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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, on rights of Civilian war victims as well as on the process for dealing with the past in the society

Compensation claims by the family relatives of those killed during and immediately after the „Storm“

The Republic of Croatia is a signatory to numerous international treaties, including the Convention for the Protection of Human Rights and Fundamental Freedoms, by which it committed itself to respect human rights and freedoms guaranteed by the Convention and its Protocols. In the context of the right to reparation of civilian war victims, especially the right to life and the prohibition of torture, it is obliged to carry out effective investigations.

In twenty years, the Croatian judiciary filed three indictments for war crimes committed during and after the military-police operation 'Storm', but only Božo Bačelić was convicted for killing of Nikola and Milica Damjanić, elderly married couple of Serbian nationality, in Prokljani near Skradin, and for killing of the enemy soldier Vuk Madić in Mandići hamlet. The same verdict of the County Court in Split acquitted three other defendants.¹ As for crimes in Grubori, the Zagreb County Court issued a verdict and acquitted Frano Drljo and Božo Krajina for war crimes against civilians committed on 25 August 1995 in the village of Grubori, during the search operation called „Storm Ring“. The indictment issued by the County Attorney's Office in Zagreb charged the defendants that, after the groups under their command entered the village, Frano Drljo himself and his subordinate Igor Bennet (now deceased), as members of Anti-terrorist Unit Lučko, fired at civilians, while other unidentified members of his group fired at civilians and burned houses whilst the defendants did nothing to prevent their subordinates to do this. During this event, Milica Grubor, Marija Grubor, Jovo Grubor, Jovan Grubor of deceased Damjan, Miloš Grubor and Đuro Karanović sustained gunshot wounds from which they died, and most of the houses and other buildings in the hamlet of Grubori were set on fire. For the crime in the village Kijani, County State Attorney's Office in Rijeka filed an indictment, which has not yet entered into force, against R.K., a member of the 118th Home Guard Regiment of

¹ <http://www.documenta.hr/hr/zlo%C4%8Din-u-prokljanu-i-mandi%C4%87ima.html>

the Croatian Army, for war crime against the civilian population committed from 15 August 1995 to 28 August 1995 in the village of Kijani, for killing two civilians, R.S. and M.S., in front of their house, and then burning of M.S. together with the house.² The county state attorney's offices recorded 6,390 criminal charges for crimes committed during and after 'Operation Storm', out of which, 439 related to the armed forces. According to the same statistics, 2,380 people were convicted, but the public does not know their identity or the criminal offenses that they were charged with.³

Although a large number of civil proceedings was initiated before the Croatian courts with a request for non-pecuniary damage caused by the killing of close relatives during the war, and these proceedings were not preceded by a conviction of perpetrators of war crimes or another crime, the courts generally refuse the claims for procedural reasons, most often because of the statute of limitations for criminal prosecution.

In addition, victims/plaintiffs are obliged to settle litigation costs, which in some cases amounted to 100,000 HRK. This fact completely negates the satisfaction of victims.

By analysing these processes during several years, we have concluded that the impossibility of obtaining compensation is an indirect result of inefficient investigation. 39 cases of 168 analysed were related to the killing and disappearances during or immediately after the „Storm“. Out of 39 claims filled before national courts, only three claims have been accepted and the relatives of those killed were granted compensation. Two judgments (one of which is still not legally valid) relate to the crimes committed in Varivode⁴. The positive outcome of these claims is directly linked to the decision of the Supreme Court of the Republic of Croatia from January 2012 in the case of Jovan Berić, which states that the father and mother of the plaintiff were shot and killed in their courtyard, and that nine elderly civilians of Serbian nationality were killed on the same day in Varivode, and that the death of the plaintiff's parents was caused by a terrorist act with the aim of instilling fear, terror and personal insecurity among citizens, and for which the Republic of Croatia is responsible pursuant to the Law on Liability for Damage Caused by Terrorist Acts and Public Demonstrations. This Law also stipulates that the obligation to damages exists regardless of whether the perpetrator is identified, prosecuted or found guilty. The claim filed by the children of the murdered Đurađ Čanak, killed in August 1995 in Zrmanja, was also adopted after the conviction passed by the County Court in Zadar⁵.

After exhausting all legal remedies in the Republic of Croatia, 17 applicants filed the applications before the European Court of Human Rights naming the violation of the right to life under Art 2 of the Convention, and ineffective investigation of crimes committed during „Operation Storm“.⁶ In four cases, the Government has signed a friendly settlement or unilateral declaration⁷ with applicants; Bibić and other vs. Croatia, application no. 74392/12, Perić vs. Croatia, application no. 38878/13, for

² Source: <http://www.dorh.hr/rije0511>

³ Source: <http://www.dorh.hr/rije0511>

⁴ On 2 September 1995, at around 5 p.m. in the village of Varivode, nine elderly civilians were murdered: Jovan Berić, 75 years old, Jovan Berić, 60 years old, Mara Berić, 70 years old, Marko Berić, 80 years old, Milka Berić, 71 years old, Radoslav Berić, 69 years old, Dušan Dukić, 75 years old, Mirko Pokrajac, 85 years old.

⁵ Verdict of 15.07.1996. K-9/96

⁶ <http://hudoc.echr.coe.int/eng#>{

⁷ An alternative way to resolve the dispute by signing of a friendly solution / settlement, the respondent can also offer signing of a unilateral declaration in recognition of damages in the claim

the death of father on the 11th August 1995 in Kistanje village; Nirvana Repac vs. Croatia, application no. 12992/13, for death of her father in the period from 8 to 11 August 1995 in Donji Srb village; Žarković and others vs. Croatia, application no. 75187/12, for death of relatives in Plavno on 24 August 1995. Four applications were declared inadmissible by the Court due to the expiry of 6 months period from learning about ineffectiveness of the investigation and for insufficient activity of the applicant in order to intensify actions of the state persecution authorities (Dušan Lončar and others vs. Croatia, application no. 12744/13, for death of relatives on 6 August 1995 near Žirovac; Grubić vs. Croatia, application no. 56094/12, for death of his mother on 5 August in Golubić; Kukavica vs. Croatia, application no. 79768/12, Dragan Radičanin and others, application no. 75504/12, for death of father in Selakova Poljana in August 1995). Other applications are still pending following communication with the Government of the Republic of Croatia.

Commemoration of the 20th anniversary of the military-police operation „Storm“

We are putting forward the question of recognition of victims' sufferings, without challenging the right to liberate and return areas into the constitutional order of the Republic of Croatia, where the members of the Serbian units committed serious violations of human rights in the period from 1991 to 1995.

We have already emphasized that according to the Croatian Helsinki Committee there were 677 civilian casualties during and immediately after the 'Storm'. According to UNHCR estimates, in 1995 before, during and after the military operations 'Flash' and 'Storm', some 250.000 Serbs fled Croatia. Out of 133.705 registered returnees only 48% stayed in Croatia, and 14,8% of them died after the return. Today 32,892 registered IDPs from Croatia live in other post-Yugoslav countries as follows: 25,962 in Serbia, 6,697 in Bosnia and Herzegovina, 198 in Montenegro and 35 in Kosovo.

We are reminding that the verdict of ICTY Gotovina and others (IT-06-90) „Operation Storm“⁸ 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 from February 2015 on the rejection of mutual lawsuits for genocide from Croatia and Serbia concluded that the crimes committed during the „Storm“ were done with the intention of “forcible removal” and “ethnic cleansing” of the Serbian population from Krajina region:

"479. In the present case, the Court notes that it is not disputed that a substantial part of the Serb population of the Krajina fled that region as a direct consequence of the military actions carried out by Croatian forces during Operation “Storm”, in particular the shelling of the four towns referred to

⁸http://www.icty.org/x/cases/gotovina/tjug/bcs/110415bcs_judgement_p1.pdf
http://www.icty.org/x/cases/gotovina/tjug/bcs/110415bcs_judgement_p2.pdf

above. It further notes that the transcript of the Brioni meeting, to which it will return later (see paragraphs 501-507 below), makes it clear that the highest Croatian political and military authorities were well aware that Operation "Storm" would provoke a mass exodus of the Serb population; they even to some extent predicated their military planning on such an exodus, which they considered not only probable, but desirable (see paragraph 504 below)."⁹

Despite the facts found, the recognition of victims' suffering is still missing and the official commemoration of the anniversary of the military-police operation 'Storm', organised by the state institutions in Zagreb and Knin this year, would not automatically include paying tribute to the memory of the victims. This part is left to the associations of families of victims and citizens' initiatives, such as *What, How and for Whom/WHW* and *Multimedia Institute*, who organised an action called „Otpisani (written off)“ to commemorate the 20th anniversary of Operation Storm and made a public call to collect and scan the books which were banned from the Croatian libraries in the 1990s. In addition to documentary material, collected 'written off' books and scanners to digitize them, this exhibition/action¹⁰ included the work and performance of the following artists: Antonio Grgić, Siniša Ilić, Public libraries, Božena Končić Badurina, Siniša Labrović and Luiza Margan. In this way the exhibition/action sought to affirm the field of art as a place of possible perspective changes and of hegemonic views.

Dalibor Matanić's movie „Zvizdan“, presenting the (im)possibility of love between a Serb and a Croat in the village near Knin during 1991, 2001 and 2011, offers a view of the events of the war seen from a different perspective as well as the ability to deepen public dialogue. The movie was recently presented in the Arena during the Film Festival in Pula and it will be shown in theatres this autumn.

Centre for Peace Studies (CMS) protested against the parade which will be held in Zagreb on 4 August in organisation of the Government of the Republic of Croatia¹¹. “We do not see the point of this parade. That only deepened the divisions in society. We regret that our politicians do not realise that militarism is not the solution to the problems. We should remember that the peaceful reintegration solved problems without firing a single shot,” said Gordan Bosanac from CMS during the press conference "War is over" held on Markov Square.

Sense - Center for Transitional Justice and the Serbian National Council, in cooperation with Documenta, presented a „Storm in The Hague“. The trial for crimes committed during and after the operation „Storm“ is one of the most controversial in the twenty-year long history of the Tribunal, primarily because the fact that the two trial chambers, on the basis of the same facts and the application of different legal standards, reached totally opposing decisions on the guilt or innocence of the accused Croatian generals. However, these conclusions do not question the facts of what actually happened during and after operation “Storm”.¹²

⁹ Unofficial translation, verdict available on: <http://www.icj-cij.org/docket/files/118/18422.pdf>

¹⁰ <https://www.otpisane.org/otpisane/>

¹¹ <http://www.cms.hr/hr/vojska-ministarstvo-obrane-rh/rat-je-gotov-ne-vojnomo-mimohodu>

¹² Sense - Center for Transitional Justice and the Serbian National Council in cooperation with Documenta presented a documentary material from the trial before the ICTY in the Gotovina et al (IT-06-90) called „Storm in The Hague“ that is available in Croatian and English at <http://snv.hr/oluja-u-haagu/>

Rights of civilian victims of war

In the days before the celebration of Victory and Homeland Thanksgiving Day we are warning that Croatian institutions do not provide appropriate support to our fellow citizens who suffered during the war.

Civilian victims of war are still waiting for the recognition of suffering due to the loss of loved ones and other grave violations of human rights. The vast majority has never got the status of civilian war victim or were granted a compensation for the suffered loss; they are still waiting for adoption of the announced laws on compensation.

The 2015 Plan of normative activities foresees to adopt a new Law on the Rights of Military and Civilian Victims of War and their families. In opinion of human rights organizations, the law should regulate the rights of all civilian victims and should not condition the exercise of their rights by setting a deadline for submission of applications or by imposing a property/income threshold as a limiting factor. It should also recognise medical records obtained from other post-Yugoslav countries and expand the possibilities of proving circumstances of injuries/losses by using both material and personal evidence (which are all obstacles to the exercise of rights under the current Law on Protection of the Military and Civilian War Invalids¹³). A positive step forward is recognition of the rights of victims of sexual violence during the war¹⁴, as well as Croatian Ministry of Veterans' announcement of a new Law on the rights of all civilian war victims.

When the time for solidarity with the civilian victims will come? The ruling elites so far did not have the will to pass a comprehensive package of legislation that would recognize the suffering of all the victims. Under the Law on the Protection of Military and Civilian War Invalids, according to statistics of the Ministry of Veterans of 31 December 2013, only a few hundred civilian invalids benefit from one or more rights (a total of 2,306 exercised rights), and 298 relatives received family disability allowances after the murdered, killed or missing family members.

It is not known how much of the budget funds will be set aside to mark the anniversary of the operation Storm, but we believe that the resources could have been used for civilian war victims instead of financing the military parade in Zagreb.

The decisions of the European Court of Human Rights on applications of civilian war victims in Croatia

During 2015, the European Court of Human Rights issued decisions for seven applications of civilian war victims (direct victims or relatives of those killed and missing) in respect of the violation of the right to life as per Art 2, and the prohibition of torture as per Art 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, due to ineffective investigation of the crimes committed. All the applications were submitted to the European Court after having exhausted all legal remedies in the Republic of Croatia, the perpetrators of any crime have not been convicted, and

¹³ Official Gazette no 33/92., 77/92., 58/93., 2/94., 76/94., 108/95., 108/96., 82/01., 103/03., 148/13.

¹⁴ Law on the Rights of victims of sexual violence during armed aggression against the Republic of Croatia in the Homeland war, NN 64/15, in force as of 18.06.2015.

no applicants have been granted the reparations in their country.

In the judgment for the application of B and others vs. Croatia (application no. 71593/11) of 18 June 2015, the European Court reiterated the views set out in the earlier judgment Jelic and others vs. Croatia (application no. 57856/11). It re-established a violation of the right to life due to ineffective investigation of crimes by which the husband and father of the applicant were taken away and murdered in 1991 in Sisak. It was pointed out that the investigation should cover not only the commanding responsible persons¹⁵, but also the direct perpetrators, because one of the main purposes of punishment is retribution, as a form of justice for victims, and general intimidation directed towards the prevention of new violations as well as the preservation of the rule of law, that is, that none of these objectives cannot be achieved unless the perpetrators are brought to justice. Local authorities are required to ensure the ability and willingness to carry out criminal prosecution against persons who illegally took the life of another, and in this case, the investigation was inexplicably delayed.

In the claim of Savo Žarković and others vs. Croatia (application no. 75187/12) the Government has acknowledged the violation of the right to life due to inefficient investigation of the applicant's father disappearance on 24 August 1995 in the village of Plavno by signing a unilateral declaration¹⁶.

In other claims: Nježić and Štimac vs. Croatia (application no. 29823/13), Dragan Radičanin and others vs. Croatia (application no. 75504/12), Radojka Kukavica vs. Croatia (application no. 79768/12), Gojević-Zrnić and Mančić vs. Croatia (application no. 5676/13) and Dušan Lončar and others vs. Croatia (application no. 12744/13) the ECHR reached a decision on inadmissibility of applications due to the expiry of 6 months period from learning about ineffectiveness of the investigation and for insufficient activity of the applicant in order to intensify actions of the state persecution authorities. At the same time, the court declared inadmissible the application of Z. and others vs. Croatia (application no. 57812/13) as premature because the State Attorney's Office reopened the investigation in connection with killing of the applicant's husband and father upon the judgment of the European Court in the Marguš vs. Croatia (application no. 4450/10), in which the court established that the rule *ne bis in idem* does not apply to the amnesty for war crimes.

2014 data on court cases related to discrimination

According to the Ministry of Justice, during 2014, the courts in the Republic of Croatia received 174 cases related to discrimination.

Most of them are infringement procedures because of harassment as per article 25 of the Anti-Discrimination Act (ADA), while several civil proceedings were launched for the compensation of damages (art 17, para 1, item 3 of the ADA), for the prohibition or elimination of discrimination (art 17, para 1 of the ADA) and as a preliminary issue in the labour disputes. In no adjudicated civil proceedings there was an acknowledgement of a claim, i.e. discrimination was not established.

¹⁵ Vladimir Milankovic, the deputy chief of the Sisak Police Administration in the time of indictment, was sentenced to 10 years in prison for war crimes against civilians and prisoners of war committed in Sisak.

¹⁶An alternative way to resolve the dispute by signing of a friendly solution / settlement, the respondent can also offer signing of a unilateral declaration in recognition of damages in the claim

During 2014 there have been six indictments as follows: for crimes of torture and other cruel, inhuman or degrading treatment under Art 104 of the Criminal Code (CC), for violation of equality under Art 125 of the Criminal Code, for violation of freedom of expression of national affiliation under Art 126 of the Criminal Code, for sexual harassment under Art 156 of the Criminal Code and for public incitement to violence and hatred under Art 325 of the Criminal Code. 16 cases opened in 2013 were passed to the following year thus totalling 22 criminal cases processed during 2014. Only 3 cases of that number were finalised last year.

No discrimination by occupation/status of self-employed persons in relation to the realisation of pension rights

On 3 June 2015, Constitutional Court of the Republic of Croatia rejected the complaint¹⁷ of the applicant who stated that she is discriminated as a lawyer in comparison with other self-employed persons.

She thought that she was unjustifiably and illegally suspended payments of the old-age pension because she re-started working as a lawyer, and especially that, as per provisions of the Pension Insurance Act (Official Gazette 157/13, 151/14 and 33/15), she is discriminated against in relation to other citizens of Croatia who, after the realisation of their pension rights, continue to perform their activities as self-employed and continue to receive their pensions, without any deductions, regardless of the type of recognised pension, and are not required to pay any contributions.

The Constitutional Court did not find any fact or circumstance that would indicate that the applicant was discriminated against in the realisation of a constitutional right of any quality: sex, religion, political or other opinion, national or social origin, property, birth, education, social status or other characteristics. Therefore, the Court found the reference to the violation of the constitutional guarantee of non-discrimination, referred to in Art 14, Para 1 of the Constitution, unfounded. The wording "other characteristics" in the Constitution means that the Constitution of the Republic of Croatia (as well as the European Convention) has an open list of protected grounds of discrimination (and not a closed one as for example Anti-Discrimination Act). Thus, in the Decision no U-III-1600/2004 of 17 October 2007, the Constitutional Court has found a discrimination on the basis of "position in realising the right to remuneration". Therefore, this decision does not mean that discrimination on the basis of occupation does not exist, or that it is not forbidden by the Constitution, but only states that in this case the applicant has not been discriminated against on the basis of occupation.

The State Judicial Council conducted elections for presidents of large number of county, municipal, commercial and misdemeanour courts

During April and July 2015, the State Judicial Council (SJC) published calls for the posts of presidents of 29 courts, namely county, municipal, commercial and misdemeanour courts. Also, elections for the judges of the Misdemeanour Court in Novi Zagreb are done for the first time. The court became

¹⁷ <http://sljeme.usud.hr/usud/praksaw.nsf/Novosti/C12570D30061CE54C1257E5900331035?OpenDocument>

operational on 1 July 2015 pursuant to the Act on the areas and seats of courts (Official Gazette 128/14).

The scope of the SJC are procedures of appointment and dismissal of judges, disciplinary procedures and approval for detention, decisions on remand and prosecution as well as decisions on the immunity of judges, transfer of judges, participation in training of judges and court officials, conducting the application and registration of candidates to the State School for Judicial Officials as well as exercising the process of taking and evaluating final exams, creating and implementing the methodology for evaluating judges, keeping property records of judges and finally, management and control of judges' assets tax declarations.

The new members of the State Judicial Council, elected in the elections held on 27 January 2015, are seven judges, Željko Šarić, Mijo Galiot, Damir Kontrec, Neven Cambi, Ivica Veselić, Sabina Dugonjić and Nediljko Boban, and two university professors of law, Eduard Kunštek and Igor Gliha. They were all sworn in early March before the President of the Supreme Court, and Željko Šarić, a judge of the Supreme Court, was elected president at the inaugural session of the new State Judicial Council.

Two representatives of the Croatian Parliament, Josip Leko from the ruling party and Davorin Mlakar from the opposition, remained as members of the new SJC. New representatives of the Croatian Parliament should be elected as members of the SJC during the elections that will take place at the end of the year.¹⁸

¹⁸ 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.