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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, 14 February 2014

Biweekly Report on War Crime Trials

Perković extradited to Germany

After the Zagreb County Court on 08 January 2014 approved extradition of Josip Perković to the Federal Republic of Germany in accordance with the European arrest warrant, the Supreme Court of the Republic of Croatia on 17 January 2014 rejected the appeals lodged by the State Attorney's Office and Josip Perković as unfounded.

Soon afterwards, Perković's defence counsel submitted the constitutional complaint, however the Constitutional Court of the Republic of Croatia on 24 January 2014 dismissed the claim. On the same day, Perković was extradited to Germany.

The proceedings have caused additional controversy, even more so since Zdravko Mustač was not extradited to Germany. Zdravko Mustač, Perković's superior officer in the intelligence structures of the former state, who had been charged, just like Perković, by the German Prosecutor's Office with complicity in the murder of Croatian emigre Stjepan Đureković in 1983 in the vicinity of Munich, Germany. In Mustač's case, the Velika Gorica County Court declined to act in accordance with the European arrest warrant, and subsequently assessed as inadmissible the appeal filed by the legal counsel authorised by wife of the late Đureković. However, the final judgement on admissibility of the stated appeal, and subsequently, possibly also on the German request, is to be delivered by the Supreme Court of the Republic of Croatia.

Controversy has also been stirred up by the actions of the Croatian State Attorney's Office. Although the Croatian State Attorney's Office has formally represented the German Prosecutor's Office in the proceedings, the State Attorney's Office did appeal against the decision of the Zagreb County Court which had approved Perković's hand-over and yet it did not appeal against the Velika Gorica County Court which had disallowed the hand-over of Zdravko Mustač.

Trial/court hearings have commenced in the criminal proceedings against Josip Boljkovac

On 05 February 2014, the trial/court hearings/ commenced before the War Crime Council of the Zagreb County Court in the criminal proceedings against 93-year-old Josip Boljkovac, charged, in his capacity as Chief of Commission of the People's Protection Department (OZNA) for the Town of Karlovac and the Karlovac District, according to his responsibilities, with arrests and executions of 21 civilians from Duga Resa suspected of collaboration with Ustasha administration.

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The accused Boljkovac pleaded not guilty and stated that, at the time of commission of crime, he had been hospitalised and had had no authorities imputed to him by the indictment. The defence counsel raised a series of objections to the contents of the indictment, claiming that The Hague Conventions from 1907 had not been ratified by the People's Republic of Yugoslavia (NRJ) but by the Kingdom of Serbia and the Principality of Montenegro, and that the Republic of Croatia was not a legal successor of the Kingdom of Serbia nor the Principality of Montenegro, and also that the application of the Basic Criminal Code of the Republic of Croatia (OKZ RH) was not feasible since the Basic Criminal Code had not even become effective at the time of commission of the crime, whereas a retroactive application was strictly forbidden, and that the Articles of the Conventions stated in the indictment were referring to the occupation forces in the occupation forces' territory, which would all imply that the Partisan army had constituted the occupation forces in the territory of the NDH (Independent State of Croatia founded by the Ustasha regime), which the defence counsel conclusively assessed as a scandalous act of the Croatian State Attorney's Office.

Another four court hearings were scheduled to take place in February 2014.

Former Nazi concentration camps guard has lived in Osijek for more than 20 years

During January 2014, a series of texts on Jakov Dencinger, a 90-year-old man from Osijek, was published in *Jutarnji list*.

It was stated that Dencinger was a former guard deployed at the Nazi concentration camps in Auschwitz, Mauthausen, Buchenwald and Plaszow. Since 1956, Dencinger was living in the United States of America whose citizenship he had been granted in 1972, however, after receiving the information on his Nazi past, the proceedings for deprivation of citizenship and Dencinger's deportation from the United States was undertaken in 1989.

In its public statement issued on 30 January 2014, the State Attorney's Office of the Republic of Croatia, avoiding the disclosure of the person's identity, stated that the Osijek County State Attorney's Office was conducting enquiries. The competent bodies of the Federal Republic of Germany and the United States' authorities, as well as the Simon Wiesenthal Centre, were kindly requested to forward the documentation.

The Central Office of the Judicial Authorities of the Federal States for the Investigation of National Socialist Crimes in Ludwigsburg, Germany, issued a public statement at the end of January 2014 stating that the Central Office had concluded the pre-trial investigations into several dozen former guards of Nazi concentration camps and that a series of court proceedings would be initiated in Germany. Thirty suspects have resided in Germany, and other seven suspects have resided in other countries, out of whom - one person has resided in Croatia. All of them were charged in their capacity as Auschwitz-Birkenau concentration camp guards with commission of criminal offence of complicity/assisting in the murders.

Due to a stance taken up by the Supreme Court of the Federal Republic of Germany in 1969 which stated that the personal guilt of each concentration camp guard had to be proven in order to have the guard convicted for complicity/assisting in murders, none of them has borne any responsibility so far. The investigations were reopened in 2011 when the verdict was returned in the case against Ivan (John) Demjanjuk. Das Landgericht Muenchen (Munich Regional Court) convicted Demjanjuk in his capacity as former guard in the Nazi concentration camp Sobibor and sentenced him to 5 years in prison for his involvement and contribution to the operation of the killing system and thus in assisting in killing of more than 28,000 persons.

On 06 February 2014, the Simon Wiesenthal Centre requested from Croatian judiciary to intensify the investigation.

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Indictment laid against former Serb Territorial Defence commander from Vojnić who is currently unavailable to the Croatian judiciary

According to the statement issued by the Rijeka County State Attorney's Office on 29 January 2014, after concluding the investigation, the indictment was laid against one citizen of the Republic of Serbia. Identity of the accused person was not disclosed in the statement.

The accused person was charged, in his capacity as Commander of the 1st Battalion of the 5th Kordun Brigade of the Vojnić Territorial Defence, which had been deployed in the area stretching from Banska Selnica to Brođani along the Kupa river and reaching into the depth of the territory to Slunjske Moravice, and that, in the period from 08 March 1992 to 06 August 1995, he had had knowledge about the events, however, he had failed to act and prevent the members of his subordinate units to illegally misappropriate and take away the property of the displaced Croats, destroy the abandoned houses and kill the civilians.

Two civilians had been killed, Croat civilians had been forced to dig trenches, at least fifty houses and farm facilities had been burnt down, the cattle had been taken away as well as the agricultural machinery and personal vehicles, whereas the houses which had been spared from fire were devastated.

Former Drmaljevo Detention Camp Chief has been arrested in Rijeka

According to the statement issued by the Rijeka County State Attorney's Office on 05 February 2014, upon receiving the criminal complaint lodged by the Primorsko-Goranska County Police Administration, a citizen of both countries, the Republic of Croatia and Bosnia and Herzegovina, had been questioned regarding a criminal offence of war crime against civilians. Subsequently, a decision to conduct the investigation was made and the order was issued to have the accused person remanded in custody.

Although the Rijeka County State Attorney's Office did not disclose either the personal data or the initials of the accused person, numerous media stated that the accused person was actually Ćazim Behrić. Behrić was charged that, in his capacity as Chief of the Collective Centre – Drmaljevo Camp, in the period from 11 June 1994 to 13 August 1994 in Velika Kladuša (in Bosnia and Herzegovina), during the time of the self-proclaimed Autonomous Region of Western Bosnia, he had been placing the civilians (among whom there had been children, women and men of all ages) into utterly inappropriate facilities, forcing them to reside in inhumane conditions and often subjecting them to mental and physical violence which had resulted in physical injuries being sustained by many civilians.

Person accused of commission of crimes against ethnic Croats in the villages along the Una river has been arrested in Austria and placed in detention pending extradition

At the end of January 2014, several Croatian internet portals published the article stating that a person accused of war crimes - Leonardo Janković - was arrested in Austria where he was ordered and placed under detention pending extradition.

According to the indictment laid by the Sisak County State Attorney's Office on 04 November 1994, Predrag Orlović and other 34 accused persons had been indicted, among whom the above stated Leonardo Janković had also been listed as the 6th-accused person. They had been charged that, in their capacity as members of the so-called Krajina Militia, armed with heavy weapons/artillery, they had entered the villages of Zamlaća, Struga and Kozibrod on 26 July 1991, expelling the ethnic Croat population, taking the civilians to act as a live shield by placing them in front of their units, burning down the houses and destroying the houses by planting explosive devices in them, opening fire on unarmed population, which had resulted in death of 16 civilians and serious physical injuries inflicted upon many civilians.

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Proceedings carried out thus far

The trial was conducted against the 11th defendant Đuro Đurić who is available to the court. In February 2009, however, the charge against him was rejected after the change of legal qualification of the offence into armed rebellion.¹

During the trial against Đurić, the prosecutor stated that majority of the defendants included in the indictment were unavailable to Croatian judiciary; only one defendant was sentenced – the 10th defendant Dragan Vranešević, to 15 years in prison; six defendants allegedly died or were killed (Tošo Sundać, Slavko Tadić, Goran Barač, Dušan Badić, Dalibor Borota and Rade Lukač), but since there was no official documentation to support this, the trial against them was not discontinued.

During 2009, the trial was separated and conducted against unavailable Simo Gaić, Đorđe Borojević and Zoran Tadić. The trial against them was discontinued after the change of legal qualification into armed rebellion.

Serbian court dismissed the compensation claim to former Croatian POWs

The First Basic Court in Belgrade, dismissed the compensation claims against the Republic of Serbia filed by the Humanitarian Law Center (HLC) in 2007 on behalf of 12 Croatian citizens for torture they endured in the ex-JNA (Yugoslav People's Army) prison camps in Sremska Mitrovica and Begejci in 1991. The HLC attorney has lodged an appeal with the Court of Appeal in Belgrade against the decision of the First Basic Court.

The First Basic Court in Belgrade dismissed the claim on statute of limitation grounds, as the former prisoners failed to bring their claim for damages within the statutory time-limit, which expired five years after the end of their imprisonment.

The HLC attorney insisted, both in the compensation claim and during the course of the proceedings, that longer limitation periods should apply to this case, because it involves the criminal offence of war crime against the civilians and that the statute of limitations in civil proceedings is the same as that prescribed for the criminal prosecution of the criminal offence in question. Nevertheless, the court established that no judgement had been issued in criminal proceeding concerning the events in question and therefore concluded that no criminal offence had been committed.

The HLC pointed out in its press release that in denying former POWs the right to redress because of the absence of a criminal judgment in this case, the court just found “a convenient excuse to protect the Serbian state from criminal responsibility for the systematic crimes committed during the 1990s”.

Dismissal of compensation claims on statute of limitation grounds – is also the practice by Croatian courts

This judgement at first instance by the Serbian court corresponds, unfortunately, to many judgements rendered by the Croatian courts wherein compensation claims, for non-pecuniar damage filed by family members of mainly killed Serb civilians, were dismissed on statute of limitation grounds.

In the Croatian courts' practice, this absence of a final judgment in which the crime perpetrator was convicted most frequently resulted with failure of family members/plaintiffs in lawsuits for damage compensations for the killing of a close person. The plaintiffs mainly succeeded in the lawsuits which were preceded by criminal proceedings where criminal liability had been established.

¹ The trial against defendant Đuro Đurić was conducted in 2001. At that time, he was kept in custody but, once his detention was vacated, he no longer responded to court summons. For that reason, the court requested his detention and issued APB against him but, in the end, the defendant turned himself in voluntarily.

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The plaintiffs were successful in several cases in which the court concluded that during 2013, in accordance with the *Act on the Responsibility for Damage Caused by the Acts of Terrorism and Public Demonstrations*, there existed an obligation of the RC to compensate the damage irrespective of the fact whether the crime perpetrator was determined, criminally prosecuted or found guilty, just because they filed their claims within the general limitation period. Unlike them, many other plaintiffs who lost their beloved persons and filed their claims after the expiry of limitation period, will be very likely rejected by the Croatian courts.

News from the ICTY

Convictions for Kosovo crimes upheld for Serb political and military leaders

a) The Šainović et al. case

On 23 January 2014, the Appeals Chamber reduced the sentence of Nikola Šainović from 22 to 18 years of imprisonment, the sentence of Sreten Lukić from 22 to 20 years of imprisonment, and of Vladimir Lazarević from 15 to 14 years in prison. The 22 year sentence of Nebojša Pavković was affirmed.

The case concerned crimes committed by Serbian forces in Kosovo between March and May 1999 when a campaign of violence was launched against the Kosovo Albanian civilian population, during which people were forcibly displaced, incidents of killing took place as well as sexual assaults against the Kosovo Albanian women, and mosques were intentionally destroyed.

During the relevant period covered in the Indictment, the defendants occupied some of the most senior positions in the Federal Republic of Yugoslavia (SRJ) and Serbia: Šainović was Deputy Prime Minister of the FRY, Pavković was Commander of the 3rd Army of the Army of Yugoslavia (VJ), Lazarević was Commander of the VJ Priština Corps, and Lukić head of the Serbian Ministry of the Interior (MUP) staff in Priština.

The Appeals Chamber, after a careful examination of the jurisprudence of the ICTY and the International Criminal Tribunal for Rwanda (ICTR), as well as customary international law, concluded that „specific direction“ is not an element of the aiding and abetting mode of liability. Such conclusion is in opposition to the finding of the Appeals Chamber in the Perišić case, who was acquitted because the Appeals Chamber concluded that there was no evidence that logistic, material, personnel and other aid, which was provided by Perišić in his capacity as the Chief of the General Staff of the Yugoslav Army (VJ) to the armies of Bosnian- and Croatian Serbs was „specifically directed“ towards the commission of crimes, and therefore Perišić could not be sentenced for aiding and abetting those crimes.

Milan Milutinović, the former president of Serbia, and Dragoljub Ojdanić, Chief of the General Staff of the VJ Initially were also included as the defendants in this Trial. The Trial Chamber acquitted Milutinović of all charges and convicted Ojdanić to 15 years of imprisonment. The Office of the Prosecutor and Ojdanić's defence came to a settlement and withdrew their appeals in January 2013, and he was granted early release in July 2013.

b) The Đorđević case

On 27 January 2014, the Appeals Chamber confirmed the guilt of Vlastimir Đorđević for crimes committed by Serbian forces during a campaign of terror and violence against Kosovo Albanians but it reduced his sentence from 27 to 18 years in prison.

The Appeals Chamber confirmed the Trial Chamber's finding that Đorđević, in his capacity as Assistant Minister of the Serbian Ministry of Internal Affairs (MUP) and Chief of its Public Security Department (RJB), participated in a joint criminal enterprise (JCE) which had the purpose of changing the ethnic balance of Kosovo to ensure Serbian control over the province and was implemented through the crimes of murder, deportation, other forcible transfer, and persecutions.

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The Office of the Prosecutor filed a motion for reconsideration of the acquittal in the Perišić case

On 3 February 2014, the ICTY's Office of the Prosecutor (OTP) filed a motion requesting a reconsideration of the acquittal of Momčilo Perišić for aiding and abetting crimes committed in Sarajevo and Srebrenica between 1993 and 1995.

Perišić was first convicted to 27 years of imprisonment by the first instance judgement but later in February 2013, the Appeals Chamber acquitted Perišić of all charges.

The OTP mentioned that this motion was filed as a direct consequence of the *Šainović et al.* Appeal Judgement delivered only a few days before. In that Judgement, as was previously mentioned, the Appeals Chamber delivered the conclusion which is in opposition to the conclusion of the Appeals Chamber in the Perišić case, concerning the „specific direction“ as an element of aiding and abetting liability. The OTP finds that it was on the basis of this absence of „specific direction“ that the conviction rendered by the Trial Chamber for aiding and abetting was quashed and Perišić was erroneously acquitted on appeal.