

Monitoring of War Crime Trials – Guarantee for the Process of Dealing with the Past and Sustainability of the Judicial Reforms in Croatia

Osijek, Zagreb, 30 June 2014

FINDINGS AND RECOMMENDATIONS

For period from July 1 2013 to June 30 2014

In the very year in which the Republic of Croatia became a full member of the European Union, the reconciliation process has come to a standstill. Hostility towards Serb minority in Croatia was expressed through destruction of bilingual plates, albeit less frequently than at the end of last year and in the first months of 2014.

Public concern over the prosecution of war crimes perpetrators has continued to decrease. In a difficult economic situation, various corruption affairs and news reports on criminal proceedings against an ever-growing number of highly-positioned persons have come to dominate the media and public attention.

The most attention in Croatian and Serbian public in mutual relations and processes of dealing with the past was sparked by a hearing conducted before the International Court of Justice regarding mutual genocide lawsuits. The hearing demonstrated that trust between the former warring sides has still not been built, the rhetoric of exclusion from the early 90s which led to the armed conflict is still present, there is bidding with the numbers of victims while both sides minimize and deny their own role in the crimes committed.

Although the relations between Croatian and Serbian state administrations were formally revitalised, no concrete agreements on cooperation in prosecution of war crimes cases have been signed whatsoever. The majority of leading politicians have failed to put in enough efforts in order to create a legal framework and social atmosphere required for the process of dealing with the past to be based on the consequent condemnation of all war crimes and all war crime perpetrators as well as the condemnation of the very politics which had been allowing the commission of crimes during the 1990s and was covering up those crimes. The social conditions have still been inadequate to allow the witnesses to willingly testify against perpetrators of the crimes committed by “our own side“. Subsequent to the announcement of the first-instance court judgement which convicted the leadership of the Herzeg-Bosnia entity and the Croatian Defence Council in May 2013, but also in June 2014 after Hague convict Dario Kordić was released and received an inappropriate welcome, the Government of the Republic of Croatia has, unfortunately, missed the chance to distance itself from the crimes committed by Croatian military formations against Muslims and other non-Croat population in the territory of Bosnia and Herzegovina and to distance itself from the previous political stance taken up by the Republic of Croatia in respect of Bosnia and Herzegovina, as was previously done by the former Croatian President Stjepan Mesić.

During 2013, all war crimes cases were delegated to the four county courts and county state attorney's offices which were declared exclusively competent for war crimes in accordance with adoption of the amendments made to *the Law on Application of the Statute of the International Criminal Court and the Prosecution of Criminal Offences against International War Law and Humanitarian Law*. Some criminal proceedings which have been delayed for some ten

years or even longer, or were repeated on multiple occasions, have finally been completed.¹ Several convicting judgements were delivered against members of Croatian military formations, which consequently resulted in the significant increase of the total number of the convicted members of Croatian military formations. However, although the results of a recent analysis of legally valid, final convicting judgments² have shown that during the last several years the sentencing and penalties criteria were standardised in respect of sentences adjudged to members of Serb military formations and those adjudged to members of Croatian military formations, still there were several cases in which the first-instance courts adjudged significantly harsher sentences to members of Serb military formations than those adjudged to members of Croatian military formations for the crimes which sustained comparison both in respect of the method of execution of crime and the consequences which occurred after the execution, therefore the Supreme Court of the Republic of Croatia has to continue with its task of standardisation of court practice and reduction of sentencing disparity.

Some specific problems have been conveyed from the previous period, such as the numerous cases of non-prosecuted crimes committed by planting explosive devices into houses of citizens of Serb ethnicity, their systematic evictions and expulsions, inadequate and insufficient prosecution of members of Croatian military formations (only as an exception) accused of crimes which did not result in victims' deaths, as well as non-reporting and consequent non-prosecution of crimes committed by rape. The issue which has remained to be the subject of our deep concern is the large number of non-prosecuted crimes, both in cases where perpetrators are members of Serb formations and in cases where they are members of Croatian formations, even more so since the lapse of time has further aggravated the situation with collecting information on the committed crimes and their perpetrators.

The victims and witnesses support system was improved only by establishing *the National Call Centre* with a free phone line for the victims to call and receive full information on their rights. Unfortunately, the *National Strategy for the Victims and Witnesses Support* still has not been prepared nor the support system has been extended to the county state attorney's offices and the police.

Unlike the past few years when, during the process of intensification of accession negotiations between the Republic of Croatia and the European Commission, investigations were conducted and indictments were issued for some of the most serious crimes committed by members of Croatian military formations, in 2013 and in the first four months of 2014 not a single investigation was initiated nor any member of the Croatian Army or the Ministry of the Interior of the RC was indicted. However, in May 2014 investigation was launched against one member of the Croatian Army. It was launched after a witness, under the pressure of conscience, admitted during the court proceedings that he had participated in the commission of the crime³. Then, in June, investigation was also launched against one member of Croatian formations who was accused of killing three persons upon the completion of the Military-Police Operation "Storm". Otherwise, only in March of this year (almost nineteen years after the commission of the crime), the first

¹ The convicting judgement (passed after the third first-instance court proceedings) against the member of Croatian military unit Enes Viteškić for the crime in Paulin Dvor was upheld. The acquittal of the member of Serb military formations Rade Miljević (passed following the two previous (quashed) convicting judgements) was upheld. The convicting judgements against members of Serb military formations Ćedo Jović and Petar Mamula (passed subsequent to the completion of the fourth i.e. fifth first-instance court proceedings) were upheld. The convicting judgement against Željko Belina and Dejan Milić, members of Croatian military formations, was upheld. In 1992, the Amnesty Act was erroneously applied to the case against Belina and Milić who were accused of killing the Serb civilians in Novska.

² Marko Sjekavica, Jelena Đokić Jović i Maja Kovačević Bošković: Do the courts in the Republic of Croatia tend to punish more severely Serb war criminals than Croat ones? (Analysis of the statutory and judicial policy of punishing war crimes perpetrators); Monitoring War Crime Trials Report, Documenta – Centre for Dealing with the Past, March 2014.

³ On April 15 2014, during the reconstruction of events in the criminal proceedings conducted against Velibor Šolaja for a war crime committed by killing an old woman in the village of Čitluk in the area of the Medak Pocket in September 1993, former HV (Croatian Army) member Josip Mršić was invited to the reconstruction of events as a witness. Due to a burden of conscience, he admitted that it was him who shot the old woman, for whose murder his fellow combatant Šolaja was tried.

member of the Croatian formations was sentenced for a war crime by a final judgment for the crimes committed during or after the completion of the "Storm" operation⁴.

During reporting period indictment was laid against member of People's Liberation Army of Yugoslavia (NOB), in the first case ever in Croatia that a member of the victorious party, has been prosecuted for the war crime committed during or after the or immediately after the WW II.⁵

In several cases the courts acquitted individual defendants of responsibility by (non) final judgments, thus some of them remain fully unpunished for the crimes with which they were charged.⁶

During the reporting period, several members of different Serb formations indicted for war crimes in Croatia were arrested in other countries or extradited to Croatia. But, the fact remains that, following the extradition of defendants to Croatia, proceedings frequently end up with a suspension or rejecting judgments or acquittals. As we already mentioned in our previous reports, this indicates that all previous unfounded indictments (or sentences rendered *in absentia*) have not been removed. However, on the other hand, it also indicates that Croatian judicial bodies are capable of conducting proceedings in a more professional and impartial manner than in the recent past.

Almost all members of Serb military formations who were the subject of the investigations initiated since July 1 2013 - have been unavailable to the Croatian judiciary, and the same is in the case of the majority of members of Serb military formations who were indicted or convicted during the previous years. More effective prosecution of the stated persons (those who have been unavailable to the Croatian judiciary) has depended on the intensification of cooperation between judicial bodies of the countries in the region. In the first semester of 2013, the Prosecutor's Office of the Republic of Serbia and the State Attorney's Office of the Republic of Croatia signed the protocols on cooperation in war crimes prosecution issues with the Prosecutor's Office of Bosnia and Herzegovina, the liaison officers were appointed and inaugurated at the prosecutor's offices in Croatia, Serbia, and Bosnia and Herzegovina at the end of 2013. After the first cases were transferred from Bosnia and Herzegovina to Croatia, several investigations were soon initiated against Croatian citizens - in their capacity as former members of the Croatian Defence Council - suspected of crimes in Herzegovina area. Although the very number of cases exchanged between the State Attorney's

⁴ On March 27 2014 The Supreme Court of the RC (VSRH) increased the sentence pronounced against Božo Bačelić, Platoon commander of the 113th Brigade of the Croatian Army (HV) for a war crime committed by murdering Nikola and Milica Damjanić, an older couple of Serb ethnicity in the village of Prokljan and by murdering captured member of the so-called Army of the Republic of Srpska Krajina Vuk Mandić in the area of Varivode, in the hamlet of Mandići in August 1995 after the completion of the military-police operation "Storm". Instead of five years and 10 months which Baželić received in the repeated first-instance proceedings conducted before the Split County Court, the Supreme Court sentenced him to seven years in prison. Thus, almost nineteen years after the commission of the crime, Bačelić became the first member of the Croatian formations who was convicted by a final judgment for some of numerous war crimes committed during or after the completion of the "Storm".

⁵ On 22 May 2014, the War Crimes Council of the Zagreb County Court acquitted by a non-final judgment the 94-year-old Josip Boljkovac of charges that in 1945, immediately after the end of the World War II, as the Head of the Karlovac Department of National Security (OZNA), he ordered the arrest and execution of 21 civilians from the area of Duga Resa who had been suspected of collaboration with the Ustasha authorities. During the verbal explanation of the judgment, President of the Trial Chamber stated, *inter alia*, that no document or witness substantiated the claim that Boljkovac ordered the commission of the crime. Boljkovac is the first and probably the last member of the partisan movement that has been accused of a war crime. It would be unfair to place the burden of all communist crimes, from Bleiberg to Široki Brijeg, on Boljkovac, said the President of the Trial Chamber stating that the court also had a duty not to succumb to public mood because it is impermissible in a democratic country and contrary to the principle of independence of the judiciary.

⁶ The following members of Croatian formations were acquitted by final judgments: Ivan Husnjak and Goran Sokol, who were charged with arson in two villages under the Papuk hills; Ivica Pintarić, who was charged with killing two civilians near Mrkonjić Grad (Bosnia and Herzegovina) and Drago Bošnjak, who was charged with the crimes committed against Serb civilians in Sisak, as well as a member of Serb formations Rade Miljević, who was charged with involvement in the killing of four Croat civilians in Glina.

Members of Croatian formations Frano Drljo and Božo Krajina, charged for the crime against six senior Serb civilians in Grubori were acquitted by non-final judgments, as well as Velibor Šolaja, a charged with the crime in the Medak Pocket, as well as members of Serb formations Željko Žakula, charged with the killing of a civilian in Čanak near Korenica and Milan Đekić, charged with the killing of a civilian immediately after the fall of Vukovar.

Office of the Republic of Croatia and the Prosecutor's Office of the Republic of Serbia has not significantly increased, the process of exchange of information and the evidence for the previously transferred cases has significantly increased indeed. However, frequent cases of lack of diligence in cooperation as well as the discrepancies between the legal interpretations and practices (which occur despite the almost identical legal systems) have raised suspicions regarding the goodwill gestures of the entire effort. The said discrepancies between the legal interpretations only serve to encourage the impunity of persons, especially of former Yugoslav National Army officers, whose prosecution has still been avoided by the Serbian judiciary, and who have got away unpunished for the crimes which had been committed by (various) Serb military formations within the Yugoslav National Army zone of responsibility.

Effective prosecution of perpetrators increasingly depends on the willingness of witnesses to testify, i.e. their confidence that fair proceedings will be conducted in other countries in the region and that direct perpetrators and responsible persons in the chain of command will be indiscriminately prosecuted. Although during the reporting period the Serbian prosecutor's office filed an indictment against five defendants for the crime committed in Sotin, the quashing of the first-instance judgment for the crime committed in Lovas, inappropriately low sentences pronounced against abusers in the Morinj camp and non-prosecution of high-ranking military and political structures in Serbia and Montenegro certainly has demotivating effect on witnesses.

Many plaintiffs/victims' family members, mainly those of Serb ethnicity, who lost civil lawsuits in which they had requested from the Republic of Croatia to compensate them with the non-pecuniary damages incurred by the killing of their close family members, will not be relieved of the burden of obligation to pay the litigation costs since they do not fulfil the strict property criteria stipulated for the waiving of the debt.

Claims for compensation of non-pecuniary damages filed by crime victims or their family members due to statute of limitations are rejected by both Croatian and Serbian courts, not taking into account the standpoints of injured parties' attorneys that it is a war crime against civilians and that the statute of limitations in civil proceedings corresponds to the statute of limitations for criminal prosecution.

During the reporting period, there was a new wave of cases in which the relatives of civilians killed during the Homeland War initiated proceedings before the European Court of Human Rights (ECHR), in which the ECHR initiated communication with the Government of the RC with the basic question whether in the aforementioned cases there was a violation of the right to life due to ineffective investigation of crimes. It is expected that in many cases the ECHR will determine that certain Convention rights of the complainants were violated by the Republic of Croatia. In order to terminate their further agony, Croatia should strike a deal with victims' family members and pay them a fair compensation, both in cases already before the ECHR and in cases that are still conducted before domestic courts .

It is commendable that the Ministry of Defenders in mid-March presented draft *Act on the Rights of Victims of Sexual Violence in the Homeland War*, pursuant to which victims should be entitled to psycho-social and medical assistance, free legal aid, rehabilitation and the right to compensation. Unfortunately, victims of sexual violence are only one part of the corps of civilian casualties. The adoption of the announced *Act* must necessarily be followed by the adoption of laws or a package of legislation which would regulate the status and enable indemnification for all categories of civilian war victims, including parents of murdered children, female and male camp detainees, victims of shelling, victims of land-mines, the persons injured or killed at their workplace during the working obligation.

RECOMMENDATIONS (MONITORING WAR CRIME TRIALS REPORT FOR 2013)

Below we reiterate recommendations cited in our previous reports which have not been implemented:

- Due to increased workload, it is necessary to provide a larger number of adequate courtrooms at the Zagreb County Court which could accommodate all interested public members;
- The Croatian Government must urgently adopt *the National Strategy for the Development of Victim-Witness Support System* in order to expand the existing support system and increase its capacity;
- The Croatian Government should adopt a Decision whereby litigation costs of all plaintiffs/injured parties who failed with their lawsuits for compensation of non-pecuniary damage due to the death of a close person would be undoubtedly written off, while refund would be provided to those who already paid litigation costs or whose property was seized;

The Project is financed within the EIDHR Program of the European Union for the Republic of Croatia. The contents of this Report are the sole responsibility of the civil society organisations and can under no circumstances be regarded as reflecting the position of the European Union.



- It is necessary to adopt the National Programme and the Act on the Establishment of a Fund for Indemnification of all War Victims which would regulate damage compensation in accordance with the *Basic Principles and Guidelines on the Right to Remedy and Reparation of Victims of Gross Violations of the International Human Rights Law and Serious Violations of International Humanitarian Law of the UN*;

- It is necessary to abrogate *the Act Declaring Null and Void certain Legal Documents of the Judicial Bodies of the former JNA, the former SFRY and the Republic of Serbia*, a harmful act that undermines relations between Croatia and Serbia;

- It is necessary to sign a contract between the countries in the region with a view to more effectively prosecute crime perpetrators and avoid politicization of war crimes trials;

- It is necessary to adopt a new or amend the existing *Act on the Protection of Military and Civilian War Invalids* and adopt the announced Act on the Rights of Victims of Sexual Abuse in the Homeland War so that rape victims, as well as all other civilian war victims, could exercise their rights;

- In order to improve support for victims of war crimes committed by sexual abuse, it is necessary to, as soon as possible, establish teams and educate employees at all government agencies dealing with victims of crimes of sexual abuse.

The new recommendations are listed below:

- It is necessary to enhance regional cooperation by forming joint investigation teams in cases which require coordinated effort and/or investigations in several countries;
- It is necessary to amend Article 91 of the new Criminal Code and equate rape and other forms of sexual abuse, in terms of stipulated sentence, with war crimes committed by torture and inhuman treatment, thereby following the practice and achievements of the ICTY;
- Due to links between numerous war crimes and appropriation of victims' property, it is necessary to investigate the origin of assets of all persons convicted of war crimes;
- It is necessary to deprive judicial officers of any political influence and facilitate the harmonization of standards in treatment between the judicial bodies of countries in the region, so that as many as possible perpetrators and persons with command responsibility would be brought to justice, but also to end the persecution of persons for whom there is no evidence that they were perpetrators or abrogate judgments against those convicted in an unjustified manner;
- It is necessary to break with the anonymization of personal data (names) of those convicted of war crimes – due to importance of prosecuting war crimes for the society in Croatia and other post-Yugoslav countries, priority must be given to the right of the general public to be informed about the ongoing proceedings and the identity of those convicted of war crimes.