

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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Biweekly Report on War Crime Trials

Completed hearing in the trial by mutual genocide lawsuits between Croatia and Serbia

A one-month hearing in the proceedings conducted before the International Court of Justice in The Hague by mutual genocide lawsuits between Croatia and Serbia was concluded.

Although there were expectations, especially following the initiatives coming from the highest political level, to withdraw the lawsuits, that the parties would be guided by the principles of professionalism, objectivity and recognition of suffering of all and not just "one's own" victims, the arguments that were presented before the Court showed that vast funds were unduly spent. An opportunity was missed to present and establish facts about the killings and suffering, as well as the scope and background of the committed crimes before a respectable international instance in a fair and honest manner.

The hearing, which was followed by the public in both countries with a large interest and an even larger sensationalism in reporting, demonstrated that trust between the former warring sides has not yet been built, there is still present the rhetoric of exclusion from the early 90s which led to the armed conflict, there is bidding with the number of victims, one's own role in the crimes committed is minimized and negated. It goes so far as to manipulatively and tendentiously interpret the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY).

Legal standpoints of Croatia and Serbia expressed during the court proceedings indicated that, despite changes in the political leadership, social and political catharsis did not take place in either of the two countries which is necessary for both societies to face the dark side of their own past and recognize the victims of mass crimes committed in the name of their own country.

However, the expected judgment, determining the scale of the crimes committed by both sides, could use its authority to become an important step towards accepting one's own mistakes from the past and recognizing suffering of all, not just one's own victims.¹

¹ From the "Public statement on the occasion of completion of the trial concerning mutual genocide lawsuits between Croatia and Serbia before the International Court (of Justice) in The Hague", issued by Civic Committee for Human Rights, *Documenta* and Centre for Peace Osijek. The entire Statement can be found on

<http://www.documenta.hr/assets/files/pdf%20za%20priopcenja/Izjava-za-javnost-povodom-okoncanja-rasprave-povodom-tuzbi-Hrvatske-i-Srbije-za-genocid.pdf>

or

<http://www.centar-za-mir.hr/wp-content/uploads/2014/04/Izjava-za-javnost-povodom-okoncanja-rasprave-povodom-tuzbi-Hrvatske-i-Srbije-za-genocid.pdf>

Main hearings began in two proceedings

a) in the re-opened proceedings against the former JNA officer convicted for the shelling of Zadar and the surrounding area

On April 2 2014, the main hearing began at the Split County Court in the re-opened proceedings against Aleksandar Lazarević, the former JNA officer who was sentenced *in absentia* to 14 years in prison by the Zadar County Court with a judgment rendered in 1997 for war crimes against civilians committed by the shelling of Zadar and the surrounding area.

Lazarević, who is a citizen of Serbia, was arrested on 29 October 2013 while attempting to enter Bosnia and Herzegovina from Serbia at the Rača border crossing. Then BiH extradited him to Croatia.

The crime of shelling Zadar and the surrounding area

In the judgement of the Zadar County Court dated April 24 1997, which the Supreme Court of the Republic of Croatia (VSRH) upheld in 1999, nineteen JNA officers (defendant Momčilo Perišić et al.) were sentenced *in absentia* because, in September and October of 1991, they issued and transmitted orders to their subordinates to open fire on civilian facilities in Zadar and its vicinity without any military needs and indiscriminately. Such combat operations resulted in the killing of at least 30 civilians, causing huge material damage on more than 120 civil facilities and the facilities of large cultural, monumental and economic importance.

All defendants received prison sentences in the duration from 10 to 20 years.

Three witnesses - JNA members, who refused to comply with the orders issued by their superiors, provided testimonies at the first trial hearing. They charged defendant Lazarević with their testimonies.

The trial is scheduled to resume on 29 April 2014.

a) in the repeated trial against members of Serb formations charged with the killing of a Croat civilian and setting fire to two houses

On 2 April 2014, the trial began at the Zagreb County Court in the case of defendants Pero Đermanović, Dubravko Čavić and Ljubiša Čavić. They were charged that, as members of Serb formations, in the villages along Una River near Hrvatska Kostajnica, they unlawfully arrested, tortured and killed civilian Vladimir Letić and set fire to two houses, the owners of which were Croats.

The first-instance proceedings are conducted for the fourth time. The VSRH has so far quashed three first-instance judgments of conviction, one rendered by the Sisak County Court and two by the Zagreb County Court. On 9 October 2013, after the VSRH quashed the first instance judgment for the third time, the case was reversed to the Zagreb County Court for a retrial, but before a completely different trial chamber.

Dubravko Čavić is at large and is being tried *in absentia*. Pero Đermanović and Ljubiša Čavić attend the trial. They are currently attending trial undetained.

The trial is scheduled to resume on 27 and 28 May 2014.

Member of the Serb formations accused of committing a war crime by stealing a tractor arrested in the Netherlands

Milutin Graić, whom Croatia charges with committing a war crime against civilians in the region of Benkovac and Perušić, was arrested in the Netherlands on 30 March 2014. Several days after the arrest, the court in Amsterdam decided that Graić would await decision on possible extradition to Croatia at liberty, deeming that there is no danger that he would flee the Netherlands.

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The original indictment was filed in 1992 by the Military Prosecutor's Office in Split, charging the defendants with committing a criminal act of terrorism. Upon the dissolution of military courts, the case file was transferred to the Zadar County Court. In 2004, the Zadar County State Attorney's Office (ŽDO) factually and legally amended the indictment and 16 defendants: Branko Bota, Savo Šarić, Vinko Šarić, Jovo Šarić, Momčilo Pupovac, Novica Berber, Aljoša Dobra, Tihomir Žorić, Momir Pupovac, Milan Pavasović, Slobodan Pupovac, Aleksandar Dragaš, Novica Gulić, **Milutin Graić**, Mihajlo Čalić and Milan Čalića were charged that, as members of the so-called "Martić's militia" in Benkovac and Perušić, they abused civilians and destroyed and alienated civilian property, thereby committing a war crime against civilians.

Defendant Milutin Graić is specifically charged that on 22 January 1993, together with defendant Momir Pupovac, he confiscated a tractor of "Ferguson" brand.

If defendant Graić is actually charged only with confiscation of a tractor and taking into account the newly established practice of the Supreme Court according to which the value of destroyed or confiscated property should exceed HRK 600,000.00 to have the characteristics of a war crime, it is not expected that the proceedings would result in a judgment of conviction following possible extradition.

Since the beginning of the year, several members of different Serbian formations indicted for war crimes in Croatia were arrested in other countries or extradited to Croatia. We are aware that Leonardo Janković, indicted for the crimes in villages along the Una River, was arrested in Austria; Germany extradited Ibrahim Kovačević, charged with the crimes in Baranja, while Gojko Eror, charged with the crimes in Berak, was arrested in Malta and extradited to Croatia.

But the fact remains that, following the extradition of defendants to Croatia, proceedings frequently end up with a suspension or rejecting judgments or acquittals. This indicates that even after the review of cases performed by state attorney's offices, all previous unfounded indictments (or sentences rendered *in absentia*) have not been removed. However, on the other hand, it also indicates that Croatian judicial bodies are capable of conducting proceedings in a more professional and impartial manner than in the recent past. It is to be expected that even in the future a part of the proceedings would be suspended or end up with acquittals, following the arrests and extraditions of defendants. Proceedings are mainly suspended after re-qualification of the criminal offences in the indictment into armed rebellion, which is why defendants are not in a position to exercise financial compensation for the time they spent in custody.

Such outcomes of proceedings do not cause any sensitivity in Croatian public towards unfoundedly accused members of the enemy forces. Contrary to that, the arrest of Tihomir Purda and Veljko Marić, two members of Croat formations who were prosecuted by the Serbian prosecution, alarmed almost the entire Croatian public. As a reminder, in the indictment issued by the Osijek ŽDO Marić is also charged with the same crime (the killing of Serb civilians) for which he was sentenced in Serbia to 12 years in prison by a final judgment.

Norac, Orešković and Grandić obliged to reimburse the State the money with which the State compensated victims of crime

By a non-final judgment of the Zagreb Municipal Civil Court dated 2 April 2014, Mirko Norac, Tihomir Orešković and Stjepan Grandić were ordered to jointly pay the Republic of Croatia the amount of HRK 107,536.00 and the costs of the proceedings in the amount of HRK 3,705.00, all increased by interest on arrears.

Norac, Orešković and Grandić, sentenced in 2003 for the crimes against civilians in Gospić and its surroundings, are obliged to pay to the Republic of Croatia the amount of money with which the State compensated Stojanka and Đorđe Borić for damages suffered due to their forced removal and detention in barracks in Perušić in October of 1991.

The facts of the crime set forth in the final judgment of conviction

Orešković, as secretary of the so-called Operational Headquarters Gospić and Norac, as commander of the 118th Brigade, in mid-October 1991 ordered the arrest and deprivation of life of a large number of civilians of Serb and Croat ethnicity. Thus, members of the Croatian Army and the Military Police unreasonably arrested 51 persons (listed in the judgment) and several other unknown persons. Afterwards Grandić, as commander of the 2nd Battalion stationed at the barracks in Perušić, detained them in a designated room in the barracks. From there, four persons were released, including Stojanka Borić and her son.

Then, on 17 October, Orešković and Norac ordered the persons present at the so-called Operational Headquarters in Gospić to execute a part of the civilians. At least ten civilians were transported to the "Žitnik" pines plantation where they were killed by firearms shots fired by members of the Croatian Army. Immediately prior to that, Norac himself killed one unidentified female person, while his gun malfunctioned three times as he was trying to shoot an unknown man.

The day after Grandić, acting upon an agreement between Orešković and Norac and after receiving Norac's order to execute the remaining civilians, organized the transportation of civilians to the site of "Lipova Glavica" near Perušić where he ordered members of the Croatian Army to execute the civilians, which they did together with him.

Orešković was sentenced to 15, Grandić to 10 and Norac to 12 years in prison.

