

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

Osijek, Zagreb, 8 May 2014

### ***Bi-weekly report on war crimes trials***

#### **Upheld judgment for war crimes committed in the Montenegrin camp of Morinj**

In late April it was announced that the Montenegrin Appellate Court rejected the appeals lodged by prosecution and defence counsels of the defendants and upheld the judgment rendered by the High Court in Podgorica on 31 July 2013 in which four members of the former JNA in the third (second repeated) trial were convicted of a war crime committed by abusing Croat civilians and prisoners of war in the Montenegrin camp of Morinj.

The pronounced sentences are lower than the minimum sentences stipulated for the offences with which they were charged. Thus, Ivo Menzalin was sentenced to 4 years in prison, Špiro Lučić and Boro Gligić to 3 and Ivo Gojnić to 2 years in prison. In the same case, Mladen Govedarica and Zlatko Tarle were previously acquitted of charges by a final judgment.

The former camp inmates consider these proceedings to be a judicial farce. After the first-instance judgment, the Human Rights Action, the Montenegrin civil society organization which monitored the proceedings, criticized the pronounced sentences to be too low. They also criticized the failure of the judicial authorities of Montenegro to treat the crimes in the Morinj camp as an organized system of prisoner abuse, which is why the persons superior to direct perpetrators of the crime were not even accused.

The Morinj camp was founded by the former JNA. According to the judgment, between October 1991 and August 1992 more than 160 Croats were detained and abused there, among them a large number of civilians who were brought there from Dubrovnik frontline.

These are the only proceedings initiated by the Montenegrin judiciary for war crimes committed against Croat civilians and prisoners of war. The Montenegrin judiciary did not initiate single proceedings for the shelling of Dubrovnik and numerous surrounding villages, either.

#### **Member of Serb formations acquitted of charges for killing a civilian immediately after the fall of Vukovar**

Due to a lack of evidence, on 30 April 2014 the War Crimes Council of the Osijek County Court acquitted the former member of Serb paramilitary formations Milan Đekić of charges that on 19 November 1991 in a part of Vukovar called Olajnica, "*after Aleksandar Laba was singled out from a column of captured civilians near the bus station, along with other unidentified members of paramilitary formations, (the defendant) fired a burst from an automatic rifle and killed him*", whereby he committed a war crime against civilians under Article. 120, paragraph 1 of the OKZRH.

The Osijek County State Attorney's Office filed an indictment on 18 February 2013. The main trial before the Osijek County Court began on 3 June 2013. During the course of the proceedings, defendant Đekić was kept in custody.

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## **During the reconstruction of events in the Medak Pocket, a witness confessed to the killing of an old woman due to a burden of conscience**

On April 15 2014, during the reconstruction of events in the criminal proceedings conducted against Velibor Šolaja for a war crime committed by killing an old woman in the village of Čitluk in the area of the Medak Pocket in September 1993, former HV (Croatian Army) member Josip Mršić was invited to the reconstruction of events as a witness. Due to a burden of conscience, he admitted that it was him who shot the old woman, for whose murder his fellow combatant Šolaja was tried. He adhered to his confession even after being informed that he is subject to criminal liability, as reported by Hina news agency.<sup>1</sup>

At the main hearing held at the beginning of October 2013 Mršić argued that, as commander of a personal carrier of the 9<sup>th</sup> Guards Brigade of the HV, he passed through Čitluk with his fellow combatants without stopping.

At the main hearing held on May 6, after the above-mentioned reconstruction Mršić incriminated himself, but he charged the defendant as well. He described the event as follow: *"When I took the woman out of the basement, I let her hand, she turned, looked at me grinning and then I fired a shot from a revolver to her body. She did not fall, but remained on her feet. Then Šolaja fired a short burst into the old woman from a distance of a meter and a half to my left, after which she fell."*

During the investigation and the main hearing, witness Samir Kulašić directly incriminated defendant Šolaja. Thus, at the main hearing he stated: *"One of my fellow combatants, I do not know his name, threw a grenade into the house just moments after two older women entered the house. Then one of them was carried out, while the other was found dead. I saw defendant Velibor Šolaja pulling a revolver of "Luger" brand from the holster around his belt and shot the old woman who flinched after she was hit. There were about 15-20 of us there, Damir Relić and Grozdan Vučak were watching the whole scene standing next to me."*

During the presentation of evidence, several witnesses corroborated the testimony of Samir Kulašić that defendant Šolaja possessed the revolver with which, according to Kulašić, he killed the old woman.

Nenad Škare, a defence counsel of defendant Šolaja, already in his opening speech said that witness Samir Kulašić did not tell the truth and that his false statement was motivated by his belief that defendant Šolaja prevented him from advancing in his military career.

Samir Kulašić testified again at the hearing held on 6 May, as well as Damir Relić who had previously claimed that he did not know who killed the old woman. Kulašić adhered to his previous testimony, stating that defendant Šolaja shot the old lady from "Luger" revolver, while Relić now testified that the old woman was killed by Mršić.

### **Prosecution of crimes committed in the Medak Pocket**

The Hague Office of the Prosecutor charged HV generals – Janko Bobetko, Rahim Ademi and Mirko Norac - for the crimes committed by Croatian troops in the Medak Pocket in September 1993. Bobetko died before extradition to The Hague Tribunal, while the ICTY transferred proceedings against Ademi and Norac to the Croatian judiciary which acquitted Ademi of charges, while Norac was sentenced by a final judgment to 6 years in prison for the crimes committed in the area of responsibility of the HV.<sup>2</sup>

<sup>1</sup> Monitors of our three organizations did not attend the above-mentioned reconstruction.

<sup>2</sup> During the proceedings conducted against Rahim Ademi and Mirko Norac, witnesses described Šolaja as a murderer and a war profiteer who was able to earn several thousand then-German marks per day from the property stolen in the area of the Medak Pocket.

Five persons were arrested for the crimes committed in the Medak Pocket in March 2012. Three suspects were soon released, while criminal proceedings were initiated against the aforementioned Šolaja and Josip Krmpotić. Krmpotić, commander of the reconnaissance company of the 9<sup>th</sup> Guards Brigade, is charged with failing to prevent the execution by firing squad of four unidentified soldiers of the so-called RSK Army and issuing orders to set on fire and destroy houses belonging to Serb population. The proceedings against him are conducted separately from the proceedings against Šolaja, and the main hearing is also underway

To date, no one has been held responsible for the crimes committed in the Medak Pocket in the area of responsibility of the Special Police of MUP RH, where the majority of victims of crimes committed during and immediately after the operation "Pocket '93 " was killed..<sup>3</sup>

### **New wave of cases in which the European Court of Human Rights communicated with the Government of the RC due to violation of the right to life for failing to carry out effective investigations into the killing of civilians during the Homeland War**

From 8 to 10 April 2014, the European Court of Human Rights (the ECHR) initiated communication with the Government of the RC in 17 cases in which relatives of civilians killed during the Homeland War initiated proceedings before the ECHR, with the basic question whether in those cases there was a violation of the right to life due to ineffective investigations of the crimes committed.

In some of those cases, the matter of dispute was whether there was also a violation of the right to a fair trial, the right to an effective remedy, discrimination and erroneous application of the amnesty act.

In similar cases the ECHR has already rendered two judgments (Jularić vs. Croatia, Application no. 20106/06, Skendžić and Krznarić vs. Croatia, Application no. 1612/08, judgments of 20 January 2011) and it is expected that the Court will continue with its practice.

For years, we have been advocating that the issues and problems of all civilian war victims are resolved within the Republic of Croatia on the principles of social solidarity and fair and quick indemnification, regardless of whether the perpetrators were identified, criminally prosecuted, found guilty or available to the Croatian judiciary.

The Croatian Government urgently needs to pass a decision that would undoubtedly write off the costs of lost lawsuits to all plaintiffs/injured parties who have failed to exercise compensation of non-pecuniary damages for the death of a close person and adopt *the National Programme* and *the Act on the Establishment of the Fund for Indemnification of all War Victims* that would regulate the compensation of damage and various other forms of reparation in compliance with *the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of the International Humanitarian Law*.

In order to bring to an end further agony of family members of killed persons who initiated lawsuits for the compensation of non-pecuniary damage, the Croatian Government should strike a deal with victims' family members, pay them fair compensation and terminate their further victimization.

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<sup>3</sup> In the months after the operation, the Croatian side and UNPROFOR handed over to the Serb side 76 bodies of victims, including a large number of civilians.