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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, 27 January 2014

Biweekly Report on War Crime Trials

Vandalism at the Orthodox Christian cemetery in Čepin

After the criminal investigation was conducted, four children are suspected of smashing the glass panes on the mortuary of the Čepin Orthodox Christian cemetery in the evening of 04 January 2014 and causing damage on a few dozen grave sites by demolishing or shattering the tombstones, crosses, vases, statues and metal lamp casings. As stated in the statement issued by the Osijek-Baranja Police Administration, a special report is to be submitted against them to the Juvenile Division of the Municipal State Attorney's Office.

Although this is an offence whose suspected perpetrators are children, the vandals' act committed several days prior to the Orthodox Christmas in Čepin, the town burdened with executions of Serb civilians committed at the end of 1991, has pointed out to the existence of intolerance of a part of the local community towards their fellow citizens of Serb ethnicity.

The Municipal Administration immediately condemned the vandals' act, stating that they consider the act also as an attack against the harmonious interethnic relations in Čepin municipality.¹

Executions in Čepin in 1991 and the court proceedings against Fred Marguš

Čepin, a town with some ten thousand inhabitants, situated 9 kilometres to the south-west of Osijek, unlike Osijek and majority of towns and suburbs in the close vicinity of Osijek, was spared from large-scale destruction during the Homeland War.

Fred Marguš, a resident of Čepin, also a former Platoon Commander of the 2nd Company of the 3rd Battalion of the 130th Brigade of the Croatian Army (HV), which had been based in Čepin, was tried at the Osijek County Court for commission of war crime against civilians and sentenced to 14 years in prison according to the first-instance court judgement passed in March 2007, while the Supreme Court of the Republic of Croatia in September 2007 altered the length of sentence increasing it to 15 years in prison.

¹ Several days earlier, the Čepin Municipal Administration sent best wishes to all its Orthodox Christian believers on the occasion of forthcoming holidays by a public statement with the traditional Orthodox Christmas greetings: MIR BOŽJI, HRISTOS SE RODI! (Peace of God, Christ is born!). According to the 2011 census data, 576 inhabitants (5%) out of 11,599 inhabitants of the Čepin Municipality (Čepin, Beketinci, Čepinski Martinci, Čokadinci and Livana) are of Orthodox Christian faith.

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In the period between 20 November and 25 November 1991, Marguš had killed eight civilians of Serb ethnicity: Vukašin Bulat and Svetozar Bulat, Nedeljka Vico and Nikola Vico, Ljubomir Grandić, Dragica Gvozdrenović and Stevan Gvozdrenović, and Savo Pavitović. Majority of the stated persons had previously been detained and tortured by Marguš. In addition to the stated, Marguš had wounded the then nine-year old boy Slaven Bulat by shooting a round at him. In the same court proceedings, Tomislav Dilber, member of the Marguš's Platoon, was tried for participation in the killing of Savo Pavitović and sentenced to 3 years in prison.

During the very time of Marguš's crimes, majority of his Platoon members had been deployed in Laslovo, a village located some 15 kilometres away from Čepin, where fierce battle had been fought. The Platoon had ended up being surrounded by the enemy, however, in the night of 22 November/23 November 1991 they had broken the siege and had withdrawn. Immediately after that, Laslovo had been occupied by enemy forces. When the Platoon members had been getting ready to leave for Laslovo in the first place, they had not wished their Commander Marguš to join them since he had gotten into a (fist)fight with one of the squad commanders.

The court proceedings had been conducted against Marguš for the killing of Vukašin Bulat, Svetozar Bulat and the spouses Vico before the Osijek County Court some ten years earlier. However, in June 1997, the court applied the *General Amnesty Act* to Marguš – which was a completely unfounded decision – and dismissed the criminal proceedings.

Especially due to the fact that the criminal proceedings against Marguš had been conducted twice, the case has still been deliberated on at the *European Court of Human Rights*. Namely, the *European Court of Human Rights* on 13 November 2012 passed the judgement determining that no violations of the right to a fair trial or the right of the accused to not be indicted and convicted of the same offence twice (*non bis in idem*) had occurred, however, the decision of the Grand Chamber of the *European Court of Human Rights* has still been expected concerning the stated matter.

Marguš is a multiply convicted person. Prior to the conviction for war crimes, he was convicted of various criminal offences: threats, assault on an official, unlawful possession of weapons and explosive devices.

The convicting verdict which had been passed by the Serbian court against fourteen persons accused of crimes in Lovas, has been quashed

According to the report by the Serbian national broadcaster RTS (Radiotelevizija Srbije) dated on 09 January 2014, the Appellate Court in Belgrade quashed the Belgrade Higher Court War Crimes Department's verdict dated on 26 June 2012 which had convicted the fourteen persons - members of Serb paramilitary formations and former Yugoslav National Army members - of the war crime committed in Lovas in October 1991 and November 1991.

According to the stated decision, the Appellate Court ordered the Lovas crimes trial to be reversed/repeated. For the time being, the legal reasons for quashing the first-instance court judgement have not been known to us.

According to the first-instance court judgement, **four local ethnic Serbs** - members of the local civilian-military authority - **had been convicted**: Ljuban Devetak to 20 years in prison, Milan Devčić to 10 years in prison, Milan Radojčić to 13 years in prison and Željko Krnjajić to 10 years in prison; **four former members of the Yugoslav National Army** had been convicted: Miodrag Dimitrijević to 10 years in prison, Darko Perić to 5 years in prison, Radovan Vlajković to 5 years in prison, and Radisav Josipović to 4 years in prison; **and six former members of the “Dušan Silni“ (“Dušan the Great“) paramilitary unit** had been convicted: Jovan Dimitrijević to 8 years in prison, Zoran Kosijer to 9 years in prison, Saša Stojanović to 8 years in prison, Dragan Bačić to 6 years in prison, Petronije Stevanović to 14 years in prison, and Aleksandar Nikolaidis to 6 years in prison.

They had been charged with the killing of 70 civilians of Croat ethnicity. During the attack on Lovas on 10 October 1991, 22 civilians had been killed in their homes and courtyards, whereas 23 additional persons had been killed in the period until 18 October 1991 in the improvised detention facilities/prisons. Other twenty-two civilians had been killed

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on 18 October 1991 when they had been forced to walk into the landmine field as a live shield, whereas other three civilians had been killed in sporadic incidents.

Influence on victims of the quashing of the conviction and its relation towards the conducted first-instance court proceedings

The quashing of the conviction came as a shock to all Lovas residents, and especially to those who had survived the abuse and those whose close family members had been killed. The repeated trial would surely re-traumatise them since they will go through painful memories all over again. The first-instance convicting judgement was bringing them at least some kind of a moral satisfaction. They mostly considered the trial as being correctly conducted.

The words by the Trial Chamber President, judge Olivera Anđelković, raised hopes that all other persons responsible for the crimes in Lovas would also be prosecuted. Namely, when presenting her oral explanation of the convicting verdict on 26 June 2012, Anđelković emphasised the fact that, during the first-instance court proceedings which had taken four years to conclude, the evidence material had been collected which would facilitate for the investigation of responsibility of high-ranking military and political structures for the crime in Lovas. Anđelković condemned the shameful testifying by the former Yugoslav National Army officers, their conduct during the critical events in Lovas, as well as the attempt by the Serbian Military Prosecutor's Office to conceal the crime. Inter alia, Anđelković stated: "In this courtroom we heard the full names of additional actors of these critical events, some of them had even appeared as witnesses in this trial, therefore it would be a just deed, regarding both the victims and the accused persons, to have the Prosecutor fulfil his promise given in the closing words and deal with their criminal responsibility. Moreover, an important segment of the events in these areas – expulsion and forced relocation of ethnic Croat civilian population, has remained outside of the scope of this indictment. How did it happen that Croat civilian population had been forcibly relocated from the area (Lovas, Ilok, and other villages and towns) which had been placed under control of the Yugoslav National Army is just one of many questions which are supposed to be answered by some higher-ranking military and political structures, whereas the mentioned questions should be dealt with by the Prosecutor."

The trial for crimes in Lovas is one of the most intricate criminal proceedings for war crimes ever conducted by the judicial bodies of the Republic of Serbia – the accused are tried for multiple criminal offences; there is a large number of injured parties, witnesses and accused persons, who are all members of different structures – local inhabitants, members of volunteer units (members of paramilitary units), members of the former Yugoslav National Army, etc. After the trial for crimes at Ovčara, this is the first/the only/ major criminal proceedings for the crimes committed by Serb military formations in the territory of Croatia.

Member of Serb paramilitary formation tried *in absentia* and sentenced to 15 years in prison for killing of one captured and wounded Croatian soldier

On 14 January 2014, the War Crime Council of the Rijeka County Court passed the judgement which convicted the accused Dušan Kovačević *in absentia* and sentenced him to 15 years in prison for commission of the criminal offence of war crime against prisoners of war and sick persons stated in Article 121 of the Basic Criminal Code of the Republic of Croatia.

Dušan Kovačević was convicted in his capacity as member of Serb paramilitary formations of the Plaški Public Security Station for killing the captured and wounded Zdravko Bionda. Namely, on 29 June 1992, in the area of Bršljenovica hill near Plaški, Kovačević and members of the Plaški Public Security Station, members of the Martić's Militia and members of the Military Police from Plaški had set an ambush and opened fire at members of the 14th Domobran (Homeland Defender) Regiment of the Croatian Army (HV) - brothers Slavko Bionda and Zdravko Bionda - capturing the Bionda brothers. Kovačević had approached the severely wounded Zdravko Bionda and opened fire from his rifle, shooting several rounds in Zdravko Bionda's head thus killing him.

The indictment against Dušan Kovačević was laid by the Karlovac County State Attorney's Office on 08 June 2011.

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The case dismissed against Mile Dakić

After the prosecution altered the legal qualification of the criminal offence stated in the indictment - changing it into the armed rebellion, the Karlovac County Court on 16 January 2014 applied the *General Amnesty Act* and dismissed the criminal proceedings against Mile Dakić.

Dakić, former Director of the Petrova Gora Memorial Park, previously tried *in absentia* and sentenced to 20 years in prison for instigating members of Serb paramilitary formation to make an ambush and kill members of Croatian police patrol in Budačka Rijeka, near Vojnić, on 04 August 1991. Three Croatian police members were killed and one police member was wounded during the stated incident.

Mile Dakić was arrested in Bosnia and Herzegovina on 26 May 2011 based on the international APB. Dakić was extradited to Croatia on 10 August 2011. Soon after that, the reopening of his case was approved. Dakić was released from custody in June 2012. Since then, Dakić was attending the trial while being at large.

During the (reopened) proceedings, prosecutors often change legal qualification of war crime stated in the indictment into armed rebellion. After that, by applying the *General Amnesty Act*, criminal proceedings were discontinued. Although several defendants stated that they did not participate in any possible way in armed rebellion, they were unable to support it with evidence and therefore a stigma of involvement in armed rebellion stayed present despite the fact that their guilt could not be proved.

Presentation of evidence for the crime in Grubori continues

On 14 January 2014, the court continued with presentation of evidence in the case against defendants Frano Drljo and Božo Krajina, members of Lučko Anti-terrorist Unit (ATJ Lučko) for the crime committed in Grubori near Knin on 25 August 1995 when six elderly citizens of Serb-ethnicity were killed and majority of buildings and farm facilities were set on fire during the field search action named „Oluja obruč“. General Mladen Markač was heard as the witness because he was Assistant to the Minister of the Interior in charge of the Special Police at the time when the crime was committed (*tempore criminis*). Several weeks, media announcements could be heard that the 2nd former ICTY's indictee general Ivan Čermak would also be summoned as a witness to attend this hearing in the Grubori case. However, he did not appear before court. He received the Post Office's written card that he should come and collect his mail, which comprised court summons, but he did not come to pick it up.

Markač stated, among other things, that he heard from Čermak that „something happened“ on the day of critical event but knew no details about it because he was busy with other tasks concerning the securing of the railway route of „the Liberty Train“. A day later, with the then President Tuđman and many other state officials as passengers in this train, a symbolic railroad connection between Zagreb and Split was re-established through the liberated Knin area. Moreover, Markač stated that his subordinate officer Željko Sačić was the person who checked the situation in Grubori via Regular Police. According to Markač, investigating activity of this incident came within the competence of that police unit. He also stated that he was not responsible for the investigation of „a minor problem“ which occurred a day later when, at the moment when the Liberty Train was passing, the same unit used an anti-armoured weapon and „one stable was set on fire“. This information annoyed him because President Tuđman could have held them responsible for this incident if the smoke had been spotted from the train.

More about “one stable set on fire” in Ramljani

On 26 August 1995, several houses and farm facilities were set on fire in the village of Ramljani. Markač's deputy Željko Sačić is charged with that crime on the basis of command guarantee responsibility. Investigation against him is completed but prosecution has neither laid an indictment nor withdrawn prosecution against him.

On 16 January 2014, the court continued with the trial hearing and heard conversations over the phone, which were recorded during the investigation.

It is evident from the conversations between the then commanders of groups in the field located in Grubori (Branko Balunović, Stjepan Žinić, Božo Krajina) and from the conversation with the action commander Josip Čelić with some of them, that they were searching for information and arranging meetings between themselves, and were also requesting the same from the then Police Deputy Head Milijan Brkić – all of this because they were in fear of criminal prosecution against them.

From the mentioned conversations, it can be concluded that Žinić, Balunović and Čelić were not at the time of crime commission (*tempore criminis*) in Grubori and that the 1st defendant Drljo was there and knew precisely what happened there. Because of their fear that they would be held responsible on the basis of command responsibility, if the court does not establish which unit and under whose command the crime had been committed, they were encouraging one another to tell the truth before investigation authority despite the fact that they were under pressure by certain Lučko ATJ members and homeland war veteran associations. Clearly they [Balunović, Žinić and Čelić] knew that Lučko ATJ members committed the crime and who witnessed it, and therefore they were attempting to get in contact with those witnesses so that they would tell the truth. In this context, their contacts with Igor Beneta were mentioned. They stated about Beneta that his health condition was terrible and that he, despite deciding initially to tell the truth although it could jeopardise him as the witness or even accessory, changed his mind and decided to tell lies in order to save himself and the defendants.² The persons who participated in the recorded conversations were criticizing witnesses Klem and Radočaj who changed their minds and, consequently, their depositions too although, initially, they had been saying that they would be telling the truth.

These telephone conversation segments shed light on some important circumstances of this crime and corroborated incriminating witness depositions provided during the investigation although the mentioned witnesses changed their depositions later on substantially in order to protect the defendants.

Lučko ATJ is perceived as being elite police unit of the Republic of Croatia. It was involved in a series of actions just like other special police units during the Homeland War.

In addition to the crimes committed in Grubori and Ramljani, the crimes committed in September 1993 in the Medak Pocket are also linked to Special Police members. Mirko Norac was convicted in his capacity as commander of the 9th motorized HV Guard for the crimes which were committed under his zone of responsibility. It was established in the trial against him that majority of victims were killed within the Special Police zone of responsibility.

Still, no Special Police member or commander is convicted for war crimes.

Apprehended once more for war crime following the conditional release from serving time in prison

According to the information provided from the Šibenik ŽDO on 13 and 21 January 2014, the Šibenik County Court's investigative judge received a request for extending investigation against four persons (born in 1964, 1961, 1965 and 1971) due to reasonable suspicion that a war crime against civilians was committed in the District Prison in the old hospital in Knin. This request was submitted because of newly revealed crime against a civilian of Croatian ethnicity (born in 1912). Soon after release from the mentioned prison, that victim died because of the consequences of the torture. The request was issued against three persons against which investigation is underway but are unavailable to Croatian authorities, and against one more suspect (born in 1971) which was apprehended on 10 January 2014.

The investigative judge decided to extend the investigation against three persons. The Šibenik County Court's extra-trial chamber accepted the investigative judge's view and rejected as unfounded the request for extending

² Igor Beneta, (ex) defendant in this trial, hanged himself just before the start of the main hearing trial. Despite the doubts that he was murdered, as was publicly stated by Željko Sačić too, police and prosecution concluded that Beneta committed a suicide.

investigation against the apprehended suspect. On 20 January 2014, the Šibenik ŽDO appealed before VSRH against this decision.

The media stated that this person is Saša Počuča. In 2008, the Šibenik County Court found him guilty for the abuse of the civilians and prisoners of war (POWs) and sentenced him to 5 years in prison. In that trial, he pleaded not guilty but the first-instance court found his defence unconvincing. 14 heard witnesses - civilians or POWs detained in the prison where he was the guard - stated charges directly against him. Majority of them stated that guard officer Počuča was beating them up in the prison. Several witnesses even stated that he participated in sexual abuse and other abuse forms. In December 2008, the VSRH amended the verdict and sentenced him to 8 years in prison.

Saša Počuča was apprehended on 19 April 2007. He was in custody during the trial and later on served his time in prison until November 2013 when he received conditional release.

Court proceedings for the crimes committed in the prisons in Knin

There were several locations in Knin where civilians or POWs were detained. One of such detention places was the District Court which was established within the premises of the old hospital.

According to the documentation which is available to our three CSOs, Croatian judiciary prosecuted several persons, mostly in their absence, for the abuse of detained civilians or POWs in the prisons in Knin. The following persons were convicted: Petar Krivić, Nikša Beara and Željko Bjedov to 6 years in prison each; Dušan Novaković to 10 years; Nikola Mišina to 7 years, Željko Cupać to 10 years, Srđan Potkonjak and Željko Knežević to 20 years each and Đuro Mirković to 5 years of imprisonment.

Once they became available to the Croatian judiciary, the proceedings against Željko Bjedov and Nikša Beara were reopened. In this reopened trial, Bjedov was acquitted in 2006 (acquittal affirmed) and on 2 December 2013 the Split County Court's War Crimes Council found Beara guilty and sentenced him to 3 years and 10 months of imprisonment.

Only Milan Atlija was tried in his presence and convicted to 5 years of imprisonment (sentence affirmed) for the abuse of POWs in the Militia Station.

The ICTY convicted Milan Marić, among other things, of murder, imprisonment and torture. From January 1991 until August 1995, Martić held various leadership positions in the so-called Serbian Autonomous District (SAO) and the so-called Republic of Serbian Krajina (RSK) – president, defence minister and minister of the interior.

Croatian Judiciary also accused Dragan Vasiljković for the abuse of Croatian POWs in the prison in the Knin fortress and Vasiljković was arrested in Australia in 2006. Since then, the legal procedure in respect of the Croatian request for his extradition is still pending.

We are familiar with the information that investigation is underway against several unavailable persons because of the crime which was committed in the old hospital. Namely, in May 2011 the investigation against two- and extension of the investigation against six persons was requested. Against the mentioned persons investigation had already been carried out. We are not familiar with the names of the suspects.