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Civic Committee for Human Rights

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

Osijek, Zagreb, 07 March 2014

Biweekly Report on War Crime Trials

Kutina Municipality State Attorney's Office: There are no elements of the criminal offence in Josip Miljak's behaviour towards Nataša Jovičić

On 04 February 2014, the Kutina Municipality State Attorney's Office dismissed the criminal complaints filed in December 2013 by Nataša Jovičić, Director of the *Public Institution of the Jasenovac Memorial Site*; the *Centre for Peace Studies*; *Documenta – Centre for Dealing with the Past*; and the *Civic Committee for Human Rights* against Josip Miljak, President of the *Croatian Pure Party of Rights* (HČSP), for criminal offence of making a threat and for criminal offence of public enticement to violence and hatred.

Criminal complaints were filed after Nataša Jovičić on 01 December 2013 received two e-mail messages containing threats: one anonymous message with allegations against Jovičić for being anti-Croatian and for commission of treason, with a depiction of a bullet and with threats to kill her, and another message containing similar insults and allegations, signed by Josip Miljak, President of the *Croatian Pure Party of Rights*, who publicly acknowledged the authenticity of the e-mail message and the fact that he was the sender.

On the basis of following allegations made in the e-mail message addressed to Nataša Jovičić and undoubtedly sent by Josip Miljak: “... *You live really well on your lies, since the Croatian state administration pays you for those same lies about Jasenovac and Croats in general ... Your lies and the hatred towards everything that has a Croatian character only contributes to your end ... People like you are only the remainder of the remnants of decay which eats away the Croatian national tissue and you are condemned to extinction and insanity into which you are led by insatiable and devious hatred ...*”, signed and concluded by Ustasha's words of salute “*Za Dom Spremni!*” (“*For the Homeland Ready*”), and on the basis of the hearing of Nataša Jovičić and Josip Miljak, the Kutina Municipality State Attorney's Office “*cannot deduce an undoubted conclusion about the issue whether the stated e-mail message sent by Josip Miljak has constituted a serious threat to kill Nataša Jovičić or inflict any harm upon her...*”, whereas, in respect of the filed complaint for criminal offence of public enticement to violence and hatred, the Kutina Municipality State Attorney's Office ascertained that the act of sending an e-mail message to a private address did lack a crucial element of publicity, since it was Nataša Jovičić herself who made the message available to the general public by forwarding it to the media.

Neither the Ustasha salute, nor the wording and the rhetoric used in the anti-Semitic propaganda, nor the fact that Nataša Jovičić almost simultaneously received a picture of a flying bullet from an unknown address, were enough for

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the Kutina Municipality State Attorney's Office to prosecute Josip Miljak. The stated inaction largely led to further provocations being made by Miljak, who subsequently announced his intention to file a criminal complaint against the President of the *Civic Committee for Human Rights* Zoran Pusić, the Head of the *Documenta* Vesna Teršelič, and the *Documenta* activist Eugen Jakovčić, claiming that they were the very persons who had falsely reported him (Miljak) for being a perpetrator of the criminal offence.

The International Holocaust Remembrance Alliance expressed its support for Nataša Jovičić and the said activists.

Updated DORH's report on criminal proceedings for war crimes

The DORH published its updated report on criminal proceedings for war crimes at the end of February 2014.

In addition to the data mentioned in the report, worth mentioning is the fact that investigation was instigated against 39 persons in 2013 (36 members of Serb military units and 9 of them are available to Croatian judiciary, and 3 available HVO members) charged with crimes against Bosnian civilians and detained members of the BiH Army in the area of Herzegovina.

Compared to previous years, an increase has been observed in 2013 in respect of the number of persons against which investigation was instigated. However, the prosecution of war crimes is still slow going and, considering the fact that suspects are mostly unavailable, inefficient.¹

24 persons were indicted (23 members of Serb military units and only one of them is available to Croatian judiciary, and 1 member of National Liberation Army of Yugoslavia). This way, after more than a decade, judiciary continued with prosecution of war crimes committed during or immediately after the Second World War. For the first time in Croatia, criminal prosecution has been instigated against a member of the winning side from the Second World War and it concerns Josip Boljkovac who is charged with apprehensions and killing of 21 persons who were suspected of cooperation with Ustashe authority.

In the previous years, during intensified negotiations between Croatia and European Commission, investigations were carried out and indictments were laid for some of the worst crimes committed by members of Croatian military units, like the crimes committed in Sisak and surroundings, at the Zagreb Velesajam, Pakračka Poljana, Grubori etc. On the other hand, not a single investigation was instigated and no HV or MUP RH member was indicted in entire 2013.

We are of the opinion that in addition to the crimes mentioned in the updated version of the DORH report², the public is also interested in crimes which were committed during and after the Military Operation „Storm“ and „Flash“, like for instance the crime against Serb civilians in Medari. Still not prosecuted crime against mainly Croatian civilians and soldiers in Bogdanovci has been also mentioned in a trial before the ICTY. Still, no investigation has been instigated for crimes committed against Serb civilians in Vukovar.

We wish to remind that out of 490 recorded crimes, 393 crimes (80%) were committed by members of Serb formations (JNA or military units of the so-called SAO Krajina), 86 (18%) were members of Croatian formations (HV or MUP RH), 2 (less than 1 %) members of the so-called People's Defense of Autonomous Region Western Bosnia, and 7 (1.4 %) were members of presently unidentified formations.

¹ In 2011, investigation was instigated against 20, and in 2012 against 16 persons.

² Crimes committed in detention camps outside the RC, rape – war crimes, crimes committed in Trpinja, at Velepromet in Vukovar, in Sotin, Dalj, Erdut and Aljmaš, crimes committed by highly-ranked JNA military command by the attack on Vukovar and eastern Slavonia, crimes in Lugor Buče, Dubrovnik, Škabrnja, Pakračka Poljana, Škabrnja and the Karlovac settlement Sajevac.

The Supreme Court of the Republic of Croatia upheld the first-instance court verdicts delivered in two lengthy criminal proceedings

a) The Supreme Court upheld the convicting verdict against Željko Belina and Dejan Milić for killing of Serb civilians in Novska

On 29 October 2013, the Appeal Chamber of the Supreme Court of the Republic of Croatia upheld the first-instance court judgement delivered by the War Crime Council/Court Panel/ of the Zagreb County Court according to which Željko Belina and Dejan Milić had been convicted to 10 years, and 9 years in prison, respectively, for commission of war crime against civilians Goranka Mileusnić, Vera Mileusnić and Blaženka Slabak, who had been killed, and against Petar Mileusnić, who had been wounded, in the Mileusnićs' family house in Novska on 18 December 1991.

In respect of the stated incriminating event, the investigation had been conducted against Belina and Milić, as well as against Ivan Grgić, Zdravko Plesec and now-deceased Dubravko Leskovar as early as in 1992. After the investigation was completed, the Military Prosecutor's Office in Zagreb withdrew from prosecution of Grgić and Plesec, whereas the criminal proceedings against Belina, Milić and Leskovar were continued before the Military Court in Zagreb. The criminal offence received a characterisation of the murder and the attempt of murder. However, after the *Act on Amnesty from Criminal Prosecution and Proceedings for Criminal Offences committed in the armed Conflicts and the War against the Republic of Croatia* (National Gazette 58/92) was adopted in September 1992, the Council/Panel/ of the Zagreb Military Court discontinued the criminal proceedings against the three stated accused persons in November 1992.

After the injured parties had repeatedly initiated criminal prosecution of the crime perpetrators by filing a criminal complaint for commission of war crime against civilians, the Sisak County State Attorney's Office, on 09 July 2010, indicted Željko Belina, Dejan Milić, Ivan Grgić and Zdravko Plesec. However, on 19 November 2010, the War Crime Council/Court Panel/ of the Sisak County Court dismissed the charges, claiming that the accused persons could not be repeatedly tried. Nevertheless, the Supreme Court of the Republic of Croatia quashed the said judgement in respect of Belina and Milić, while upholding the first-instance court judgement on suspension of indictment/dismissal of charges/ in respect of Ivan Grgić and Zdravko Plesec.

The stated case is one of the five cases known to us in which the Croatian courts, during the 1990s, had unfoundedly applied some of the amnesty acts to the members of Croatian military forces.

Except the above-stated proceedings, three additional criminal proceedings were re-initiated: in two cases the crime perpetrators have been convicted, whereas the criminal proceedings in one case are still pending (in accordance with the first-instance court judgement, the accused persons were acquitted, however, the case is currently in the appeal phase).³ The repeated criminal proceedings against a perpetrator of a crime has not commenced yet since the Croatian judiciary determined that the accused persons in the particular case could not be repeatedly tried.⁴

b) The Supreme Court upheld the acquittal of Rade Miljević

On 21 January 2014, the Supreme Court of the Republic of Croatia upheld the judgement delivered by the War Crime Council/Court Panel/ of the Sisak County Court on 22 November 2012 which had acquitted Rade Miljević, former

³ In the newly-conducted criminal proceedings, Fred Marguš was convicted to 15 years in prison for the killing of Serb civilians in the village of Čepin near Osijek (meanwhile, the judgement became legally valid and final), whereas Antun Gudelj was convicted to 20 years in prison for the killing of Josip Reihl-Kir, Goran Zobundžija and Milan Knežević, and for the attempted killing of Mirko Tubić in the village of Tenja near Osijek. In 2013, Damir Vide Raguž and Željko Škledar received the first-instance court verdict which acquitted them of charges for the killing of four Serb civilians in Novska in 1991, however, the case is currently in the appeal phase.

⁴ The criminal complaint was dismissed, as well as the subsequent request for conducting investigation, which was filed by the spouse of the killed Damjan Žilić in an attempt to initiate the repeated criminal proceedings against Robert Ahmetagić, Damir Šarić, Dragan Kostrić and Vinko Kovačević.

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member of the Serb military formations, following the third (the second repeated) first-instance court proceedings held on the basis of the charges stating that, on 20 September 1991, Miljević had taken the incarcerated (Croat) civilians Janko Kaurić, Milan Litrić, Borislav Litrić and Ante Žužić out of the Glina prison, and handed them over, in order for the civilians to be executed, to a non-defined group of armed unidentified persons, who had met them in front of the Glina prison facility. The civilians had been killed by shots fired from fire-arms on the Pogledić hill near Glina.

Rade Miljević had been found guilty by the Sisak County Court on two occasions: on 13 June 2007, Miljević had been sentenced to 14 years in prison, and on 17 December 2008 he had been sentenced to 12 years in prison. However, both judgements were quashed by the Supreme Court of the Republic of Croatia due to the incorrectly and deficiently-established factual situation.

Rade Miljević was held in custody/detention/ from March 2006 to December 2010. He was released from custody during the course of the trial – immediately upon the expiration of the maximum time-limit for keeping an accused person in custody.

ICJ opens hearings in Croatia vs. Serbia case for genocide

On 3 March 2014, International Court of Justice (ICJ) opened hearings in Croatia vs. Serbia case for genocide.

In July 1999, Croatia filed an Application against the Federal Republic of Yugoslavia (FRY) in respect of a dispute concerning alleged violations of *the 1948 Convention on the Prevention and Punishment of the Crime of Genocide*. Croatia requested the following: to take effective steps to submit to trial Slobodan Milošević and other persons who committed crimes against the Republic of Croatia during the Homeland War, to provide all information on the missing persons and to return any items of cultural property.

In 2002, Serbia objected to the Application. In 2008, the ICJ found that it has jurisdiction to adjudicate upon the Application filed by the Republic of Croatia in 1999. Following to that, the Republic of Serbia filed a Counter-memorial against Croatia for violating its obligations under *the Convention* against Serbs in the Operation Storm.

About the Application of the BiH filed against Serbia and the outcome of the proceedings

In 1993, Bosnia and Herzegovina submitted to the ICJ an Application instituting proceedings against Serbia for violations of its obligations under *the Convention on the Prevention and Punishment of the Crime of Genocide*. The ICJ ruled in February 2007 that Serbia is not responsible i.e. that the acts committed by Bosnian Serbs cannot be imputed to the FRY because it could not have been proven that FRY had effective control over them. The Court also concluded that genocide was committed in the Srebrenica area but not at the wider BiH area. However, ICJ found that Serbia was responsible for failing to prevent and punish genocide.

For several years, both Serbian and Croatian politicians were mentioning the possibility of withdrawing mutual charges of genocide – but, no such thing happened. The Croatian side expressed its willingness on several occasions to reach an agreement concerning mutual withdrawal of charges if the Serbian side provides to Croatia all information on the persons which went missing during the war. Unfortunately, politicians at the highest level both in Serbia and Croatia failed to invest sufficient efforts into resolving the issue of missing persons and accelerate the proceedings against responsible persons.

Still sought in January 2014 are 1663 persons which went missing during the Homeland War. Out of this number, 945 persons, mainly of Croatian ethnicity, disappeared in 1991 and 1992. 718 persons, mainly of Serbian ethnicity, disappeared in 1995. Croatian media generally do not report on the latter number and the necessity of discovering their fate.

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News from the ICTY

Dismissed Goran Hadžić's motion for acquittal

On 20 February 2014, the Trial Chamber dismissed the motion for acquittal of the Defence of Goran Hadžić, the former President of the self-proclaimed Serbian Autonomous Region of Slavonia, Baranja and Western Srem and the President of the Republic of Serbian Krajina, on charges from eight counts of the indictment against him.

On 16 December 2013, pursuant to Rule 98 bis of *the Rules of Procedure and Evidence*, Hadžić's Defense requested acquittal on specific charges for the crimes committed in eastern Slavonia and in detention centres in Serbia, arguing that the prosecution had not presented sufficient evidence which would lead to a conviction at the end of the case. The Chamber, however, took the view that it may decide either on the dismissal of all counts or on entire counts in the indictment. Since the Defence requested the judges to dismiss only portions of certain counts, the Chamber concluded that it could not acquit the accused.

In addition, the Chamber concluded that the crimes alleged in the indictment did happen at specific locations: in Opatovac, Lovas, Velepromet and at Ovčara, that there was a joint criminal enterprise that involved several members including Slobodan Milošević, Vojislav Šešelj, Radovan Stojičić "Badžo", Željko Ražnatović "Arkan", Slavko Dokmanović, Andrija Biorčević and Mihalj Kertes. The aim of that enterprise was, according to the charges, to forcibly and permanently eliminate the majority of Croats and other non-Serbs from one third of the Croatian territory which should have become part of a new state under Serb dominance. The Trial Chamber concluded that sufficient evidence was called to show that Hadžić significantly "contributed to the joint criminal enterprise and shared the intent of other members to implement its goal." The judges concluded that there was sufficient evidence for Hadžić's criminal responsibility for the specific crimes, but stressed that the presence of evidence capable of sustaining a conviction did not mean that Hadžić would be found guilty at the end of the trial.

Hadžić is charged with persecution, deportation, wanton destruction and looting of property, extermination, murder, detention, torture and cruel treatment of Croat and other non-Serbs detained in prison facilities on the Ovčara farm, in Velepromet in Vukovar, Erdut, Dalj, Borovo Selo and in facilities in Serbia, on farms in the villages of Stajičevo and Begejci, in the JNA military barracks in Zrenjanin and military prisons in Šid and Sremska Mitrovica.

Goran Hadžić was initially indicted on 4 June 2004. After having been at large for seven years, he was arrested on 20 July 2011 in the village of Krušedol in Fruška Gora in Serbia. Two days later, he was transferred to the ICTY. Trial against him commenced in October 2012.

Changes in the DORH head position

The Government of the Republic of Croatia announced that after 12 years, i.e. three consecutive mandates, the Chief State Attorney Mladen Bajić will be replaced by Dinko Cvitan, former director of USKOK and one of Bajić's closest associates.

Under the chairmanship of Bajić, the State Attorney's Office (DORH) processed war crimes which were not previously investigated, carried out proceedings against members of Croatian military units - the prosecution of which was avoided for years, and carried out audit procedures against members of Serb military units that were previously indicted or convicted in biased proceedings, without sufficient evidence that they were the perpetrators or that it was a war crime.

Nevertheless, there are still many war crimes waiting to be prosecuted, for instance the crime committed at the end of 1991 in Bogdanovci when more than 50 civilians and war veterans - mainly Croats – were killed, as well as the crime against Serb civilians in Vukovar and the crimes committed during and after Operation "Storm".

We hope that with the arrival of Cvitan, the prosecution of war crimes will not fall in the shadow because of the prosecution of corruption cases.

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