

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

Hotel International, Zagreb, 16 April 2014

ROUND TABLE

„By strengthening the position of witnesses and victims towards more effective prosecution of war crimes“

A round table related to presentation of the report on war crimes trials monitoring during 2013 was organized by Documenta - Centre for Dealing with the Past, Centre for Peace, Non-violence and Human Rights Osijek and Civic Committee for Human Rights on **16 April 2014** in Zagreb. The topic of the round table was **“By strengthening the position of witnesses and victims towards more effective prosecution of war crimes”**.

The round table was attended by representatives of county courts, the State Attorney's Office of the Republic of Croatia, the Ministry of Justice, civil society organizations, lawyers...Speakers included **Ivo Josipović**, President of the Republic of Croatia, **Branko Hrvatin**, president of the Supreme Court of the RC, **Ranko Marijan**, Supreme Court judge, **Jasmina Dolmagić**, Deputy Chief State Attorney of the RC, **Sandra Artuković Kunšt**, Deputy Minister of Justice, **Lora Vidović**, Ombudsperson, **Maja Munivrana Vajda** from the Department of Criminal Law of the Zagreb Law Faculty, **Vesna Teršelič**, director of Documenta, **Mladen Stojanović** from the Centre for Peace, Non-Violence and Human Rights Osijek, **Zoran Pusić**, president of the Civic Committee for Human Rights, **Robert Adrić**, Head of the Office for support to victims and witnesses at the Osijek County Court, **Marko Sjekavica** from the Civic Committee for Human Rights and **Emina Bužinkić** from Documenta

In the introductory part **Vesna Teršelič**, director of Documenta, emphasized that a large number of non-prosecuted crimes causes concern, the more so as by the passage of time it becomes more and more difficult to collect data on the crimes committed and their perpetrators. In 2013 there was no significant progress in the prosecution of crimes. She mentioned the non-investigated crimes in the territory of Vukovar-Srijem County, for instance the crimes committed over predominantly Croatian civilians and defenders in the village of Bogdanovci and the crimes against Serb civilians in Vukovar. Certain problems were transferred from an earlier period, such as numerous cases of non-prosecuted crimes committed by throwing bombs at the houses of citizens of Serb ethnicity, their systematic evictions, rare (only exceptional) cases of prosecuting members of Croatian formations for crimes that did not result in fatal consequences as well as failure to report and, consequently, prosecute crimes committed by rape. Many family members of persons who had been killed, mostly of Serb ethnicity, who lost lawsuits in which they sought from the RC compensation of non-pecuniary damage for the killing of their relatives, will not be relieved of the

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obligation to pay the litigation costs because they will not meet strict property criteria stipulated to write off the debt. The majority of leading politicians still do not invest enough effort in creating legal frameworks and social atmosphere for the process of dealing with the past based on consistent condemnation of all war crimes, their perpetrators and the policy from the 90's that permitted the commission of crimes and covered them up. She stressed the importance of further development of the support system for victims and witnesses, which is extremely important for humanization of court proceedings.

Branko Hrvatin, President of the Supreme Court of the RC, pointed out that dealing with the past is inevitable and there is no future as long as each individual learns something, including how to deal with the past. Standards in the judiciary during the 90s were low, but eventually became higher; a lot was done to correct mistakes. "We have to work much more on the standards, persist in sentencing the guilty and acquitting the innocent, and speak on behalf of the victims whenever possible", said President of the Supreme Court while addressing the participants of the round table .

War crimes trials are a difficult and important task, but another segment connected with trials is also important for the process of dealing with the past, and those are civil lawsuits for compensation of damage for the death of a family member.

When it comes to supporting victims and witnesses, it is today institutionalized and still necessary. The current system was assessed by many international factors as very good, thus the former "project" is today a "functioning system" which significantly affects the quality of criminal proceedings, he said. "To stop today means to forget what has been done so far", said President of the Supreme Court Branko Hrvatin, adding that he believed there was room for further improvements. Witness protection should be developed in all bodies (courts, the police, the state attorney's office) because it is necessary and it is the foundation of developing human rights. The standpoint of the Supreme Court, Hrvatin continued, is that further development of the system of assistance / support to victims and witnesses of all crimes, with particular emphasis on war crimes, is required.

An important segment of the system is volunteers who provide support in criminal and other proceedings before courts, all the more so because we live in a materialistic society. They are the foundation of society, they bring emotions into their work, they are carefully trained, educated and their approach is crucial.

Sandra Artuković Kunšt, Deputy Minister of Justice, spoke about strengthening victims and witnesses. She noted that support to victims and witnesses is very important for the improvement of judicial procedures and achievement of an environment for fair trials, which at the same time leads to respecting the rights of all individuals. The objective of support is to prevent or at least minimize secondary victimization of victims and witnesses during the trial. She mentioned that Article 16 of the Criminal Procedure Act explicitly stated that the police, investigators, the state attorney's office and the court must deal with victims of crimes with extreme caution. Artuković Kunšt stressed the importance of respecting the rights of all victims, including the right to psychological assistance and informing victims and witnesses about the course of an ongoing judicial procedure. She emphasized the support system for victims and witnesses which is operational on the Croatian territory and which is internationally recognized for its effectiveness. Witnesses are brought into courtrooms, they are informed individually, emotional support is provided to victims and witnesses during the trial, transport of victims and witnesses to courts is organized and communication with judges has been established for a better and more effective prosecution of crimes. She stressed that, from 2008 until 31 March 2014, 2917 victims and witnesses received support and assistance through the system.

The second thematic block pertained to the Report on monitoring war crimes trials for 2013 and social and political context in which trials take place.

Mladen Stojanović from the Centre for Peace, Non-violence and Human Rights Osijek said that the Report on monitoring war crimes trials for 2013 concerned not only war crimes trials, but also the social and

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political context, civilian war victims and other topics that have impacted the prosecution of war crimes. In the year in which the Republic of Croatia became full member of the European Union, the reconciliation process came to a halt, i.e. there was a lot of hostility toward the Serb minority. Public interest for prosecuting war crimes perpetrators is becoming increasingly smaller.

During 2013 all war crimes cases were delegated to four county courts and state attorney's offices. Some proceedings that had lasted for ten years or more or were repeated several times were finally completed. Results of the analysis of final convictions show that the criteria for deliberating sentences to members of Serb and Croatian formations has become harmonized in recent years. The support system for victims and witnesses was enhanced in 2013 with the establishment of the National Call Centre with free telephone line where victims can be informed about their rights.

Finally, Stojanović pointed at the recommendations that comprise an integral part of the Report. Among other things, he emphasized that it is necessary to enhance regional cooperation between judicial authorities of the countries in the region by forming joint investigation teams in all cases that require a coordinated effort and / or research in several countries; it is necessary to amend Article 91 of the new Criminal Code and equalize rape and other forms of sexual abuse with a war crime of torture and inhuman treatment in terms of stipulated punishment, which would follow the practice and achievements of the ICTY; that, due to links between numerous war crimes and alienation of victims' property, it is necessary to investigate the origin of the property belonging to all persons convicted of war crimes; it is necessary to deprive judicial officers of any political influence and allow harmonization of standards of treatment between judicial bodies of countries in the region in order to bring as many perpetrators and persons with command responsibility before justice, but also to end the persecution of persons for whom there is no evidence that they were perpetrators or quash judgments against wrongfully convicted persons; it is also necessary to stop with anonymization of personal data (names) of persons accused of war crimes because, due to the importance of prosecuting war crimes for the society in Croatia and other post-Yugoslav countries, priority must be given to the right of the public to be informed about the course of proceedings and the identity of the accused of war crimes.

Zoran Pusić from the Civic Committee for Human Rights said that we have witnessed stagnation in the reconciliation process. Pusić stressed that social and political context has a large influence on trials because judiciary is a part of the society and, thus, dependent on other segments of the society. He noted that without democracy and fair trials there is no progress in society and, therefore, a lot of effort has been invested in monitoring trials, which is important for achieving equality of all citizens and satisfying their rights. He cited certain cases from which it is evident that victims of war crimes were re-victimized during the trial. This was happening first and foremost when conducting inadequate trials and with major litigation costs that victims are obliged to cover.

President of the Republic, **Ivo Josipović Ph.D.** emphasised that these three civil society organizations assisted the society to become much better. He deemed that Croatia has made visible progress, especially in relation to general public opinion and the judiciary, towards committed war crimes. From the times when war crimes trials were marked by ethnic discrimination and when the same criteria did not apply "for these and for those perpetrators", we have come to a situation where the judiciary applies "the same criteria when it comes to criminal prosecution" and the sentences deliberated are similar or the same, he said.

He added that there are cases marked by differences in approach with regard to whether the perpetrator is a member of Croatian military formations or of the enemy side, but these are exceptions. He also pointed out that, compared to the past, there are visible changes in the statements provided by the highest state officials about judicial proceedings and these statements, he said, cannot be compared with the statements of members of associations or religious communities. Such an improved climate, he said, has led to cooperation between the states and state attorney's offices in the region. However, he agreed that the

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obstacle to better cooperation, particularly with Serbia, is the Act on Nullity, the "famous act" against which he requested the assessment of constitutionality because he deems this Act to be unconstitutional, harmful and unfair.

He also commented on the work of the Hague Tribunal, saying it is good that it exists because it brought justice to many people but, because of the court's weaknesses, many people were left without justice as well. "Numerous crimes are non-convicted because we accepted shortcuts imposed by the prosecution through introduction of certain institutes that objectively do not exist in the judiciary and, naturally, in the end it turned out that the Court's Appeals Chamber did not agree with this. And the result is not good for justice and is not good for the sentiments here in the region where we expected a lot from that court and there remains a sense of incompleteness of work ", he said.

He urged judges and prosecutors to do everything in their power so that not a single crime remains unpunished.

He stated that reactions that followed the performance of the theatre play "Aleksandra Zec" in the Croatian National Theatre in Rijeka were not morally acceptable. "For a society that permits the „Zec“ case, rape during the war, and treats it lightly, there is no good future", he concluded.

The third thematic block pertained to further development of support to witnesses and lifelong support to witnesses and injured parties.

Vesna Teršelič, director of Documenta, pointed out the problems that occur after perpetrators come out of the prison and the needs of victims for empowerment and support in that moment. She pointed out that we have yet to accept the fact that all victims are our victims and treat them equally. One of the means to do so would be a complete list of victims.

Robert Adrić, Head of the Office for support to victims and witnesses at the Osijek County Court, emphasized that full implementation of the Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime is necessary, particularly stressing that family members should also be considered victims in criminal proceedings.

"According to official data of the Ministry of the Interior, 380,000 criminal offences are reported annually, so it is possible that each one of us would find him / herself in the role of witness or victim", Adrić noted. It is therefore necessary to have support by the police. It also shows that victims' needs go beyond what the system has to offer. Adrić also pointed at the fact that state attorneys and the police at this moment discreetly assess whether assistance is necessary and that we should consider a possibility that the need for support is left to victims themselves for assessment. He emphasized that the work of volunteers is important for further development of support, especially bearing in mind that volunteers are most often students from the faculties of social sciences (sociologists, psychologists, lawyers) and one day those same students will be employed in the state system and apply the knowledge gained through volunteering.

The fourth thematic block pertained to new criminal procedural and substantive legislation through the prism of war crimes.

Ranko Marijan, judge of the Supreme Court of the RC, stressed that there are no theoretical differences between international and domestic legislation, but it is necessary to establish legal standards in order to better prosecute crimes. He noted that amendments to the laws, which are made without clear concept, create instable legal norms and undermine judicial authority.

Jasmina Dolmagić, Deputy Chief State Attorney of the RC, referred to the new criminal legislation, both substantive and procedural, stressing that the new Penal Code, which became effective on 1 January 2013, indicates clear illogicalities and omissions that must be corrected, such as measures of intimidation and terror / terrorism that are not listed as modes of committing a war crime.

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After that she spoke about paragraph 2 of Article 91 of the Croatian Penal Code, which talks about "milder forms of a war crime", i.e. 27 points of that paragraph, i.e. modalities of committing a war crime which carry a prison sentence of at least three years. The first paragraph of that Article specifically mentioned the modalities for which a prison sentence of at least five years or a long-term imprisonment, were stipulated. The DORH sees a problem in some of the modalities listed in the second paragraph.

Marko Sjekavica from the Civic Committee for Human Rights spoke about the research that was conducted on a sample of war crimes cases that were completed with final judgments rendered by Croatian courts. The initial premise of the research was that there was a difference in pronouncing sentences against perpetrators of war crimes based on their ethnicity. The sample included judgments rendered between 2000 and 2014 in which a total of 109 persons were convicted. The main conclusions of the research were that there was no relevant difference in imposing sanctions against Serb and Croatian offenders. He pointed out that certain sentences that were higher in cases of Serb perpetrators make an exception but not the rule. In the end, he said that the sentences pronounced against perpetrators are close to the lower end of the statutory minimum and that, in cases of sentence mitigation, there lacks a quality explanation why this institute was applied.

Maja Munivrana-Vajda from the Zagreb Faculty of Law continued in her presentation where the Deputy Chief State Attorney of the RC left off, stressing that Article 91 of the new Penal Code sought to harmonize practice with the international law and practice. Her presentation continued along the lines of the Deputy Chief State Attorney regarding the modalities of intimidation and terror which the Rome Statute does not prescribe, but which was, for instance, applied through the Statute of the International Tribunal for Rwanda.

She also pointed out that rape must be treated as a mode of torture, which is contained in the first paragraph (severe form) and not as a milder form. It is a discrepancy that occurs just at the time when the whole society is trying to send a message about numerous crimes committed by rape.

She also pointed at the jurisprudence of the Supreme Court, pursuant to which destruction / alienation of property worth less than 600,000 kuna is not considered a war crime. She believed that this was not a problem with the law, but with practice. She considered that it should be assessed on a case to case basis bearing in mind the relevance of the alienation / destruction for each victim in which case, probably, not any alienation / destruction would be considered an insignificant criminal offence.

The last thematic block pertained to reparations to civilian war victims in Croatia.

Ombudsperson **Lora Vidović** spoke about the cases encountered by the Office of the Ombudsperson, such as issues of property restitution and return of the population, mostly of Serb ethnicity, and housing care issues. The issue of restitution and reconstruction of property and housing care is one of the most complicated issues. An aggravating circumstance is permanent amendments to the Act on the Areas of Special State Concern which has been amended a dozen of times since 2006. She noted that the Report of the Ombudsperson for 2013 contains data that a total of 77,269 requests for housing care were submitted (until January 24, 2014), while only 406 housing units are available. Likewise, she emphasized that there is an apparent ethnic discrimination against national minorities which is reflected in a lack of employment opportunities and a lack of resolution of housing issues.

Emina Bužinskić from Documenta spoke about the position of civilian victims, serious problems that occurred in 2013, key discussions about indemnification, stressing that there were no significant judicial and political steps forward. Many victims were left without certain hard-earned acquired rights.

She pointed out that progress was made only for particular groups, that for twenty years there was no list of war victims and that the social welfare system is scarce. She pointed at the increased need for psychosocial support to victims of crimes. Victims often feel discriminated against because not all victims are covered by specific laws and regulations. She noted that many organizations have advocated for years the removal of

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statute of limitation deadlines for exercising the rights for all civilian war victims and to equalize military and civilian war victims. She pointed out that, with the recent legislative amendments, a large group of war victims lost social support (the so-called “opskrbnina”), thus increasing frustration among vulnerable groups in society.

She stated that the European Court of Human Rights will, according to hitherto practice, establish that many victims had their rights from the Convention violated.

Veselinka Kastratović and **Jovica Brkić** were among those who participated in the discussion, warning about the importance of judicial proceedings for war crimes victims. The judiciary and the public should not lose sight of the obligation to efficiently prosecute war crimes and respect the rights of victims to participate in war crimes proceedings.