

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, and on the rights of civilian war victims

Worrying decisions of the State Prosecutor's Office (DORH)

DORH/USKOK The Office for the Suppression of Organized Crime and Corruption (USKOK) announced on 21st January 2016 that the investigation against Josipa Rimac, the former Mayor of Knin and current HDZ's Member of Parliament, and her husband Danijel has been stopped. However, USKOK announced that they have charged Ana Marija Radić, director of the *Administration for Areas of Special State Concern* of the *Ministry of Regional Development, Forestry and Water Management*, with abusing her position from mid-2008 to the end of 2009 by making a series of unlawful acts which made it possible for Rimac and her husband to acquire two condominium units in a building in Knin of 128,68 m² each. It remains unclear why would the indicted endanger her position, if not incited to abuse her official powers by the persons to whose benefit the alleged criminal offence is committed, i.e. the then Mayor of Knin?

Based on the charges pressed by MP Branimir Glavaš of the HDSSB regional party the Office for the Suppression of Organized Crime and Corruption (USKOK) ordered investigation against MP Gordana Rusak, on grounds of attempt to bribe other parliamentary deputies, according to the Article 339 of the Criminal Law. On 27th January 2016 USKOK dismissed criminal charges against MP Rusak, since the investigation has shown that there was nothing unlawful in Rusak's conduct. It is indisputable that Rusak has not received nor asked for material gain for voting in a certain way, but in order to join certain political option.

On 7th January 2016, the Zagreb County Prosecutor's Office called off an investigation for war crime in the village of Ramljani into Željko Sačić, wartime Interior Ministry special police assistant commander, and Frano Drlje, former member of the Lučko police anti-terrorist unit, suspected on the grounds of command responsibility of not monitoring, sanctioning and reporting on the killings of six elderly Serb civilians by members of the 'Lučko' special police unit in the village of Ramljani, immediately after the crime committed in Grubori near Knin, in August 1995. The laconic explanation of the decision states that there is no reasonable doubt that both of the suspects committed war crime in the village of Ramljani.

Until the date of the publication of this report, neither police nor the State Prosecutor's Office have reacted to the *ustasha* salutes and hate speech at the rally held on 26th January 2016 before the Agency for Electronic Media.

Disciplining the journalists

On 10th December 2015 *Journalists' Court of Honor of the Croatian Journalists' Association* with five votes in favor and two opposing separate opinions, decided that the journalist Nikola Bajto as author, and Ivica Đikić as editor of the *Novosti* weekly, violated the Code of Ethics of Croatian journalists¹ with the satirical poem «Our beautiful howitzer». The poem published on 7th August 2015, was a satirical comment of the marking of the 20th anniversary of the Military Police Operation Storm, and the attitudes towards the non-prosecuted war crimes against Serbian civilians. The Court of Honor, with separate opinions by Veronika Rešković and Marinko Jursić, adopted the conclusion that Nikola Bajto violated Articles 6 and 13 of the Code of Ethics of Croatian journalists. He was given a reprimand, with an explanation that "... the title and the text of the poem is a parody of the lyrics of Croatian national anthem", and that "the poem written by Nikola Bajto offers simplified and imprecise hypotheses, that additionally burden (the already burdened) interethnic relations (between Croats and Serbs) in the Republic of Croatia (or between Croatia and Serbia). The journalism should not serve to that purpose, nor it should work that way, since it should be constructive in its efforts, even when it comes to criticism, instead of being destructive and insulting." In their separate opinions Veronika Rešković and Marinko Jursić considered that it is a satire, an integral part of the freedom of expression. They also consider that the Court of Honor should not have taken into account the complaint of the journalist Mario Čužić in the first place, since he accused Nikola Bajto of committing an offence according to the Article 349 of the Criminal Code, as well as the violation of the *Law on the Coat of Arms, the Flag, and the National Anthem of the Republic of Croatia, and on the Flag and Sash of the President of the Republic of Croatia*, which is not a competence of Croatian Journalists' Association, but the State Prosecutor's Office. Apart from their position based on common sense, we would add that the role of the satire is to loosen, and not to tighten interethnic relations. We find alarming the fact that the majority of the *Journalists' Court of Honor of Croatian Journalists' Association* yielded to the increasing pressure to follow one-sided interpretation of the war events in the 1990s. Since Nikola Bajto and Ivica Đikić did not file a complaint, the decision of the *Journalists' Court of Honor of Croatian Journalists' Association* is final.

Hate speech vs. freedom of expression

On 19th January, Marko Jurič, author and speaker of the local Zagreb TV station Z1 show "Markov trg", transmitted by some other local television stations in Croatia, and, according to him, also in Australia, for the second time sent the following message to the citizens of Zagreb: "A message to all the citizens of Zagreb, all of you who walk the Flower Square, beware of the 'Chetniks' lurking in the city-center Serbian Orthodox church or, to paraphrase one Serbian government minister, the Chetnik vicars. Especially mothers with children, be careful that one of these Chetnik vicars doesn't run out of the church and, in their best style of killing, start a bloody feast on our most beautiful Zagreb square. Maybe we should put a sign: beware of the Chetnik!«

Croatian Journalists' Association (HND) condemned this statement, especially because this speech comes from the media. On 22nd January 2016, the Council of the Electronic Media Agency, Croatian broadcasting regulator, temporarily suspended the license of the Zagreb-based local television channel Z1 owing to alleged incitement to hatred in the program "Markov trg" which was aired on 19th January 2016. The Electronic Media Council unanimously decided to suspend the license of the Croatian capital city's local TV for a period of three days (from 26th to 29th January) and to inform the State Attorney's Office of possible breaches of the Article 12 of the Electronic Media Law².

¹ <http://www.hnd.hr/dokumenti>

² Official Gazette No. 153/09, 84/11, 94/13, 136/13

On 26th January a massive rally was organized before the Electronic Media Agency, where hundreds of persons shouted «Ready for the Homeland», "Rakić go to Serbia", "Radman go to Serbia", "Kosanović go to Serbia». Neither the police nor the State Prosecutor's Office filed any criminal charges for hate speech. The same day two NGO's, House of Human Rights and GONG called upon the institutions to file criminal charges regarding the shouting in front of the Electronic Media Agency building, in the protest organized by HVIDRA due to a three- day suspension of license to Z1 television channel. At the same time parliamentary deputies from HNS (Croatian People's Party) stated that the protest before the Electronic Media Agency is «an attempt of endangering the principles of the rule of law» and stressed the fact that the Vice Speaker of the Parliament Ivan Tepeš legitimized the protests. Therefore the HNS parliamentary club strongly protests against such practice and calls the MP's not to participate in such acts because it is their task to preserve the dignity of the Parliament, and the Electronic Media Agency is an independent body that respected the law and «suspended» Z1 for three days because of its obligation of filing charges to the State Prosecutor's Office of «hate speech and spreading panic and turmoil among citizens». Radimir Čačić (SDSS and the Reformists' Club) also stated that it was unacceptable that the decision of the Agency is used for creating an «atmosphere of fear and division».

Art. 325 It. 1. Whoever through the press, radio, television, computer system or Internet, at a public rally or otherwise publicly incites or makes available to the public, leaflets, images or other material inciting to violence or hatred towards a group of people or a member of the group on the grounds of their race, religion or ethnicity, origin, skin color, gender, sexual orientation, gender identity, disability or any other characteristics. (Criminal Code NN 125/11, 144/12, 56/15, 61/15)

According to the *Convention for the Protection of Human Rights and Fundamental Freedoms* the legal provision does not include every speech where some elements of hatred, insults, and discrimination could be recognized, but such speech that incites the others and calls publicly to violence and hatred. Of course, this causes major doubts and difficulties in the application of this provision in court practice: how to distinguish and where is the precise limit between the guaranteed right to the freedom of speech and freedom of expression, and the limitations to this right. According to the Article 10 of the *Convention for the Protection of Human Rights and Fundamental Freedoms* everyone has the right to freedom of expression without interference by public authority, but at the same time the Article 17 prohibits the abuse of rights aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the *Convention*. The criteria and the limits are not precisely prescribed anywhere. European Court for Human Rights stressed several criteria to be taken into account when assessing if a statement represents hate speech as a criminal offence: first of all, the purpose of the speech- whether there is an intent of spreading of racist or discriminating ideas by the speech, the speech content- if it is adequate for inciting to violence and hatred, and finally the context of the speech in the sense of establishing the status and the role of the perpetrator, dominant social climate, and the way and the means that the certain statement is expressed through, as well as the target audience. All these criteria should be assessed on a case-by-case basis, to determine with relative certainty whether it is hate speech that could be qualified as criminal offence or is it politically incorrect and inadequate speech, containing some discriminatory characteristics, but not representing criminal offence, but the freedom of speech which is, as such, necessary in a pluralistic and democratic society. If we take into account the above-described media statements, we conclude that by the application of the above mentioned criteria there are significant differences in the purpose, content and the intent of spreading discriminatory ideas. Therefore, while strongly advocating for the freedom of expression, we call upon the State Prosecutor's Office to consider filing criminal charges against the journalist Marko Jurič.

Calling on the media

The Z1 television program „Markov trg“ on 19th January called on the Director of Croatian News Agency HINA. The program stated that «Croatian Television and HINA are a disaster and wasting the money of Croatian taxpayers», and that the programs are edited by «half-literate people and a bit retards». HINA was, as the program argues, purged without respecting the legal procedure, and the loyalists of the current government occupy chief positions. On some websites articles appeared that question the private life of HINA's Director Branka Valentić, who filed charges for hate speech, as well as for libel. HINA Director's mandate lasts until January 2017. In our opinion, since the beginning of her period HINA is excellently performing its task of objective informing of the public.

The Novi list daily, where journalist Sanja Modrić works, refused to publish her column titled *Banana Prime Minister* criticizing the government. The social media and Croatian Journalists' Association transmitted the censored column³. In the situation of attempt of censorship (and threatening self-censorship) the role of the non-profit media became prominent, in order to broaden the media space and guarantee the rights of all the citizens to timely information.

Drmeljevo detention camp director convicted of 4 years of prison in the first instance for war crimes against civilian population

On 21st January 2016 the Rijeka County Court found Čazim Behrić guilty for war crimes against civilian population and sentenced him to 4 years of prison.

He was charged with war crimes committed from 11th June 1994 to 13th August 1994 against civilians detained in the Drmeljevo camp, Velika Kladuša (Bosnia and Herzegovina): civilians, among them children, women, pregnant women, disabled persons, men of all age. He was also charged with rape of a detained woman. Under inhuman conditions, the accused and his guards abused detainees physically and psychologically, insulted them, deprived them of medical assistance, because they were considered the enemies of the so-called the self-proclaimed Autonomous Region of Western Bosnia. In 2002 before the Karlovac County Court Fikret Abdić was found guilty and sentenced to 15 years of prison for ordering, planning, organizing and establishing several detention camps in the area of Velika Kladuša, where at least 5000 persons were detained.

The trial against the defendant Čazim Behrić started on 13th March 2015, and some of the witnesses were questioned before the institutions of Bosnia and Herzegovina. The procedure is the result of cooperation between the Special Department for War Crimes of The Prosecutor's Office of Bosnia and Herzegovina and the State Attorney's Office of the Republic of Croatia. The defendant was arrested in February 2014 in Vojnić, Croatia, where he was living at the time. During the investigation, as well as during the hearing, he was in investigative detention, based on the Article 123, Item 1, of the 2008 Criminal Procedure Code (danger of flight), since the defendant has dual citizenship of the Republic of Croatia and Bosnia and Herzegovina.

After the verdict the defendant Čazim Behrić was released from investigative detention. In determining the sentence the fact that he has no previous criminal record was taken into account as attenuating circumstance, as well as his position of Director of Drmeljevo detention camp in relation to his subordinates. Therefore he was sentenced to a prison sentence below mandatory minimum. The Court ordered that the defendant cover the trial expenses (5.000 kunas) and witnesses expenses (17.000 kunas). In the legal system of justice, the hierarchy of the severity of crime becomes visible when we talk about the years that the perpetrators should serve in prison. The victims see this as the equivalent to the acknowledgement given by the society for the violence they suffered. Therefore

³ <http://www.hnd.hr/zabranjena-kolumna-sanje-modric-banana-premijer>

small sentences for rape and sexual abuse also mean the lack of acknowledgement of the severity of the crime of rape, as war crime.

The Supreme Court of the Republic of Croatia established discrimination on grounds of sexual orientation in the statements given by Zdravko Mamić

On 17th June 2015, based on the extraordinary review for the protection of the right to equal treatment of the civil society organizations: Lesbian organization Rijeka – LORI, Zagreb Pride, Domino and Center for Peace Studies, against Zdravko Mamić, the Supreme Court of the Republic of Croatia modified the judgments of the Court from 2012 and the Zagreb County Court from 2011 and established that there was discrimination on grounds of sexual orientation. The Court also prohibited Mamić from further discrimination of people on grounds of sexual orientation in the media, ordered him to publicly apologize through the media and publish the decision in *Jutarnji list* daily, in the period of three days from the delivery of the decision.

Lower courts rejected the suit on the basis of the *Anti-Discrimination Law* because they considered it was a value judgment and hypothetical statements that did not bring the plaintiffs into unfavorable position by sexual orientation, so there was no direct discrimination. Also they considered that there was no harassment either, since the statement did not have as objective or really represented a violation of dignity or caused fear, or hostile, degrading or offending environment.

Contrary to the positions of lower courts, the Supreme Court of the Republic of Croatia in its recent judgment took the position that the first and second instance courts applied the law in a wrong manner, that the respondent violated the right to equal treatment with this statements, and that it is possible to verbally discriminate. The Court also established that the statement that «homosexuals are persons who, due to a deficit of aggressiveness and sacrifice cannot play professional soccer» represents treatment that potentially puts a person (a homosexual) into unfavorable position by other person (heterosexual men) in a parallel situation (employment of soccer players). Therefore with such statement direct discrimination is committed, based on the provisions of the Articles 2, It. 1 and 3, Item 1 of the Anti-Discrimination Law⁴.”

The Supreme Court mentions the "case Feryn"⁵ in four occasions as the basis for its decision. However, in no occasion does it state the number and the full name of the decision, stating that it is the judgment of the European Court of Human Rights, although it was the decision of European Court of Justice. On the other hand, the Supreme Court in its judgment does not mention the case of the European Court of Justice C-81/12 *Asociația Accept v Consiliul Național pentru Combaterea Discriminării*⁶ where the facts and the legal issues regarding are even more relevant than the "case Feryn". In that case it was an issue whether the statement of a stakeholder in a professional football club that he would never take a homosexual player represents discrimination.

On 30th January the Supreme Court's judgment and the public apology by Zdravko Mamić, given through authorized lawyer Jadranka Sloković, was published:

"According to the order emanating from the decision of the Supreme Court of the Republic of Croatia Rev 300/13-2 of 17th June 2015, which modifies the judgment of the SCRC VSRH Reg.No. Gž 12/11 of 18th April 2012 and the decision of the Zagreb County Court, Reg. No. 15 Pnz-6/10-27 of 24th March 2011, I hereby apologize to all the persons that consider that I discriminated them with the statement published in the article of *Jutarnji list* daily on 16th November 2010, titled «Gays could not play in my national team either».

⁴ SCRC decision no. 300/13-2

⁵ More on the case: http://www.vsrh.hr/CustomPages/Static/HRV/Files/EU11_Predmet-C-54-07-Feryn-Px.pdf

⁶ <http://curia.europa.eu/jcms/upload/docs/application/pdf/2013-04/cp130052en.pdf>

*Every offense of a powerful woman is a reflection of the powerlessness of a man*⁷

Every developed and modern society, Croatian included, should strive to gender social equality as one of its key objectives and priorities. Women represent around 51% of Croatian population, a huge human potential contributing to economic, political and cultural development of the society. Lately we have witnessed attacks on women who are publicly exposed because of their profession or activism. Verbal attacks against women aimed at devaluating their attitudes and values, are frequently directed at their private life or their personality. The attackers use the most sensitive areas to wound and intimidate strong women with the urge to silence them. Let us only mention the attack against the President of the Electronic Media Council, journalist Mirjana Rakić, Director of Croatian News Agency Hina, journalist Branka Valentić, the actress Nina Viočić. The form and the content of the attack are directed against their gender, therefore they are threatened with rape or they are given a «present»- Yugoslav Army or Chetnik cap, sent to them by raped women of Vukovar. We are just stating the last example of direct attack against strong women that the attackers want to transform into victims by using the sufferings of members of their own gender. The threats of rape confirm a deeply patriarchal structure of the society where men threaten to rape women when they want to subdue them. Only Center for Women's Studies condemned this attack: an establishment of harassing policies towards women⁸, while other institutions ignored the severity of the events. A civilized society to which we aim does not tolerate any form of violence towards any of its members.

Convocation of new Croatian Parliament and Government, protests against a minister with anti-democratic attitudes, and the first resignation vs. pressures against civil society organizations

After the parliamentary elections on 8th November 2015, none of the two big coalitions «Patriotic coalition» and «Croatia grows» gained the sufficient number of votes to be able to form government without the new party «Most». After lengthy negotiations «Most» formed coalition with the «Patriotic coalition» and designated as prime minister Tihomir Orešković, Canadian businessman of Croatian origins unknown to the public, until then manager in «Teva» pharmaceutical corporation. The constitutive session of the new Croatian Parliament was held on 28th December; HDZ's Željko Reiner, was elected Speaker. It took a month to appoint the new government, which was made public on 21st January 2016. On the same day *Platform 112* sent an open letter against the announcement that the new Minister of Culture will be Zlatko Hasanbegović, and the Minister of War Veterans Mijo Crnoja, requesting the Prime Minister- designate Tihomir Orešković to withdraw the appointment proposals, and the MPs to give a vote of no confidence to these persons with obviously anti-democratic positions. The next day the *Platform 112* organized protests under the title *Death of the freedom of expression at St. Marks' Square*. *Croatian Journalists Association, Croatian PEN Centre and Croatian Writers' Association* also protested. Croatian Parliament voted for the new Government on 22nd January in late-night hours.

The transfer of duties between the former Minister of War Veterans Predrag Matić and the recently appointed Mijo Crnoja, with the presence of the new Minister of Social Policy and Youth Bernardica Juretić was marked by intolerance, breaking the nameplate of the former Minister and a threatening atmosphere, characteristic of the veterans' protest in Savska 66, as well as the blessing of the facilities. After the Minister was appointed, information were published on his violent behavior, and the fact that he registered his residence in the town of Samobor, and not in Zagreb where he really lives and therefore evades taxes. Minister Crnoja resigned only six days after his appointment.

⁷ Roman Vodeb; <http://www.romanvodeb.com/>

⁸ <http://www.zenstud.hr/osuda-napada-na-mirjanu-rakic-i-ninu-violic-utjelovljenje-zlostavljacke-politike-prema-zenama/>

Civil society organizations became a topic of the discussions of Croatian MP's. At a session held on 22nd 2016 they were mentioned by SDSSB MP Branimir Glavaš, who has a non final verdict for war crimes, commenting the protests organized in front of the Parliament: «We know very well who is behind this *Platform 112*. These are the people who were used to living very well off the money of Croatian taxpayers for the last 20 years and drew money from the state budget... The leaders of these organizations are people such as Zoran Pusić, Sanja Sarnavka, Vesna Teršelič etc., etc., but I am not against any of them personally. And they know what is coming up now, when the cuts are imminent. We will cut there where the state and the people hurt less, and it is the so-called non-governmental organizations that will be left without money. This is why they were making noise in front of the Parliament, creating a perception of some kind of discontent». We would like to stress here that the above mentioned CSO's receive less than 10% of a total of their project assets from Croatian state budget, and pay more into the budget through taxes than they get from state support. Their financial balances and reports are published on their websites.

During the parliamentary session held on 27th January on the 2014 report on Croatian Memorial-Documentation Center MP Miroslav Tuđman (HDZ) reminded: «... five or six months before the acquittal of general Gotovina by the ICTY, *Documenta* organized a meeting attended by the then President of the Republic of Croatia and his counselors, the Chief State Attorney and his deputies, the President of the Supreme Court, and they all concluded that there would be no catharsis in Croatian society until Croatian political and military leadership from 1990's is condemned.» He concluded: «It is pretty difficult to work with these associations». In his final speech the Center Director Ante Nazor stressed: «So, we are not against cooperation, but since we are a serious institution, we simply cannot cooperate with those who are not interested in facts, but would allegedly like to confront us with their facts. Luckily the ICTY's decision was clear... By the way, we have an excellent cooperation with the Helsinki Committee for Human Rights in Serbia, whose President Ms. Sonja Biserko is an excellent example of how to work. But it is interesting that we heard the sentence that Serbia is responsible for war and aggression from the President of Serbian Helsinki Committee, while the head of *Documenta* association never pronounced that.»

At the session held on 29th January on the 2014 Report of the National Foundation for Civil Society MP Josip Đakić (HDZ) stated: «Civil society associations have the right to work and activity, to all what is described as their activity and registered as such. Also, we have our Homeland with its Constitution, laws and truths. And it is difficult to understand that some of the associations claim that there was a civil war in Croatia, that the Military Police Operation Storm was a joint criminal venture and that our generals were criminals and they should be sent to the Hague. They testified about that and the deceitful equaling between the victim and the aggressor, the victor and the defeated, the truth and lie, political constructs and manipulations on the civil war, on aggressor and victim were really in the focus of some civil society organizations. I want to say that it should not be like that and that the National Foundation for Civil society should apply clear and national criteria.» MP Ladislav Ilčić (Hrast) stated that «civil society is deeply degenerated». After the sessions held on 27th and 29th of January *Documenta* refuted the wrongful statements, by stressing that the organization repeatedly talked about the war in Croatia was an aggression by the Yugoslav Peoples' Army and Serbian troops, that is, a defensive war, containing some elements of civil war.⁹

⁹ 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.