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MONITORING
WAR CRIMES TRIALS
2016 ANNUAL REPORT

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ABSTRACT¹

The Croatian judiciary is still faced with a large number of unprocessed war crimes. Of the 490 crimes recorded in the war crimes database of the State Attorney's Office of the Republic of Croatia (hereinafter referred to as DORH), for 168 (34%) crimes, perpetrators are still unknown. For example, in late 2013, according to DORH data, perpetrators of 173 crimes were unknown², while in reporting period for 2015, the number of proceedings against unknown crime perpetrators fell to 171. Although we do not have access to the database, based on field research of human losses it is likely that certain crimes are not covered by the work done within the criminal investigation due to the insufficient capacities of the DORH and the insufficient resources of the state budget.

Last updated report of the State Attorney's Office of the Republic of Croatia from May 2017³, referring to the previous from 2016, provides a quantitative overview of their work in the area of war crimes prosecution. DORH reports on the number of criminal reports received, number of accused persons as well as on the completed proceedings which are not legally binding. Thus, during 2016, 84 persons were charged, while 21 persons were found guilty. In relation to this number of defendants, three specialized county state attorneys (CAO Rijeka, Split and Zagreb) filed 12 indictments, while CAO Osijek for the second year in a row did not produce any war crimes indictments. These are indictments covering the planned and widespread attacks (without a choice of target) on the civilian population, raised against a large number of defendants who will, in all likelihood, be tried in absentia, contrary to established international standards.

DORH's systematized database on all war crimes, with accompanying documentation and evidence, and by logical, geographical and time key related collections of all evidence for individual crimes, that can be used in various war crimes cases (such as, for example, documents and judicature of the International Criminal Tribunal for the Former Yugoslavia – ICTY), is insufficiently used.⁴ The percentage of completely resolved crimes is very small. The reason for this is the numerous indictments filed in the nineties and even in the decade after, against unreachable defendants for the Croatian judiciary, as well as trials that have now been repeated for years before the first-instance councils. Such a *modus operandi* further

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2 <https://www.documenta.hr/hr/izvje%C5%A1taj-o-pra%C4%87enju-su%C4%91enja-za-2013.-godinu.html>

3 <http://www.dorh.hr/IzvjesceDrzavnogOdvjetnistvaRepublikeHrvatskeZa>

4 The War Crimes Database is established with funds of the Kingdom of the Netherlands and contains information on all war crimes committed since 1991. The database also systematizes data on crimes against Croatian citizens committed in other countries. For example, the War Crimes Database also contains data from a case in which an indictment was filed in April 2011 against high-ranking persons of the JNA National Security Service, who are charged with command responsibility for crimes committed against Croatian citizens in camps in the territory of the Republic of Serbia. This is an indictment against former senior JNA officers, Vasiljević and Živanović, whose filing coincided with the non-legally binding verdict of two Croatian generals Gotovina and Markač.

weakens the personal and financial resources of the prosecution, the victims are again traumatized, and the witnesses show fatigue during repeated testifying before the court.

Also, the interest of the public, particularly the media, for war crimes trials before the national courts, as well as before the International Criminal Tribunal for the Former Yugoslavia (ICTY) and in the neighboring states, is rapidly declining, and moreover, there is a lack of understanding of the purpose of war crimes trials. Instead of acknowledging victims' suffering and distancing from crime, we witness the continuation of widespread denial of crimes, and refusal of acceptance of facts established by final judgments.⁵

This is also confirmed by the acquittal of Vojislav Šešelj. Due to a whole series of misunderstood facts, such as, for example, the absence of systematic and widespread attacks on civilian population, the prosecution filed an appeal, which will be decided by the Mechanism for International Criminal Courts.

The reduced capacities of the DORH, the non-appointment of the Chief Prosecutor for War Crimes of the Republic of Serbia and insecurity due to disciplinary proceedings against the BiH Chief Prosecutor, inevitably and objectively weakens the efficiency of war crimes prosecution as well as regional co-operation. To illustrate, 9 of 12 indictments are charging as many as 93 defendants, inaccessible to Croatian judiciary. Only three of the defendants were kept in detention after the arrest. These are members of the JNA and Serbian units that mostly reside on the territory of the Republic of Serbia. Otherwise, most of the members of the Serb units which were accused or convicted in previous years are unavailable to the Croatian judiciary, and the execution of final verdicts was conditioned by trials conducted in the presence of the accused, which is in accordance with international standards. For their effective persecution, the cooperation of the regional judiciaries is crucial. At the same time, during 2016, 3 investigations were conducted against 12 defendants.

Several verdicts of the ICTY in legally binding completed proceedings, as well as the case forwarded to Croatia, pursuant to Rule 11 bis of the Rules of Procedure and Evidence, have prompted the Croatian judiciary to initiate only a few criminal proceedings based on established facts about the crimes committed.⁶ Provided evidence for war crimes prosecution in Pakračka Poljana and its surrounding area collected during the investigation of the Hague Investigators, was not sufficiently utilized, and based on this evidence, only two indictments were issued on the basis of which, criminal proceedings were conducted. Also, there was no criminal prosecution of other perpetrators.⁷

⁵ We followed media reports regarding the arrest of Ramush Haradinaj, the trial of Veljko Marić, Ilija Jurišić for attack on JNA soldiers in Tuzla, process Prlić at al. before the ICTY, criminal proceedings against ten Croats from Orašje, as recent examples.

⁶ After the final verdicts of Ante Gotovina and Mladen Markač there were no investigations or indictments, except for the crimes in Grubori and Kijani, while for other crimes committed during and immediately after military operation „Storm“ proceedings were not initiated, except for the crimes committed in Prokljan and Mandić. Also, after the verdict for crimes in Medački Džep, three criminal proceedings were initiated, but none for the crimes in the area of responsibility of the special police.

⁷ We are referring to materials in the „Atlantis“ case, which we received as evidence in phase II, partially covered by the indictment against Tomislav Merčep and the indictment for the crimes committed in Marino Selo.

30 cases of war crimes trials that were monitored before specialized courts in 2016, were marked by seldom scheduled major hearings, lengthy procedures, frequent repetitions, inaccessibility of the defendant, and low prison sentences.

Non-legally binding verdicts were passed in 13 cases against 26 defendants. In relation to 21 defendants, nine convictions were issued while five defendants were acquitted of the charges in four cases.

On the other hand, no positive progress has been made regarding the reparation of civilian war victims (who are also often victims of war crimes) in 2016. Dismissal of the Commission for War Victims of Sexual Violence has also contributed to negative trends in the exercise of these rights. A small number of positive court decisions, both national courts and the European Court of Human Rights, require that the reparation issue be resolved by adopting a new legislative framework.

For years there has been a lack of a comprehensive legal framework that would guarantee the status and right of reparation to all civilian war victims. Also, the process of ratification of the International Convention on the Protection of All Persons from Forced Termination, as well as the Law on Missing Persons in the Croatian War of Independence, has not been initiated. With this legal vacuum, families of more than 1571⁸ victims have been denied recognition of suffering and right to reparation.

Victims of criminal offenses in Croatia cannot yet exercise the rights that victims in other EU Member States have, and the biggest problem is that the European Directive 2012/29 / EU on the Minimum Standards for the Rights, Support and Protection of Criminal Victims has not yet been fully incorporated into Croatian legislation. The deadline has long expired, in November 2015.

After 88 (out of a total of 115 resolved, 182 received, by the end of 2016), positive solutions to the demands of survivors of sexual violence or their relatives⁹, a wave of negative decisions followed, which retraumatized the victims. We welcome the announced establishment of new Veterans' Centers, with hope that support programs adapted to the different needs of surviving women and men will be developed within them.

In general, dealing with the past, which includes a wide range of activities, *res inter* and war crimes trials aimed at establishing the facts, approaching justice, acknowledging victims' suffering and recovering affected and vulnerable groups, as well as society as a whole, was almost completely absent.

⁸ Data from the website of the Ministry of Croatian war veterans: <https://branitelji.gov.hr/o-ministarstvu/djelokrug/mjere/nestale-osobe/nestale-osobe-u-domovinskom-ratu-834/834>

⁹ According to the provisions of the Act on the Rights of Victims of Sexual Violence during armed aggression on the Republic of Croatia in the Croatian War of Independence, NN 64/15