated December 31, 1993 (on file with Human Rights Watch/Helsinki).

When a Human Rights Watch/Helsinki representative visited him in prison in April 1994,⁶⁵ Vuletić stated that no one physically forced him to write a confession, but that he had been led to believe that he would be exchanged and set free if he confessed. Vuletić stressed that the director of the prison in Osijek made him no promises, but that he got the idea from the police officers who had driven him to the prison.

Vuletić explained his diary entries as "something he wrote in the woods." In a disjointed and contradictory story, Vuletić first denied that he was anywhere near Vukovar during the fighting and then stated that he had been sent to a village near Vukovar as a Yugoslav Army recruit trained in high-tech equipment. "Since there was no high-tech equipment," he explained, "I didn't have anything to do, so I guarded the tanks."⁶⁶ Vuletić told Human Rights Watch/Helsinki that he was hopeful that he could speak with someone at the Russian Embassy who could help him get exchanged as a prisoner of war.

Vuletić was uncomfortable speaking about any mistreatment in prison, implying only that he had been mistreated at the beginning of his imprisonment. He eventually volunteered, "I am afraid what could happen — that's all I can say."⁶⁷ Vuletić's court-appointed attorney had no doubt that the men who had arrested him had beaten him, as is "normal in these cases."⁶⁸ According to the lawyer, when he first saw Vuletić in front of the investigating judge, there were no signs of mistreatment "other than a blue spot above his eye."

When questioned about his lawyer, Vuletić expressed dissatisfaction with his performance, particularly because he had only visited him on one occasion. The lawyer candidly admitted, "I do not visit him the same as I do other prisoners," but he explained, "I am afraid of being alone with him."⁶⁹ When questioned about whether he should continue to accept the case if he is afraid to be with his client, the lawyer dismissed the suggestion that he should be excused.

⁶⁵ Human Rights Watch/Helsinki asked to speak to Vuletić specifically and, having received approval from Deputy Minister of Justice Josip Kardum, prison officials complied. HRW/Helsinki observes that even though we were able to speak with Vuletić privately, testimony taken from prisoners in captivity must always be weighed against the fact that prisoners may not feel free to communicate fully.

⁶⁶ Human Rights Watch/Helsinki interview with Ivica Vuletić in Osijek, April 1994.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

Although the Croatian authorities should be commended for providing Vuletić with legal representation, Human Rights Watch/Helsinki is gravely concerned about the adequacy of that representation. Lack of adequate counsel can impair a defendant's right to a fair trial, and the defendant should be able to ask for a replacement if he is not satisfied with his lawyer's performance.

Violations of Freedom of Association: The Case of Milorad Vukanović, an Organizer of the Serbian Democratic Party

In several cases, charges have been brought against Serbs for organizing "illegal" associations and attending their meetings. In particular, Serbs have been charged with being members of the Serbian Democratic Party (Srpska Demokratska Stranka — SDS), the political party that represented portions of the Serbian population in Croatia during the 1990 election and, for a period, within the Croatian Parliament. Many SDS leaders were responsible for organizing the Serbian rebellion against the Croatian government in mid-1990, and the SDS is considered an illegal or terrorist organization by many in areas which remain under Croatian government control. Still other Serbs have been charged with organizing to separate parts of Croatia and annex them to Serbia and Montenegro.

Such were the charges brought in November 1992 against fourteen defendants in military court in Split. The men were accused of making contacts with extreme Serbian nationalists — including Bosnian Serb leader Radovan Karadžić — and other Serbs abroad, and with supplying weapons and information to the Yugoslav Army. Five of the fourteen accused were present during the judicial proceedings (i.e., Milorad Vukanović, Vladislav Turnić, Mladen Škero, Tom Bajčetić and Rajko Radan). The remaining defendants were tried *in absentia* (i.e., Aleksander Apolonio, Mirko Komnenić, Jovan Komnenić, Vukašin Zubac, Veselin Stolica, Spaso Šišić, Simo Galić, Jovo Mijatović and Dragan Kulaš).⁷⁰

Human Rights Watch/Helsinki spoke with one of the accused, Milorad Vukanović, in Dubrovnik in March 1994, several months after the charges against him had been dropped. While Vukanović readily admitted to playing a leading role in founding a Dubrovnik branch of the SDS, he argued that he had done nothing wrong. According to Vukanović, the decision to form a Serbian political party was completely understandable in light of inter-ethnic tensions in Dubrovnik in the early 1990s:

The problems were huge in the 90s. Dubrovnik was surrounded by extreme Serbian nationalists and threatened constantly. The police did not act to soothe the situation. Instead, they used checkpoints on the road to Herceg Novi and [other parts of] Montenegro to continually check people, especially Serbs. Serbs here felt very uncertain. Serbian nationalists were using that fear and they were making the situation even more tense by using propaganda.⁷¹

⁷⁰ Charges were brought against Milorad Vukanović under article 236(1) of the Croatian Criminal Code ("jeopardizing the territorial integrity of the Republic of Croatia"), and against Vukanović and other defendants under articles 159(2) and 157(2) of the Croatian Criminal Code. See Court Request for Investigation of 14 Defendants, Military Court, Split, dated November 20, 1992 (on file with Human Rights Watch/Helsinki).

⁷¹ Human Rights Watch interview with Milorad Vukanović in Dubrovnik, March 1994

In March 1991, a local chapter of the SDS was founded. According to Vukanović, the Dubrovnik chapter was never intended to be closely allied with the nationalist faction of the SDS, which was headquartered in the town of Knin and had already taken over parts of Croatia. Vukanović claims that he abided by Croatian law and reported the meeting to the local authorities, emphasizing that no one from Knin or Montenegro would be present at the meeting. Vukanović claims that he was surprised when Serbian extremists appeared at the SDS meetings held near Dubrovnik. Vukanović contends that he tried to play a "moderate" and "mediating" role at the gatherings:

Some members from Montenegro and Herceg Novi made very militant speeches threatening what could happen to Dubrovnik if Serbs were attacked. In that meeting, I was not in a very good position to distance myself from the statements...but after the meeting, I gave a statement to [the Croatian daily] *Vjesnik* saying that some of the statements at the meeting were not acceptable.⁷² ... We [local Serbs] gave more statements to the newspapers opposing any possible involvement of the [Yugoslav] army.

After the attack on Dubrovnik began in October 1991, Vukanović says that he continued to act to protect Dubrovnik:

I was immediately on the radio condemning the attack. We established a committee for human rights in Dubrovnik and I was a member of the committee. I was a member of the Croat delegation in the negotiations in Cavtat, so I spoke on the Croatian side with the Yugoslav Army. In the presence of the Croatian delegation, I said that Serbs are not threatened in Dubrovnik, that what the Yugoslav Army is doing is an occupation, and that the majority of Serbs are not accepting it ...

Nevertheless, Vukanović was viewed suspiciously by Dubrovnik's residents and attacked. According to Vukanović:

On the nineteenth of December 1991, two grenades were thrown in front of my house. On the thirteenth of November 1991, my house was hit by machinegun fire. I informed the police about this. Two policemen came and saw what happened, and they just went away without doing anything.

Five days later, on November 18, 1992, Vukanović was called to the police station and interrogated about the establishment of the SDS in Dubrovnik. Later that day, he was arrested and charged with the preparation of and participation in armed rebellion against Dubrovnik. The main evidence against him were minutes from SDS party meetings. The day after he was arrested, Vukanović was brought before a military judge:

One of the questions the public prosecutor, Miho Valjalo, asked me was why I wrote the minutes of our meeting in Cyrillic letters. He proposed a very long detention. He asked if I knew about the preparations of the Yugoslav Army. I said, "Only soldiers know military plans."... No lawyer was with me.

⁷² Human Rights Watch interview with Milorad Vukanović in Dubrovnik, March 1994.

Charges were dropped against Vukanović after a month, but he and his family continued to face harassment. According to Vukanović, in April 1993 a bomb exploded in front of his house and in July 1993 the police "walked close to [his] house in a very threatening way at midnight."

Human Rights Watch/Helsinki believes that proceedings were instituted against Vukanović because of his affiliation with the SDS. Human Rights Watch/Helsinki recognizes the Croatian government's right and responsibility to prosecute persons guilty of criminal activity. However, a person's membership in a given group — even if the group is deemed "illegal" or "terrorist" by the authorities — is not a crime. Insofar as evidence exists to support criminal activity or the commission of war crimes or crimes against humanity by members or organizers of the SDS, those persons should be held accountable for their acts, not their political affiliation.

Trials in Absentia

In many instances, evidence pointing to the commission of war crimes against Serbian defendants exists in many of the trials being adjudicated in Croatian courts. However, while some of these cases reflect a genuine effort to achieve justice, most trials of alleged war criminals violate due process guarantees because the defendants are being tried *in absentia*. For example, the district court in Osijek convicted four men *in absentia* for war crimes against civilians in September 1993. The indictment charged the four — Borivoj Lukić, Dragoslav Lukić, Željko Ivković and Drago Marijaš — with holding a nineteen-year-old woman captive from August 26, 1991, until November 2, 1991. The woman testified that throughout this time, the men repeatedly raped and tortured her. They allegedly cut her hair and forced her to eat it. The court sentenced the men to ten years each, over the protest of the deputy district attorney who wanted a higher sentence.⁷³ The testimony of the victim is a strong piece of evidence in this case and, if proven reliable, can be used to convict the defendants of war crimes. However, true justice will not be met unless due process is truly respected and those guilty of such crimes are in custody.

By contrast, the decision of Osijek's district court in February 1994 is an example of how such cases should be handled where evidence exists to convict a person of war crimes but in which the defendant(s) is not present. In that case, the District Court in Osijek considered charges of genocide and crimes against humanity against Borivoj Lukić, Zoran Misčević and Ilija Dragojević, as well as fifty-two accomplices. The prosecution alleged that the three men had joined the Yugoslav Army in September 1991 in order to overturn the Croatian government, to take over Croatian towns, and to create an ethnically pure Serbian area. According to the prosecutor, in the villages outside of Podravska Slatina, the men burned Croatian homes and killed twenty civilians and four police officers. As a result of this onslaught, 300 civilians fled, and the remaining elders were slaughtered. As none of the defendants were present, the court did not deliver a verdict, but instead called for an international seizure of the accused.⁷⁴

⁷³ Mirko Sajler, "Tužiteljica Traži Veće Kazne," *Vjesnik*, September 16, 1993.

⁷⁴ Mirko Sajler, "Optuženi Zločinci iz Odreda Smrti," *Vjesnik*, February 19, 1994; Mirko Sajler, "Zločinci na Sud," *Vjesnik*, February 25, 1994.

Similarly, in June 1993, the district court in Šibenik heard charges against four men for violations of humanitarian law. The defendants — Goran Hadžić, the "president" of the self-proclaimed Serbian Republic of Krajina" (i.e., Serbian-controlled areas of Croatia), and Djordje Bjegović, Mile Novaković and Kosta Novaković — were charged with crimes in connection with attacks on the city of Šibenik and other villages and towns, including Zaton, Pirovac, Vodice, Skradin and Lozovac. In particular, they were charged with using prohibited arms, destroying cultural and historic monuments and intentionally shelling the hospital in Šibenik. Over twenty witnesses testified against the men at the trial and, at the conclusion of the testimony, a warrant was issued for the men's arrest.⁷⁵ Also, in June 1993, the district court in Bjelovar began an investigation against two large groups of people accused of crimes against humanity and war crimes against the civilian population.⁷⁶ Because all of the accused are fugitives, the court then stopped the procedure and issued arrest warrants.

Human Rights Watch/Helsinki supports the methods of the Osijek and Šibenik district courts in both of the aforementioned cases and urges other courts to follow the same course instead of conducting trials *in absentia*.

Violations of Freedom of Movement: Three Men Tried For Assisting the Yugoslav Army

Seventy-seven-year-old Draga ("Pepo") Marinović, sixty-nine-year-old G. Urgin and seventy-five-year-old Jovo Barzut faced war crimes charges in Split's military court in October 1993. All three men were charged with "criminal acts against the territory of the Republic of Croatia."⁷⁷ In particular, they were accused of turning in Croatian citizens to the Morinje detention camp in Montenegro⁷⁸ and of attempting to separate territory from Croatia for the purposes of joining that land to Montenegro. In addition, the complaint accused Urgin of "criminal acts against the private property of citizens," because he purportedly stole from the

⁷⁵ Jadranka Klisović, "Orkanima" Sijali Smrt," *Vjesnik*, June 8, 1993.

⁷⁶ The first group is accused of being leaders of the armed uprisings during the war against Croatia, in Pakrac, Daruvar, Grubišno Polja and Virovitica. Allegedly, the accused were founders of the central and regional jail in Bučja. In addition, they purportedly ordered the forced separation of civilians to use them as security in the subsequent negotiations. Those civilians taken prisoner were reportedly mistreated, tortured and killed. This group of accused includes the following: Veljko Džakula, Veljko Vuković, Milan Lončar, Milan Petković, Miloš Bajić, Savo Šestović, Ranko Slavujević, Vladimir Bosić and Boško Malenić.

The prosecution accused the second group of being members of a Serbian terrorist organization that acted under Serb command and imprisoned at least 298 civilians who they mistreated and tortured. The terrorist group allegedly killed Ilija Turković, Marijan Svetlačić, Zdravko Kolar, Viktor Oblak, Ivica Šreter, Nevijo Zodon, Zdravko Barač and Mate Božić, and ten as of yet unidentified civilians. This second group of accused includes: Ljubomir Banjeglav, Simeon Milković, Željko Prodanović, Nenad Vurdelja, Savo Bosanac, Boško Pralica, Čedomir Bojčić, Milan Stojanović, Vladimir Vukasović, Vladimir Pavlica, Steva Bojčeta, Nikola Tomić, Nead Srdjenović, Slobodan Miličević, Savo Kojadinović, Teše Tešić, Nikola Kosijer, Milan Drakulić, Dobrivoje Ečimović, Luka Krajanović, Ljuban Vezmar, Nikola Dragušin, Ilija Bodgrajac, Niko Adamović, Dragan Rusmir and Stojan Teodorčević. (See M. Martinić, "Taoci Zlostavljani, Mučeni i Ubijani," *Vecernji List*, July 4, 1993.)

⁷⁷ Articles 231(1) (formerly Articles 236(b)), Croatian Criminal Law. Indictment against Draga Marinović, G. Urgina and Jovo Barzut, Military Court, Split, dated October 22, 1993 (on file with Human Rights Watch/Helsinki).

⁷⁸ Morinje was a prisoner-of-war camp in Montenegro run by Montenegrin Yugoslav Army officers. Many men from villages surrounding Dubrovnik were sent to Morinje; some were beaten and severely mistreated. Human Rights Watch/Helsinki interviews with survivors of Morinje in Dubrovnik, March 1994.

apartments of persons fleeing their homes in the Dubrovnik area during the siege.⁷⁹ Only Marinović was in custody; the others were tried *in absentia*.

⁷⁹ Articles 125(1) (formerly articles 131(1)(4)) of the Croatian Criminal Code.

According to Marinović's attorney, the defendant had gone to Belgrade to see his daughter during the blockade of Dubrovnik.⁸⁰ Once in Belgrade, Marinović allegedly had difficulty returning home because he did not have a valid passport. The prosecution claimed that Marinović had been pointing out strategic targets to the enemy army, but the papers filed against Marinović failed to allege any concrete evidence. At the time the indictment was issued, Marinović, a fisherman by profession, had already been in jail for over a month. He was kept for an additional four months before the prosecutor decided to call off the investigation against him.

When interviewed by Human Rights Watch/Helsinki in March 1994, Marinović complained that the court had still not filed an official notice that the case against him had been dropped. Therefore, with criminal charges still technically pending, Marinović's rights as a citizen were significantly impaired, both in practice and by law. In particular, because restrictions reportedly apply against the rights of accused criminals to buy and sell property, Marinović claimed he had had difficulty in purchasing or selling property.⁸¹

Human Rights Watch/Helsinki urges the Croatian government to file the final acquittal in Marinović's case and to file such documents in other cases more promptly. In addition, Human Rights Watch/Helsinki believes that charges against Marinović were brought, at least in part, because he had traveled to Serbia during the siege of Dubrovnik. Indeed, many Serbs in Croatia have been accused of, and prosecuted for, the commission of "war crimes" despite the fact that the only evidence supporting such charges has been the defendant's travel to Serbia, usually when the war in Croatia was at its height in mid- and late 1991. Human Rights Watch/Helsinki believes that such trials violate a person's right to freedom of movement and, without further evidence to support charges of criminal wrongdoing, are groundless and discriminatory.

Forced Prisoner Exchanges of Alleged War Criminals

On December 12, 1992, the military court in Split issued an indictment against thirteen defendants for "arming themselves and organizing an attack against Dubrovnik."⁸² In particular, they were accused of meeting and plotting with Božidar Vučurević, the head of the so-called Serbian Autonomous Region of Eastern Hercegovina based in the Bosnian town of Trebinje, which is approximately thirty kilometers due east of Dubrovnik and one of the areas from which the Yugoslav Army and Serbian and Montenegrin forces attacked Dubrovnik; Momir Bulatović, the president of Montenegro; Branko Kostić, then the prime minister of the Federal Republic of Yugoslavia; and Novak Kilibarda, the head of the People's Party (Narodna Stranka) in Montenegro, which generally supports Serbian nationalist politics.

⁸⁰ Human Rights Watch/Helsinki interview with Draga Marinović and his attorney in Dubrovnik, March 1994.

⁸¹ Human Rights Watch/Helsinki interview with Draga Marinović in Dubrovnik, March 1994.

⁸² Specifically, the thirteen were charged under Articles 236(b)(1) of the Croatian Criminal Code (jeopardizing the territorial integrity of Croatia). Indictment dated December 12, 1992 (on file with Human Rights Watch/Helsinki).

According to defense counsel, only four of the thirteen accused were ever in custody.⁸³ These four — Mladen Miljanović, Mile Bujić, Jovan Pejović and Predrag Dangubić — were interrogated in the summer of 1992 by the military court in Dubrovnik, where they denied all charges against them. The others accused included: Vojislav Dučić, Dragan Parežanina, Milenko Reljić, Velimir Zečević, Zoran Čičović, Milovan Baždar, Nikola Kovač, Drago Miš and Risto Šošo.

The investigation and trial proceeded in the absence of the accused, with court-appointed lawyers handling their claims. Human Rights Watch/Helsinki spoke with four of the defense attorneys who worked on the case; all of them argued that there was no direct evidence linking any of the accused to specific crimes and that the accused were simply Serbs in the wrong place at the wrong time.⁸⁴ To the extent that the attorneys had any contact with their clients, their clients claimed that they did not even know all of their co-defendants and could not possibly, therefore, have been acting as a group against Croatia. Mile Bujić, for example, contended that he simply had drinks with two of the accused, Goranović and Trajković, friends from his college days in Sarajevo. Bujić further alleged that although Miljanović and Dujić were part of a Serbian political party, he claimed not to have been affiliated with any political.⁸⁵

In August 1993, the military court in Split convicted all of the accused except for Velimir Zečević and Jovan Pejović. The sentences against the remaining defendants were as follows: Miljanović, three years imprisonment; Dučić, eight years; Bujić, two years; Parežanin, eight years; Reljić, eight years; Čičković, ten years; Baždar, six years; Kovač, four years; Miš, four years; Šošo, three years; and Dangubić, two years.

On August 14, 1993, the men who had been held were exchanged for Croatian prisoners held by Serbian authorities. At least two of these men claim that they were exchanged against their will. According to Pejović's attorney, Srdj Jakšić, Pejović did not want to be exchanged.⁸⁶ In addition, Mile Bujić told his attorney that he protested his exchange.

⁸³ Human Rights Watch/Helsinki interview with Srdj Jakšić (one of the defense counsel) in Dubrovnik, March 1994.

⁸⁴ Human Rights Watch/Helsinki interviews with attorneys in Dubrovnik, March-April 1994.

⁸⁵ In a letter to his attorney, Bujić also contended that he was fired from his job in 1991 because of his ethnicity. Bujić claimed that he was accused of celebrating the Day of the Republic (i.e., Dan Republike), a holiday in the former Socialist Federal Republic of Yugoslavia. Letters from Mile Bujić to attorney Ms. Skanci, dated March 27, 1993, and May 1, 1993, (on file with Human Rights Watch/Helsinki). Bujić added that if he felt he would have a fair trial, he would return but he is convinced that a fair trial is impossible given the current political situation in Croatia. Human Rights Watch/Helsinki has no evidence to comment on the accuracy of Bujić allegations.

⁸⁶ Human Rights Watch/Helsinki interview with Srdj Jakšić in Dubrovnik, March 1994.

Human Rights Watch/Helsinki is troubled by the possibility that the Croatian government is forcing prisoners to be exchanged. We have received similar reports of forced and coerced prisoner exchanges in Osijek and Split. When prisoner exchanges are coordinated with, or organized by, the International Committee of the Red Cross (ICRC), ICRC delegates ask every prisoner if he or she wishes to be exchanged from Croatian to Serbian custody, or vice versa, as the case may be. When the ICRC is present during such exchanges, the wishes of the prisoners generally are respected. However, the wishes of prisoners are not always respected when exchanges are organized without ICRC participation. Indeed, some Serbs held in custody by Croatian authorities in Croatia have told Human Rights Watch/Helsinki that they do not wish to be sent to territory held by Serbian forces. Many such Serbs have family remaining in areas under Croatian government control. Other Serbs were born and have always lived in Croatia and others have spent only a small portion of their lives in Serbian-populated areas of the former Yugoslavia. For these reasons, such Serbs regard Croatia as their home and claim they have no material or other links to Serbian-controlled lands of the former Yugoslavia. If such persons choose to remain in Croatia and serve their prison term rather than be transferred to the Serbian authorities, their choice should be respected. Human Rights Watch/Helsinki requests that the Croatian government immediately investigate its practices on prisoner exchanges and instruct all involved in the exchanges that no one should be exchanged against his or her will.

War Crimes Trials in Serbian-Controlled Parts of Croatia

The legal system in Serbian-occupied areas of Croatia is in disarray and most legal proceedings are conducted arbitrarily. Human Rights Watch/Helsinki knows of only one trial, recently concluded, in which a Serbian soldier was found guilty of war crimes against non-Serbs in the so-called Republic of Serbian Krajina (Republika Srpske Krajine - RSK), the self-proclaimed Serbian "state" in Croatia. In general, few war crimes trials have taken place in Serbian-controlled areas of Croatia, and those few have been characterized by the Serbian authorities' arbitrary use of article 124 and 136⁸⁷ of the Yugoslav Criminal Code to bring non-Serbs to trial for armed insurrection and, in some cases, war crimes.⁸⁸

Persons are charged and tried for war crimes in Serbian-controlled areas of Croatia on little or no evidence. They are arrested because of their non-Serbian ethnicity or their actual or presumed prior affiliation with opposing Croatian forces. One such example is the case of Ivan Mišić, a Croat from Vukovar. Mišić was arrested on February 4, 1993, and was indicted on February 4, 1993, for fighting with the Croatian National Guard (Zbor Narodne Garde - ZNG, i.e., the precursor to the Croatian Army) from July to October 15, 1991, in Vukovar. Mišić's trial lasted ten months. After six court sessions, the proceedings were closed to the public and other outside observers. The Serbian court reportedly had no evidence that Mišić had perpetrated war crimes or harmed civilians. Mišić was eventually released and transferred to Croatian authorities during a prisoner exchange. Similar trials of Croats for war crimes were held before the Beli Manastir district court in

⁸⁷ Articles 124 criminalizes the participation in, and organization of, armed insurrection. Articles 136 criminalizes the organization of, or membership in, organizations aimed at conducting enemy activities or perpetrating criminal acts.

⁸⁸ Humanitarian Law Fund, "Judicial Practice: Beli Manastir, UNPA, Sector East," Belgrade, March 1, 1994.

1993. Although they were found not guilty and released by the presiding judge, Serbian human rights groups believe that the trials were conducted to pressure the Croatian defendants to leave the Serbian-controlled area.⁸⁹

⁸⁹ Helsinki Committee for Human Rights in Serbia, "Beli Manastir Trial Case: Dušan and Jagoda Boljević," Belgrade, 1995.

According to the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949⁹⁰, a party to the conflict has the right to bring penal or disciplinary actions against a prisoner of war for war crimes or grave breaches of the laws of war, provided due process guarantees are observed.⁹¹ However, participation in hostilities in an international conflict is not a war crime, provided the combatant does not violate international humanitarian law.⁹²

Dejan Stević, a Serb, and Štefica Mužek, a Croat,⁹³ fled from their village of Lipovac in Serbian-controlled eastern Croatia and traveled to Serbia during the fighting between Serbian and Croatian forces in July 1991. They returned to the nearby village of Nijemci in March 1992, when Stević joined the Serbian border police. On August 4, Stević and Mužek were arrested and kept for three days in separate quarters in the basement of the Serbian military's command center. Reportedly, Mužek was repeatedly slapped in the face and Stević was tied, kicked and beaten. They were further mistreated in the Vukovar police station, where they were urged to confess to the killing of Serbs and the burial of their bodies in clandestine places in Lipovac. The mistreatment suffered by Stević and Mužek is an outrage on the personal dignity of prisoners, a violation prohibited by articles 13 of the Third Geneva Convention and articles 75 of Protocol I Additional to the Geneva Conventions of 1949, which provide for the humane treatment of prisoners and due process guarantees.

Stević was indicted for allegedly having been a member of the Croatian police in mid-1991. Both he and Mužek were accused of "participating in activities against the inhabitants of Lipovac and neighboring villages." Reportedly, little evidence was presented by the prosecution, and the prosecution withdrew its case on August 26, 1993. Stević and Mužek were released but have since left the area.

In a separate case, the district court in Beli Manastir found Dušan Boljević, a Serb, guilty of war crimes against the non-Serbian civilian population on January 20, 1995.⁹⁴ Boljević had been charged with war crimes under articles 142 of the Criminal Code of the Federal Republic of Yugoslavia (which is enforced in the so-called RSK) and for obstructing an official from performing his duty. Although Boljević was accused of murdering eighteen non-Serbs, the prosecutor eventually sought to bring him to trial for six of the murders, claiming that lack of evidence prevented him from prosecuting the others.

During the trial, the court heard testimony from thirty witnesses and expert testimony from psychiatrists and forensic pathologists. The accused had legal representation. Despite public pressure to acquit him, the court found Boljević guilty on all six murder counts and sentenced him to the maximum penalty of

⁹⁰ Hereinafter referred to as the Third Geneva Convention

⁹¹ See Third Geneva Convention, articles 82 to 108.

⁹² In a non-international conflict it is legitimate for authorities to bring charges of rebellion or sedition against those who rise up in arms against the state. (See articles 3 common to the Geneva Conventions of August 12, 1949.) The international community considers the conflict in the former Yugoslavia an international conflict.

⁹³ This information is taken from the Humanitarian Law Fund, "Judicial Practice: Beli Manastir, UNPA, Sector East," Belgrade, March 1, 1994.

⁹⁴ The information included here is taken from Helsinki Committee for Human Rights in Serbia, "Beli Manastir Trial Case: Dušan and Jagoda Boljević," Belgrade, 1995.

twenty years' imprisonment.⁹⁵ Boljević's wife, Jagoda, was charged as an accessory in some of the murders but was found not guilty due to lack of evidence.

To its credit, the Beli Manastir court, operating under Judge Rada Jelovac, resisted public pressure and appears to have adjudicated the case properly and in accordance with due process. The RSK authorities should respect the integrity of the judicial process and refrain from tinkering with the court's decision, regardless of public sentiment against it. To that end, Boljević should be imprisoned and made to serve his full sentence.

WAR CRIMES TRIALS IN BOSNIA-HERCEGOVINA

War Crimes Trials in Bosnian Government-Controlled Areas and in the Muslim-Croat Federation

⁹⁵ Until 1993, Yugoslav law allowed for the death penalty. Amendments and revisions to Yugoslavia's Criminal Code, which is applied in the so-called RSK, abolished capital punishment.

The Bosnian government has had few trials of war criminals and claims not to have held any trials *in absentia*. Captured Serbs and Croats not accused of war crimes have been tried for "armed insurrection" against the state.⁹⁶ The Bosnian court system, however, has been in disarray because of the war. It is slowly being reestablished and reformed, at least some areas.

Both military and civilian courts operate in Bosnian government-held territory. According to Idriz Kamenica, president of the military court in Sarajevo,⁹⁷ Bosnia's military courts are used to try Bosnian Army and enemy soldiers who violate international humanitarian law, Bosnian Army soldiers accused of criminal activity as codified in the Criminal Code of the Republic of Bosnia-Herzegovina, and civilians accused of committing criminal acts involving national security or violations of international humanitarian law. Human Rights Watch/Helsinki has consistently criticized the use of military courts to try civilians, on the grounds that they are not truly impartial or independent and that they apply lesser standards of due process than civilian courts. National security and violations of international humanitarian law do not justify the trial of civilians in military courts.⁹⁸

There are higher civilian courts that adjudicate criminal cases carrying a penalty of ten years of imprisonment or more; they are in Sarajevo, Mostar, Bihać, Tuzla, Zenica, Goražde and Travnik. These seven courts are the federal courts of the Bosnian government; in addition, a new cantonal court system will be established in those parts of Bosnia which make up the Bosnian Croat and Muslim federation.⁹⁹ If the cantonal courts are to have jurisdiction over cases similar to those in the seven higher civilian courts, they should not

⁹⁶ During the conflict between Bosnian Croat forces and the predominantly Muslim forces of the Bosnian government in 1993, Croats were captured and tried by the Bosnian authorities. However, since the rapprochement and formation of a federation between Bosnian Croats and Muslims in early 1994, most Bosnian Croat prisoners held by the Bosnian government have been released or exchanged for Muslims held by Bosnian Croat forces.

⁹⁷ Human Rights Watch/Helsinki interview in Sarajevo, May 28, 1994.

⁹⁸ See also preceding section concerning broad exercise of power by military courts in government-controlled areas of Croatia. Following the rapprochement between the predominantly Muslim forces of the Bosnian government and the Croatian Defense Council (Hrvatsko Vijeće Obrane - HVO) in central and southwestern Bosnia, a federation between Muslims and Croats was formed.

⁹⁹ The Muslim-Croat federation is divided into six cantons, each of which has its own governing and judicial structures.

hear cases committed before their creation; such an approach would better ensure that prohibitions against *ex post facto* legislation are not violated.

Trials in areas controlled by the Croat-Muslim federation in Bosnia-Herzegovina are virtually nonexistent, with the exception of several trials that have taken place in Sarajevo. The federation agreement established mechanisms to allow for the protection of human rights and accountability for war crimes within areas controlled by the federation. However, these mechanisms have not yet been fully established, and those Muslims and Croats who perpetrated war crimes within areas controlled by the federation (i.e., against members of each other's ethnic group and against Serbs) have not been brought to trial.

According to Vasvija Vidović, a deputy to Bosnia's minister of justice,¹⁰⁰ as of mid-1994, the Bosnian government had not tried alleged war criminals *in absentia*. Ms. Vidović claimed that the Bosnian government was still compiling evidence of war crimes and was not at the stage at which it could bring such trials to court.

Alleged war criminals have generally not been charged with war crimes but rather, with violations of domestic criminal law. However, the Bosnian government has arrested and tried at least three Serbs for war crimes. These trials — well-publicized in the international and domestic Bosnian press — involved two Bosnian Serb soldiers, Borislav Herak and Sretko Damjanović, and the latter's companion. Herak and Damjanović were convicted and sentenced to death by a Sarajevo court for the commission of a host of war crimes, including numerous counts of summary executions and the rape of civilians.¹⁰¹ The woman received a sentence of three years of imprisonment.¹⁰²

According to Idriz Kamenica, the president of the military court in Sarajevo, no Bosnian Army soldiers being held in Sarajevo at the time of our visit in May and June 1994 had been charged with violating international humanitarian law. According to Kamenica, "Bosnian Army soldiers in Sarajevo have not perpetrated war crimes. However, we do try cases involving individual criminal activity of some Bosnian Army soldiers." Mr. Kamenica's remarks attempt to portray abuses by Bosnian Army soldiers as individual criminal acts. However, Bosnian Army soldiers have committed war crimes and other violations of international law in Sarajevo and other parts of Bosnia-Herzegovina and should be held accountable for such violations.¹⁰³

¹⁰⁰ Interviewed in Sarajevo by Human Rights Watch/Helsinki representatives, May 26, 1994.

¹⁰¹ The Bosnian government has since abolished the death penalty, and Herak and Damjanović's sentences have been commuted to life imprisonment.

¹⁰² Interviewed in the district prison (*okružni zatvor*) in Sarajevo, May 27, 1994.

¹⁰³ For examples of such violations by Bosnian Army or Muslim forces, see the following reports by Human Rights Watch/Helsinki: "Bosnia-Herzegovina: Abuses by Bosnian Croat and Muslim Forces in Central and Southwestern

Bosnia-Herzegovina," (New York: Human Rights Watch, September 1993) and "Bosnia-Herzegovina: Sarajevo," (New York: Human Rights Watch, October 1994).

The Bosnian government has arrested, prosecuted and convicted Mr. Čengić, a Bosnian Army soldier, for the murder of two Catholic priests in the town of Fojnica in 1993. Čengić was found guilty of murder and sentenced to eleven years in prison. Three other Bosnians were each sentenced to six months of imprisonment for concealing evidence in the case. Human Rights Watch/Helsinki representatives interviewed Čengić while he was in investigatory detention in Sarajevo's military prison, where he said he had been treated properly.¹⁰⁴ However, Čengić claimed to have been beaten during his earlier interrogation to force a confession from him. He was later given a court-appointed lawyer because he could not afford his own counsel.

According to Čengić, he volunteered to join the Bosnian Army on April 20, 1992, and was commander of a unit which fought against the Bosnian Croat militia to gain control of Fojnica in mid-1993. Čengić believed that the Bosnian Croats were storing weapons in a Franciscan monastery in the town, and he and three colleagues went to the monastery. During our interview, Čengić admitted to the murder and recounted the event to a Human Rights Watch/Helsinki representative:

On the morning of November 13, I ordered three soldiers to come with me to the Franciscan monastery ... We had been drinking ... and we walked from the village of Natbare, from the direction of Kiseljak. We walked along the road for half an hour. HVO [the Bosnian Croat militia] controlled the road, and we saw how they were walking about. I decided that, if we found any weapons with the Ustaše,¹⁰⁵ we would either kill them or detain them. No one shot at us from the road. The monastery is on a small hill at the entrance to Fojnica. We were in uniform and carried only two rifles and hand grenades ... The gate was wide open, two [soldiers] were following me, aiming their guns at the [monastery's] windows. I walked with one soldier and the other two were about ten or fifteen meters behind me.

I saw two civilians in the courtyard. The younger was about thirty-five or forty years old and was wearing jeans and a jacket; the other one, who was around fifty, wore pants and a jacket. I could not make out who they were. They had no insignia. "Look, Ustaše!" I said to the two who were guarding my back. The younger one said, "I am not an Ustaša. We are not Ustaše." "We shall now find out," I said. I ordered one of my soldiers to search him. The older one was about five or six meters away from him. We were drunk. My soldier started to search him and took his wallet, removing documents from the left-hand side pocket. As the search continued, a pin-badge bearing the *šahovnica* [i.e., the Croatian crest] fell out of his right-side pants pocket — I don't know for sure it; it might have been the left-side pocket — which seemed to

¹⁰⁴ Interviewed in May 1994.

¹⁰⁵ With the backing of the Nazi and Italian fascist governments, Croatian fascists (known as Ustaša(e)) established the puppet state of the Independent State of Croatia (Nezavisna Država Hrvatska - NDH), which included most of present day Croatia and Bosnia-Herzegovina. Under the Ustaša regime, thousands of Serbs, Jews, Romas and others were killed between 1941 and 1945. Some Serbian forces and Bosnian government forces that fought against the Bosnian Croat militia refer, in a derogatory sense, to these Croatian troops, or in some cases to all Croats, as "Ustaše."

me to be proof that he was an Ustaša. I told them that I would kill them both if I found a radio station or weapons in the monastery. We went into the monastery. The younger one stopped and started arguing. "You have no right to search the monastery," he told me. I shouted at him and told him to get lost. When we entered, the older one started to flee towards the right. I first shot the younger one [using] four bullets, and then the older one [using] two bullets. I had no control over myself. I then just turned around and left. I didn't think about anything anymore, my brain stopped working. My men asked me, "What happened?" "I killed two Ustaše," [I replied].

The two men Čengić had killed were priests dressed in ordinary clothes. Čengić and his men returned to their base, near the town of Visoko, where their commander told them that someone had murdered two Franciscan priests in Fojnica. Čengić was later interrogated by the police in Sarajevo and by the military police in Visoko. Nuns who had witnessed the murder could not positively identify the perpetrators in a line-up. Čengić was then sent back to his military base, and his rifle was examined by munitions experts, who found evidence incriminating him.

Čengić and another suspect, named Vilić, were taken to police headquarters in Sarajevo twice thereafter. On February 13, 1994, they were taken to a detention facility and both agreed that Vilić would accept blame for the murder because he did not have a family, while Čengić had a wife and two children. Čengić claims that he was interrogated for two nights and a day by different officers who changed shifts. As agreed, Vilić confessed to the murder, but the authorities remained suspicious because Vilić could not describe details of the murder, such as the doors of the monastery. Čengić claims he was then beaten for an hour on both feet with hands and sticks until he fainted. Vilić was later brought into the same area as Čengić and, according to Čengić, Vilić had also been beaten. Seeing that Vilić had been mistreated, Čengić then confessed to the murder and was placed in investigatory detention, first in solitary confinement and then in a larger room with other prisoners, where he was properly treated.

The use of torture to extract a confession violates a defendant's right to due process and cannot be used in a court of law. If Čengić's conviction was based on a confession extracted under torture — as it appears to have been — the sentence must be set aside. Čengić should be given a new trial, and the coerced confession must be excluded from evidence. If Čengić is convicted on other evidence, the conviction should stand, but all efforts to achieve accountability must be based on due process principle, including the inadmissibility of evidence obtained under torture.

Despite its professed willingness to try its own abusive forces and the prosecution of Čengić, the Bosnian government still has not taken vigorous steps to arrest, try and punish members of the Bosnian Army or paramilitary groups responsible for violations of human rights and humanitarian law in government-controlled areas of Bosnia-Herzegovina. For example, Bosnian Army soldiers and Muslim paramilitary groups sympathetic to the Bosnian government have tortured and otherwise mistreated prisoners in the Konjic sports hall and the Čelebići and Tarčin prisons and have summarily executed civilians and disarmed combatants in the villages of Trusina and Uzdol and in the town of Konjic;¹⁰⁶ to the best of our knowledge, no one has been arrested, indicted or tried for those crimes.

¹⁰⁶ For information concerning abuses perpetrated by Bosnian government troops and Muslim paramilitary groups, see

War Crimes Trials in Bosnian Croat-Controlled Areas and in Bosnian Serb-Controlled Areas

The Bosnian Croat authorities in central Bosnia have improved discipline among their troops but many abusive soldiers have not been prosecuted. In particular, Croatian military and civilian officials responsible for the massacres of Muslim civilians in the villages of Ahmići and Stupni Do and those officials responsible for the atrocious conditions and treatment in the detention camps of western Hercegovina have not been arrested, indicted or prosecuted. Rather, Bosnian Croats believed to be responsible for war crimes and crimes against humanity have been removed from the areas where they perpetrated the crimes and most have been transferred to the Bosnian Croat "capital" in western Mostar, where they now serve as police officers or as members of the HZHB "government" or HVO command.

Human Rights Watch/Helsinki is not aware of any trials that have taken place in Bosnian Serb-held territory. Our requests for such information from the Bosnian Serb authorities were never answered.

WAR CRIMES TRIALS IN THE FEDERAL REPUBLIC OF YUGOSLAVIA (I.E., SERBIA AND MONTENEGRO)

The government of the Federal Republic of Yugoslavia and the government of the Republic of Serbia have held few war crimes trials of "enemy forces," members of the Yugoslav Army (JNA), Serbian paramilitaries or Bosnian and Croatian Serb soldiers transitting through or visiting the FRY. The few trials that have taken place, and the irregularities associated with each trial, are described below.

the following reports: Helsinki Watch, *War Crimes in Bosnia-Hercegovina, Volume II*, (New York: Human Rights Watch, April 1993), pp. 271-274, 354-81; and Human Rights Watch/Helsinki, "Bosnia-Hercegovina: Abuses by Bosnian Croat and Muslim Forces in Central and Southwestern Bosnia-Hercegovina," September 1993.

It should be noted that the Yugoslav Army has tried some of its officers, not for war crimes, but for surrendering to Croatian forces during the war in Croatia.¹⁰⁷ Fourteen members and supporters of several Serbian paramilitary groups, including members of the ultra-right-wing Serbian Radical Party and its armed wing, the Serbian Četnik Movement, were arrested by the Belgrade authorities in late 1993. The charges ranged from illegal arms possession to rape and murder; most of the crimes were perpetrated against Hungarians and Croats in the northern Serbian province of Vojvodina.¹⁰⁸ While such crimes should be punished, members of the Serbian Četnik Movement also are responsible for war crimes and crimes against humanity in Croatia and Bosnia-Herzegovina and have never been brought to trial in Serbia for such crimes. Rather, most Serbian paramilitaries and right-wing leaders were arrested to discredit popular right-wing parties that threatened the ruling party's majority in parliament prior to parliamentary election on December 19, 1993. Others such as Vojislav Šešelj, the leader of the Serbian Radical Party, were arrested for insulting or criticizing Slobodan Milošević's regime. Prosecutions for "insulting" or criticizing the government are directly in violation of the right to freedom of expression. Despite their responsibility for a vast array of abuses in Croatia and Bosnia and their residence or frequent transit through Serbia proper, the Serbian government has never convicted Serbian paramilitaries for war crimes or crimes against humanity.

Misuse of Military Courts, Coerced Confessions and Use of the Death Penalty: Defendants from Vukovar

On June 26, 1992, seven members of the Croatian National Guard (Zbor Narodne Garde - ZNG, i.e., the precursor to the current Croatian Army) were sentenced to death or received long prison terms despite the fact that due process guarantees were not followed. Despite their convictions, the defendants later were exchanged and handed over to Croatian authorities.

¹⁰⁷ See Tanjug report of April 13, 1992, reported as "Army Officers on Trial for Surrendering Corps," *Foreign Broadcast Information Service—East Europe (FBIS—EEU)*, April 17, 1992, p. 41. Human Rights Watch/Helsinki researchers interviewed one such defendant in the Belgrade military prison in 1992.

¹⁰⁸ Yigal Chazan, "Serbian Radicals Held Before Poll," *The Guardian*, November 6, 1993, p. 14.

The defendants had fought with Croatian forces in Vukovar and were accused of having summarily executed Serbian civilians within the city during the siege and destruction of Vukovar by Serbian forces and the Yugoslav Army (Jugoslavenska Narodna Armija - JNA). Martin Sabljic, Zoran Šipoš and Nikola Čibarić were sentenced to death for having killed civilians.¹⁰⁹ Bartol Domazet, Jure Marušić, Slavko Madjarević and Ante Vranković were sentenced to prison terms of fifteen, twelve, eight and six years, respectively. The four men were found guilty of murder, attempted armed insurrection and theft. All seven men were tried and sentenced by a Yugoslav military court in Belgrade, and competent counsel may not have been available to some of the defendants. Human Rights Watch/Helsinki believes that military courts should not be used to try civilians. In an international conflict, although military courts can be used to try enemy soldiers for war crimes, it would be preferable that a neutral party to the Geneva Conventions or an international tribunal adjudicate such cases. A combatant's privilege exempts him/her from prosecution for participation in hostilities in an international conflict, but it does not exempt the soldier from prosecution for war crimes. As a matter of policy, Human Rights Watch/Helsinki believes that a country's military courts should have jurisdiction to try members of their own armed forces only for breaches of military discipline.¹¹⁰ Human Rights Watch/Helsinki believes that serious offenses such as war crimes and crimes against humanity should be tried by civilian courts that ensure impartiality and independence, or by international tribunals. Otherwise, military jurisdiction can become an excuse for impunity when applied to one's own forces, or for revenge when applied to the enemy.

After they were tortured by their captors, some of the defendants confessed to having killed Serbian civilians in Vukovar. In March 1992, Human Rights Watch/Helsinki representatives interviewed some of the seven individuals sentenced on June 26. On the basis of these testimonies and other evidence gathered by our representatives, Human Rights Watch/Helsinki believes that confessions were extracted from several of the defendants by beatings or other forms of torture while in prison in the town of Sremska Mitrovica in the province of Vojvodina in northern Serbia. International law prohibits submission of such coerced confessions into evidence in a court of law.

The use of a military tribunal, the apparent lack of due process and the use of torture to obtain confessions raise serious doubts about the fairness of the legal proceedings against the aforementioned men.

Extradition of an Alleged War Criminal to the Bosnian Serb Authorities: The Lukić Case

¹⁰⁹ At the time of the trial, Yugoslav law allowed for the use of the death penalty, but amendments and revisions to Yugoslavia's Criminal Code abolished capital punishment in 1993.

¹¹⁰ See also preceding sections concerning broad exercise of power by military courts in Croatian government-controlled areas and war crimes trials in Bosnian government-controlled areas.

In late 1992 and 1993, Muslims living in the region of Sandžak, which straddles Serbia and Montenegro, were abducted and disappeared while transitting through Bosnian Serb-held territory, close to the Yugoslav-Bosnian border. On October 22, 1992, a still-unidentified group abducted seventeen Sandžak Muslims from a bus in the village of Mioče, in the Bosnian Serb-held municipality of Rudo. All of those abducted were civilians, and most were on their way to work or school in the town of Priboj, in Serbia. None of those abducted were ever seen again. Similarly, on February 27, 1993, at least nineteen Muslim civilians and one Croat were abducted from a train running through Sandžak, en route from Belgrade to the Montenegrin port of Bar. The train was stopped by a group of armed men in the village of Štrpci on a short stretch of track that runs through Bosnian Serb-held territory. None of those abducted were ever seen again.¹¹¹

The Yugoslav and Serbian authorities have refused to investigate the abductions thoroughly, claiming that the disappearances took place on Bosnian Serb territory, not within the Federal Republic of Yugoslavia. However, according to interviews conducted by Human Rights Watch/Helsinki, members of the Yugoslav Army (JNA) and police allowed Bosnian Serb irregulars to enter Sandžak in late 1992 and 1993 and made no attempts to protect non-Serbs from attack. Numerous witnesses testified that regular Yugoslav army troops and reservists abetted the Bosnian Serb paramilitaries, and in some cases participated themselves in the raids on Muslim-populated villages in Sandžak. Such coordination between Serbia's military and police and Bosnian Serb forces indicates Serbian government complicity in the perpetration of the crimes. Given the willingness of the Serbian and Yugoslav governments to facilitate the transit of Bosnian Serb soldiers on its territory in 1992 and 1993, the Yugoslav and Serbian authorities should demand, and have the influence to force, accountability for the disappearances of Yugoslav citizens on Bosnian Serb-controlled territory.

However, in both cases, Yugoslav authorities have showed little will to identify or arrest the perpetrators despite pledges by numerous Serbian officials, including Serbian President Slobodan Milošević, to bring to justice those responsible for the abductions and disappearances. The public prosecutor never began a formal investigation. Although parliamentary commissions were formed, they failed to interview many of the most important witnesses in each case, including the bus driver, the train engineer, conductors, and Serbian policemen stationed aboard the train. The results of their investigations have not been made public.

Police arrested only one man in connection with the Štrpci case: Milan Lukić, a Belgrade resident and a volunteer soldier with the Bosnian Serbs who commanded a paramilitary group known as "The Avengers." According to the Helsinki Committee for Human Rights in Serbia, Lukić also is suspected of having committed other crimes and was detained and released several times by the Yugoslav authorities.¹¹² At the

¹¹¹ Testimony from this incident is reported in Human Rights Watch/Helsinki, *Abuses Continue in the Former Yugoslavia: Serbia, Montenegro and Bosnia-Herzegovina*, (New York: Human Rights Watch, July 1993), p. 25.

¹¹² Helsinki Committee for Human Rights in Serbia, "The Prosecution of War Criminals Before Courts in the Federal Republic of Yugoslavia: Some Legal Questions," Belgrade, 1995.

request of a court in the Serbian-controlled part of Sarajevo, the Serbian authorities extradited Lukić to the so-called "Srpska Republika," the self-proclaimed Serbian state in Bosnia.¹¹³ It should be noted that the authorities of the Republic of Serbia extradited Lukić despite the fact that federal law stipulates that the extradition of a Serbian national to another state falls under the jurisdiction of the federal Yugoslav government, not the republican Serbian authorities.¹¹⁴

The Serbian government's arrest and subsequent extradition of Lukić is a sham and a mockery of judicial process. Because Lukić was a Belgrade resident, the courts in the Republic of Serbia had the jurisdiction to try him. Instead, he was extradited by the Serbian authorities who claimed that he was to stand trial in the so-called Republika Srpska. However, Lukić was never taken into custody by the Bosnian Serb authorities and reportedly now owns a cafe in the Bosnian Serb-held town of Višegrad.

Trial of a Serbian Paramilitary: The Case of Dušan Vučković

In November 1994, the first trial of a Serbian soldier accused of war crimes was held in Serbia but was postponed due to the sickness of the judge. The trial resumed in February 1995 but was then again postponed indefinitely and no verdict has yet been handed down by the court. To date, the trial has been marked by a lack of vigorous prosecution. The account which follows details the crimes that the defendant is reported to have committed and is based on testimonies taken by a Human Rights Watch/Helsinki researcher in September and October 1994 in central Bosnia. This section also includes information about the defendant's trial in Serbia, which was attended by a Human Rights Watch/Helsinki representative.

Divić, a village of approximately 3,000 Muslims, is located on the left bank of the river Drina, near Zvornik, in eastern Bosnia. According to witnesses interviewed by Human Rights Watch/Helsinki in refugee camps in central Bosnia, Divić came under attack on April 26, 1992, and was among the first Bosnian towns to be "ethnically cleansed." Divić was surrounded on three sides by Bosnian Serb soldiers and paramilitaries claiming affiliation with Serbian paramilitary leader Željko Ražnjatović (a.k.a. "Arkan"). Also, the village was simultaneously shelled from Serbia by the Yugoslav Army (JNA) which positioned its artillery in Sakar, a village located on the opposite bank of the Drina river, in Serbia proper. The attack lasted for eight hours and continued until the morning of April 27. During the shelling, Serbian troops entered the village, but they allegedly encountered no resistance from the Muslim inhabitants. The Serbian soldiers claimed to be working with the JNA, asserting that they were there "to protect the civilian population." The villagers believe that these soldiers were members of Arkan's paramilitary force and other volunteer formations from Serbia. The Serbian troops searched the homes for weapons, beat the villagers and looted their property. Some civilians were killed, but most remained in their village through the following month.

On May 26, 1992, Muslim civilians were forcibly put on buses belonging to the "Drinatrans" company, were driven toward the Bosnian government-controlled town of Olovo, but were brought back to Zvornik, where they spent the night. The following day, all able-bodied men — a total of 180 — were ordered to get off the buses at the Drina stadium in Zvornik. Women and children were driven to the Bosnian government-controlled city of Tuzla. The men were held at the stadium for five hours, then taken to Novi

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

Izvor, a former office building that had been turned into a makeshift prison. Brano Grujić, President of the Zvornik chapter of the Serbian Democratic Party (SDS), visited the men and advised them to sign loyalty oaths to the new Bosnian Serb regime. Most of the Muslim prisoners complied. On May 29, 1992, the remaining men were taken away from Novi Izvor and never seen again or were transferred to Čelopek, where they were incarcerated in the *dom kulture* (i.e., a local hall where cultural or civic activities take place).

Dušan Vučković, nicknamed "Repić," appears to have been first seen in Čelopek on June 10, 1992, when he arrived with about ten of his soldiers. He forced all fathers who were captured with their sons to climb up on the stage and perform fellatio on one another; those who refused, were killed. Another eleven men were beaten to death or shot. A total of fifteen prisoners were killed by Vučković and his men on June 10. Throughout this time, the other prisoners were forced to sing Serbian national songs. The surviving prisoners were given ten minutes to wash the blood of those beaten or killed, and those who were ordered to carry out the bodies were never seen again.

Thereafter, Vučković and his soldiers came to Čelopek prison almost every night to beat, torture and kill prisoners. On one of these visits, on June 10, Vučković asked a prisoner named Nurija Bikić, "Who is the handsome boy [standing next to him]." When Bikić said that the sixteen-year-old boy was his son, Vučković shot the teenager in the head saying, "You don't have a son any more!" Vučković also mutilated the ear of the prisoner Enes Čikarić.¹¹⁵ In another instance, on June 27, 1992, Vučković came to the prison, picked up a machine gun which stood by the guard's chair and shot randomly at the terrified crowd, killing twenty-five prisoners. The Čelopek prison was closed down on June 29, 1992, and the surviving eighty-four prisoners were taken to Zvornik and then onto the Batković detention camp, near the Bosnian Serb-controlled town of Bijeljina, on July 15, 1992.

Dušan Vučković (born in 1963), was a member of the Igor Marković paramilitary unit, widely known as the "Yellow Wasps" (*Žute ose*) and commanded by Vučković's brother, Vojin Vučković, nicknamed "Žuća." The unit, consisting of about seventy men, was allegedly formed on April 12, 1992, at a session of the Zvornik municipal assembly by Brana Grujić, the SDS president of Zvornik, and a man known under the pseudonym of Marko Pavlović, the commander of the Zvornik territorial defense unit. "Žuća," who was born in 1962 and employed as an electrician in the town of Umka, near Belgrade, is a martial arts expert and former coach of the Serbian Interior Ministry's judo team. According to witnesses interviewed by Human Rights Watch/Helsinki, the "Yellow Wasps" are responsible for "ethnic cleansing" in the Zvornik region.

About seventy "Yellow Wasps" were arrested in August 1992, and accused of robbing and murdering both Serbian and Muslim civilians. The paramilitaries were held in a jail in the Bosnian Serb-controlled town of Bijeljina, where they were allegedly beaten and forced to sign confessions extracted under torture. They were then transferred to Sremska Kamenica, and then to the town of Ruma (in the province of Vojvodina in northern Serbia) before they were released.

¹¹⁵ There are differing accounts of this incident. Witnesses claim that Čikarić's ear lobe was then torn off and eaten, but while some witnesses claim that Vučković did this himself, others claim one of Vučković's soldiers did it.

On November 5, 1993, the Vučković brothers were arrested by the Serbian Interior Ministry and detained in Šabac. Vojin was subsequently released, while Dušan remained in detention awaiting trial. Both were indicted on April 28, 1994. Duško was indicted for killing sixteen civilians and wounding another twenty in June 1992 and cutting off one civilian's ear in Čelopek. Dušan was also charged with raping a Muslim woman and stealing 1,000 German marks from her in the village of Radalj, near Mali Zvornik, a town in Serbia. Vojin was charged with illegal possession of arms and falsely identifying himself as a police officer.¹¹⁶ The indictment specifies that "civil war erupted in the former Yugoslav Republic of Bosnia and Hercegovina," and that the brothers volunteered to help the Serbian people in their struggle. The indictment was written so that it in no way suggests possible Serbian government involvement in the war in Bosnia, and it refers to the Serbian "volunteers" in an affirmative tone.

In the two hearings before the investigative judge, Dušan Vučković admitted cutting off a Muslim man's ear. He told the judge that the Muslim prisoners would not tell him what he wanted to know, so he got angry and severed the man's ear. He also said that he was a little drunk one day so he shot at the prisoners, who made him angry. "That satisfied my soul," he concluded. He did not confess to having raped a woman.

The trial of Dušan Vučković began in the town of Šabac in Serbia, on November 22, 1994. Scores of Yugoslav and foreign journalists were present for the commencement of the trial and court officials — including Andrija Simić, president of the Šabac District Court — were visibly satisfied by the attendance. Dušan Vučković, who entered the courtroom with a loud "May God be with you, brother Serbs!" (a traditional Serbian greeting), denied any involvement in the crimes to which he previously had confessed. "I had to sign a confession because I was afraid that the secret police would kill my family," said Vučković, a father of two small children. When asked by the prosecutor whether he liked to drink, Vučković said he "enjoys alcohol." He asserted that he was dismissed from the army after about two months, diagnosed as "a psychopath and an alcoholic," and has since been treated twice for alcoholism and drug abuse. His brother, Vojin, boasted about his connections in the Serbian Interior Ministry, spoke with great pride of his units' military successes in and around Zvornik, and said that his brother "obeyed [his] orders in the field and was an example to other soldiers."

The prosecutor, Branko Njegovan, did not vigorously question either of the brothers. He asked Dušan for the names of Muslims who beat him while he was briefly detained by Bosnian forces in April 1992, about his drinking, and whether he stopped the car in which he drove the Muslim woman in order to rape her. When Dušan answered that he never stopped the car, the prosecutor didn't persist. Mr. Njegovan asked Vojin which gun his brother carried and the names of his unit's members. The defense insisted that Dušan did not own an automatic weapon, so he could not have killed so many civilians.

¹¹⁶ Dušan Vučković was indicted for rape under Article 103, paragraph 1, of the Serbian Criminal Code, which carries a penalty of between one and ten years of imprisonment, and for robbery, under Article 168, paragraph one, of the Serbian Criminal Code, which carries a penalty of at least one year of imprisonment. Dušan Vučković was also charged with the commission of war crimes against civilians under Article 142, paragraph 1, of the federal Yugoslav Criminal Code, which carries a penalty of at least five years of imprisonment. Vojin Vučković was indicted for illegally identifying himself as a police officer under Article 224, paragraph 1, of the Serbian Criminal Code, which carries a penalty of up to one year of imprisonment, and for illegal possession of firearms under Article 33, paragraph 3, of the Law on Arms and Ammunition.

Based on observation of the trial by a Human Rights Watch/Helsinki researcher, the prosecutor's questions were formulated in such a way so that the answers were more valuable for the defense than for the prosecution's case. The prosecution's witnesses — two members of the "Yellow Wasps" — could easily have been mistaken for defense witnesses, and they revealed absolutely nothing about the crimes. Both agreed that Vojin was the best of commanders, and that Dušan was the type of soldier that any army would be proud to have within its ranks. Despite the fact that witnesses and the accused implied Serbian government involvement during the course of their testimonies, the prosecutor did not pursue this line of questioning. The prosecution's feeble presentation of his case was so blatant that even the defense attorneys begun to laugh and were overheard saying, "Hey, this guy is on our side!"

Ms. Q.,¹¹⁷ who was allegedly raped by Dušan, was forced to testify before the court. Her testimony was crucial, because the alleged rape took place in Serbia, thereby allowing Serbian courts jurisdiction to hear the case; had the crimes taken place in Bosnian Serb-held territory, the Serbian courts would have refused to hear the case. Ms. Q. was brought to the courtroom by the police. She was visibly frightened, and it appeared that she was not testifying of her own free will. By the end of the trial, Ms. Q., her sister and brother (who did not witness the rape, but were in a car nearby) testified that Ms. Q. had been raped, but the Vučković brothers denied involvement. The prosecutor asked for the exact location of the alleged rape and requested that a commission go there to survey the spot. Again, the prosecutor failed to present evidence of any wrongdoing, and his line of questioning was inept. Two other witnesses did not appear for the trial. One of the judges winked at the Vučković brothers and appeared proud to be near them. The guards offered the brothers Marlboro cigarettes during breaks and also expressed a sense of camaraderie with the two.

On the third day of the trial, defense lawyers announced that Vučković had already been tried and found not guilty by a military court in the Bosnian Serb-held city of Banja Luka for war crimes allegedly perpetrated in Bijeljina.¹¹⁸ During a brief discussion as to the feasibility of obtaining the Banja Luka court documents,¹¹⁹ the prosecutor appeared relieved to know that Vučković had been exonerated of the crimes, saying, "Oh, if only they would give us those files!" The court was then dismissed, but the presiding judge, Vladimir Bajić, fell ill and, as of this writing, the trial has been postponed indefinitely.

Based on our observations of the trial, it appeared that Serbian authorities wanted to publicize the trial widely, the guards and the judges were sympathetic and friendly to the accused and the prosecutor was

¹¹⁷ Although the name of the alleged rape victim is known to the court, Human Rights Watch/Helsinki has chosen not to disclose the names of rape victims in its reports without the express permission of the victims. In this case, we do not have the permission of Ms. Q. to use her name, and the information taken here is based on court records and observation of the victim's testimony during the trial.

¹¹⁸ The "Yellow Wasps" paramilitary group, of which Dušan Vučković was a member, was one of three paramilitary groups responsible for the "ethnic cleansing" and looting of Zvornik. According to *The Sunday Times* of London, November 20, 1994, the "Yellow Wasps"

targeted not just Muslims, but anyone who was rich — Serbs included — getting away in one raid with 250,000 [British pounds]. They began to fancy themselves as robber-barons. They captured the Serbian mayor of Zvornik and stole weapons from the territorial defence force in an effort to run the town themselves. The Bosnian Serbs arrested them and sent them back to Serbia, but they soon returned.

¹¹⁹ After the alleged severing of ties between the Federal Republic of Yugoslavia (FRY) and the Bosnian Serb authorities in September 1994, most telecommunication links were cut between Bosnia and the FRY.

frightened. The prosecution was based on testimonies from witnesses who, because they live in Bosnia, were not accessible to the court. Those witnesses who testified at the trial did not reveal half of what Human Rights Watch/Helsinki was able to learn of Dušan Vučković through interviews with former residents of Zvornik.

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This newsletter is based on information gathered by Julie Mertus, an attorney and former counsel to Human Rights Watch/Helsinki, during a mission to Croatia and Serbia in March and April 1994, and by Ivana Nizich, research associate at Human Rights Watch/Helsinki, during missions to Croatia between May and September 1993, and to Bosnia-Herzegovina in May, June and September 1994. The report was written by Julie Mertus and Ivana Nizich and was edited by Juan Mendez and Jeri Laber, counsel and senior adviser to Human Rights Watch, respectively. Research assistance was provided by Vlatka Mihelić and Andrea Matačić. Production assistance was provided by Lenée Simon, associate at Human Rights Watch/Helsinki.

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