

## Support to the Strategy of development of judiciary in the area of human rights

Osijek, Zagreb, Bjelovar 8<sup>th</sup> April 2016

### **Biweekly report on war crimes trials, acts of discrimination, hate crime and hate speech, and on the rights of civilian war victims and the social process of dealing with the past**

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#### *Osijek stadium- Croatian shame*

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On 23<sup>rd</sup> March at the friendly football match between Croatia and Israel, certain «fans» chanted Fascist chant “Za dom spremni” (“Ready for the Homeland”) used during the times of the World War II Nazi puppet state, the Independent State of Croatia, NDH. This was detrimental for the Republic of Croatia, the City of Osijek and football. Again, the state officials who were present at the match did not timely react. They should have, and well-educated people would have done so, leave the stadium and show their disagreement with the chant. The Prime Minister Tihomir Orešković was at the match. The day after, the Government of the Republic of Croatia published a press release<sup>1</sup> condemning all the attempts of degradation of achieved democratic values, hate speech and insults, as well as the use of symbols and slogans of totalitarian regimes at sport events as an unacceptable and unwanted occurrence, without stating the concrete event. Therefore, as citizens of Croatia, we are ashamed of our homeland and the lack of unambiguous response of the democratically elected government.

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#### *Attacks against journalists and freedom of expression*

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On 16<sup>th</sup> March the Program Management of Croatian Radio Television (HRT) decided to pull the satirical show «Montirani proces» from the schedule. The program management of HRT said in a press release that “part of the script mentions content that is inappropriate for broadcasting” and collides with HRT’s “mission, values and principles and [HRT] «considers that the topic of the satirical show is misused to incite religious, national and other intolerance».

On 31<sup>st</sup> March in Split two men attacked journalist and writer Ante Tomić. One tried to punch him in the head, but as he turned away, his friend got the severe blow. He was taken to hospital for medical help. The Split police arrested the attackers. However, instead of a clear condemnation of the attack against journalist and writer Ante Tomić, the Ministry of Culture sent this official statement: “The Ministry of Culture condemns physical violence and attacks on all citizens. At the same time, this case reminds us about the importance of responsibility for words spoken and/or written in public.” With such reaction Minister Hasanbegović gives legitimacy to the attackers or relativizes attacks and threats. He should therefore resign, according to the President of Croatian Journalists' Association, Saša Leković.

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<sup>1</sup> <https://vlada.gov.hr/vijesti/postujmo-dosegnute-demokratske-vrijednosti/18652>

As a sort of response to the attacks against the freedom of speech and journalists, who through their texts rise in favor of the protection of human rights and fundamental freedoms of individuals and the society, on April Fool's Day a rally titled «Ready for the Satire» was held in Zagreb. The rally was backed by the civil society organizations group Platform 112, as a support to all the defenders of human rights.

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***Prosecuting terrorist acts committed in the 1990's and the rights of the victims of terrorism***

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A round table on «*Prosecuting terrorist acts committed in the 1990's and the rights of the victims of terrorism*» was held on 30<sup>th</sup> March 2016 at the Bjelovar Central Hotel. The round table was organized by Documenta – Center for Dealing with the Past, Centre for Peace, Nonviolence and Human Rights, Osijek, Civic Committee for Human Rights and Pravda Bjelovar as host. The round table was organized within the Program «Support to the Strategy of development of judiciary in the area of human rights» supported by the European Economic Area and the Kingdom of Norway Grants (EEA/NG). The goal of the project activities is to contribute to European standards of independence, impartiality, professionalism and efficiency of judiciary in Croatia and to achieve social awareness on the importance of the respect of human rights, improving identification of discriminatory practices in the society and strengthening marginalized groups exposed to rights violations. Today, 20 year after terrorist acts were committed in the Republic of Croatia, affecting certain group of Croatian citizens who have not yet been indemnified, it becomes clear that all citizens can equally become victims of terrorist attacks. Namely, after tragic images from Paris and Brussels, the question what is terrorism, how close is the danger and, in case of terrorist attacks against people or property, who would be responsible for the damage, become especially relevant. We consider that tragic events in Western European cities and the real danger of terrorism should motivate the authorities to remember and indemnify the victims of terrorist acts in Croatia and to set clear rules on responsibility for possible future events.

The experiences of mostly Bjelovar Serbs, but also some Croats related to the beginning of the war in the 1990's are extremely difficult and painful. The Association Pravda has made a list of owners in the Bjelovar region (individually, by their names), whose properties were blown up. These were classic terrorist acts against Croatian citizens and their private property. The list comprises around 600 owners, listed with numerous photos of facilities before and after destruction. Unfortunately, nobody has been prosecuted for these terrorist acts until today, and what is even more painful, none of the aggravated has got any compensation. There is no doubt that the perpetrators were trained for this «job», as well as the fact that they had to get the explosive from somewhere to use it in their insanity.

The point of round tables like this is a permanent fight for elementary the human right to a private property that is the fundament of the system of values promoted in the Republic of Croatia as a member of the European Union. The Secretary of Pravda Association from Bjelovar, Jovica Brkić, as host, opened the round table. Other participants of the discussion were Vesna Teršelić and Milena Čalić-Jelić from Documenta, attorneys Bojana Ivanišević and Klaudio Čurin, Zoran Pusić from the Civic Committee for Human Rights, Veselinka Kastratović Centre for Peace, Nonviolence and Human Rights-Osijek, Tatjana Spasojević-Vukobratović- Serbian National Council, and Darko Karanović, President of the Council of Serbian National Minority in the Bjelovar and Bilogora County and Vice-president of the Serbian National County. The Vice-Governor of the Bjelovar and Bilogora County Saša Lukić also attended the round table. Zoran Pusić characterized the attitude of the State towards the aggravated parties as an abuse of the right to inflict injustice, called the rule of law. The State must acknowledge its responsibility for the damage caused by terrorism out of the warzone and APOLOGIZE to the aggravated. Also, some extremely cynical acts and regulations were exposed, where units of local self-administration (Pakrac, Zadar) force the aggravated to pay the works of the «cleaning» of the rests of their private property without previous notice to the aggravated.

At the end of the round table a documentary was shown, made by Nebojša Slijepčević and Daniela Draštata on the attacks against Bjelovar Serbs and their private properties in the 1990's, that seem to be a collateral damage of war events, although there was no war in their closer surrounding. The film "Voices of fear - Justice", produced by Croatian Television, is one of the films in European coproduction on the challenges of a multicultural society within the EBU (European Broadcasting Union) Expert Group in Multi-culture. Seven European public broadcasters produced documentaries on how growing intolerance, xenophobia, racism, homophobia and anti-Semitism in European countries affect the everyday lives of members of different minority groups, as well as in which moment the fight for the minority rights becomes their discrimination.

*The Hague, March 2016*

## 1. Sentences of the International Criminal Tribunal for the Former Yugoslavia

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### *Radovan Karadžić sentenced to 40 years' imprisonment*

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After five years of trial and eighteen months of weighing the evidence Trial Chamber III of the International Criminal Tribunal for the former Yugoslavia (ICTY) convicted Radovan Karadžić, former wartime President of Republika Srpska (RS).

*According to the rules of the Tribunal on the determination of the integrated punishment (compounded sentence) Radovan Kardžić was sentenced to 40 years' imprisonment, bearing individual criminal responsibility, in the context of four overarching joint criminal enterprises, for genocide, crimes against humanity (on all counts) and violations of the laws or customs of war (on all counts) for:*

- genocide committed against the men of Srebrenica
- permanent removal of Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory in BiH through the crimes of forcible transfer of non-Serbs, organizing system for detention and abuse in around 50 detention facilities, mass executions, widespread looting of non-Serb property, using prisoners as human shields, destruction of multiple mosques, Catholic churches and other cultural monuments and sacred sites, consistent and systematic provision of misleading information to representatives of international organizations, the public, and to the media in relation to these crimes with the aim to achieve the goal to continue to commit the crimes through which the common purpose of the Overarching JCE was implemented
- establishing and carrying out a campaign of sniping and shelling against the civilian population of Sarajevo, the primary purpose of which was to spread terror among the civilian population
- taking hostage over 200 UN peacekeepers and military observers in order to compel NATO to abstain from conducting air strikes against Bosnian Serb military targets

The Chamber acquitted Karadžić of charges for genocide in seven municipalities (Bratunac, Foča, Ključ, Prijedor, Sanski Most, Vlasenica and Zvornik) where the alleged persecutory campaign included or escalated to include conduct and intent that amounted to genocide. The Tribunal took the same position in the earlier cases of Stakić and Brđanin.

Radovan Karadžić, besides Mladić, formed a plurality of persons who acted pursuant to this common plan and shared the intent for the crimes that formed part of the plan: Momčilo Krajišnik, Slobodan Milošević, Biljana Plavšić, Nikola Koljević, Mićo Stanišić, Momčilo Mandić, Jovica Stanišić, Franko Simatović, Željko Ražnjatović and Vojislav Šešelj, Stanislav Galić, Dragomir Milošević, used their authority and influence over Crisis Staffs, TO, VRS, Bosnian Serb MUP, and paramilitaries to carry out the crimes envisaged by the common plan of the Overarching JCE. Furthermore, at times, paramilitaries, local Serbs, JNA, Bosnian Serb MUP, TO, and VRS units acted at the behest of the



Crisis Staffs, which were under the Accused's authority and influence, to commit crimes in furtherance of the common plan, the fact determined by the Tribunal beyond reasonable doubt.

Given the sentences rendered in other cases before ICTY for the crimes committed in Sarajevo, Prijedor and Srebrenica, and considering Karadžić's political responsibility, the victims expected that the Chamber III would sentence Karadžić to life imprisonment.

This sentence will become important for confidence building only if the sufferings of the victims are acknowledged by the politicians and the societies of post-Yugoslav countries, including the elected representatives of Republika Srpska and Bosnia and Herzegovina, who should do everything to indemnify the families of the victims, instead of inappropriately naming a student dormitory in Pale after a convicted war criminal.

Karadžić spent almost 13 years hiding from justice. He was accused in July 1995 and arrested in 2008, as one of the highest-ranked top officials to be tried before the International Tribunal (from 17 December 1992 to July 1996, he was the sole President of Republika Srpska, and the Supreme Commander of the armed forces of Republika Srpska).

During the almost 5 years of trial, 586 witnesses testified. The prosecutor requested life imprisonment, and the defense requested acquittal.

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*Acquittal of Vojislav Šešelj – the most devastating first-instance judgment of the International Criminal Tribunal for the former Yugoslavia (ICTY) so far*

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Vojislav Šešelj as a symbol of spreading ethnic hatred and warmongering politics whose consequence was the expulsion of tens of thousands of people and killing of around 905 persons, as well as the destruction of entire villages and religious objects, torture and rape of civilians and prisoners of war in Croatia, Bosnia and Herzegovina and Vojvodina, was acquitted by the ICTY on all of the nine counts of the indictment.

Šešelj's contribution to joined criminal enterprise which was, according to the Prosecutor's argument reflected in the recruitment of paramilitaries and volunteer units called "Četniks" and "Šešeljevci", planning the forcible conquer of territories in Eastern and Western Slavonia and Bosnia and Herzegovina, forcible detention of non-Serbs into detention camps where they were submitted to torture and killings and extremely nationalist rhetoric and war propaganda that incited the commitment of crimes, for the majority of the members of the panel of Judge Antonetti is a mere reflection of Šešelj's political passion directed at raising morale and a legitimate support to the war efforts of Serbian paramilitary formations.

Confusing indictment by the Prosecutor's office, continuing obstructions of judicial process and inadequate procedural capacity of judicial panel to neutralize such occurrences, resulted in the most devastating judgment of the judgment of the International Criminal Tribunal for the former Yugoslavia (ICTY) so far.

The indictment bases the criminal responsibility of the accused exclusively on the Article 7(1) of the Statute of the ICTY that does not imply a hierarchical link, *de facto* and *de iure*, applicable for the superiors in military and civilian position.

The Prosecution charges Vojislav Šešelj, a politician, President of the Serbian Radical Party and a member of the Assembly of the Republic of Serbia, of having directly committed, incited and aided and abetted the crimes attributed to the Serbian protagonists in the conflict during the period from August 1991 to September 1993, and of having participated in them by way of his membership in a joint criminal enterprise.

The judgment was scheduled for 30<sup>th</sup> October 2013, but it was postponed due to the change of the panel since the Danish judge Harhoff was disqualified upon Šešelj's request and replaced by judge Niang

from Senegal who spent more than two years analyzing the evidence material of around 17.500 transcript pages.

In a dissenting opinion, judge Lattanzi, points to the climate of intimidation to which Vojislav Šešelj subjected the witnesses, that has not been taken into account by the majority. Judge Lattanzi also concluded that ample evidence was received that established the existence of a JCE whose purpose was to force the non-Serbs, through the perpetration of crimes, to leave parts of the territory of the former Yugoslavia. Similarly, Judge Lattanzi found that all conditions were met to convict Vojislav Šešelj for the physical commission of the crime of persecution in the form of public and direct denigration of non-Serbian civilians through his speech in Hrtkovci on 6<sup>th</sup> May 1992.

Judge Lattanzi further found that the requisite evidence existed to conclude that Vojislav Šešelj incited the crimes charged in the Indictment (with the exception of plunder) through all his inflammatory speeches, not only by the recruitment of volunteers but also the organization of the recruitment that involved all levels of the Serbian Chetnik Movement (or SČP) and of the Serbian Radical Party (or SRS), which he controlled with an iron fist. Finally, Judge Lattanzi noted that the incorporation of the volunteers into the official armed forces is an additional factor that supported a finding of conspiracy and cooperation among the members of the JCE in furtherance of the criminal purpose of ethnic cleansing.

“On reading the majority’s Judgement, I felt I was thrown back in time to a period in human history, centuries ago, when one said – and it was the Romans who used to say this to justify their bloody conquests and murders of their political opponents in civil wars: “*silent enim leges inter arma*”.<sup>2</sup>” – from the dissenting opinion of Judge Lattanzi<sup>3</sup>

In spite of a big positive role of the ICTY in discovering many grave crimes committed on the territories of Croatia, Bosnia and Herzegovina and Kosovo, this judgment, although non-final, will additionally raise tensions in the region, disappoint victims and contribute to the creation of an atmosphere of hatred, mistrust and intolerance.

In the long run, this judgment, in spite of being a non-final judgment, offends the victims and brings justice to an absurdity.

## 2. Judgments for war crimes committed on the territory of the Republic of Croatia

### *Confirmed guilty verdict for the killing of six civilians in Beli Manastir in 1991*

Three wartime policemen from Beli Manastir, eastern Croatia, have been sentenced to a total of 35 years in prison for their roles in the killing of at least six Croatian civilians in Beli Manastir in 1991, the Court of Appeal in Belgrade decided on 11th March 2016. The court upheld the ruling by the War Crimes Department of the High Court in Belgrade that sentenced Zoran Vukšić to a maximum prison term of 20 years in prison, Slobodan Strigić to 10 years and Branko Hrnjak to five years. Velimir Bertić had earlier been sentenced to 18 months in prison for the same crime.

The accused were members of the police forces of the self-styled Serb Autonomous District of Slavonia, Baranja and Western Srem. They were found guilty of violating the rules of international law through detention, causing injury, intimidation, terror, torture and inhumane treatment of at least six civilians.

The criminal procedure is a result of the regional cooperation between the Croatian State Prosecutor's Office that referred the case and the Serbian War Crimes Prosecutor's Office that issued the indictment.

<sup>2</sup> “In times of war, laws fall silent” (Cicero, *Oratio pro Milone*, 52 B.C.)

<sup>3</sup> [http://www.icty.org/x/cases/seselj/tjug/bcs/160331\\_summary\\_of\\_the\\_partially\\_dissenting\\_opinion.pdf](http://www.icty.org/x/cases/seselj/tjug/bcs/160331_summary_of_the_partially_dissenting_opinion.pdf)

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*Confirmed guilty verdict for war crime of rape in Dalj*

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The Supreme Court of the Republic of Croatia upheld the verdict of the Osijek County Court War Crimes Chamber that found Ljubinko Radošević and Vojislav Grčić guilty for war crime of rape in Dalj. In a retrial Ljubinko Radošević was sentenced to 10 years' imprisonment, and Vojislav Grčić was sentenced to 5 years' imprisonment.

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*Again guilty verdict for crimes in Kerestinec*

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On 24<sup>th</sup> March 2016 Zagreb County Court War Crimes Chamber in a retrial rendered a guilty verdict for crimes committed in in prisons in Gajeva Street in Zagreb and at the Kerestinec military prison near Zagreb in late 1991 and early 1992. All the defendants were found guilty for war crime against prisoners of war according to the Article 122 of the General Criminal Law of the Republic of Croatia (GCLRC) and war crime against civilian population, according to the 120 of the same Act.

1st defendant Stjepan Klarić was sentenced to a single punishment of 8 years' imprisonment (Art. 122 GCLRC 5 years, Art.120 GCLRC 5 years), 2nd defendant Dražen Pavlović was sentenced to a single punishment of 3 years' imprisonment (Art. 122 GCLRC 2 years, Art. 120 GCLRC 2 years), 3rd defendant Viktor Ivančin was sentenced to a single punishment of 5 years' imprisonment (Art. 122 GCLRC 3 years, Art. 120 GCLRC 3 years), 4th defendant Željko Živec was sentenced to 18 months' imprisonment (Art. 122 GCLRC) and 5th defendant Goran Štrukelj was sentenced to 2 years' imprisonment (Art. 120 GCLRC). The 5th defendant was not present at the reading of the ruling. Due to the length of the prison sentence, the 1st and the 3rd defendant were immediately sent to investigative detention.

On 19<sup>th</sup> February 2015 a re-trial started against Stjepan Klarić, Dražen Pavlović, Viktor Ivančin, Željko Živec and Goran Štrukelj. The indictment, amended in the meantime, charged the five defendants with two criminal offences, war crime against civilians and war crime against prisoners of war.

The defendants are charged that they committed the mentioned crime in Zagreb and Kerestinec in the period from December 1991 until 25 May 1992. The defendants were charged that, in the mentioned period, they abused 29 persons in various forms and thus caused them great suffering and injuries of physical integrity and health. On the basis of command responsibility, the 1st defendant Stjepan Klarić is charged with failing to prevent the torture and inhumane treatment committed by his subordinates against war prisoners and with direct commission of the crime. Other four defendants are charged that they committed war crime against war prisoners, i.e. they are also charged as direct perpetrators.

In the prior trial the defendants were charged with war crimes against prisoners of war (29) such as *physical abuse, electric shocks and different forms of sexual abuse, such as connecting electrodes to genitals, dancing in male-female couples- women with naked breasts, and men with naked genitals and vice-versa, masturbating in front of naked female prisoners... and multiple rapes*, and sentenced to prison sentence below the mandatory minimum sentence of 5 years. Three defendants were sentenced to on year imprisonment, one to two years' imprisonment, and the first defendant as de facto and de jure commander and direct perpetrator to three and a half years' imprisonment.

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### *Non-final acquittal for crime in Borovo Selo*

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On 23<sup>rd</sup> March, Osijek County Court War Crimes Chamber acquitted Radenko Alavanja of charges of war crimes by command responsibility as a commander of Territorial Defense (TO) Borovo Selo. He was charged that from 18<sup>th</sup> to 22<sup>nd</sup> November 1991, after the occupation of Vukovar, violating rules of international law during an armed conflict, failed to prevent his inferiors in inflicting physical injuries and illegal detention of civilian population.

The panel president in his explication of the judgment stressed that it was established that in Borovo Selo one of the most serious crimes against civilians was committed (39 civilians were killed, while 32 persons who were tortured, questioned, beaten and deported, and disappeared ever since, are still looked for; that at that critical time Radenko Alavanja was the commander of TO Borovo Selo. However, contrary to the Prosecutor's argument, the panel, based on testimonies of the aggravated parties, whose closest family relatives were killed or disappeared, has not been able to establish that Radenko Alavanja participated in tortures, killing, nor that he had the authority of command over those who tortured, abused and killed civilians.

The panel analyzed in detail the evidence submitted by the end of the trial by the Osijek State Attorney's Office (expertise of Belgian UN officer on the role, organization, structure and activities of the former Yugoslav Peoples Army (YPA) – Operative Group „South“, in the trial against the Vukovar Three). It was established that crimes were committed in Borovo Selo, Vukovar and surroundings as part of the plan of the former YPA to destroy anyone who was in Croatian Army or connected with it in any manner, including being relatives of Croatian Army members. It was established that the questionings, and separating people was carried out by the members of the former YPA, who came to the area of Vukovar and surrounding at the time of the fall of Vukovar.

From the testimony of one of the members of TO Borovo Selo, and it is only one of many testimonies, it was established that aside from Radenko Alavanja at the Borovo Selo school, where most of the crimes were committed, questioning, selection, and where prisoners were taken away from to be executed, high officials of former YPA were present, forbidding anyone to save civilians and prisoners of war that some locals of Borovo Selo tried to save (their friends, working colleagues, relatives...). Therefore the panel decided to acquit the defendant, and the procedure trials are to be covered by the state budget.

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### *Non-final acquittal for crime in the village of Borovac*

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On 29<sup>th</sup> March in a retrial the Zagreb County Court acquitted Mitar Vujaklija of war crime against civilians committed in the village of Borovac on 1st October 199 during the non-international armed conflict.

Although it was established beyond reasonable doubt that the defendant killed Jovan Ljiljak, testified in detail and credibly by a witness, the court established that the criminal offence does not qualify as war crime, but as murder with non-established motive, for which statutes of limitations are applicable.

Also, the panel has not found elements of war crime in an alleged humiliation and abuse of two civilians, whose clothes the defendant searched, after hearing a shot from an unknown place.

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### *New extradition of war crimes suspect*

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On 8<sup>th</sup> March, Montenegro extradited Serbian retired general Borislav Đukić to the Republic of Croatia. Montenegrin police arrested Borislav Đukić on 18<sup>th</sup> July 2015 at Tivat Airport while trying to go back to



Belgrade, on a warrant issued by Croatia, accusing him of involvement in blowing up Peruča dam in 1995- war crime against civilian population. The same indictment is also issued against Ratko Mladić, in the capacity of the commander of IX Knin Corps of the former YPA, now late general Mile Novaković, commander of the so-called “Serbian Army of Krajina”, and major Milan Korica, commander of the so-called “Serbian Army of Krajina» border units. The defendant is in investigative detention of the Split County Court.<sup>4</sup>

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<sup>4</sup> The content of this report is the sole responsibility of the organizations that published it and any opinions expressed therein do not necessarily represent the official position of the donors. The report is part of the project «Support to the Strategy of development of judiciary in the area of human rights» supported by the European Economic Area and the Kingdom of Norway Grants (EEA/NG), implemented in the Republic of Croatia by National Foundation for Civil Society Development.