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

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**Biweekly report on War crime trials, acts of discrimination, hate crime and hate speech as well as on rights of War victims**

*Crime in Godinjske Bare - a conviction against the defendant Milorad Momić*

On 10 July 2015, the War Crime Council of the Osijek County Court convicted defendant Milorad Momić and sentenced him to 15 years in prison for committing a war crime against civilians in Godinjske Bare, Bosnia and Herzegovina. Momic was convicted based on the fact that he was in Godinjske Bare, near Trnovo, Bosnia and Herzegovina, as a member of a paramilitary unit „Scorpions“, seconded to the Army of Republic of Srpska in its military actions against the Army of Bosnia and Herzegovina on the wider areas around Sarajevo, and that, following the order of his commanding officer Slobodan Medić, together with Pero Petrašević, Aleksandar Medić, Branislav Medić, Slobodan Davidović and few other unknown members of „Scorpions“, he took six already captured Srebrenica civilians of Bosniac nationality to the area near the fighting position and executed them on 16 or 17 July 1995, thus violating the rules of the international law. By doing so, they covered mass and organised liquidations of man of Bosniac nationality captured in the area of Srebrenica.

In June 2012, County State Attorney's Office in Osijek, acting on the Request for international legal assistance of the High Court in Belgrade, took over the conduct of criminal proceedings against the defendant Milorad Momic, on suspicion of having committed a crime against humanity and international law – war crime against civilians according to the Article 120, paragraph 1 of the Criminal Law of the Republic of Croatia.

In the course of 2007, criminal proceedings against defendants Slobodan Medić, Pero Petrašević, Aleksandar Medić, Aleksandar Vukov, Branislav Medić and Milorad Momić, all previous members of the „Scorpions“ unit, took place before the High Court in Belgrade. All of them were convicted except for defendant Momić for whom the criminal proceedings were stopped due to the fact that he was unavailable to the Serbian judicial authorities.

*Crime in Glina prison – an acquittal for the defendant Zoran Dmitrović*

On 13 July 2015, in the repeated trial, Zagreb County Court acquitted the accused Zoran Dmitrović, who was tried in absentia, of charges of committing a war crime under Article 91, paragraph 2, point 21 of the Criminal Law (NN 125/11 144/12 56/15 61/15). In accordance to the Principle of applying the more lenient law (*lex mitior*), the accused was charged under the Criminal Law in force since 2013 and which is less stringent than the laws in force at the time of committing the offense (OKZ RH). He was acquitted in repeated trial due to lack of criminal quantity necessary to qualify the offence as a war crime.

Zoran Dmitrović was charged that he was beating brothers Davor and Zoran Ančić, civilians imprisoned in Glina prison, in the period from October to December 1993 while he was a guard in Glina prison.

During the first trial in January 2015, Zagreb County Court dismissed the charges against the first accused Miroslav Hasic, characterising the crime as a part of the armed rebellion which is covered by the General Amnesty Law, while the second accused Zoran Dmitrović was acquitted. Supreme Court of the RC quashed that judgement and the case was sent for retrial.

### *Crime in Sotin – a conviction before High Court in Belgrade*

On 26 June 2015, War Crimes Department Council of the Belgrade High Court announced the first-instance court judgement in which the associate defendant Žarko Milošević and defendant Dragan Mitrović were found guilty of having committed a war crime against civilians. Defendant Milošević is sentenced to 9 years in prison, while defendant Mitrović is sentenced to 15 years in prison. Defendants Dragan Lončar, Mirko Opačić and Miroslav Milinković were acquitted of charges of having committed this offence. The Council has found beyond reasonable doubt that they (Milošević and Mitrović) committed the criminal offense of war crimes against 16 civilians of Croatian and other non-Serb nationality in Sotin, during October, November and December 1991. The trial for crimes committed in Sotin started on 4 February 2015 before the Belgrade High Court.

Families of those killed, searching for the remains of their missing members, dissatisfied with the prosecution of this crime in the Republic of Croatia, demanded institution of proceedings before the judicial authorities in the Republic of Serbia. In June 2014, the High Court in Belgrade confirmed the indictment for war crimes against five members of Serbian paramilitary units for the murder of Croatian civilians in Sotin at the end of 1991. The remains of 13 dead civilians were found in April last year in the mass grave in an abandoned slaughterhouse near Sotin. The War Crimes Prosecutor in Serbia learned about the location of the graves during the investigation of one of the suspects. The information was forwarded to the Croatian judiciary and the remains were exhumed and identified shortly after.

### *Extradition of Dragan Vasiljković*

On 8 July 2015, Australia has extradited Dragan Vasiljković to the Republic of Croatia. He is accused for having committed the war crime against civilians and prisoners of war in the Republic of Croatia in the period from 1991 to 1993. The procedure of extradition of the suspect Dragan Vasiljkovic lasted for 10 years because he put a complaint on impossibility of conducting a fair trial before the courts in the Republic of Croatia, in particular due to a possible discrimination by ethnicity. He also put a complaint in respect of objectivity and impartiality of the courts.

In December 2005, Šibenik County Court ordered the investigation against Dragan Vasiljkovic (also known as Captain Dragan) on suspicion of committing war crimes against civilians and prisoners of war during June and July 1991 in Knin. In particular, Vasiljkovic is accused that he, as Commander of the Special Operations Unit, saw and knew that nine members of the Croatian Army and police who were brought and detained in the Knin fortress, which also served as Commanding post, were detained in unsanitary conditions and tortured in various ways, starved and taken out to fictitious executions by the subordinated members of his unit on a daily basis, and he failed to take the necessary measures and steps to prevent such a treatment and thus did not contribute as a superior officer to punish the perpetrators. He is also accused that he personally kicked a prisoner, while examining him; that, on 24 February 1993 in Bruska near Benkovac, he ordered, as commander of the Special Operations Unit and Teaching Centre for the training of the special unit 'Alfa', his subordinates to abuse and then kill two captured members of the Croatian Army; that, on 26 July 1991, he prepared a plan of attack on a police station and villages of Gornji and Donji Viduševac, and during the attacks his Unit used tanks to shell the church, school building and other civilian objects, which resulted in the death of two people, several inhabitants wounded, and more than 30 houses and farm buildings were destroyed and looted.<sup>1</sup>

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<sup>1</sup> Kio-86/05 Šibenik County Court

In a final conviction of the International Criminal Tribunal for the former Yugoslavia against Milan Martić<sup>2</sup>, Dragan Vasiljković is mentioned as a participant in a joint criminal enterprise together with Milan Martić, Milan Babić, Blagoja Adžić, Radmila Bogdanović, Veljko Kadijević, Radovan Karadžić, Slobodan Milošević, Ratko Mladić, Vojislav Šešelj, Frenki Simatović and Jovica Stanišić, with the aim of creating an ethnic Serbian territories by displacement of non-Serb population. During the trial before the ICTY it was found that in 1991 a detention facility was set up in the old hospital building in the center of Knin. Part of the hospital was used as dormitory by “Captain Dragan's men and members of the reserve forces of the JNA”. In the period from mid 1991 to mid 1992 some 120 to 300 persons were detained in the old hospital building in Knin. Detainees were Croatian and other non-Serb civilians, as well as members of the Croatian armed forces. The prisoners were regularly threatened, beaten, often by several guards at once, each of them using rifle butts, batons and wooden bats. They were also sexually abused.

On 25 July 1991, the units under the command of Captain Dragan and War Headquarters in Glina attacked the village of Struga. That operation involved 50 members of the 'special forces', 50 policemen and 700 civilians. After the attack, the JNA intervened and created a buffer zone.

Deliberating the status of Dragan Vasiljković in the case of Stanišić and Simatović<sup>3</sup>, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) concluded that from May to August 1991, Captain Dragan commanded the members of the Unit in the training centres in Golubic and in the Knin fortress, as well as during the attacks on Glina and Struga.

### *Verdict against Zagreb Pride*

In July 2015, Osijek County Court upheld the verdict of the Municipal Civil Court in Zagreb<sup>4</sup> by which the association Zagreb Pride is obliged to pay non-pecuniary damage to the plaintiff Karolina Vidović Krišto in the amount of 30,000.00 HRK, plus default interest and attorneys' fees. The total amount to be paid is 41.018,91 HRK because of the article „Elections for Homophobe and Homofriend 2013“, published on the Zagreb Pride web-site.

At the press conference, Marko Jurčić from Zagreb Pride pointed out that the Association considers such a verdict as limitation of the freedom of speech in the Republic of Croatia. He said: „Mission of Zagreb Pride is a public indication of homophobia, bi-phobia and trans-phobia, so our basic duty and activity is to react every time when we hear, see and note that someone exhibits such behaviour. For us, this verdict means that the work of Zagreb Pride is currently blocked and censored in the fight for the human rights of LGBT people.“<sup>5</sup>. He called for solidarity and announced that Zagreb Pride will seek protection of fundamental rights of LGBTIQ people before the Constitutional Court, as well as of all those who believe in equality and dignity of all Croatian citizens, because they believe that the right on freedom of speech is guaranteed by the Constitution of the Republic of Croatia.

### *Commemoration of the Military-Police-Action (MPA) “Storm“ and criminal war crime proceedings up to date*

During official commemoration of the MPA Storm, almost twenty years after it happened, it is still not possible to simultaneously celebrate the victory and to remember the victims. In Croatia, the 20th anniversary of the 'Storm' will be marked on 4 August by a military parade in Zagreb, and on 5 August by commemoration activities celebrating the Victory and Homeland Thanksgiving Day and the Day of Croatian Defenders in Knin.

Prime Minister of Serbia, Aleksandar Vučić, announced a joint commemoration of the 20<sup>th</sup>

<sup>2</sup> ICTY Verdict of 12.06.2007; <http://www.icty.org/x/cases/martic/tjug/bcs/070612.pdf>

<sup>3</sup> [http://www.icty.org/case/stanisis\\_simatovic/4](http://www.icty.org/case/stanisis_simatovic/4)

<sup>4</sup> Poslovni broj: 39 Pn- 2238/13-7, of 23 October 2014, <http://www.zagreb-pride.net/presuda-u-ime-republike-hrvatske/>

<sup>5</sup> Slobodna Evropa: <http://www.slobodnaevropa.org/content/zagreb-pride-presuda-ogranicavanje-slobode-govora/27125007.html>

anniversary, organised by the Republic of Serbia and the Republic of Srpska, consisting of lighting candles on the border crossing Rača between Bosnia and Herzegovina and Serbia. Prime Minister Zoran Milanović, in his reply to media, said: “I am sorry that no foreign delegation has ever come to Knin, they will not do it this year either. But again this is our celebration, our feast; it is not directed against anyone. I'm sorry if someone feels badly about that. It is our holiday.” Aleksandar Vučić emphasised that “we will never forget the biggest crime of ethnic cleansing after the WWII on the territory of the contemporary Europe.” Minister of Foreign Affairs, Vesna Pusić, said: “Croatia does not celebrate anyone's suffering, it celebrates its liberation from occupation and we expect not only understanding, but also support for this by every normal politics.”<sup>6</sup>

Four criminal proceedings for crimes committed during and immediately after Operation Storm have started.<sup>7</sup> Only one criminal proceeding resulted in a final conviction in relation to one defendant<sup>8</sup>.

Croatian Helsinki Committee data show 677 civilian victims and almost 20.000 units of destroyed private property belonging to Serbs. If we focus on 167 victims of war crimes, the number counted by the State Attorney Office, with the maximum respect for discretionary powers of the prosecution, we can observe rather meagre statistics of prosecution.

Discretionary powers of state attorney's offices used in the selection of crimes to be investigated or prosecuted must be based on the right to an effective investigation and effective remedy and should not be discriminatory. The principle of equality before the law (prohibition of discrimination), has been incorporated into the Croatian Constitution (Art. 14), as well as in international instruments, the Universal Declaration of Human Rights (Art. 7) and the Convention for the Protection of Human Rights and Fundamental Freedoms (Art.14), which are part of the positive legislation of the Republic of Croatia and hold primacy over the laws by their legal importance.

The judgement of ICTY<sup>9</sup> clearly stated, beyond a reasonable doubt, that, based on a number of presented personal and material evidence and within the framework of crimes against humanity, criminal acts of murder, deportation, wanton destruction, plunder, inhumane acts, cruel treatment, and persecution were committed in the period from July to the end of September 1995, aimed at the permanent removal of the Serbian population from the Krajina region. This factual substrate was also confirmed by the Appeals Chamber of the Court.

In addition, a recent decision of the International Court of Justice<sup>10</sup> (3 February 2015) on the rejection of mutual lawsuits for genocide from Croatia and Serbia concluded that the crimes were committed with the intention of “forcible removal” and “ethnic cleansing” of the Serbian population from Krajina region. The Court also notes that crimes were committed in Operation Storm and that the exodus of the Krajina Serbs was a planned consequence of military operations for the Croatian leadership.

### *War crime of sexual violence in Bosnia and Herzegovina – a decision on compensation for the war crime victim passed together with the conviction*

On 24 June 2015, the Court of Bosnia and Herzegovina has found Bosiljko and Ostoja Marković guilty for committing war crimes against the civilian population and more accurately for the crime committed to the minor girl which took place in June 1992 in the municipality of Kotor Varos. They were sentenced to 10 years in prison each and ordered to pay compensation to the victim for damages

<sup>6</sup> Source: <http://www.hrt.hr/enz/dnevnik/292521/>

<sup>7</sup> For crimes in Prokljani and Mandići- judgment of the County Court in Split; for the crime in Grubori, Zagreb County Court acquitted the two defendants; for crimes in the village Kijani County Attorney's Office in Rijeka filed an indictment against one person, and the investigation of crimes in Grubori and Ramljani is still ongoing before the County Attorney's Office in Zagreb.

<sup>8</sup> Crime in Prokljani and Mandići; <http://www.documenta.hr/hr/zlo%C4%8Din-u-prokljanu-i-mandi%C4%87ima.html>

<sup>9</sup> Judgement IT-06-90-T against Ante Gotovine, Ivana Čermaka and Mladena Markača, April 15, 2011., <http://www.icty.org/case/gotovina/4>

<sup>10</sup> Source: <http://www.icj-cij.org/docket/files/118/18422.pdf>

suffered.<sup>11</sup>

Bosiljko and Ostoja Marković were convicted that, as members of the Republic of Srpska Army, Kotor Varos brigade, they came together with other persons to the village of Orahova, mainly inhabited by Croatian population, and took out the protected witness, minor at that time, from her house and alternately repeatedly raped her on 28 June 1992, by use of force and threat to life and body.

This judgement represents a positive development in the case law, because the court did not only found the defendants guilty, but also granted the victim of rape with compensation for damage. To our knowledge this is the first such verdict in Bosnia and Herzegovina, but also in other countries formed after dissolution of the Yugoslavia, in which the Court used its powers and decided about the compensation claim of the victim within the criminal proceedings.

The case law, for the courts in Croatia as well as in Bosnia and Herzegovina, is that the criminal courts were always instructing victims to exercise their right to compensation of damages in civil proceedings, rather than to decide on it in the criminal proceedings, in accordance with the existing legal basis. As a result, most of the survivors - who do not receive any legal support from the state - simply renounce their basic right to compensation. The reason is that recourse procedures in a civil lawsuit involve disclosure of their identities, which are often protected during criminal proceedings in Bosnia and Herzegovina, and such additional procedure leads to re-traumatisation of victims. Also, this requires additional financial costs that many victims are unable to pay. Therefore, this decision is a positive step for the realisation of the rights of victims of war in Bosnia and Herzegovina.

The injured party in this case was represented by the NGO TRIAL from Sarajevo. TRIAL has provided her with legal support, coordinated with other organizations to provide psychological support and put pressure on the judicial institutions to undertake certain activities related to the criminal prosecution.

This judgement is a positive development in the jurisprudence, but it also emphasises the need for further advocating of legislative changes as well as the increased activities of the institutions, courts and prosecutors' offices to facilitate victims' access to justice.

### *Attack in Srebrenica overshadowed the remembrance of genocide victims*

The attack on Serbian Prime Minister Aleksandar Vucic that happened during the commemoration in Srebrenica, which was held to mark the 20<sup>th</sup> anniversary of the perishing of more than 8,000 Bosniac men and boys of Srebrenica, overshadowed the commemoration "that was supposed to be the most important tribute to the victims of horrible crimes, the most of the media in Bosnia and Herzegovina reported"<sup>12</sup>. Munira Subašić, president of the "Mothers of Srebrenica and Žepa enclaves" condemned the attack: "This was not an attack on Vučić but on us, on our dignity! This was done by a group of people among whom I did not see the victims. We greeted Vučić and I told him to act as his conscience tells him to do. I gave him the Flower of Srebrenica which ended to be a tool of the attack. I'm really sorry that this happened"<sup>13</sup>.

Processions, in memory of the victims, were held in Dubrovnik, Rijeka, Split, Zagreb and other Croatian cities and were organised by the Coordination of Bosniac organisations. Klovičevi dvori gallery in Zagreb hosts a photo exhibition of British photographer Tim Loveless as part of the *Snapshot* cycle adding to the one installed by SENSE – Documentation Center Srebrenica. The

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<sup>11</sup> The defendants Bosiljko Marković and Ostoja Marković are obliged to compensate the injured party, protected witness 'S-4', jointly and severally, and to pay non-pecuniary damage in the amount of 26.500,00 KM as follows: for emotional suffering caused by the violation of freedom or rights of person the amount of 20.000,00 KM; for mental suffering due to decreased life capability the amount of 6.500.00 KM, all to be paid within 30 days under the threat of execution; <http://www.sudbih.gov.ba/?id=4065&jezik=h>

<sup>12</sup> *Jutarnji list*, <http://www.jutarnji.hr/bih--napad-na-vucica-zasjenio-zrtve-genocida--trazi-se-krivac/1381212/>

<sup>13</sup> *Portal Klik*, <http://www.klix.ba/vijesti/bih/majke-srebrenice-ovo-nije-bio-napad-na-vucica-vec-na-nase-dostojanstvo/150711078>

exhibition is opened in the organisation of SENSE - Center for Transitional Justice Pula and *Documenta* - Center for Dealing with the Past. It remains open until 2 August 2015.

*New cycle of judicial proceedings' monitoring as a support to development of justice*

As of 1 July, we are continuing to monitor the trials with the support of the European Economic Area and the Norway Grants (EEA / NG). Another NGO, Pravda from Bjelovar, has joint *Documenta* – Center for dealing with the Past, Center for Peace, Non-violence and Human Rights Osijek and Civic Committee for Human Rights, the human rights organizations which jointly monitor the war crimes procedures before the courts of the Republic of Croatia since 2005, in this new cycle of monitoring.<sup>14</sup>

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<sup>14</sup> The content of the report is the sole responsibility of the publishers and it does not by any means reflect the official position of the supporting organizations. The report was made within the project «Support to the Strategy of development of judiciary in the area of human rights», with the financial support by the European Economic Area and the Kingdom of Norway grants for civil society organizations, implemented in the Republic of Croatia by the National Foundation for Civil Society Development.