



*Documenta – Center for Dealing with the Past | Centre for Peace, Nonviolence and Human Rights | Civic Committee for Human Rights | Pravda Bjelovar*

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

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Osijek, Zagreb, Bjelovar 6<sup>th</sup> November 2015

**Biweekly report on war crimes trials, acts of discrimination, hate crime and hate speech, and on the rights of civilian war victims**

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***Institutions of the Republic of Croatia stepped back before the self-will of Branimir Glavaš, convicted by a non-final verdict for war crimes***

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We consider that the candidature of Branimir Glavaš for parliamentary elections is morally unacceptable, since he is convicted by a non-final verdict for war crimes against civilian population: the death of Čedomir Vučković, Đorđe Petković, Branko Lovrić, Alija Šabanović, Jovan Grubić, Milutin Kutlić, Svetislav Vukajlović, Petar Ladnjuka, Milenko Stanara, Bogdan Počuča, and one unidentified female and one unidentified male person, attempt of murder of Radoslav Ratković and the torture of Nikola Vasić and Snežana Berić. We warn to the vagueness of legal provisions, ignoring of ethical code of political officials as well as the ethical code of political parties, excessive length of judicial procedures and judgments that result in the lack of trust of the citizens in the judiciary and the rule of law.

In Croatia the most striking example of a politician tried for war crimes who tries to keep being part of the political elite is Branimir Glavaš – founder and informal leader of Croatian Democratic Assembly of Slavonia and Baranja (HDSSB), dominant political party in Eastern Croatia. After the Constitutional Court in January 2015 quashed the judgment of the Supreme Court of the Republic of Croatia that convicted Branimir Glavaš for war crimes against Serb civilians in Osijek, (now) with a non-final verdict, within the election campaign for parliamentary elections, HDSSB establishes and lines up male party members in black uniforms in front of the Croatian Parliament building. The line-up ceremony reminds of not so remote war events, recalling the images of fear, exile and refuge. Therefore we express our fear for the political abuse of intimidating symbols and concepts and we point to the flawed legal provisions, as well as to the excessive length of judicial procedures.

On 21st October, the Antifascist League of the Republic of Croatia filed a request to the Ethics Commission of the State Electoral Commission of the Republic of Croatia<sup>1</sup> to reconsider revoking the candidature of Branimir Glavaš as MP. As stated in the request, the behavior of Branimir Glavaš during October is an open threat to democracy in Croatia, the fundamental values enshrined in the Constitution of the Republic of Croatia and, in general, the development of Croatia as a decent country not burdened by fear. On 22<sup>nd</sup> October the Ethics Commission answered that the request refers to the events that occurred before the election campaign and that they cannot decide on them according to the

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<sup>1</sup> Ethics Commission evaluates the behavior of election participants during the election campaign and the election procedure and carries out external supervision of election campaigns;  
<http://www.izbori.hr/ws/index.html?documentId=7784C16B8C7C852EC1257EE1003991AD>

Art. 28 It. 1 and 103. It. 2 of the *Election Code of Ethics*<sup>2</sup>. At the same time in October the Ministry of Public Administration of the Republic of Croatia, as a comment related to the abuse of symbols, more precisely the line-up of Slavonian Hawkby HDSSB, stated that the Ministry of Public Administration is competent for authorizing the statutes of political parties in accordance with the Law on Political Parties. The Law does not contain provisions regarding the establishment or lining-up of honor guard, although symbolically it reminds on the 1st SS-Panzer Division *Leibstandarte SS Adolf Hitler*. Also, the very term «guard» (fr.) represents an elite military troop in charge of security and honors of statesmen; their body guard or personal escort.

According to the provisions in force, today we have an MP candidate, in this case representative of HDSSB in the IV electoral unit, with non- final verdict for war crimes, a man who fled from Croatian laws and judiciary, who lines up a guard of uniformed men, and on the other side a passive attitude of the society and state institutions. In the light of the reaction of the state through the preventive measures of the protection of democracy, we would like to point out to the ECHR judgment in the case of Vona vs. Hungary (Application No. 35943/10) of July 2013 where the Court unanimously decided that there was no violation of the Article 11 (Freedom of peaceful assembly and to freedom of association with others) of the European convention on human rights. The case discusses the dissolution of the Hungarian Guard Association because of anti-Roma demonstrations organized within the movement. In the Court's view, "the State is also entitled to take preventive measures to protect democracy *vis-à-vis* such non-party entities if a sufficiently imminent prejudice to the rights of others threatens to undermine the fundamental values on the basis of which a democratic society exists and functions... A paramilitary march goes beyond the mere expression of a disturbing or offensive idea, since the message is accompanied by the physical presence of a threatening group of organized activists. Where the expression of ideas is accompanied by a form of conduct, the Court considers that the level of protection generally granted to freedom of expression may be reduced in the light of important public-order interests related to that conduct."

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### ***Recognition and remorse for war crimes***

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During the yearslong war crimes monitoring we have observed that the admission of crime and expressed remorse of the perpetrator is not an often event in our courtrooms. At the trial before the Osijek County Court in October 2015, Đorđe Stojaković, accused of war crimes against prisoners of war by inhuman treatment towards prisoners of war – the crime on the bridge between Erdut and Bogojevo, according to the Art. 122 of the General Criminal Code of the Republic of Croatia, plead guilty. He was found guilty because on 19<sup>th</sup> November 1991, as member of the reserve unit of the Military Police of the Yugoslav People's Army near the bridge Erdut Bogojevo, after pulling out the prisoners of war from the bus, he participated in physical abuse of two prisoners of war from Borovo Commerce. The Court took into consideration his guilty plea and his remorse and sentenced him to 3 years of prison.

On the basis of the Vukovar County State Attorney's Office indictment no. K-DO-30/10 and European

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<sup>2</sup> **Amendments to the Act on Election of Representatives to the Croatian Parliament** (OG 19/2015), adopted the suggestions of civil society organizations, specifically: Voters and political parties may not nominate persons sentenced to an unconditional punishment of incarceration over six months in duration by a court decision in full force and effect if at the moment of the entry into force of the decision to call an election the punishment is being enforced or to be enforced. Also, Voters and political parties may not nominate persons whose rehabilitation terms under a special law have not expired at the moment of the entry into force of the decision to call an election, and who were sentenced by a court decision in full force and effect for any of the following crimes against humanity and human dignity: genocide, a crime of aggression, a crime against humanity, a war crime, terrorism, terrorist association, torture, slavery; criminal offences against life and limb: aggravated murder, and criminal offences against official duty: abuse of position and authority.

arrest warrant, Đorđe Stojaković was extradited from Ireland on 17th July 2015. During the trial he was in investigative detention in Osijek.

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### ***Position of the Supreme Court of the Republic of Croatia regarding in absentia war crimes trials***

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The trials against members of Serb paramilitary forces accused of war crimes are still being held *in absentia*. Therefore in 2014 in absentia were held against 27 indictees. We stress that in 5 cases against 7 defendants<sup>3</sup>, the trials were held *in absentia* and non-final judgments were rendered. The addresses of the 6 defendants are known: five (5) of them live on the territory of the Republic of Serbia and one (1) on the territory of Montenegro. We consider that there was an opportunity for cooperation between the judiciaries of the countries in the region. Also, a legal effect of these judgments is questionable, for the judiciary and for the injured persons in these procedures.

On 24th September 2015 the Supreme Court of the Republic of Croatia quashed the first-instance judgment of the Zagreb County Court in an *in absentia trial* against Dušan Žarković et al. (Crime in Joševica). The reasons of the abolishment of the first-instance judgment is the application of the Criminal Procedure Court<sup>4</sup> provisions, that require cumulative fulfilment of necessary preconditions of the Article 402, It. 3 of the CPC<sup>5</sup>. In this particular case the first-instance court has not reasoned why the extradition of the defendant or a trial in another country is not possible.

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### ***Availability of archival materials in the process of dealing with the past***

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At its 263<sup>th</sup> session, the Government of the Republic of Croatia<sup>6</sup> unanimously adopted a Resolution to declassify the documents of the Presidency of the Socialist Republic of Croatia (SRC), Executive Council of the SRC Parliament (executive power) and the SRC Parliament (legislative power). Therefore the documents of the above mentioned body will be available to the public- the archival materials of 30 or more years since their creation, until 31<sup>st</sup> December 1984, as well as the archival materials of the above mentioned bodies of executive and legislative power in the period from 1985 to 1990.

At the same session the Government adopted the Resolutions on defining deadlines of use of archival materials created during the presidential office of Franjo Tuđman: 30 years after the creation of documents for the archival materials that are not confidential, and 50 years for classified documents, containing data related to external affairs, defense and national security affairs, whose availability would be detrimental to the national interest of the Republic of Croatia.

We welcome the Government's initiative regarding the declassification of archival materials of the former SR Croatia, but we warn to the further lack of transparency and deprivation of the public regarding the documents created during the presidential office of Franjo Tuđman. According to the Resolution, such documents will not be available for 50 years to the public, and upon individual

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<sup>3</sup> See Crimes at the Bršljenovica hill near Plaški, Crime in Čanak near Korenica, Crime in Drinovci, Crime in Banski Grabovac, Crime in Slano.

<sup>4</sup> Official Gazette no.152/08, 76/09, 80/11, 91/12 – Judgment of the Constitutional Court of the Republic of Croatia, 143/12, 56/13, 145/13 i 152/14)

<sup>5</sup> The defendant can be tried in absentia only if there are especially important reasons for the trial, and a trial in a foreign country is not possible, or his/her extradition is not possible or he/she is unavailable to the authorities.

<sup>6</sup> Source: <https://vlada.gov.hr/sjednice/263-sjednica-vlade-republike-hrvatske-18006/18006>

requests to access and use they will depend on the approval by the Commission for Archival Materials of National Interest.

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### ***2138 missing persons – The Book of Missing Persons as an appeal to the publicc***

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On 30<sup>th</sup> October 2015 a fourth edition of the *Book of missing persons on the territory of the Republic of Croatia*<sup>7</sup> was presented. The book contains two separate lists: a list of 1716 persons missing on the territory of the Republic of Croatia during the Homeland War from 1991 to 1995, and the list of 422 persons that it is known that they are dead, but their bodies are still not found. In total, these are 2138 cases unsolved on the date of the publishing of the Book, 1<sup>st</sup> May 2015. The book also contains 52 open request for finding missing citizens of the Republic of Croatia on the territory of Bosnia and Herzegovina.

At the book presentation the Minister of War Veterans Predrag Matić stressed that during his term of offices no difference was made between the persons missing during the Homeland War in 1991 and the ethnic Sebirs missing during the MPO «Storm» in 1995. He underlined that the main adverse factor is the lapse of time. It is increasingly difficult to find the real evidence leading to the missing persons. Therefore the book is an appeal to the public to contribute with their information to the process of finding and clarification of the fate of the missing, as well as to overcoming of the problem that constantly burdens the war trauma.

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#### ***Annex: In the light of the difficulty of yet another day of humanitarian crisis- appeal of the Initiative «Dear refugees: Welcome to Croatia»***

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Because of the importance of the response of Croatian society in accordance with the principles of the respect of human rights to the refugee crisis, and the fact that in early November there were 60 million displaced persons and refugees in the whole world, we pass on the appeal of the Initiative «*Dear refugees: Welcome to Croatia*».

On 2<sup>nd</sup> November 2015: Aggressive expression and excessive use of force cannot become the arms used by the police forces that manage refugee camps in Opatovac and Slavonski Brod. We repeatedly point to the necessity of peaceful communication and respectful attitude towards refugees and giving assistance in this extremely difficult life situation for them. We foster and strengthen volunteers to warn the police directly on crossing the limits of acceptable behaviour and to appeal to higher instances if they ignore these firendly warnings.

„Slavonia won't become a deposit for refugees“ said Branimir Glavaš, convicted by a non-final verdict for war crimes and who recently organized a line-up of Slavonian Hawk Guard in Osijek and announced a battle for Slavonia. At the same time, him and his party HDSSB are against opening of a refugee camp in Slavonski Brod. Having in mind the already organized citizens' protests in Slavonski Brod, we think that it is extremely important to build and preserve social spaces of solidarity and clearly and directly condemn intolerance and violence, especially violent and war rhetorics during the electoral campaign.

Having in mind the result of the elections in Turkey, and the victory of Erdogan and the AKP, in the atmosphere of fear of attacks against pro-Kurd activists and the strengthening of the ISIS forces in the

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<sup>7</sup> Source: <https://branitelji.gov.hr/vijesti/predstavljeno-cetvrti-izdanje-knjige-osoba-nestalih-na-području-republike-hrvatske/1237>

context of European-Turkish agreement on financial assistance to Turkey to build a *hotspot* country, we call to strong protests against the development of autocratic regimes that suppress human rights and freedoms. The attacks against refugees in camps and other transit points are frequent in Turkey and other countries that are Croatia's neighbors. We cannot allow this practice to develop in Croatia, and it is unacceptable that the police forces do not have an adequate response in such cases – an ultimate protection of the refugees, their rights to safety and dignity. We raise our voice against any form of violence against refugees in the whole world.

The same way that Hosseini's mountains echoe, many have looked for their families that they lost by moving in narrow caravans towards camps or buses that transported them to their next destination. We hope that their stories will end much faster than in the case of Hosseini's characters. We stress that everybody has the obligation and responsibility to protect the unity of a family.

How does the world respond to this humanitarian crisis and the fact that today there are 60 million displaced persons and refugees in the whole world?

From Tovarnik, with solidarity<sup>8</sup>

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