

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

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Bi-weekly report on war crimes trials

The European Court of Human Rights rejected the application by Fred Marguš

On 27 May 2014, the Grand Chamber of the European Court of Human Rights (ECHR) upheld the conviction of its Chamber dated 13 November 2012: that there was no violation of the applicant Fred Marguš's right to a fair trial (Article 6 of the *(European) Convention for the Protection of Human Rights and Fundamental Freedoms*) and the right not to be indicted and sentenced twice for the same offence, *ne bis in idem* (Article 4 of *Protocol no. 7 to the Convention*).

Namely, during the first-instance criminal proceedings held before the Osijek County Court and the appellate proceedings held before the Supreme Court of the RC, in which Fred Marguš was sentenced to 15 years in prison for a war crime against Serb civilians in Čepin near Osijek committed by abusing and killing eight and wounding one person, the key issue was whether in view of the two incriminating events - the murder of two and wounding one member of the Bulat family, as well as detention, torture and murder of a married couple Vico – that was a matter already adjudicated with a final judgment because, with regard to these events, a judgment rejecting the charges had been rendered in 1997 in relation to Marguš by way of application of the *General Amnesty Act*.

Croatian courts accepted the prosecutor's explanation that the judgment rejecting the charges for a murder, by way of application of the *General Amnesty Act*, does not preclude the rendering of a conviction for a war crime against civilians because it is not only an offence against life and body, but an offence that is at the same time directed against both humanity and the international law the prosecution of which does not fall under the statute of limitations and which the Republic of Croatia is obliged to prosecute pursuant to the international law. The judgments of the ECHR's Chamber confirmed that, in relation to Marguš who was convicted with a final judgment before national courts, there was no violation of the rights guaranteed by the *Convention* and the *Protocol no. 7*, which Marguš invoked in his application.

Josip Boljkovac acquitted of charges for a "partisan" crime committed in 1945

On 22 May 2014, the War Crimes Council of the Zagreb County Court acquitted by a first-instance 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. The victims were not members of the Ustasha, Home Guard or other military formations, nor did they collaborate with the so-called NDH (Independent State of Croatia) authorities, but they were prominent citizens and entrepreneurs from Duga Resa. The objective of the

crime was to get rid of political and class enemies. It is undisputable that the partisan combat was anti-fascist, but the crimes committed had, to some extent, compromised it. Boljkovac is the first and probably the last member of the partisan movement that was 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.

The Zagreb County State Attorney's Office (ŽDO) announced that it would appeal this judgment because it believes that sufficient evidence was presented during the proceedings for a judgment of conviction against defendant Boljkovac.

The first final judgment of conviction rendered nineteen years after the war crimes committed in the "Storm" operation

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".

Apart from Bačelić, HV conscripts Ante Mamić, Luka Vuko and Jurica Ravlić who had been under Bačelić's command, were tried in the same proceedings. The Appeals Chamber of the Supreme Court upheld a section of the judgment in which Mamić and Ravlić were acquitted of charges for the involvement in the killing of the captured soldier, but quashed a section of the judgment which dismissed the charges against all three of them for a crime against civilians, so they will be re-tried with regard to that section.

Namely, the War Crimes Council of the Split County Court changed the legal qualification of the offence from war crime against civilians into aiding and abetting the offender. Then it rendered a judgment rejecting the charges due to the statute of limitations. The Appeals Chamber of the Supreme Court held that this resulted in overstepping the scope of the indictment. i.e. an absolute essential violation of the criminal procedure.

Otherwise, these criminal proceedings have been conducted since 2001. By the first-instance judgment of the Šibenik County Court from September 2002 all four defendants were acquitted of charges. After the Supreme Court in April 2007 quashed the judgment of acquittal, Bačelić escaped and Mamić, Vuko and Ravlić were detained. The proceedings were stayed until 2012 when Bačelić was arrested in Germany and extradited to Croatia.

Beara found guilty of abusing captured Croatian soldiers in the Knin prison

On 12 May 2014, the War Crimes Council of the Split County Court pronounced Nikša Beara guilty and sentenced him to three years and 10 months in prison because he physically abused three captured members of the Croatian Army in the Knin prison. His detention was extended until the judgment becomes final.

Beara surrendered to the Croatian authorities in 2011 and requested a retrial, as he had been previously convicted *in absentia*. Namely, in the judgment of the Šibenik District Court dated 29 September 1993, Petar Krivić, Nikša Beara, Željko Bjedov and Dušan Novaković were convicted *in absentia* for abusing prisoners in the prisons of Knin. Krivić, Beara and Bjedov received six years in prison each while Novaković received 10 years. However, later in the reopened trial Bjedov was acquitted.

Following Beara's surrender, the War Crimes Council of the Split County Court on 2 December 2013 pronounced Beara guilty and sentenced him to three years and 10 months in prison, but the Supreme Court quashed the first-instance judgment. In the repeated proceedings, as mentioned in the introduction, he was sentenced to the same prison term as half a year ago.

Seven years in prison for participation in the arrests, abuse and expulsion of Croat civilians

On 26 May 2014, the War Crimes Council of the Osijek County Court pronounced Ibrahim Kovačević guilty of committing a war crime against civilians because, from August 1991 until mid 1992 as a member of Beli Manastir Secretariat for Internal Affairs (SUP) he participated in the arrests and physical abuse of several persons, addressed threats to one family due to which that family was forced to leave Baranja, and that he drove away prisoners from Beli Manastir to prisons in Borovo and Dalj. He was sentenced to seven years in prison.

Kovačević is the 11th defendant in the indictment laid by the Osijek County State Attorney's Office in 2001 against as many as 58 persons for the crimes committed in the area of Baranja.

German police arrested him on 19 October 2013 on the basis of an international arrest warrant during a routine check of a bus near the town of Passau, on the German-Austrian border. Then, in January of this year, he was extradited to Croatia.

The accused member of Serb formations acquitted *in absentia* by a first-instance judgment

On 29 May 2014, the War Crimes Council of the Rijeka County Court rendered a first-instance judgment acquitting absent defendant Željko Žakula of charges that in March 1992 in the village of Čanak near Korenica, as a member of formations of the so-called SAO Krajina, together with the now deceased Dragan Barać, he took Blaž Grbac from his family home and, after Barać stabbed him in the neck with a knife, he fired several shots at Grbac inflicting him multiple gunshot wounds due to which Blaž Grbac died.

The Gospić County State Attorney's Office laid the indictment on 16 October 2009. During the evidence procedure a total of 16 witnesses were heard. A few of them gave testimonies at the High Court in Belgrade where defendant Žakula presented his defence, as well.

During the investigation, defendant Žakula was charged by witness Nikola Jurković who died in the meantime. The testimony of Nikola Jurković was not attended either by the defendant or his counsel, and the witness talked about his indirect knowledge, i.e. what other people had told him.

The Trial Chamber rendered a judgment of acquittal deeming that the value of the material evidence presented was not sufficient to form a closed circle of indications, based on which one could derive a conclusion that the defendant had undoubtedly committed the offence with which he was charged.

Josip Mršić charged along Velibor Šolaja with the killing of an old woman in Lički Čitluk

The Zagreb County State Attorney's Office issued a decision on conducting an investigation against Josip Mršić due to reasonable suspicion that in September 1993, during the military action "Pocket 93" in the village of Lički Čitluk, as a member of the 9th Guards Brigade of the Croatian Army, after he found an unknown female person of advanced age in the basement of a house, along with Velibor Šolaja he shot her from his personal weapon, thus killing her.

Namely, in the criminal proceedings conducted before the Zagreb County Court against Velibor Šolaja, in April of 2014 a reconstruction of the crime scene was carried out in the village of Lički Čitluk during which Mršić, as a witness, stated that it was him who shot the unknown female person and thus killing her. He repeated the same thing at the main hearing on 6 May 2014 while explaining that, after he shot her, defendant Šolaja shot her as well. At the same hearing witness Damir Relić confirmed that Mršić shot a female person. The Zagreb County State Attorney's Office then questioned another witness who also confirmed that Mršić, together with defendant Šolaja, shot the victim. That was stated, without specifying personal data of the defendants, in a press release issued by the Zagreb ŽDO on 21 May 2014.

Main hearing started for a crime committed by abusing civilians in the Šibenik prison of Kuline

On May 22 2014, the main hearing began at the Split County Court in the trial against Damir Boršić and Miroslav Periša charged with committing a war crime against civilians.

Boršić is charged that from 21 May until 17 July 1993 in Šibenik, as commander of the Military Prison Kuline, he held four civilians in that prison. He knew that the guards beat them and abused them on a daily basis, but did nothing to prevent it and even participated himself in those actions. Detained civilians, according to the indictment, were physically and mentally abused on a daily basis and one injured party was repeatedly raped. Periša is charged that, as a prison guard, he physically and mentally abused civilians. In addition, he forced the injured party to have sexual intercourse with another injured party.

After reading the indictment, both defendants pleaded not guilty. The beginning of the evidence procedure was set for the autumn, until when attempts will be made to reach two witnesses (the injured parties) who live outside Croatia. Two other people who were listed as victims in the indictment died in the meantime and never gave a testimony.