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Civic Committee for Human Rights

Monitoring of War Crime Trials – Guarantee for the Process of Dealing with the Past and Sustainability of the Judicial Reforms in Croatia

Osijek, Zagreb 24 December 2013

Biweekly Report on War Crime Trials

First-instance verdict for the crimes against Serbs in Sisak – Milanković sentenced to 8 years in prison and Bošnjak acquitted

On 9 December 2013, the Osijek County Court rendered the guilty verdict at first-instance against Vladimir Milanković, based on the so-called guarantee responsibility¹, for war crimes committed in the area of Sisak in 1991 and 1992 and sentenced him to eight years in prison while the second defendant Drago Bošnjak was acquitted.

Prior to this, the Supreme Court of the Republic of Croatia (VSRH) had to delegate this case to Osijek in order to make possible the investigation of the Sisak crimes which involved apprehensions, maltreatments, brutal beating and killing of Serb civilians from Sisak and its surrounding, and prisoners of war, planting explosives under vehicles and in housing and business units owned by the citizens of Serb ethnicity.

For over many years, only few media companies and few family members of the victims and representatives of civil society organisations spoke of the war crimes committed in Sisak. The influence and power of Đuro Brodarac, against whom criminal proceedings were also initiated, but who died during the investigation, were too strong while the judiciary in Sisak was without power and/or the will to investigate and prosecute crime bosses and subordinates.

Proportion and bestiality of the crimes committed in Sisak were expressed to its full extent in the proceedings before the Osijek County Court. Despite the fact that this verdict included only one part of the victims killed in Sisak (25), it certainly presents a framework for further investigation and prosecution of direct perpetrators of crimes.

Belittling national anthem and aggrandizing Milanković sentenced by the first-instance verdict

After the verdict's pronouncement, the defendants' supporters started singing the national anthem of Croatia. Retired general Mladen Mikolčević and President of the Osijek City Council Anto Đapić were among them. Mikolčević stated before journalists that they did so because „this is a trial against a Croatian hero“.

Such a gesture is an abuse of Croatian national symbols and insults patriotic sentiments of all Croatian citizens who in no way can be connected with war crimes. Every single attempt of trying to present that the crimes were committed in the name of Croatia raises our concerns, but this is, unfortunately, the current reality of Croatian society.

¹ Translator's note: 'guarantee responsibility' – responsibility for failing to take action which is under the scope of his/her duty.

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Problems in co-operation between Croatia and Serbia

a) Application of *the Nullity Act* in practice – rejected settlement request submitted by the wife of killed civilian in the damage compensation proceedings because the judgement ruled by the Serbian court does not produce legal effects in Croatia

On 12 July 2013, Bjelovar Municipality State Attorney's Office rejected the request submitted by Ana Slijepčević, the wife of killed Petar Slijepčević, for peaceful settlement of dispute in which she requested from the Republic of Croatia a compensation of non-pecuniary damage for the killing of her husband. In the explanation, the Municipality Deputy State's Attorney stated that Ana Slijepčević's request was unfounded because the judgement rendered in September 2011 by the Higher Court in Belgrade, by which ZNG member Veljko Marić was sentenced to 12 years in prison for war crime committed by the killing of Serb civilian Petar Slijepčević, in accordance with *the Act Declaring Null and Void certain Legal Documents of the Judicial Bodies of the former JNA, the former SFRY and the Republic of Serbia*, void and does not produce legal effects.²

This law is still in force despite the fact that many legal experts have warned of the harmful effects of the law that declares null & void and without legal effects all legal acts of the former JNA, its judicial authorities, judicial authorities of the former SFRY and the Republic of Serbia relating to the Homeland War in Croatia, in which Croatian citizens were suspected, accused and/or convicted for war crimes. Moreover, President Josipović requested in December 2011 from the Croatian Constitutional Court to provide its opinion whether the Nullity Act is in compliance with the Constitution but the Constitutional Court has not yet decided on that matter.

Veljko Marić, the only member of Croatian military units convicted in Serbia, is presented publicly as the victim of unfounded persecution by Serbian judiciary. Thereby, media continue to suppress the fact that after the investigation the Osijek County State Attorney's Office laid an indictment against him in January 2011 for the same crime.

Marić currently serves prison sentence in Sremska Mitrovica. Serbian judicial authorities refuse to approve his request to serve his time in Croatia because he is a suspect in Serbia for the abuse, committed in the secondary school in Grubišno polje which ZNG was using as detention unit, and the murder of two persons in Grubišno Polje and Ivanovo Selo.

President Josipović and Minister of War Veterans Matić, during a recent official visit to Serbia, advocated for Marić to serve the sentence in Croatia. However, considering the fact that Croatian positive legal acts (read: *the Nullity Act*) do not recognise the legal acts rendered by Serbian judicial authorities relating to the war in Croatia, we must raise a question on the grounds of which verdict would Veljko Marić serve his sentence in Croatia if the judgement rendered in Serbia does not produce legal effects in Croatia?

b) Croatian Nullity Act and Serbian Act on the Organisation and Jurisdiction of State Authorities in War Crimes Trials – cause of disputable issues and mutual accusations

The Nullity Act is frequently criticized by Serbian legal experts and partly by Croatian legal experts too. Objections are also directed against the Serbian *Act on the Organisation and Jurisdiction of State Authorities in War Crimes Trials*. This Act stipulates that criminal proceedings for war crimes committed in the territory of the former SFRY fall within the jurisdiction of the national bodies of the Republic of Serbia irrespective of the citizenship of the perpetrator. According to the opinion of the Croatian side, the criminal authority of the Republic of Serbia is excessively extended with this Act.

² *The Nullity Act*, publicly known as *Lex Šeks*, adopted end of 2011 based on the initiative by the ruling political party HDZ. His supporters provided an explanation that the reason for its adoption was the conviction of Veljko Marić rendered by the Higher Court in Belgrade, and the indictment against Vladimir Šeks, Branimir Glavaš, Ivan Vekić, Tomislav Merčep and other 40 persons, against which the JNA Prosecution laid the indictment back in 1992.

Despite the efforts made by the prosecution authorities in strengthening regional cooperation in the prosecution of war crimes³, the non-resolving of previously mentioned disputable issues and absence of particular agreements by Croatian and Serbian political elites considerably restrict more efficient prosecution of war crimes. Political leaders do not make enough efforts to create legal frameworks and social environment in which full professional integrity of prosecutors and judges without any political influence would be attained.

The need for coordination between/bringing together/ the practices of the Croatian and Serbian judicial bodies

The War Crimes Prosecution Office of the Republic of Serbia refused to act on the indictments laid by the Osijek County State Attorney's Office against former highly-ranked Yugoslav National Army officers – Aleksandar Vasiljević and Miroslav Živanović, charged with the crimes committed in Serbian detention camps, and Enes Taso, charged with the crimes committed in the village of Dalj. Although both the Croatian and Serbian prosecution offices do have full sovereignty in exercising their rights to decide whether or not to initiate criminal prosecution in each individual case, it is the disparity between the decisions passed in almost identical legal systems of Croatia and Serbia which raises serious doubts regarding the true status of the practice allegedly free from political influence.

Only 5 out of 150 persons accused of war crimes by the Republic of Serbia in the period from 2003 until 2013 has held medium- or highly-ranked command positions. The War Crimes Prosecution Office of the Republic of Serbia does not apply the institute of command responsibility, as it is regulated at the International Tribunal for the former Yugoslavia, since the stated criminal offence has not been prescribed by the criminal code applied in war crimes cases, and it also does not apply the institute of the so-called guarantee responsibility of a commander, which is, on the other hand, regularly applied by county state attorney's offices and county courts in the Republic of Croatia only after being coerced into its application subsequent to the transfer of the case of accused Rahim Ademi and Mirko Norac from the ICTY to Zagreb County Court. Such a practice has led to the situation in which the prosecution of crimes in Serbia has been reduced to a few cases viewed as sporadic incidents, whereas the highly-ranked persons - who had organised the commission of systemic crimes - have remained completely intact by the judiciary.⁴

After Bosnia and Herzegovina submitted the case, investigation of the crimes committed in Herzegovina has been initiated in Split

The Split County State Attorney's Office has taken over the cases against three Croatian citizens suspected of war crimes committed in the territory of Herzegovina in 1993.⁵

On 10 December 2013, Ivan Hrkač a.k.a. Čikota, former member of the Croatian Defence Council “Convicts' Battalion“ which had been organised by the ICTY's convict Mladen Naletilić Tuta, was apprehended. According to the statement issued by the Split County State Attorney's Office on 11 December 2013, the investigation was ordered to be conducted due to a founded suspicion that, on several occasions, Hrkač had been battering three captured

³ On 15 December 2013, the State Attorney General of the Republic of Croatia Mladen Bajić, Chief Prosecutor of the BiH Prosecution Office Goran Salihović and Serbian War Crimes Prosecutor Vladimir Vukčević agreed to exchange liaison officers with the purpose to improve mutual communication and achieve more efficient prosecution of perpetrators of war crimes. This was the first joint meeting after the signing of bilateral protocols on cooperation in the prosecution of war crimes, earlier this year.

⁴ The information and assessment on war crimes prosecution in Serbia was presented by Marijana Toma from *the Humanitarian Law Centre* from Belgrade at the Public panel “Dealing with the Past and the Regional Process of Transitional Justice“, held in Belgrade on 02 December 2013.

⁵ Identity of the stated suspected persons was not revealed by the County State Attorney's Office; however, their names and surnames were published by several media.



Bosniak soldiers – members of the BiH Army. There also has been a founded suspicion that Hrkač had been physically abusing eight Bosniak civilians which had resulted in the death of one civilian (born in 1936) who succumbed to injuries inflicted upon him by the suspected person. The three civilians had been forced under death threat to engage in sexual intercourses.

The Split County State Attorney's Office requested the suspect to be placed in the investigative detention, however, the investigation judge rendered the decision that Hrkač was not to be remanded in custody during the proceedings, but also put an interdict upon his changing/leaving the place of residence and introduced the obligation of Hrkač's reporting to the police on a weekly basis. The Split County State Attorney's Office announced its intention to appeal against such a decision.

Several days later, the Split County State Attorney's Office issued the decision to conduct an investigation of Željko Rodin and Mario Marić, who had been suspected of a degrading treatment, and physical and mental abuse of a large number of Bosniak civilians kept in detention camps. Rodin and Marić were charged with actions which caused the death of a detained Bosniak civilian (born in 1959). A remand order was issued and they were placed in the investigative detention.

The Supreme Court of the Republic of Croatia acquitted the Croatian Army officers charged with arson of two Serb villages at the foot of the Papuk Mountain

The Appellate Chamber of the Supreme Court of the Republic of Croatia on 31 October 2013 upheld the first-instance court judgement passed by the Bjelovar County Court according to which the Croatian Army officers Ivan Husnjak and Goran Sokol had been acquitted of charges for criminal offence of war crime against civilians.

The two former Croatian Army officers were charged, according to the so-called guarantee command responsibility, with arson of the Papuk villages of Pušine and Slatinski Drenovac. It was the first indictment laid against members of Croatian military formations for the war crime committed by destruction of property – with no human victims and no abuse involved.

Since the identity of direct perpetrators of arson of Pušine and Slatinski Drenovac has not been determined yet, the acquitting verdict in this case also means that nobody has ever been convicted for the stated crime.

The Constitutional Court of the Republic of Serbia quashed the judgement passed for the Ovčara crime

According to the information conveyed by the numerous media, the Constitutional Court of the Republic of Serbia, adopted in the mid-December 2013, the constitutional appeal lodged by Saša Radak, convicted and sentenced to 20 years in prison for participating in the execution of 200 wounded persons, ill persons and medical staff from the Vukovar hospital which had been committed at the Ovčara farm facilities on 20 November/21 November 1991.

Allegedly, almost identical constitutional appeals were lodged also by Predrag Milojević and Miroslav Đanković, both sentenced to 20 years in prison each, Milan Lančuzanin, sentenced to 6 years in prison, and Predrag Dragović, sentenced to 5 years in prison.

Allegedly, the Constitutional Court accepted the claims made by Saša Radak regarding the violation of the right to a fair trial based on the fact that the same person - the judge, had been appointed as member of several court chambers/judges' panels/ which had been passing decisions in various stages of the court proceedings.



In the photograph taken at the Drvena pijaca (Fire-wood market) in Vukovar several days before the fall of the town, the apprehension of the civilian Slavko Batik (Batik is the person in the middle - walking with a stick) by members of Serb paramilitary formations, was recorded. Saša Radak a.k.a. Cetinje is the person depicted as the first on the left. No trace of Slavko Batik has been found ever since the stated incident. Batik is one of 1,664 persons who have been registered as missing persons and whose whereabouts still have been unknown since the Homeland War. Slobodan Raić (the second person from left, wearing olive-drab uniform and the helmet) had been charged with taking away Slavko Batik and killing him. The indictment had been modified on several occasions during the court proceedings. At the end, Raić was sentenced to 2 years and 6 months in prison for inhumane treatment of unlawfully arrested/captured Slavko Batik since Raić had failed to secure him medical help.

The trial for the crimes committed in the village of Grubori resumed

On 16 December 2013, the trial/main hearing resumed at the Zagreb County Court in the case against Frane Drljo and Božo Krajina, former members of Croatian formations (Lučko Anti-Terrorist Unit), accused of the crime in the village of Grubori, where six elderly civilians of Serb ethnicity had been killed and most houses and farm facilities had been burnt down on 25 August 1995, during the battle-area clearance operation code-named “Storm Encirclement“.

Aleksandar-Saša Milošević, the-then official of the UN's Centre for Human Rights, and current Deputy President of the Serb National Council, appeared as a witness.

Along with the UN officials, Saša Milošević had entered the village of Grubori immediately after the massacre. *"Some victims' heads had been massacred, completely shattered"*, he stated. They had pulled two dead bodies out of a house taken by flames to prevent them from being destroyed by fire. They had found five dead bodies, out of the total of six killed persons. They had informed the Croatian authorities about the whole thing – first, the liaison officer, and then the Commander of the Knin Military District – General Ivan Čermak. *"Initially, Čermak had categorically denied that anything had happened, whereas in the second conversation he had said that he had been (previously) informed that a battle-area/terrain clearance operation had been conducted in the stated area, which all caused our astonishment and we expressed our deep concern over the issue since the entire area had been under control of the Croatian authorities for quite some time "*, Saša Milošević stated.

The trial/main hearing/ should resume on 14 January and 20 January 2014. Generals Mladen Markač and Ivan Čermak, who, according to the ICTY's final judgement, had been acquitted of charges of their participation in the joint criminal enterprise, which they had constituted together with the-then Croatian top political officials, with the goal to have the Serb population permanently expelled from the territory of the so-called Republika Srpska Krajina, should appear and give their testimonies on 14 January 2014. The court hearing of Joško Morić, former Assistant Minister of the Interior of the Republic of Croatia; Marijan Benko, former Chief of the Police; Smiljan Reljić, former

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Chief of the Service for the Protection of the Constitutional Order; and Milijan Brkić, current General Secretary of the Croatian Democratic Union party (HDZ), is expected on 20 January 2014.

Mladen Markač has not testified so far since there has been a possibility of the revision of the acquitting verdict the ICTY passed in his case. After expiration of the time-limit during which the ICTY's Office of the Prosecutor could have requested the revision of the verdict, Markač should be testifying in two cases (in respect of the crimes committed in the village of Grubori, and in respect of the crimes which had been committed one day earlier than the Grubori crimes in the village of Ramljani) at the trial/main hearing in the case against Frane Drljo and Božo Krajina, and in the investigation procedure conducted against Željko Sačić.

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