

Osijek, Zagreb, Bjelovar 26<sup>th</sup> February 2016

**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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**Increase of inter-ethnic conflicts in war areas**

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During the last two weeks two inter-ethnic conflicts occurred in the Republic of Croatia. The first conflict happened in Vukovar where the victim was a nineteen-year-old boy with a Croatian nationality, while the other conflict occurred in Okucani where the victim was a 22 years old boy with a Serbian nationality. In both cases the victims were young people, and more people participated on the side of the attackers and also both attacks happened in the evening of the weekend on public spaces. As a consequence of the attacks the victims suffered physical injuries, and the attackers showed persistence and brutality in the commission of the criminal offences.

In the first case, the County Attorney in Vukovar on the basis of a criminal complaint issued by the Police Department of Vukovar Srijemska the Police station in Vukovar delivered a decision to conduct an investigation against three Croatian citizens because of the existence of a reasonable doubt for committing a criminal offence an attempt for aggravated murder according to Article 111, paragraph 4 in relation to Article 34, paragraph 1 of the Criminal Law, as well as against the third accused because of the existence of a reasonable doubt that the criminal offense damage of other people's stuff was committed according to Article 235, paragraph 1 KZ and illegal possession, production and acquisition of weapons and explosives from Art. 331 paragraph 1 of the KZ.

In the second case the Police Department Brodsko Posavska submitted a proposal for an indictment for an offense against public law and order against more persons among whom was the victim and five attackers.

The analysis of these two events demonstrate that beside the brutality and aggression that are evident in both cases it is also concerning that in both cases the attackers and the victims come from different nationalities. Both cases occurred on the territory where former armed conflict existed, and where inter-ethnic intolerance is present in an area that is loaded with a significant number of unemployed young persons. The reason for an attack in both cases is indicative. In one of the cases it is estimated that the reason was among sport fans, while in the other case two songs served as a cause for the conflict. However, in both cases the attackers and the victims came from a different nationality.

It should be noted that the ŽDO in Vukovar by using the indicators for hate crime correctly determined that the criminal offense was an attempt for aggravated murder committed out of hatred (Article 111, paragraph 4 KZ). In this particular case, the crime was committed against a member that belonged to the majority (the circumstances linked to the victim). The perpetrators were members of a sports fan community, while the victim was perceived as a member who belonged to another sports fan community or he actually did. The behavior of the perpetrator is characterized with the brutality of the attack, and as the result of that attack the victim suffered injuries, specifically grievous bodily injuries.

Nonetheless, the events in Okučani deserve more attention. It seems that in the specific case the competent ŽDO from Slavonski Brod would require additional information from the Police Department Brodsko Posavski just by using the listed potential indicators for hate crime. Primarily because of the fact that out of the five persons who bet the victim one was under age two were above their thirties, while one was 42 years old. The reason for the attack is also indicative, since it was about songs and photographs that were posted on Facebook. As a result of the attack the victim suffered bodily injuries, in particular, minor injuries.

An adequate answer from the judiciary is needed so that an inter-ethnic conflict as well as any other form of violence is prevented. It is also needed so that the criminal offence and the motives behind it are determined correctly, and also for the purposes of identification of the victim and its family members and for determining the environment where the victim lived and where the criminal offence happened. Also, a commitment of the entire society is needed, as well as continuous work with potential victims, and with the communities that were potentially violent.

The public statements of the political parties and the political bickering surely will not contribute to the creation of a tolerant atmosphere. In areas where distrust and intolerance is evident an in-depth work is needed for the purpose of tackling prejudice, dealing with the problems and preventing violence.

In Croatia, as a member of the United Nations and the European Union the work related to research, detection and prevention of hate crimes is based on various international legal acts. <sup>1</sup>

Amnesty International in its yearly report from 2015 addresses that discrimination of national minorities in the Republic of Croatia is still present, especially discrimination of Serbs and Romas. <sup>2</sup>

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### Acquittal for the case «Grubori»

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On the 26th of February with the acquittal decision the repeated trial for war crimes against civilian population in Grubori was completed. The repeated trial commenced on 15<sup>th</sup> February 2016 in front of the amended Council of the County Court in Zagreb, with Presiding Judge Ivan Turudić, who explained in the verdict that ATJ Lučko undoubtedly committed the war crimes.

On 25 August 1995, in Grubori near Plavno a war crime against civilian population was committed. Members of ATJ Lučko killed the elderly Jovo Grubor, Milos Grubor, Marija Grubor, Milka Grubor, Đuro Karanovic and Jovan Grubor and Damjan who happened to be there.

The majority of the residents of Plavno and Grubori that day went to report to UNPROFOR which was located in the school building in Plavno to announce whether they were leaving to at the time SR Yugoslavia, or whether they were eventually staying in Croatia. The civilians from Serbian nationality that stayed that morning in their houses were killed.

Due to silence conspiracy between thirteen Judges and the inefficiency of the investigation and the trial the burden of responsibility regarding the action in which six elderly Serbian civilians were killed remains to be on all members of ATJ Lučko.

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<sup>1</sup> Directive 2012/29 / EU of the European Parliament and the Council (since 25. 10. 2012), which establishes minimum standards on the rights, support and protection of victims of crime. (56) Identify the possible motive of hatred or prejudice at the crime scene; (57) To assess whether a victim of crime at risk of secondary victimization, intimidation or reprisal and that there are strong indications that these victims benefit from special protection measures; The Framework Convention of the Council of Europe for the Protection of National Minorities, art. 6.; The Convention on the Prevention and Punishment of the Crime of Genocide of 12. 09. 1948; International Convention on the Suppression and Punishment of the Crime of Apartheid; The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) approved proposed for signature, ratification and accession by General Assembly resolution 34/180 of 18 12th 1979. Entered into force: 03. 09. 1981, in accordance with Article 27 .; The Convention on the Rights of the Child (CRC) in 1989. (Art. 2); Declaration of the International Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001.

<sup>2</sup> <https://www.amnesty.org/en/latest/research/2016/02/annual-report-201516/>

If the crime that according to the statement of Judge Turudić was undoubtedly committed by members of the elite units of the Croatian police we expect the State Attorney of the Republic of Croatia to file an appeal. We expect the State Attorney of the Republic of Croatia to commence an investigation against the other members of ATJ Lučko for whom it was confirmed that undoubtedly committed the crime.

It is also concerning that the State Attorney of the Republic of Croatia re-qualified the charges that indicated that Zeljko Sacic had command responsibility and helped a war crime to be committed which was obsolete, especially since during the procedure numerous witnesses (Marko Gojevic, Karolj Dondo, Cedo Romanic, Zvonko Gambiroza and Stjepan Buhin) mentioned the presence of the regular police that had to conduct the investigation in the village, and also the presence of Sacic who used his function and influence to stop the investigation at any cost.

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[Notice of announcement of two first- instance judgments in front of the International Criminal Tribunal for the former Yugoslavia in the cases Kradzic and Seselj](#)

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### **First Instance Judgment in the case Vojislav Seselj, 31 March 2016**

The Trial Chamber has scheduled an announcement of the judgment in the case against the Serb leader of the Serb Radicals and at the same time ordered the Serbian authorities to take all necessary measures to ensure the presence of the defendant Seselj in the courtroom of the ICTY. Vojislav Seselj voluntarily surrendered to the ICTY in 2003. The criminal procedure commenced in 2007, while the closing speeches were given in 2012. Firstly the announcement of the verdict was scheduled for October 2013, but the defendant requested the disqualification of one of the members of the Trial Chamber, the Danish Judge Frederik Harhoff, because of the publication of a text in which he stated that he was concerned about the “new direction” of the Tribunal, and therefore appeared as biased and in favor of the conviction of the defendant.

Vojislav Seselj is charged only on the basis of individual, hence not command responsibility. His responsibility on three charges in the indictment is qualified as crime against humanity (Article 5, ICTY Statute), and under six charges of the indictment as a breach of the laws and customs of war (Article 1 and 3 ICTY Statute). He is also charged for participating in systematic and widespread attack on Croatian, Muslim and non-Serb civilian population in Eastern and Western Slavonia, Bosnia and Herzegovina and Vojvodina.

According to the indictment, until September 1993, Seselj had the knowledge, intent and full awareness of the consequences and he was one of the participants of the “joint criminal enterprise”, with the aim to permanently and violently remove the non-Serbs population from one third of the territory of the Republic of Croatia, and from the bigger part of Bosnia and Herzegovina, as well as from parts of Vojvodina. According to the indictment, Seseljs contribution to that criminal enterprise is multifaceted. Firstly, he participated in the recruiting, arming, equipping and 'guidance' of the volunteer paramilitary formations such as “Cetnici” or “Seseljevci.

Secondly, he participated in the “planning and preparation” and wining villages in Eastern and Western Slavonia and the municipalities Zvornik and Bosanski Samac, as well as in the forcible transfer of non-Serb inhabitants of those villages or keeping them in detention facilities where they were subjects to torture, killings and inhuman life conditions. Thirdly, the most important Seselj's contribution in the joint criminal enterprise is his "flammable" and "extremely nationalistic rhetoric" and "war propaganda" from the 1990 to 1994.

## First instance judgment in the case Radovan Karadzic 24 March 2016

For almost 13 years Radovan Kardžic was on the run. He was indicted in July 1995 and he is one of the top officials who were on trial in front of the ICTY. Karadzic is charged with very serious charges. According to the indictment, he participated in a comprehensive “joint criminal enterprise” that had an aim to permanently remove Bosnian Muslims and Bosnian Croats from areas of Bosnia and Herzegovina claimed as Bosnian Serb territory through the commission of genocide, persecution, extermination, murder, deportation and forcible transfer. Moreover, he participated in a joint criminal enterprise with the aim of carrying out a campaign of sniping and shelling against the civilian population of Sarajevo, whose primary goal was to spread terror among them. Karadzic on the basis of individual criminal responsibility through the concept of joint criminal enterprise is charged for genocide against the Bosnian Muslims in Srebrenica. Finally, it is stated in the indictment that the defendant participated in a joint criminal venture-taking members of the UN as hostages so that NATO is forced to abstain from airstrikes on Bosnian Serbs military targets. During the trial that lasted for almost 5 years 586 witnesses were examined. The indictment demanded life imprisonment, while the defense demanded acquittal. The State Attorney Office in Pozega in 1999, filed an indictment against Radovan Karadzic for committing war crimes against the civilian population, and it was also stated that on the 7 August 1995, as a president of Republic Srpska, he personally commanded an aviation racket attack on the bordering Croatian village Mačkovac, and during that event two airplanes from the type "Orao" threw four village four bombs and four rackets in the village and therefore two persons were killed, and nine were injured, 20 family houses were destroyed with a farm building, machinery and livestock. During the air attack also the local Roman Catholic Church "St. Matija" was destroyed.

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### The arrest of Tomislav Duic

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Tomislav Duic was arrested on the 19th of February in front of his apartment in Split after being on the run for 15 years. Tomislav Duic was a commandant of the former Military- Investigative center Lora after completion of the trial in the case "Lora 1" and the case in trial "Lora 2". Tomislav Duić was sentenced to eight years imprisonment for a war crime against civilians and prisoners of war in the Military Investigative Center Lora.

During all these years the public denied and relativized the crimes committed in Lora which sums up the thesis of the so called "Political - legal conspiracy" despite the fact that since 2007 the effective final judgment ("Lora 1"), which undoubtedly established the guilt of the accused from some of whom have admitted that have committing the crimes and therefore have also expressed remorse. The criminal procedure against the arrested Tomislav Duic ET all charged for war crimes against prisoners of war in the case “Lora 2” is pending in front of the County Court in Split. The indictment of the actual case "Lora 2" against the sentenced from the case "Lore 1", Tomislav Duic, Tonci Vrkić, Anđelko Botic, Emilija Bungura i Ante Gudić, which is in force since 2009, but the trial is not scheduled yet since 2014 because of disagreements regarding the trial in absence.

Namely, Tomislav Duic and Emilijo Bungur were on the run for more than 10 years. Emilijo Bungur was arrested in August 2015. It was decided in the end that they will be tried in absentia, the same as the case "Lora 1", with the difference that in this case they were charged for psychological and physical torture of JNA members and members of Serbian paramilitary organizations. Three prisoners (Dusan Jelic, Bojan Vesovic and Vade Savic) died as a consequence of their wounds. The data collected by the organization for the protection of human rights show that there were more victims.

We would like to repeat that the members of the 72nd Military Police Battalion of the Croatian Army, Tomislav Duic, commander of the military prison Lora, Tonci Vrkić, Anđelko Botic, Emilia Bungur Ante Gudić Miljenko Bajić, Josip Bikić and Davor Banic, in the so called case Lora 1, are sentenced because the Court based on the evidence unequivocally established that throughout the period from

March until September 1992 in the Military Investigative Center Lora in Split, without any legal basis significant number of detained civilians were kept, mostly from Serb nationality and they insulted their human dignity, humiliated them, physically and psychologically tortured them and punished them physically. Consequently Gojko Bulovic and Nenad Knezevic died from the tortures. The judgment was affirmed by the High Court of the Republic of Croatia and became final on 6 February 2007. In November 2008 Josip Bikic voluntarily surrendered to the Croatian authorities and requested another trial and fully admitted his guilt and expressed remorse. (more about the crimes in Lora: annex of the bi-weekly report from 18.09.2015).

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### The European Human Rights Court determined discrimination on the grounds of sex

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On the 23 February the European Human Rights Court found that there was discrimination on grounds of sex as well as that there was a violation on the right to family and private life in the case Pajic against Croatia (file number: 68453/13)<sup>3</sup>.

The applicant who is a citizen of BIH was not given permission for family unification with her female partner who is a citizen of Croatia. With this, the governing bodies for interpretation of the national law (Alliens Act) failed to apply the ratified international conventions.

The applicant filed a complaint that she was discriminated on the basis of her sexual orientation during the procedure for getting a residence permit for family reunification with her partner in relation to illegitimate sexual partners. Specifically, their relationship did not fall within the definition of "family member" on the basis of Article 56, paragraph 3. Also the term "other relative" from Article 56, paragraph 4 Allians Act was not applied to homosexual couples.

The procedure in front of the national bodies commenced in 2011. The Court emphasized that in the last few years a significant number of member states of Council of Europe acknowledged same sex couples and their life partnerships and therefore stated that taking into account the legal evolution it would be artificial to maintain the view that homosexual couples could not enjoy "family life".

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### Pakrac pioneers earned misdemeanor charges

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During the carnival days the students from the high school in Pakrac wore masks as pioneers, as well as masks as Jovanka Broz and Josip Broz Tito. Twenty students wore white shirts, red kerchief, "titovka" cap and were guided by other students that wore masks as "Tito and Jovanka". They all masked like this walked around Pakrac.

However, some people did not like their masks and therefore filed a complaint at the Pakrac Police station as well as the misdemeanor court.

Lipicki monthly Kompas.com.hr published their apology to all citizens of Pakrac and in Croatia: "We did not intend to hurt anyone. We did not expect such negative comments and we were not aware that our walk would be considered a misdemeanor act. Moved by the individual complaints at the Pakrac police as well as at the misdemeanor court once again we would like to apologize to all citizens of Pakrac and Croatia that we have unintentionally insulted. Thanks 5bm class. ". It remains unclear for what kind of offence they are charged and whether masquerade can be considered as a violation of the public peace and order?

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<sup>3</sup> Judgment EXHR, from 23.02.2016, available at: [http://hudoc.echr.coe.int/eng?i=001-161061#{%22itemid%22:\[%22001-161061%22\]}](http://hudoc.echr.coe.int/eng?i=001-161061#{%22itemid%22:[%22001-161061%22]})

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## European day of the victims of criminal acts

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The European Commission has declared the 22 February to be the European day for the protection of victims of criminal acts, when in all Member States in an adequate manner through professional and educational public events on the principle of mutual coordination of all responsible stakeholders would be carried out sensitization of the general public on this topic. Directive 2012/29/EU establishing minimum standards on the rights, support, and protection of victims of crime ensures: that victims are treated with respect and that the police, the state attorneys and the judges are adequately trained to work with victims, that the victims are given comprehensible information regarding their rights in this case, that the victims have the support in all member states, that the victims can participate in the procedure if they wish to do so and be offered help for participating in court proceedings, that the vulnerable victims such as children, victims of rape, and victims with disabilities should be identified and given adequate protection so that the victims are also protected during police investigations and during the court proceedings.

Namely, in accordance with Article 26 Directive 2012/29/EU European Parliament and the Council regarding the minimum standards on the rights, support, and protection of victims of crime the competent authorities of the member states are obliged to take preventive measures with an aim of raising the awareness of the rights of the victims of criminal acts as well as the other articles of the Directive. This includes the implementation of the public campaigns and other forms of sensitization of the citizens in cooperation with the competent organizations of the civil societies and other competent authorities. Therefore, last week the Ministry of Justice organized a round table on the topic " Application of the rights of the victims- experience in practice ", the Association for support of the victims and witnesses a round table entitled " Development of support systems for victims and witnesses of crimes and criminal offences in the Republic of Croatia ", and PU Osijek Baranja held a series of preventive actions for the purpose of sensitization of citizens regarding the rights of victims of crime in the Information Centre of the Osijek police.

The aim of the above mentioned public events was to show examples of good practice in the part relating to application of the rights of the victims during the previous criminal proceeding, as well as the problems we are facing. Since the Republic of Croatia did not manage to implement the above mentioned Directive in its national law within the given time frame currently it's a direct source of the right and therefore we are advocating that all representatives of the bodies that are on a daily basis in contact with the victims as well as all the citizens of Croatia to familiarize themselves with the content of the Directive in a more systematic way. <sup>4</sup>

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<sup>4</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.