

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

Osijek, Zagreb, Bjelovar 18th December 2015

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

War crimes

15th December 2015

The Hague:

The Appeals Chamber of the ICTY quashed the Trial Chamber's decision to acquit Jovica Stanišić and Franko Simatović, and ordered that Stanišić and Simatović be retried on all counts of the indictment. Consequently, the detention of Stanišić and Simatović was ordered at the United Nations Detention Unit in The Hague, where they will remain pending further orders.

In a significant judgment that establishes a relation between the acts of State Security Service and war crimes, the first-instance decision was quashed, based on the standard according to which the leaders of State Security Service of Serbia did not offer assistance to their subordinate units (*Red Berets- special units of the Republic of Serbia DB, the Scorpions, Serbian Volunteer Guard- Arkan's Tigers and the Krajina police*) aimed at committing crimes, but at gaining control and maintaining the occupied territory. The indictment charges Stanišić and Simatović with crimes against humanity and violations of the laws or customs of war, on grounds of joint criminal enterprise and individual criminal responsibility, in Croatia (Baćin, Cerovljani, Dubica, Saborsko, Poljanik, Lipovača, Škabrnja, Bruška, Dalj, Erdut, Lovinac, Vukovar,) as well as Bosnia and Herzegovina.

According to the indictment, Slobodan Milošević, Veljko Kadijević, Blagoje Adžić, Ratko Mladić, Radmilo Bogdanović, Milan Martić, Goran Hadžić, Radovan Karadžić, Biljana Plavšić, Željko Ražnjatović Arkan, Vojislav Šešelj etc., besides the accused are identified as co-participants of joint criminal enterprise with the objective of forcible and permanent removal of non-Serbs from the territory of Croatia and Bosnia and Herzegovina.

The retrial will be held by the Mechanism for International Criminal Tribunals, before the Chamber composed by Judge Burton Hall former ICTY judge and Seon Ki Park and Solomy Balungi Bossa former ICTR judges. On Friday, 18 December Stanišić and Simatović will appear before judge Hall to enter their plea on the counts in the indictment against them.

15th December 2015

Croatia:

Before the Split County Court the trial continued against former members of the Military Police of the Republic of Croatia. The indictment covers crimes against 21 persons taken prisoners near Nos Kalik. The defendants are charged with non- prevention of abuse and personal participation in crime in the Military Prison Kuline, in Šibenik. Before the formal start of the hearing on 24th November 2015, due to the obstruction of the defence team, ten witnesses were examined at hearings before the main hearing. At the same court there is another criminal procedure underway against one of the defendants Damir Boršić, for war crimes against civilians held prisoners in Kuline. This procedure is in the phase of main hearing and the decision is expected at the beginning of next year.

14th December 2015

The Rijeka State Attorney's Office issued a decision on investigation against five former members of Serbian paramilitary troops. They are suspected for permanent physical abuse of civilians living in the surroundings of Slunj and rape of one woman living in the area.

9th December 2015

Before the Osijek County Court the trial started against Zoran Vučićević, former member of the so-called Erdut Militia. The defendant is charged with war crimes against civilians by orders of the commander Božo Bolić, and he is tried *in absentia*. The indictment states that in November 1991 he tortured and abused a couple from Aljmaš, hitting them with a baseball bat, and that he ordered the husband to take off his clothes and he squeezed his testicles with a nutcracker tool.

8th December 2015

The Supreme Court held a public session regarding the appeal against the acquittal of Franjo Drljo and Božo Krajina for the crime against six civilians in the village of Grubori, immediately after the Military- Police Operation «Storm».

So far there only one final judgment was rendered for the crimes committed during the MPO «Storm», convicting Božo Bačelić, commander of the 113th Reconnaissance Company of the Croatian Army Brigade from Šibenik, to seven years of prison for the killing a married couple of two civilians.

2nd December 2015

There is another *in absentia* trial underway before the Osijek County Court. Two defendants, Zdravko Pijunović and Ratko Zorić, former members of armed paramilitary platoon – the so-called Bilje Territorial Defense, are charged with crimes against civilians committed by intimidation and multiple rape of one person. The first hearing was closed for public.

1st December 2015

The main hearing at the trial against Tomislav Merčep restarted for the third time, due to the application of the provisions of the new Criminal Procedure Code.

It is the longest first- instance war crimes trial before Croatian courts (the criminal procedure is underway since December 2010, and in February 2015 the trial before first-instance council entered its fourth year and until now resulted in direct examination of over 150 witnesses). The defendant Tomislav Merčep was charged that, as commander of the MUP (Ministry of the Interior) reserve unit stationed in Pakračka Poljana and at the Zagrebački velesajam [the Zagreb Fair] and as adviser to the Croatian Ministry of the Interior, he personally issued orders to have civilians unlawfully confined, tortured and killed in the period from October to December 1991. Although he knew that his subordinates, with no authority, were confining civilians, plundering them, mistreating, torturing and



killing them, he failed to prevent such unlawful actions. Hence in the area of Kutina, Pakrac and Zagreb, his subordinates unlawfully confined 52 persons, out of whom 43 persons were killed, three went missing whereas the remaining persons survived the torture and abuse inflicted upon them.

In the meantime the indictment was modified and Merčep is no longer charged with individual criminal responsibility for the arrest of 52 persons and torture and killings of at least 23 civilians, but that he has not undertaken any action to prevent his subordinates from committing war crimes.

Monitoring of judicial reform and the phenomenon and prosecution of hate crimes/hate speech

14th December 2015

A round table discussion was held under the title *Monitoring of judicial reform and the phenomenon and prosecution of hate crimes/hate speech*.

The round table discussion, gathering representatives of the judiciary, the academia, as well as civil society organizations, was on how to improve the monitoring of judicial reform and prosecution of hate crimes.

Vesna Teršelič, Director of *Documenta* – Center for Dealing with the Past, assessed that there are many reasons for concern when it comes to the trust in judiciary and prosecuting hate crimes. She stated: "The Judicial reform is a one step forward two step back process, once and again... When we observe it in a longer period of, let us say 5 years, we can observe improvement, but we can see that there are frustrations with retrials in cases of corruption or war crimes"¹. She warned on the ignoring of indictments as well as of non-final and final judgments in the public. She especially stressed the late decision of the Constitutional Court regarding the case of Branimir Glavaš, accused of war crimes against civilian population. After that decision, although with a non-final first-instance verdict for war crimes against civilians, Glavaš was elected as MP for the new constitution of Croatian Parliament. We also witnessed the fact that Tomislav Merčep, accused for war crimes against civilians, attended the inauguration ceremony of the President of the Republic and the constitutive session of Croatian Parliament.

Deputy Ombudsman of the Republic of Croatia **Lidija Lukina Kezić** stated that the highest number of citizens' complaints to the Ombudsman refers to the field of judiciary. She stressed that the citizens are bitter and they claim that judgments are rendered based on superficial evidence and point to the abuse of office, corruption and conflict of interests. The complaints do not refer only to lower courts, but also to the Supreme and even to the Constitutional Court. As far as the judicial procedures regarding discrimination are concerned, the number of misdemeanour procedures has increased, but there are few criminal procedures. In 2014, according to the data of the Ministry of Justice there were 19 criminal procedures for discrimination.

Professor **Alan Uzelac** from the Faculty of Law of the University of Zagreb warned that there are two opposite poles in the public when it comes to the perception of the judiciary, and that there is not very much of real dialogue. On the one hand, the public is critical towards the judiciary, and on the other hand, the judiciary considers that there are no major problems in the system, or, that the problems arise

¹ Article by Veronika Rešković *Pravosuđu prijeti povratak na staro*: <http://www.forum.tm/vijesti/pravosuđu-prijeti-povratak-na-staro-3847>

because of the lack of understanding by the public.

Since the 1990s until today the reforms in the judiciary have been slow, but there is no evidence that root changes occurred, stated Uzelac. He stressed that the reforms increased under the pressure of the EU accession, but insufficient to really implement all the necessary measures. After Croatia joined the EU, he claims that there is a backward direction visible, which brings into danger the system whose establishing was a precondition for joining the EU.

Journalist **Slavica Lukić** is not surprised by the lack of trust. «One of the topics that certainly formed the image of the citizens on the work of the judiciary are the so-called big anti-corruption trials and their results. These are the big cases of USKOK Office for the Suppression of Corruption and Organized Crime that started by the end of the EU accession negotiations, and overlapped, by coincidence or not, with the resignation of the Prime Minister Ivo Sanader. Let us only remember the scandals with Podravka, HAC (Croatian Highways) and Croatian Postal Bank where the top management of Croatian state-owned companies was involved. The last straw was the cases against Sanader himself. We witnessed spectacular arrests before TV-cameras and leak of information from investigations. The citizens had great expectations that with Croatia joining the EU the judiciary reformed and managed to escape the pressures of politics. In the end, these expectations were not fulfilled".

State Judicial Council

26th November 2015

The competition for the appointment of the Zagreb County Court President is to be repeated. None of the three candidates, Ivan Turudić, the outgoing president, Jasna Smiljanić and Oliver Mittermayer have got the necessary support of six SJC members. ²

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