



## Monitoring of War Crimes Trials – Guarantee for the Process of Dealing with the Past and Sustainability of the Judicial Reform in Croatia

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### *Biweekly Report on War Crime Trials*

#### **Denial or cancellation of minority rights – a clear indicator of (un)successful democratisation process**

The results of the referendum at which citizens decided in great majority to include in the Constitution a provision which would stipulate that marriage is exclusively a life union between a woman and a man, represents a clear indicator to what degree the others and those different to us are accepted in Croatian society.<sup>1</sup>

The possibility of holding a new referendum (and allegedly the so-called *Headquarters for Defence of Croatian Vukovar* has already collected a sufficient number of signatures to call a referendum), which would guarantee equal application of the language and script of a national minority in the territory of a local self-government unit in which national minority members compose a minimum of one half of the population (instead of one third, as is currently stipulated by law), only shows the readiness of our society to continue denying or cancelling minority rights.

Unfortunately, this radicalisation in our society is also supported by the pandering to homeland war veteran associations, who follow the behavioural patterns used back in the nineties by using 'the path of least resistance'.

#### **Inappropriate invitations to attend and actual attendance of Tomislav Merčep at a great number of official events**

Tomislav Merčep, who currently faces trial for one of the most serious war crimes committed in Pakračka Poljana and at Zagrebački Velesajam during the war in Croatia, attended the official marking of the day of the fall of Vukovar on 18 November 2013. Previously in September 2013, he also attended the anniversary of the forming of the 204<sup>th</sup> Vukovar Brigade. Minister of Homeland War Veterans Predrag Matić stated on that occasion that he regarded attendance at the anniversary of all three commanders of the defence of Vukovar (Dedaković, Borković and Merčep) as exceptional honour. In the meantime Merčep together with many highly ranked officials attended also the celebrations on the occasion of the Day of Police and the Day of Independence held at the Croatian Parliament.

His appearance in the media and his standing nearby highly-ranked officials can have a negative influence on the readiness of witnesses to provide their testimonies on committed crimes. He attends the trial not detained because the Court established that, following the conduct of expert survey, the Hospital for detained persons could not provide adequate health care to Merčep.

<sup>1</sup> Referendum turnout: 65% of citizens who voted answered „yes“ to the referendum question “Do you agree that a provision is added in the Constitution of the Republic of Croatia that marriage is matrimony between a man and a woman?”; 33,51% voted against, and 0,62% votes were invalid or not thrown into ballot boxes – according to the official results published by the State Electoral Commission (<http://www.izbori.hr/2013Referendum/rezult/rezultati.html>).



His name is frequently heard in connection with the killings of Serb civilians in Vukovar, committed in summer 1991. Investigation of those crimes, however, has been stalled to the point where nothing further is carried out. According to available information, the proceedings are still under preliminary investigation phase.<sup>2</sup>

Merčep is still President of *the Homeland War Volunteers Association* (UHDDR), one of the largest homeland war veteran associations.

An incident with the Ustasha greeting occurred on 19 November 2013 in Zagreb after the football game between two national representations Croatia and Island. Soon after that, Director of the Jasenovac Memorial Park Nataša Jovičić received death threats and Jasenovac represents a memorial to the greatest concentration camp run by the Ustasha.<sup>3</sup> Vice-president of Independent Democratic Serb Party (SDSS) and also President of Serb National Council Milorad Pupovac also received a death threat which included a hate speech and insults against members of Serb minority.

It is necessary to stop the deepening of polarization and radicalization in the society, where more and more energy is wasted on confrontation and very little energy is left for creating, developing and encouraging innovation and creativity. The biggest responsibility lies now with the Croatian Government which has easily been giving up thus far on the protection of minority rights – this way, it has left the minorities and civil society initiatives to fight on their own.

### **Former leader of the Croatian Democratic Union (HDZ-BiH) is indicted for abuse of authority and position (abuse of office) – because he purchased an apartment to former fugitive from the ICTY**

On 11 November 2013 USKOK laid the indictment before the Split County Court against Ante Jelavić, former leader of HDZ-BiH. Jelavić is charged that in his capacity as Assistant Defence Minister of the 'Croatian Republic of Herceg-Bosna' (HR H-B) in March 1996, he passed a written decision to purchase for HVO member Ivica Rajić, without any legal grounds, an apartment in Split (90.88 m<sup>2</sup>) for HRK 739.083.41 and pay this apartment with the funds of the Ministry, mostly supported by the funds of the Ministry of Defence of the Republic of Croatia.

In 1995, the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia indicted Ivica Rajić, former commander of the Croatian Defence Council's operational groups, based in Kiseljak town, in central Bosnia. ICTY indicted him for crimes in Stupni Do in Vareš municipality which were committed during the Croatian-Bosnian war. In 1993, Croatian authority extradited him to the Hague after his arrest in Split where he was hiding under the name Viktor Andrić. In 2006, Rajić was sentenced to 12 years in prison.

Despite the fact that former indictee of the ICTY Ivica Rajić was hiding in Split, Jelavić was not indicted for aiding and abetting Rajić in his hiding.

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<sup>2</sup> According to the judicial practice of *European Court for Human Rights (ECHR)*, it is stemming from the obligation of a state to protect the right to life under Article 2 of the *Convention on the Protection of Human Rights and Fundamental Freedoms* and general duty of a state to respect human rights mentioned in Article 1, that national bodies are obliged to conduct effective investigation in all cases where there is some doubt as to the cause of death by a violent act. The mentioned example only represents one of many crimes which were not efficiently investigated and prosecuted.

<sup>3</sup> Jasenovac was the place of detention, forced labour and executions, primarily of Serb Orthodox Christian population which was to be completely eradicated from the area of the Independent State of Croatia (NDH), with a goal of establishing an ethnically clean territory, as well as Jews and Roma people, who were the discriminated population by the then racial laws. A large number of Croats – communists and anti-fascists, members of the People's Liberation Army of Croatia, as well as their family members and other opponents of the Ustasha regime – also suffered and lost their lives in Jasenovac camp. Referred to as a concentration and labour camp by the Ustasha regime, the Jasenovac Concentration Camp - with its detention camps in Bročice, Krapje, Jasenovac and Stara Gradiška, with numerous camp-owned farm facilities in the forcibly evicted and evacuated villages as well as numerous execution sites on both sides of the Sava and Una rivers, operating from August 1941 until 22 April 1945 – was a death camp in which men, women and children were being killed on the basis of their religious, ethnic or ideological background. The names and data on death of 83,145 victims have been collected until March 2013. According to the mentioned data, 39,570 male persons, 23,474 female persons and 20,101 children up to the age of 14 were killed in the Jasenovac Concentration Camp. *The Project is financed within the EIDHR Program of the European Union for the Republic of Croatia. The contents of this Report are the sole responsibility of the civil society organisations and can under no circumstances be regarded as reflecting the position of the European Union.*



Just like in this case, there are many cases of concealing traces of war crimes (for instance the crimes committed in Paulin Dvor, the Medak Pocket) or aiding and abetting the perpetrator after the crime had been committed. And in such cases, highly ranked civilian or military officials which had been involved, will remain unpunished. According to the Croatian law and court practice, unlike the court practice of the ICTY, concealing the traces of war crimes and aiding & abetting the perpetrators after the crime had been committed are considered independent criminal offences stipulating low prison punishments and thus, the statute of limitation was enforced.

In 2005, following the first-instance court judgement passed in Bosnia and Herzegovina, Jelavić was convicted for alleged abuse of powers in *Hercegovačka* bank and for embezzlement of the budget funds which had been coming from the Republic of Croatia for the Croats in Bosnia and Herzegovina, and was sentenced to 10 years in prison, however, at the time of the announcement of the verdict Jelavić was no longer to be found on the territory of Bosnia and Herzegovina. The Appellate Court quashed the stated judgement and reversed the case for retrial; however, the retrial has never been conducted. Jelavić was (temporarily) residing in Croatia, and, concerning the fact that he has held Croatian citizenship as well as BiH citizenship, he could not have been extradited to Bosnia and Herzegovina. The proceedings against Jelavić for the stated charges have never been conducted in Croatia.

### **An attempt to outmanoeuvre the justice – a Mostar prison fugitive will request in Croatia a parole release from serving his sentence**

Dominik Ilijašević a.k.a. Como, a former member of the Croatian Defence Council (HVO), who escaped from the Mostar prison and Bosnia and Herzegovina at the end of September 2013, where he was serving 15 years for the crimes committed against Bosniak civilian population of Vareš and Kiseljak municipalities, including also the killings committed in the village of Stupni Do, has been located in Croatia.

Ilijašević is a Croatian citizen and, since he cannot be extradited to Bosnia and Herzegovina, Bosnia and Herzegovina made a request asking Croatia to uphold and execute the sentence. Ilijašević himself claims that he escaped from prison in BiH because he did not believe that he would be released after serving two-thirds of the sentence. Namely, although Bosnia and Herzegovina does not exclude the possibility of a parole release of the war crimes perpetrators, the judicial practice in Bosnia and Herzegovina has shown so far that war criminals do not get the parole release.

Ilijašević intends to serve the remaining part of the sentence in Croatia since he believes that he is to be released on parole after serving the two-thirds of the sentence.

If such an abuse of the institute of dual citizenship and if such outmanoeuvring of justice proves to be successful for Ilijašević, the same or similar action may also be expected of Branimir Glavaš, who is serving an 8-year sentence in the same Mostar prison for executions of Serb civilians in Osijek.

Until present day, Branimir Glavaš has spent almost 4 years either in pre-trial detention or serving his sentence in the prison. The time Glavaš spent in the detention during the trial in Croatia, from 18 April 2007 until 11 January 2008, has been included as a constituent part of the total length of the sentence. After his escape to Bosnia and Herzegovina and after the BiH judiciary upheld the Croatian court judgement taking over the judgement execution, Glavaš was arrested on 28 September 2010. Glavaš was kept in the detention in Sarajevo, then he was transferred to the Zenica prison from where he was finally transferred to Mostar prison.

### **Retrial commenced against five absent/unavailable persons accused of the crime in Saborsko**

On 29 November 2013, court hearings of the repeated trial against the accused Miloš Jovetić, Đoko Jakšić, Miloš Momčilović, Miroslav Milaković and Branko Šupica commenced at the Rijeka County Court.

According to the Karlovac County Court judgement passed in 1994, the above-stated accused persons were sentenced in absentia to 15 years in prison respectively; however, the Supreme Court of the Republic of Croatia in 1996 quashed the first-instance court judgement in respect of the accused persons. The repeated trial has only just begun now (29 November 2013).

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## About the course of the previous proceedings

According to the judgement passed by the Karlovac County Court on 26 May 1994, the first-accused Nikola Medaković was found guilty. As a person who had organised the armed rebellion in the area of Plaški municipality, Medaković had established an illegitimate government in the area annexing the area to the so-called SAO Krajina (Serb Autonomous Area of Krajina) in the second semester of 1991. Medaković had founded the so-called Plaški Municipality whose President he had been appointed. Medaković had also founded the Territorial Defence units, the Territorial Defence Headquarters as well as the units of the so-called SAO Krajina Militia whom he had been leading into action, together with Chetnik formations, launching attacks on the Croatian village of Saborsko.

After entering and subjugating Saborsko, Medaković had ordered the destruction of private housing facilities and public facilities, looting and arson, as well as execution of civilians, abuse and interrogation of civilians. As the result of the stated actions, at least 34 civilians had been killed, a considerable number of civilians had been severely injured, 27 persons had gone missing, the civilian-owned facilities had been destroyed and the property had been looted.

The accused Miloš Jovetić and Đoko Jakšić, together with Medaković, had founded the Territorial Defence (TO) units and the Territorial Defence Headquarters. Jovetić had acted as a commander while Jakšić had acted as Chief of the Headquarters. Miloš Momčilović, Miroslav Milaković and Branko Šupica had joined the so-called SAO Krajina (Serb Autonomous Area) Militia. Following the Medaković's command, they had launched several attacks on Saborsko that had been led by Jovetić and Jakšić, while Momčilović, Milaković and Šupica had participated in those attacks. Upon entering and conquering the village, they had been executing and wounding the civilians, destroying the village facilities, plundering the houses, and interrogating and abusing a part of the captured civilians.

Medaković was sentenced to 20 years in prison whereas other accused persons were sentenced to 15 years in prison respectively.

According to the judgement passed by the Supreme Court of the Republic of Croatia on 26 June 1996, the first-instance court judgement in respect of Medaković was upheld, whereas the first-instance court judgement section referring to other accused persons was quashed and the case was reversed for retrial.

## **Eight former members of Serb military formations, who are currently unavailable to the Croatian judiciary, accused of the crimes committed in the prisons in Stara Gradiška and Okučani**

According to the statement issued by the Osijek County State Attorney's Office on 14 November 2013, the indictment has been laid against eight citizens of Serbia. The accused have been charged with crimes committed in the period from August 1991 until December 1991 in Stara Gradiška and Okučani.

The first-accused person has been charged - in his capacity as a commander of the prison which was located within the walls of the former Penitentiary-Correctional Facility – with a failure to prevent his subordinate prison guards and other persons who were regularly coming to prison and abusing, torturing and punishing the captured Croats taken in from the territory of Gornja Varoš, Mali Strug, Stara Gradiška and other surrounding villages, as well as with his taking part in abusing and torturing the civilians.

The second-accused person has been charged, in his capacity as a military police member, with unlawful arrests of civilians of non-Serb ethnicity, apprehension of the mentioned civilians and taking them into the stated prison, where he abused the civilians and one prisoner of war.

The third-accused person has been charged in his capacity as a Chief of the Okučani Militia (Police) station, while other accused persons have been charged in their capacity as members of the SAO Krajina (Serb Autonomous Area of Krajina) Militia, with (unlawful) detention of captured civilians without providing them with food, water and basic hygienic conditions, and they have also been charged with all sorts of abuse and with beating the civilians to death during everyday interrogations.

21 civilian persons and one captured member of the Croatian Army (HV) had been abused. Six persons had died as a result of the torture.

