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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 crimes trials, acts of discrimination, hate crime and hate speech,  
the rights of war victims and the process of dealing with the past in the society**

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*Arrests of war crimes suspects*

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Đorđe Stojaković was extradited from Ireland on 17th July 2015 on the basis of European arrest warrant. The Vukovar County State Attorney's Office issued the indictment no. K-DO-30/10, of 8<sup>th</sup> December 2010 and accused Đorđe Stojaković of war crimes against prisoners of war by inhuman treatment towards prisoners of war. He is charged that on 19<sup>th</sup> November 1991 in Serbia near the bridge Erdut Bogojevo he pulled out two prisoners from the bus that transported Croatian POWs from Borovo Commerce, Vlado Kovačević and Vinko Miljak, and abused them and beat them.

Retired Serbian general Borislav Đukić, accused for war crimes against civilians in Croatia in the 1990's was arrested on 17<sup>th</sup> July 2015 in Tivat, Montenegro. According to the order by the investigative judge of the High Court in Podgorica he was placed in extradition custody. The Split County State Attorney's Office issued the indictment no. KT 27/93, of 13<sup>th</sup> December 1995 against Ratko Mladić, Mile Novaković, Borislav Đukić and Milan Korica, According to the indictment, generals Mladić and Novaković ordered Djukić and Korica on 28 January 1993 to set up large quantities of explosive to blow up the Peruca dam. About 30 tonnes of explosive was set up and the resulting explosion damaged the dam. The timely response of Croatia's HEP power utility prevented total flooding and the endangering of the lives of more than 50,000 residents of Sinj, Trilj and Omiš.

The Split County State Attorney's Office confirmed the information related with the arrest of Emilio Bungur, accused of war crimes against civilians in Lora in 1992, who is accused in another criminal procedure for war crimes in Lora. Emilio Bungur, unavailable to Croatian judiciary since 2004, was arrested in Žaborić near Primošten on 22<sup>nd</sup> August 2015 and immediately transferred to the prison in Split. On 28<sup>th</sup> August 2015 he submitted request for retrial before the County Court of Split.

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*Citizen of the Republic of Croatia accused of war crimes in Mostar*

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On 8<sup>th</sup> September 2015 the Prosecutor's Office of Bosnia and Herzegovina charged former Croatian Defence Council (HVO) member Mario Miličević, Croatian citizen living in the Republic of Croatia,

charged for crimes against humanity by committing offences against Bosniak prisoners in 1993 and 1994 in the Mostar area.<sup>1</sup>

According to the indictment, from July 1993 till March 1994 as Commander of the “*Benko Penavić*” Antiterrorist Unit of the Croatian Defence Council Miličević ordered that prisoners, Bosniak civilians be taken out (or took them out himself) from the prison camp *Heliodrom* to do forced labour and serve as «human shield»- According to the indictment, the prisoners were forced to build trenches, sand bag fortifications and carry heavy bags of sand on the front lines between the Bosnian Army and the Croatian Defence Council. In these actions five civilians were killed, twenty were wounded, while five civilians were physically abused by the members of the “*Benko Penavić*” Antiterrorist Unit under Miličević’s command.

According to the Article 9 of the Constitution of the Republic of Croatia, a citizen of the Republic of Croatia may not be forcibly exiled from the Republic of Croatia nor deprived of citizenship, nor extradited to another state, except in case of execution of a decision on extradition or surrender made in compliance with international treaty or the *acquis communautaire* of the European Union. Since there is the Protocol on Cooperation in War Crimes Cases signed between the State Attorney’s Office of the Republic of Croatia and the Prosecutor’s Office of Bosnia and Herzegovina, there is a possibility that upon exchange of evidence Croatian State Attorney’s Office starts criminal prosecution against Mario Miličević.

There are currently three cases before the courts of the Republic of Croatia whose indictments were the result of regional cooperation based on agreements between regional prosecution offices: for crime in Velika Kladuša an indictment was issued on 18<sup>th</sup> July 2014 against Čazim Behrić, citizen of the Republic of Croatia and of Bosnia and Herzegovina, currently tried before the County Court of Rijeka; for crimes in prison camps Gabela, Silos and Dretelj, the Split County State Attorney’s Office issued an indictment against two defendants, members of the *Knez Domagoj* brigade of the Croatian Defence Council who have double citizenship (Croatian and Bosnian); for the crime in Manjača camp the Zagreb County State Attorney’s Office issued an indictment on 23<sup>rd</sup> December 2014 against Ratko Andrić, citizen of the Republic of Serbia, vice colonel of Yugoslav People’s Army.

According to the report of the State Attorney’s Office of the Republic of Croatia for 2014, the Prosecutor’s Office of Bosnia and Herzegovina handed over information and evidence in five (5) cases related to five (5) Croatian citizens living in the Republic of Croatia, charged of war crimes on the territory of Bosnia and Herzegovina. In one case the indictment was issued, there is an investigation on-going against two (2) persons, and other cases are under consideration. The Doboj County State Prosecutor’s Office (BiH) delivered information related to ten (10) Croatian citizens under examination before the competent County State Attorney’s Offices.

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### *Condemnation of the initiative for rehabilitation of slogan "Za dom spremni"*

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A shocking citizens' initiative that the slogan «*Za dom spremni*» (“*Ready for the Homeland*”) become the official salute of Croatian Army, was not accepted neither by the President of the Republic of Croatia nor by other political and party leaders. The initiative was supported, among others, by two bishops of Roman Catholic Church in Croatia, Auxiliary Bishop of Zagreb Valentin Pozaić and Bishop of Sisak Vlado Košić. The initiative was labelled as provocative and anti-civilizational since the slogan was used only in the times of the *ustasha* Nazi puppet Independent State of Croatia and it is equalled with the Nazi salute. Among the reactions of civil society organizations we are stressing the statement by Croatian P.E.N. Centre: “We are against the recent suggestion that the *ustasha* slogan “*Za*

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<sup>1</sup> <http://www.tuzilastvobih.gov.ba/?id=3021&jezik=b>

*dom spremni*” becomes the official salute of Croatian Army and we condemn the use of *ustasha* symbols in public places and events. We point to the phenomenon of frequent falsification of history and denial of crimes committed in the Independent State of Croatia, especially at the death camp Jasenovac. We condemn the behaviour of Catholic Church in Croatia that offers an unhidden support to these events and their protagonists. We are also worried because of the ignorance of young generations regarding that period of Croatian history and their indifference, caused by textbooks and general unpreparedness to speak about it objectively and truthfully. We are observing the expressions of neoustasha movement in a wider framework of appearance and strengthening of neo-Nazi movements not only in parts of Germany, but also in other places of Europe, that as a consequence result in an increase of xenophobia, racism and anti-Semitism. They are a serious threat to the realization of the principle of European unity, openness and democratization of society.»

Apart from the historical, political and social motives for the absence of condemnation of *ustasha* crimes and their legacy, through the so far monitoring of hate crimes prosecutions we have noticed some legal flaws and their application. The use of the before mentioned *ustasha* slogan is punishable by several misdemeanour laws, and in more rare cases, when the slogan is linked to another offence, Criminal Code is applied. In practice this means the implementation of the *Law on preventing disorder at sport events*, *Public Order Act* and *Law on open public meeting*. The new Criminal Code regulates hate speech<sup>2</sup> as public incitement to violence or hate (article 325). The article 4 of the *Law on preventing disorder at sport events* prescribes what is prohibited at the sport stadiums and represents an offence: signing chants or sending messages whose content shows or incites to hate or violence on the basis of race, ethnicity, regional belonging or religion. Regardless of the fact that the Criminal Code foresees punishing anyone who directly incites to hate and violence or uses symbols that lead to such acts, the symbols themselves are not explicitly stated. According to the information available through media<sup>3</sup> obtained by the Ministry of the Interior and the High Misdemeanour Court from 2011 until today, so far the Police has registered 62 persons for public chanting of the slogan «Ready for the Homeland» and submitted 60 misdemeanour and two criminal reports, while misdemeanour courts have given 13 condemnatory rulings and financial fines of up to 700 kunas.

Also, at the same time the mentioned initiative represents a complete lack of reverence towards the victims of fascist terror.

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### *Relativization of crimes committed in ustasha camps Slana and Metajna*

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When Israeli TV crew came to the Island of Pag in early September to film a documentary on *ustasha* concentration camps in the bay of Slana and Metajna on the Island of Pag, the locals of Metajna called the police because of a supposed unauthorised filming of a school building, claiming that they do not know anything about the crimes and that they never occurred, so eventually the Israeli TV crew left Pag accompanied by the police.

We remind that death camps Gospić-Jadovno-Pag were established in Mid-April 1941 and operated as scaffolds until their closure and reoccupation of this area by Italian fascists by mid August 1941. At the concentration camps several tens of thousands of Jews and Serbs were killed from the whole then Independent State of Croatia. The camps Slana (for men) and Metajna (for women and children) on the island of Pag mainly gathered prisoners from labour camp Ovčara, near Gospić. Based on Italian

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<sup>2</sup> More on hate speech: Munirana Vajda, Maja (2014) *Zakonska podloga za sankcioniranje govora mržnje - devedesetih i danas* [Legal basis for sanctioning hate speech - in the nineties and today] In: *Dubljević, M. (Ed.) Procesuiranje ratnih zločina - Jamstvo procesa suočavanja s prošlošću u Hrvatskoj* [War Crimes Trials-Guarantee of the process of dealing with the past and sustainability of judicial reforms in Croatia], Documenta, Zagreb pp. 359 – 371; <http://www.documenta.hr/assets/files/publikacije/procesuiranje-ratnih-zlocina-FINAL.pdf>

<sup>3</sup> <http://www.jutarnji.hr/na-sudu-od--2010--samo-13-kazni-za-uzvik--za-dom-spremni-/1413042/>

documents and testimonies of the survivors, it was established that a really large number of people was already murdered and thrown in the sea in the Channel of Pag on their way to the island. The prospects of survival of prisoners were measured by unconceivable hatred, torture, rapes and planned executions. The last prisoners of Slana were the first prisoners and constructors of the camp of Jasenovac. Some researchers estimate that around 8.000 women, children and men were murdered on Pag.

A commemorative plaque to remind of the Serbs, Jews, Roma and Croats who were against the ustasha regime was placed and destroyed three times, the last time in July 2013. Civil society organisations protested against this constant continued destruction of the plaque and requested a police investigation. Aneta Lalić from Serbian National Council in the program *Prizma* commented: «Pag is not the only place of deaths nor the only place of the culture of oblivion, denial of genocide and holocaust in the Republic of Croatia. We can say that today there is an atmosphere where it is normal to repeatedly destroy plaques within two to ten days from their placement... It is very sad that on such a limited territory as an island the police are not capable of finding the culprits or the culprit. The fact that the culprits were not found shows that there is no interest to do so, and that the atmosphere of denial of what happened in Slana in the summer of 1941 is present at all levels of authority on the island of Pag.»<sup>4</sup>

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### *The disappeared*

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International Day of the Disappeared (30<sup>th</sup> August) is the day of remembrance of all the persons who are considered disappeared, whether during armed conflicts, crimes against humanity or violations of human rights.

On 29<sup>th</sup> August 2014 in Mostar the Declaration of the International Commission on Missing Persons was signed on “*The role of the state in addressing the issue of missing persons as a consequence of armed conflicts and human rights abuses*”<sup>5</sup>, signed by the then heads of state: President of Serbia Tomislav Nikolić, former Croatian President Ivo Josipović, President of Montenegro Filip Vujanović and the Chairman of the Presidency of Bosnia and Herzegovina, Bakir Izetbegović.

On 28<sup>th</sup> August this year in Zagreb the members of the Management Board of the Regional Coordination of Family Associations of Missing Persons from the former Yugoslavia, seated in Sarajevo, comprised of 17 associations of missing persons from Croatia, Serbia, Bosnia and Herzegovina and Montenegro. The purpose of the meeting was to adopt a common position on the issue of missing persons and to call for speeding up the whole process, since more than 12.000 families are searching for truth on their beloved who were gone missing as a consequence of armed conflicts in the 1990's. Also, members of the Regional coordination, as well as the representatives of the families of the missing persons, regardless of their ethnicity, religion or any other group or diversity, are demanding from the signatory parties of the Declaration, as well as from those who are not signatories, to fulfil the obligations of clarifying the destiny of their citizens.

On 30<sup>th</sup> August 2015 in Bučje and Pakrac was held the central event of commemorating the International Day of the Disappeared<sup>6</sup>, organized by the Union of Associations of Families of Captured and Missing Croatian Defenders and the Union of Croatian Civilian War Victims Associations with the Support of the Ministry of War Veterans, Town Halls of Pakrac, Lipik and Zagreba, Association of Children of Fallen and Missing Defenders of the Homeland War, Croatian Red Cross, under the high auspices of the President of the Republic of Croatia Kolinda Grabar-Kitarović. The event began by

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<sup>4</sup> Croatian Television Programme Prizma, 12.09.2015: <http://www.hrt.hr/enz/prizma/298579/>

<sup>5</sup> <http://www.icmp.int/wp-content/uploads/2014/08/signed-declaration-2.pdf>

<sup>6</sup> <http://www.compas.com.hr/clanak/1/1266/jos-jednom-upucen-apel-za-prekidanje-sutnje-o-sudbini-nestalih-osoba.html>

laying wreaths at the place of the former camp *Bučje*.

The Head of the Office of Missing and Detained Persons of the Republic of Croatia, colonel Ivan Grujić, representative of the Ministry of War Veterans, stated that during the Homeland War there were 18.000 detained persons, out of whom 7.666 were freed. In the last 20 year 148 mass graves and more than 1.800 individual graves were discovered, and there are still 2.012 missing persons.

In the case *Cyprus vs. Turkey*<sup>7</sup>, the European Court of Human Rights in its judgment brought in 2001 established that the continuing suffering of the families of missing persons constituted not only a continuing but also an aggravated violation of Article 3 of the Convention (“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”), because the silence of the Turkish authorities in the face of the real concerns of the relatives of the missing persons attains a level of severity which can only be categorised as inhuman treatment within the meaning of Article 3. In their ruling of 12<sup>th</sup> May 2014 the European Court of Human Rights ordered the Government of Turkey to pay a compensation of 30 million euros to Cyprus, that will be distributed to the individual victims whose family members disappeared during the armed conflict.

On 9<sup>th</sup> September 2015 in Brvik, Municipality of Bosanski Šamac (Bosnia and Herzegovina), an exhumation of the remains of one person was carried out, upon initiative and insistence of the family of the victim Ivo Karalić. Karalić was a member of Croatian Defence Council from Hasići (Municipality of Bosanski Šamac), and taken prisoner on 24<sup>th</sup> May 1992 at the frontline, near Grebnica. After being detained, he was taken to Bosanski Šamac camp where he disappeared. The exhumation was carried out at the place that witnesses pointed out as the place of burial of Ivo Karalić. The found remains were transferred to the Missing Persons Institute in Tuzla where identification will be carried out. The family of Ivo Karalić turned to the Prosecutor’s Office of Bosnia and Herzegovina with the request of criminal prosecution of the perpetrator of the crime against Ivo Karalić. Namely, until today, to the knowledge of the family members, Ivo Karalić is not listed as the victim on any indictment, neither before the ICTY nor before the Court of Bosnia and Herzegovina.<sup>8</sup>

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### *The First Review Conference of the UN Convention on Cluster Munitions*

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The First Review Conference of the UN Convention on Cluster Munitions was held in Dubrovnik from 7<sup>th</sup> to 11<sup>th</sup> September 2015 in Dubrovnik. Under the Convention on Cluster Munitions, States Parties may not stockpile cluster munitions, and must also destroy their existing stocks within eight years of joining. States Parties are obliged to clear areas contaminated by cluster munitions as soon as possible but no later than ten years after the entry into force of the convention for each state as well as to provide an adequate and comprehensive assistance to the victims.

Delegations from some 100 countries and civil society advocates are participated at the Conference.

During the Conference the members of Cluster Munitions Coalition, including victims of cluster munitions followed the progress achieved in the field of destruction of stocks of cluster munitions, contaminated areas cleanup and offering assistance to the victims in the last five years when the Convention entered into force, as well as in solving issues related to the new use of cluster munitions Documenta, together with the partners from Mine Aid Croatia represented Croatian civil society organisations.

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<sup>7</sup> <http://hudoc.echr.coe.int/eng?i=001-59454#%7B%22itemid%22:%5B%22001-59454%22%5D%7D>

<sup>8</sup> The witnesses, survivors and former prisoners of Bosanska Gradiška camp, told the family members that Ivo Karalić was imprisoned in Bosanski Šamac, but that they soon did not see him any more. They suspect that he was held in one of special cells, where representatives of Red Cross did not have access, therefore he is not registered on the list of prisoners of Bosanski Šamac camp, so he is not among the victims or affected of this camp

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## *Annex: Crime at the Military Investigation Centre "Lora"*

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The Military Investigative Centre «Lora» was military prison in Split from 1992 to 1997, where Croatian Army held Serbian and Montenegrin soldiers and civilians and Croatian soldiers during the Homeland War. The Investigative Centre was the scene of serious violations of International Humanitarian Law, as well as of violations of the prisoners' human rights. During the investigations of the crimes committed in Lora mechanisms of international legal assistance were used in order to obtain evidence and documentation. Therefore cooperation was realized with the Prosecutor's Office of Bosnia and Herzegovina, County Prosecutor's Office of Trebinje, War Crimes Prosecutor of the Republic of Serbia, High State Prosecutor's Office of the Republic of Montenegro and the International Criminal Tribunal for the former Yugoslavia in The Hague.

– Short review of judicial and investigation procedures:

- **"Lora1"**

After performing a thorough criminal investigation, on 27<sup>th</sup> September 2001 the Ministry of Defence, Military Police Service, Department of Military Criminalistics submitted to the County Attorney's Office in Split a criminal report against eight members of Military Police.

On 2<sup>nd</sup> March 2006 in a repeated trial the County Court in Split pronounced a verdict and the accused were found guilty for criminal offense of war crimes against civilian population according to the Article 120, paragraph 1 of the General Criminal Code of the Republic of Croatia, as follows: Tomislav Duić and Tonči Vrkić were sentenced to imprisonment for a period of eight (8) years, Davor Banić was sentenced to imprisonment for a period of seven (7) and Milenko Bajić, Josip Bikić, Emilio Bungur, Ante Gudić and Anđelko Botić were each sentenced to imprisonment for a period of six (6) years. The Supreme Court of the Republic of Croatia on 6<sup>th</sup> February 2007 upheld the first- instance verdict. The plaintiff Josip Bikić surrendered himself voluntarily and in retrial he made a guilty plea. On 29<sup>th</sup> December 2009 he was sentenced to imprisonment for a period of four (4) years. Milenko Bajić was arrested, his request for reopening the trial was accepted and in May 2012 he was sentenced to imprisonment for a period of 4 years and 6 months.

The convicted are Tomislav Duić, as the Commander of the Military Investigative Centre «Lora» within the of the 72nd Battalion of the Croatian Army Military, in the nature of military prison, Tonči Vrkić as Deputy Commander, Milenko Bajić, Josip Bikić and Davor Banić as members of the Intervention group- platoon of the 72<sup>nd</sup> Battalion of the Croatian Army Military Police and Emilio Bungur, Ante Gudić and Anđelko Botić as the prison guards where. Apart from the military prisoners at Lora a large number of "civilian persons" mostly of Serb ethnicity were held. From 12th June until early September 1992 Tomislav Duić and Tonči Vrkić allowed the guards who were under their command and other military and civilian persons who were allowed to enter the prison, to offend the detainees human dignity humiliating them, mistreated them both physically and mentally tortured and physically punished them until the death of some of the detainees. They also personally participated in such acts, thus violating the Geneva Convention provisions.

As a result two persons were killed (Gojko Bulović and Nenad Knežević), eight were heavily injured with long term health consequences (Mirko Šušak, Lazo Ostojić, Tomo Krivić, Rade Krivić, Uglješa Bulović, Duško Galić, Miroslav Katalina, Đorđe Katić – civilians of Serb ethnicity). The defendant Tomislav Duić was on the run from the beginning of the procedure, and after being let from detention Milenko Bajić, Josip Bikić and Emilio Bungur also fled, so the trial was held in their absence.

- **"Lora2"**

As the criminal investigation continued, on the grounds of suspicion that other criminal offenses were also committed at the military prison "Lora", on 8<sup>th</sup> December 2004 investigative report was submitted to the Investigative Centre of the County Court in Split against Tomislav Duić, Tonči Vrkić, Emilio Bungur, Ante Gudić and Anđelko Botić for war crimes against prisoners of war according to the article 122 of the General Criminal Code of the Republic of Croatia. On 23<sup>rd</sup> December 2008 the indictment

was issued against the above listed defendants. They were charged that from March to August 1992 in Split, Tomislav Duić, as the Commander of the Military Investigative Centre «Lora» within the of the 72<sup>nd</sup> Battalion of the Croatian Army Military, Tonči Vrkić, as Deputy Commander, Emilio Bungur, Ante Gudić and Anđelko Botić, as prison guards, together with unidentified persons at the Military Investigative Centre – Military Prison Lora, where prisoners of war were being held as members of the so-called Yugoslav People's Army and Serbian paramilitary troops, Tomislav Duić and Tonči Vrkić in the above stated quality allowed to the guards under their command and other military and civilian persons to enter the prison and to treat **37 prisoners of war** offending their human dignity by humiliating them, mistreated them both physically and mentally, tortured and physically punished them until the death of some of the detainees and they also personally participated in such acts, thus violating the Geneva Convention relative to the Treatment of Prisoners of War and other provisions of the international law. As a result **three prisoners of war died** (Dušan Jelić, Bojan Vesović, Vlade Savić), and others suffer heavy health consequences. The trial in this case starts on 9<sup>th</sup> September 2015 before the County Court in Split.

- **"Lora 3"**

As a result of cooperation with the High State Prosecutor's Office of the Republic of Montenegro and based on the information provided by one NGO, a criminal investigation was requested under suspicion for the death of a group of prisoners- members of the so-called "Nikšić- Šavnik group", who were brought to the Military Prison «Lora», where they were abused. The investigation is in course in order to verify the allegations and establish the facts and circumstances of the death of these prisoners.<sup>9</sup>

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<sup>9</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.