

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

Osijek, Zagreb, Bjelovar 30th May 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

Freedom of assembly – a frequent mean of expressing the position of the citizens

During the month of May citizens participated in at least ten protests/manifestations/events¹, as a sign of criticism toward economic, secular and political events in the country. The above-mentioned gatherings were inevitably charged with emotions, but they still opened the possibility to break the silence and to overcome the ontological divisions between activists and non-activists and to start discussions, as well as to develop research agenda in the future.

Some of the organized protests were: "Say it with your shoes- left shoe protest" – 28th April, "Together for fertility" – 30th April, "People before profit!" – 1st May, "International media freedom day" – 3. svibnja, "Gimme 5 for DPS" – 5th May, protest for changing the name of the Square of Marshall Tito in Zagreb– 7th May, Let's preserve the Croatian model of support to the civil society development – 9th and 10th May, protest of support to the Minister of Culture Zlatan Hasanbegović – 12th May, Defend your right to choice – 21st May, «Walk for Life»- 21st May. The motives of the protests were diverse, and there were often counter-protests organized. Since we are witnessing the third generation of human rights, we can conclude that the freedom of assembly is used actively, thus strengthening and developing democratic principles, gaining a sense of overview of state authorities in the society through watchdog agency- by the media, civil society organizations and the citizens themselves.

Hate graffiti – a reflection of bad policies

In the period from the last report we have noticed numerous graffiti related to fascist iconography, swastikas, ustasha symbols, chetnik movement symbols and hatred towards Serb ethnic minority. We registered an incident near a Karlovac primary school, at a student dorm in Zagreb, during the «Norijada» (last day of secondary schooling) celebration, at Remiza in Zagreb.

It is undisputable that the above mentioned hate graffiti are a result of bad policies and weak reactions of political leadership to the increase of intolerance in the society, disrespect and fight against diversity, as well as questionable rewriting of the past. At the same time, the reaction of the judiciary is insufficient and slow. In May the Higher Misdemeanor Court accepted the appeal of the Zagreb Municipal Prosecutor's Office² and fined soccer player Josip Šimunić with 15.000,00 kn for shouting

¹ Različita okupljanja građana, u cilju javnog izražavanja stavova da bi se obranile određene ideje ili ostvarili interesi.

² See biweekly report of 26th January 2016, Late judicial conviction of hate speech:

<http://www.documenta.hr/assets/files/lzvjestaji%20sudjenja/2016-01-15-Dvotjedni-izvjestaj-ENG.pdf> sije%C4%8Danj-

«Ready for the Homeland» during a football match in November 2013. Another concerning fact is that most of the authors of the graffiti known to the police are persons of a younger age. Therefore, we should pay less attention to the consequences, and more to the causes of hate in young population as well as to inform and sensitize the public, especially youth, on the respect of human rights, as well as the negative effects of hate speech.

Croatian Parliament rejected the 2015 Ombudswoman's Report

On 20th May 2016 Croatian Parliament rejected the 2015 Annual Ombudswoman's Report (49 votes "in favor", 63 "against", 4 "abstained"), despite the fact that the members of the Judiciary Committee, the Committee on the Constitution, Standing Orders and Political System of Croatian Parliament and the Committee on Human and National Minority Rights unanimously adopted the report and recommended the Parliament to accept the 2015 report.

The rejection of the Report without serious criticism is a political attack against the Ombudswoman's independence.

In her presentation of the Report the Ombudswoman stressed that the Report contains the analysis and assessment of the situation of human rights and discrimination-related issues in Croatia, as well as recommendations for eliminating systematic problems. According to the report during 2015 a record number of 4. 655 cases were filed, 475 being complaints in the field of judiciary: 239 to the work of the courts, 114 complaints against judicial decisions, 66 against lengthiness of procedures, 37 complaints to the behavior of judges and abuse of office and 22 complaints to judicial administration work. Furthermore, the citizens show distrust in the lawfulness of judicial decisions and the efficiency of the judiciary as a whole. The complaints to the work of the State Prosecutor's Office show that the Office does not answer to the citizens' complaints nor give information on the state of the cases. Also, significant amount of criticism refers to the field of state administration.

In the annual report the Ombudswoman advocates for a better promotion of free legal aid in order to secure equality before the law to the citizens that need it the most, as well as the right to access the courts and institutions of state administration. She also mentioned the difficulties of allocation of budget assets for primary legal aid and the need of continuous education of civil servants. She also stressed that the area of violation of rights of victims and witnesses in criminal procedures will be of special interest of the Ombudswoman. In 2015 the number of discrimination-related cases increased, and the Office advocates for an establishment of a more efficient system of fight against discrimination, increasing information of all the participants on the legislative and institutional framework for the protection from discrimination, raising awareness on the occurrence of discrimination and recognizing situations and cases of discrimination. The report stresses the fact that the basis of every fourth discrimination complaint is race, ethnicity or skin color, as well as ethnic origin. There is still the problem of public intolerance towards minority groups in general, and when it comes to ethnic minorities, the most vulnerable groups are Roma and Serb ethnic minorities. A special praise was given to the establishment of an anti-discrimination phone line for citizens, existing as of 2014. The line is a big help to members of ethnic minorities in getting the necessary information on the possibilities of protection or proceeding in filed complaints. Through the National Preventive Mechanism in 2015 191 complaints were filed, coming from prisoners, mentally ill persons, persons detained in police stations, asylum seekers and foreigners. Also the problem of poverty and social exclusion was stressed. In 2015, 92,000 pensioners received pensions under 500 kuna, almost one in five young people was outside the education system and labor market, and thus at a serious risk of social exclusion. Number of patients with melanoma in Croatia is at EU average, but the melanoma mortality rate is 50 percent higher. 12,000 veterans submitted a request for state housing last year.

2016.html

Residents of rural areas live in villages without electricity, without access to water, public transport and with unkept roads. Unacceptable and discriminatory rhetoric in public space are still strong, and the rights of minorities are perceived as a threat to the majority.

Reparations to the war crimes victims

During May the Karlovac Municipal Court decided to allocate reparations to the mother and brother of the killed girl Danijela Roknić (see: Crime in Karlovac settlement Sajevec³). The widows of killed and disappeared victims from the case against Vladimir Milanković (see: crime in Sisak⁴) the Sisak Municipal Court rejected the petitions for retrial of civil procedures for reparations based on a new fact- final guilty verdict for war crimes, due to the expiry of the deadline, or that it was an already ruled upon issue. The families of the killed/disappeared filed criminal procedures through their activities, writs to numerous state institutions and filing civil reparation complaints. Their civil suits for compensations were rejected due to statutes of limitations or lack of evidence. According to the new decisions of the Sisak Municipal Court, the injured persons of the criminal procedure are again blocked from obtaining compensations.

According to the Resolution of the Šibenik County Court⁵ the suit of the Republic of Croatia against Ivica Petrić⁶ was dismissed on the grounds of prematurity since the deadline of 3 months for the pacific solution of the dispute has not expired. The suit is based on the petition of the Republic of Croatia for the damage paid to the family of the killed after a final guilty criminal verdict. What is worrying is the neglecting of legal norms by the Municipal State Prosecutors' Office in Šibenik – and its Civil Administrative Department as well as the fact that it took 4 years to the County to adopt the decision.

We would wish to remind that the Republic of Croatia filed compensation claims against 7 persons who were convicted for war crimes (Mirko Norac – two judgments, Tihomir Orešković, Stjepan Grandić, Tomislav Duića Tonći Vrkić and Ivica Petrić). In some trials, according to our information, non-final sentences were rendered. Due to the slowness of the judiciary the money paid from the state budget for the compensation of damage to the families of the killed or direct victims of torture has not been reimbursed, although the facts of the crimes were established with final criminal verdicts.

Civilian war victims still waiting for the acknowledgement of their suffering

On 21 May in Slavonski Brod a monument to the killed children in the Homeland War was unveiled. Apart from this symbolic commemoration of the killing of civilians in the war, the issue of reparations has not yet been tackled. In the Republic of Croatia there is still not an integral register of the victims containing all the categories, circumstances, places as well as personal data on the victim. Also, the data on the total number of civilian victims of war are approximate (between 4000 and 8000 victims). The rights that the survivors of families of killed and disappeared could enjoy according to the *Law on Protection of Civilian and Military War Invalids* are limited and represent more forms of social assistance than measures of reparation. According to the *Law on Protection of Civilian and Military War Invalids* on 31st December 2014 there were 1406 military war invalids, 1479 civilian invalids from the Second World War, 2219 civilian invalids from the Homeland War, 2162 peacetime military invalids, 2022 family members, 1 military war invalid injured in peacekeeping mission, 115 participants of war, 87 family members of the participants on war. On 31st December 2015 there were

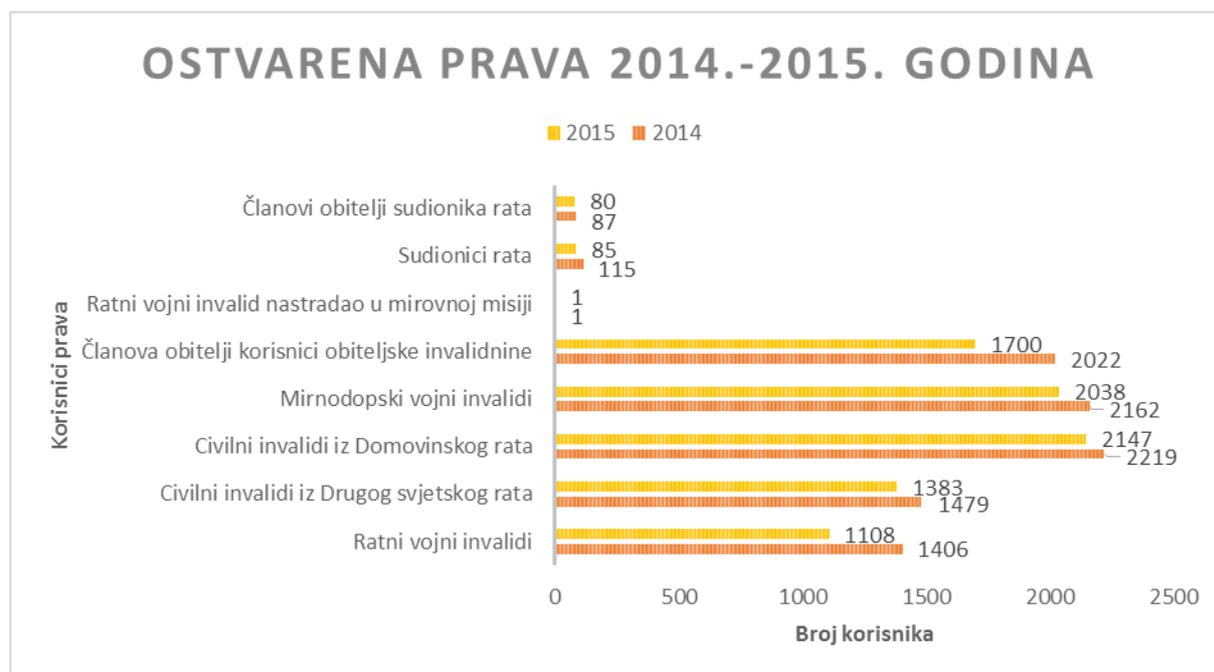
³<http://www.documenta.hr/en/crime-in-karlovac-settlement-sajevec.html>

⁴<http://www.documenta.hr/en/crime-in-sisak.html>

⁵Gž – 1379/2012-2, Decision dated 29th Feb 2016

⁶Ivica Petrić was found guilty for the murder of Đurađ Čanak, in August 1995, judgment of the Zadar County Court No. K71/99, judgment of the Supreme Court of the Republic of Croatia Kž-343/97-17

established 1108 military war invalids, 1383 civilian invalids from the Second World War, 2147 civilian invalids from the Homeland War, 2038 peacetime military invalids and a total of 1700 family members (by the previous categories). According to the same Law the rights were established for one military war invalid injured in a peacekeeping mission, 85 participants of war and 80 family members of participants of war.



Graph 1 Number of beneficiaries according to the *Law on Protection of Civilian and Military War Invalids*

As we can see from the graph, the number of beneficiaries is falling due to their death. As a result of the postponement and the lack of serious approach to this problem, the persons who suffered do not get to obtain any compensation or acknowledgement of suffering during their lifetime.

With the research of the necessities of the civilian war victims we established a need for a legal solution of the needs of civilian war victims (2012⁷ and 2013⁸) that would adequately solve all the needs of the civilian war victims. However, until today there is neither will nor serious initiative that could solve this problem. The Ministry of War Veterans founded a working group that was supposed to bring certain conclusions and make a draft of the law that would be satisfactory for the victims. The aforementioned working group met on 4 occasions during 2015 and offered certain normative framework, but the draft law itself was not subjected for public discussion. If we study our state budget we can see that in 2016 no improvement is expected regarding the solution of the issue of civilian war victims since their rights are not foreseen in the state budget. The Union of Associations of Homeland War Civilian Victims pointed to this problem in their communication from 14th March 2016: „Not even after 20 years of fight for the rights of civilian victims of the Homeland War the Government of the Republic of Croatia has not found assets in the state budget. Unjustly neglected and affected by various governments in the course of twenty years, defeated and humiliated by their own country when 80 million kunas from the state budget allocated to them was erased. With that all the civilian victims were erased, as well as their human rights guaranteed by the Constitutions, the

⁷ Emina Bužinkić (Ed.), *Civilne žrtve rata u Hrvatskoj* (Civilian War Victims in Croatia) *Documenta*- Center for Dealing with the Past, Zagreb, 2012

⁸ Emina Bužinkić (Ed.), *Pravo civilnih žrtava rata u Hrvatskoj na reparacije*, (Rights of Civilian War Victims to Reparations in Croatia) *Documenta*- Center for Dealing with the Past, Zagreb, 2014

*rights they are living without for twenty years. For the sake of civilian victims we have to inform the public that the civilians have been waiting for 20 years for the realization of their constitutional rights*⁹

We hereby call upon the authorities to reorganize a working group for the law on the rights of civilian war victims and to approach this issue in a serious and comprehensive manner because it is the least that the victims deserve.

Review of the work of County Prosecutor's Offices

Osijek County State Prosecutor's Office adopted a decision on carrying out criminal investigation against Croatian citizen (1950) on grounds of war crime against civilian population (Article 120, paragraph 1 of the General Criminal Code of the Republic of Croatia in conjunction with the Article 28) and war crime against prisoners of war (Article 122, paragraph 1 of the General Criminal Code of the Republic of Croatia in conjunction with the Article 28, it. 2 - with the application of Article 43 of the Criminal Code of the Republic of Croatia) committed in the Gabela detention camp in Bosnia and Herzegovina in 1993. Investigative detention has not been requested.

Rijeka County State Prosecutor's Office, after carrying out criminal investigation issued an indictment before the Rijeka County Court against four citizens of the Republic of Serbia (1964, 1954, 1962 and 1963) for war crime against civilian population (Article 120, paragraph 1 of the General Criminal Code of the Republic of Croatia in conjunction with the Article 28) and war crime against prisoners of war (Article 122, paragraph 1 of the General Criminal Code of the Republic of Croatia in conjunction with the Article 28, it. 2), committed in Vojnić in 1994. Since the defendants are unavailable to Croatian judiciary, the warrants of their arrest and detention was issued.

Split Osijek County State Prosecutor's Office after carrying out criminal investigation issued an indictment against 40 citizens of the Republic of Serbia (1964, 1951, 1959, 1968, 1958, 1965, 1964, 1965, 1961, 1964, 1968, 1968, 1965, 1964, 1964, 1968, 1949, 1972 and 1972), one citizen of Bosnia and Herzegovina (1966) and persons of unknown citizenship (1963, 1969, 1969, 1965, 1961, 1962, 1964, 1965, 1962, 1963, 1970, 1967, 1965, 1963, 1952, 1964, 1963, 1962, 1972 and 1958) for war crime against prisoners of war (Article 122, paragraph 1 of the General Criminal Code of the Republic of Croatia in conjunction with the Article 28, it. 2) and war crime against civilian population (Article 120, paragraph 1 of the General Criminal Code of the Republic of Croatia in conjunction with the Article 28), committed in Knin, since June 1991 until December 1993. Since the defendants are unavailable to Croatian Judiciary, the Prosecutor's Office requested trial in absentia.

News from the International Criminal Tribunal for the Former Yugoslavia – May 2016

Final verdict in the case of **Mičo Stanišić and Stojan Župljanin**, former high level officials in Bosnian Serb police and intelligence structures, will be rendered in late June 2016. In March 2013 they were found guilty at the first instance trial before the ICTY Trial Chamber and sentenced to 22 years imprisonment each for crimes against humanity and war crimes committed between April and December 1992 in Bosnia and Herzegovina (BiH). The first-instance judgment also includes the grounds of a joint criminal enterprise (JCE) with the objective to permanently remove non-Serbs from the territory of a planned Serbian state that involves many members of Bosnian Serb military and political establishment, led by Radovan Karadžić (sentenced to 40 years imprisonment in the first-instance trial) and Ratko Mladić (trial in course, judgment in November 2017).

⁹ Press Release, 14/03/2016, Zagreb

The first instance verdict pointed to a characteristic pattern of crimes repeated in all the twenty municipalities of Bosnia and Herzegovina covered by the indictment (Banja Luka, Bijeljina, Bileća, Bosanski Šamac, Brčko, Doboј, Donji Vakuf, Ilijaš, Kotor Varoš, Pale, Prijedor, Sanski Most, Skender Vakuf, Teslić, Vlasenica, Višegrad, Vogošća and Zvornik). In the appeal the Prosecutor requested higher imprisonment, the Defense acquittal, lower prison sentence or retrial due to the disqualification of Trial Chamber Judge Harhof whose alleged bias was ground for his removal from the Trial Chamber in the trial against Vojislav Šešelj.

Former Bosnian Croat leaders – **Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić**, the final judgment will be rendered in late 2017.

The start of the retrial against Stanišić and Simatović before the UN Mechanism for International Criminal Tribunals is still unknown. Namely, soon after the Appeals Chamber of the ICTY quashed the Trial Chamber's decision to acquit Jovica Stanišić and Franko Simatović in December 2015, and ordered that Stanišić and Simatović be retried on all counts of the indictment, the defendants were granted provisional release. The retrial could start by the end of 2016 or in April or May 2017. Due to his alleged health condition Stanišić could fully participate in the proceedings via video-conference [link](#) from Belgrade, according to his defense lawyer.

Chief prosecutor Serge Brammertz has signed a request to formally terminate the case against Goran Hadžić, since there are no 'real prospects' that 'the requirements for the trial to continue will ever be fulfilled'. Despite Hadžić's advanced illness and the Appeals Chamber's clear instructions to 'continue or terminate' the trial, the Trial Chamber has decided to suspend the proceedings for the time being, the motion notes. At the same time, Hadžić was granted permission to contact defense witnesses who have not yet given evidence. This decision has 'compromised the trial', the prosecution notes.

The prosecution rested its case in October 2013. In October 2014 the trial was suspended mere months before the defense was expected to rest its case. Diagnosed with an incurable brain tumor, Hadžić refused to allow the trial to continue in his absence. Hadžić was a high official in Croatian Serb leadership and he is charged for some of the most serious crimes. He was on the run for 7 years.¹⁰

¹⁰ 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.