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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, 10 January 2014

### ***Biweekly Report on War Crime Trials***

#### **The opening of the monument dedicated to the victims executed in 1946 in Gacka Valley**

On 30 December 2013 in Tupale hamlet near Sinac, a memorial monument was opened in memory of the fifteen victims of communist regime who were executed in that area in 1946. This is the first such memorial which Croatia erected on the site of the crimes which were committed after the World War II, after the adoption of the *Act on the Research, Planning and Maintenance of Military Cemeteries, Cemeteries of the Victims of World War II and the Postwar Period* (OG 143/2012) in December 2012. Despite a delayed investigation of the crimes and marking of the sites where those crimes were committed, we support such activities because they present expression of piety toward the killed persons.

The exhumation took place in late October 2013 on the basis of an order of the Karlovac County Court. The remains of the victims were found in two graves. During the exhumation, a methodology was used as it had been in the case of the victims of the Homeland War. The mortal remains were then stored at the cemetery in Otočac and the burial place was marked as stipulated in the aforementioned Act. According to the Ministry of War Veterans, identification of the victims is underway and carried out in co-operation with the Institute for Forensic Medicine & Criminology of Medical School in Zagreb.<sup>1</sup>

Unveiling ceremony of the memorial was attended by President of the Croatian Parliament, Minister of War Veterans, members of the *Commission for Research, Planning and Maintenance of Military Cemeteries, Cemeteries of the Victims of World War II and the Postwar Period*, local government representatives, President of the Croatian Helsinki Committee, but without any representatives of the Catholic Church. Gospić-Senj Bishop Msgr. Mile Bogović blamed the authorities because the corpses were dug out by bulldozers only a few days before the All Saints Day and the Day of the Dead when people are especially sensitive about deceased ones. Some residents expressed doubt that evidence of communist crimes is herewith attempted to be destroyed.

Although the intention of (any) government to mark the places where victims were killed during (any) regime should be received with praise, criticism and suspicion about the method and purpose of the exhumation carried out displays actually a complete distrust of the right-wing political spectrum and (one part of) the structures of the Catholic Church against the current center-left government.

<sup>1</sup> According to the Ministry of War Veterans, search was carried out at 15 sites (six counties and the City of Zagreb) from 1 January to 30 December 2013 from which 273 persons were exhumed.

## **Amendments to the European Arrest Warrant entered into force - different county court decisions in response to requests for extradition of Josip Perković and Zdravko Mustač because of the murder of Croatian political emigrant Stjepan Đureković**

*The Act on Amendments to the Act on Judicial Cooperation in Criminal Matters with the EU Member States* (Official Gazette 124/2013) entered into force on 1 January 2014.

Following the dispute between Croatia and the European Commission (EC), which was generated by the introduction of a time limit in the application of the European Arrest Warrant (EAW) just shortly before Croatia's accession to the EU, a compromise between Croatia and the EC was reached in September followed in October by the adoption of the amendments to the law which enabled, among other things, the EAW application to criminal offences which had been committed before 7 August 2002, as it was provided for in the initial version of the law before the controversial amendments in June 2013.

On the first day of 2014 EAW was activated in the case of 28 persons whose extradition was requested by different EU countries. The same day police authority apprehended Josip Perković and Zdravko Mustač, leaders of Yugoslav and Croatian secret services, whose extradition was requested by German judicial authorities because of the murder of Croatian political emigrant Stjepan Đureković in Germany in 1983.

Both Perković and Mustač opposed their extradition. Perković's defence lawyer said that the defence opposes extradition for several reasons: the defence is of the opinion that the proceedings in Germany would not be a fair trial; it also believes that the statute of limitation for criminal prosecution has expired according to the domestic law, which, according to Article 20 of the *Act on Judicial Cooperation in Criminal Matters with the EU Member States* would represent an absolute obstacle for exemption, although according to the German law the statute of limitations has not yet expired; it is of the opinion that national prosecuting authorities decided not to initiate criminal proceedings for an offence for which EAW was released, given the fact that the State Attorney's Office rejected on two occasions in earlier years the charges against Perković.

On the other hand, it is debatable among lawyers whether in this particular case the statute of limitations can be applied and whether the statute of limitations according to the domestic law could be a reason for refusal of extradition in the murder case. Namely, Article 10 of the said Act stipulates that a double criminality shall not be verified (in the country requesting extradition and in Croatia) in the case of 32 criminal offences, including the murder, and that received decision of foreign criminal authorities shall be immediately executed.

Therefore, the question remains whether the institute of "exclusion of verification of double criminality" is applicable to 'becoming subject to the statute of limitations' or whether the statute of limitations presents an explicit barrier to execute EAW?

The Zagreb County Court ruled on 8 January 2014 that Josip Perković could be extradited to Croatia. It held that the statute of limitations is not an obstacle to the extradition, and that in this particular case the statute of limitations has not expired. The next day, the Velika Gorica County Court denied the request for extradition of Zdravko Mustač because it held that the statute of limitations for criminal prosecution has expired and that it is an obstacle for extradition.

The Supreme Court of the Republic of Croatia will have to decide at second instance on the above decisions made by the county courts after they lodge their appeals.

## **Divided opinion on the domestic political scene concerning the "Lex Perković" and amendments to the Constitution regarding exemption of murders from the statute of limitations**

Public opinion, especially the opposition led by the Croatian Democratic Union (HDZ) argued that the law, abbreviated in the public "Lex Perković," was amended in late June so that the current government could prevent Perković's extradition and obstruct the prosecution of political assassinations committed until the nineties<sup>2</sup>.

The ruling authority sharply denied any possibility of being connected with any of particular case<sup>3</sup>. The introduction of time limits in the EAW application was justified with the protection of Croatian Defenders from possible criminal prosecution in the EU Member States which apply the principle of universal jurisdiction. They tried to enable prosecution by initiating amendments to the Constitution that would exempt all serious murders from the statute of limitations. This attempt of amending the Constitution failed because the proponent failed to ensure a sufficient parliamentary majority. The biggest opponent to the proposed amendments was the HDZ, which advocated for the exemption from the statute of limitations of only political murders committed during the communist regime.

## **Slobodan Medić - the Commander of "Scorpions" died in a car accident**

Commander of the notorious Serbian paramilitary unit „Scorpions“ Slobodan Medić, together with his wife and son, died in a severe car accident near Sremska Mitrovica in Serbia on 31 December 2013. At the time of the accident, Medić was serving his prison sentence for war crimes during his free weekend. He was sentenced to 20 years in prison because he ordered the members of his unit the killing of six Muslim boys in Godinske Bare, near Trnovo, in eastern Bosnia in July 1995.

### ***The prosecution of direct perpetrators of the crime in Godinske Bare***

For the mentioned crime, in addition to Slobodan Medić, the Belgrade District Court sentenced also his subordinates who were direct perpetrators of the crime. The Court sentenced Pero Petrašević to 13 and Branislav Medić to 15 years of imprisonment, while Aleksandar Medić was found guilty of abetting the same crime and sentenced to 5 years in prison. In the same trial, Aleksandar Vukov was acquitted of all charges.

In the 2005 Verdict rendered by the Zagreb County Court and upheld by the VSRH judgement in 2006, Slobodan Davidović was sentenced to 15 years of imprisonment because he participated in the said liquidation and the abuse of prisoners of war in Bobota near Vukovar.

Because of the participation in crime in Godinske Bare, Croatian and Serbian judiciary also charged Milorad Momić. He was extradited from France to Croatia in September 2011. The Vukovar County Court rendered the first-instance judgement in December 2012 in which Momić was sentenced to three years in prison for the abuse of one civilian in Berak near Vukovar. Momić is kept in custody. The investigation of the crime in Godinske Bare against Momić, conducted by the Osijek County State Attorney's Office, is interrupted from October 2013 because Croatian judiciary await from France a special approval for the prosecution in this particular case.

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<sup>2</sup> Josip Perković is the father of Saša Perković, a national security adviser to the Croatian President during the mandates of former President Mesić and now Josipović.

<sup>3</sup> Out of 146 received requests, 31 persons were extradited to foreign countries based on the EAW.



*A photograph showing the liquidation of six Muslim civilians-boys: Safet Fejzić (b. 1978), Azmir Alispahić (b. 1978), Sidik Salkić (b. 1959), Smail Ibrahimović (b. 1960), Dino Salihović (b. 1979) and Juso Delić (b. 1970) is one of the most moving testimonies recorded during the wars in the former Yugoslavia. The photograph was published by the Humanitarian Law Fund.*

### The "Scorpions"

The "Scorpions" were formed in summer 1993. The unit was formed by the company named „The Republic of Serb Krajina Oil Industry“ in order to safeguard the oil rigs in village Đeletovci and its surrounding area and operated within the so-called Republic of Serb Krajina Army. The commander of the unit was Slobodan Medić. The unit was under the command of Slavonia and Baranja Corps, which had its headquarters in Vukovar. It initially comprised 200-300 members, and in May 1996 it increased to 500. Slavonia and Baranja Corps Command treated this unit as a special battalion. The orders were received directly from the corps command which was headed since 1994 by General Dušan Lončar.

The unit repeatedly went to the field. One 'field' was Trnovo at the mountain Jahorina. From the moment of arrival at Trnovo battlefield, this unit was part of the Sarajevo Romanija Corps of the Republic of Serb Krajina Army headed by General Dragomir Milošević<sup>4</sup>. While there, this unit had nothing to do with its parent corps (Slavonia and Baranja Corps), but it was exclusively under the command of the Army of Republic of Srpska, in whose area of responsibility it was to be found.

*Source: The Belgrade District Court' judgment no. K.V. 6/2005 of 10 April 2007.*

*[http://www.hlc-rdc.org/images/stories/pdf/sudjenje\\_za\\_ratne\\_zlocine/srbija/Slobodan\\_Medic\\_i\\_dr/presuda.pdf](http://www.hlc-rdc.org/images/stories/pdf/sudjenje_za_ratne_zlocine/srbija/Slobodan_Medic_i_dr/presuda.pdf)  
and the report by the Humanitarian Law Fund on the pronouncement and verbal explanation of the verdict  
[http://www.hlc-rdc.org/images/stories/pdf/sudjenje\\_za\\_ratne\\_zlocine/srbija/Slobodan\\_Medic\\_i\\_dr/Skorpioni.pdf](http://www.hlc-rdc.org/images/stories/pdf/sudjenje_za_ratne_zlocine/srbija/Slobodan_Medic_i_dr/Skorpioni.pdf)*

### News from the ICTY: Šešelj Judgment will not be delivered before second half of 2014

The Trial Chamber has decided that the trial of the Serbian Radical Party leader Vojislav Šešelj should continue when the newly appointed judge Niang fully acquaints himself with the case, and this will take at least six months.<sup>5</sup>

<sup>4</sup> *International Criminal Tribunal for the former Yugoslavia* sentenced Dragomir Milošević to 29 years in prison. He led a campaign of sniping and shelling Sarajevo. The Court found that the attacks which he led were deliberate, non-selective and/or excessive and disproportionate to the anticipated concrete and direct military use. As a result of the attack more than a thousand civilians were killed or wounded.

<sup>5</sup> Vojislav Šešelj is charged with crimes against non-Serbs in Croatia, Vojvodina and Bosnia and Herzegovina. He is in the ICTY detention unit from March 2003. In December 2013 he was subjected to the operation of the tumour on large intestine. In the last two weeks, many media claim that the tumour has metastasized and that Šešelj will have to receive chemotherapy.

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After Šešelj's motion for the disqualification of judge Judge Harhoff was granted because of alleged bias, pronouncing the judgment, originally scheduled for October 2012 has been prolonged.

When Judge Harhoff was disqualified, Judge Niang from Senegal took his place. Once it was fully constituted, Trial chamber had to decide how to continue the trial. Šešelj demanded that the proceedings against him be suspended, called for his urgent and prompt release and damages to the amount of 12 million euros. The prosecution proposed that the trial continues from the point where it stopped – when the judges were deliberating the verdict.

The Trial Chamber has decided to allow enough time to its new member to familiarise himself with the case file. It will then start its deliberations. After such decision, the Judge Niang said that he would try to get acquainted with the case in six months following the ICTY's winter recess.

**Out of 161 persons prosecuted by the ICTY for crimes committed (and) on the Croatian territory, prosecuted were 16 members of the Serbian military or political leadership:**

- six persons were sentenced with final convictions: Milan Martić to 35 years in prison, Milan Babić to 13, Pavle Strugar to 7.5 years, Miodrag Jokić to 7, Mile Mrkšić to 20 and Veselin Šljivančanin to 10 years in prison;
- two persons were acquitted (final judgments): Momčilo Perišić and Miroslav Radić;
- the trial suspended due to the death against two persons: Slobodan Milošević and Slavko Dokmanović;
- charges were withdrawn against one person: Milan Zec;
- after transferring the proceedings to the Republic of Serbia due to the incapability to stand trial, the trial was suspended against one person: Vladimir Kovačević "Rambo";
- acquitted (before appeal; not final judgment) were two persons: Jovica Stanišić and Franko Simatović;
- first instance trials are ongoing against two persons: Goran Hadžić and Vojislav Šešelj.