

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

Bill of the Act on the Rights of Homeland War Victims of Sexual Abuse opened up for public discussion

On 17 March 2014, the Bill of *the Act on the Rights of Homeland War Victims of Sexual Abuse* was presented at the Ministry of Homeland War Veterans, according to which the victims should gain their right to psycho-social and health care, free legal aid, rehabilitation and the right to pecuniary compensation.

The Bill of *the Act* defined the procedure for effectuation of the rights of victims of sexual abuse, whereas the victim status would be established on the basis of evidence, findings and opinion of the competent independent and expert committee.

Considering the fact that at this moment the state budget cannot provide sufficient financial means for payment of compensations to the victims, the *Foundation for Victims of Sexual Abuse* should be established. The amount of the compensation of damages, details on establishing the *Foundation*, method of work and handling the business transactions, fund-raising and other tasks would be regulated by a specific act.

The public discussion following the presentation of the Bill of *the Act* will last for 45 days.

Data on persons who were raped and sexually abused during the Homeland War

According to the information provided by the State Attorney's Office of the Republic of Croatia, the Ministry of the Interior of the Republic of Croatia has established that there is a (reasonable) suspicion that during the Homeland War 182 persons could have been the victims of war crimes committed by rape or some other forms of sexual abuse. After conducting the additional enquiries it has been determined that some of the potential victims died in the meantime, some of the victims gave statements to county state attorneys saying that they had not been raped or sexually abused in any form which could have been subsumed under any of the characteristics of the criminal offence of war crime committed by inhumane treatment, whereas some of the potential victims declined any possibility of giving their statements.

According to the records kept by competent county state attorney's offices, there is credible information on only 57 victims of war crimes committed by rape, and the majority of victims are female persons. Criminal proceedings have been initiated in respect of 36 victims, out of the total of 57, and those proceedings have currently been in different phases. To this day, 15 perpetrators have been convicted for criminal offence of war crime committed by rape.

Lack of support by the state institutions, non-identifying and non-recognition of sufferings of victims of sexual abuse and their social stigmatisation have influenced the low rate of reporting of the said crimes. Information gathered by various international studies has shown that one reported case of rape is followed by 15-20 non-reported cases of rape.

Unfortunately, the victims of sexual abuse constitute only a part of the corps of all civilian victims. Also included among the civilian victims of war are the parents of killed children, female and male camp detainees, victims of mortar attacks, victims of land-mines, the persons injured or killed at their workplace during the work obligation decree...

The initiative for adoption of the act on rights of victims of sexual abuse is definitely a positive move, however, a crucial thing after its adoption would be to complement the stated act with adoption of additional act or a package of laws which would regulate the status (of victims) itself and facilitate the payment of compensations to all categories of civilian victims of war.

Reconstruction of the events in Grubori

The reconstruction of the crime in Grubori took place on 28 February 2014 - the reconstruction of the events which have been the subject of the criminal proceedings held before the Zagreb County Court against Frano Drlje and Božo Krajina, members of the "Lučko" Anti-Terrorist Unit accused of war crime committed in Grubori on 25 August 1995.

During the reconstruction of the events, a tour was made on site of the village in which six civilians of Serb ethnicity had been killed on the threshold of their homes during the battle area clearance action, immediately after the Military Operation "Storm". Once beautiful and picturesque village is nowadays a desolate place covered in weeds and shrubs. Piles of pieces of clothing, shoes and kitchen plates are scattered around inside the burnt and derelict houses.... It seems as if the time has stopped on the very day of 25 August 1995.

Two witnesses were heard on the site of the reconstruction of the crime: Veselin Karanović and Karolj Dondo. The latter, former liaison officer of the Croatian forces, who, at the time of incriminating events, had been communicating with representatives of the international community – the UN and the EU, had entered the village immediately after the massacre. He described the events during the main hearing at court: *"The site of Grubori, a hamlet which could be reached via a steep rocky path, was terrible. Shocking pictures which have haunted me to this day. Elderly and disabled civilians had been killed, except for one younger person who had been dead, lying on his stomach. There was an elderly man who had been killed by firearms shots in the attic of a house; we were told that the man had been a disabled person. It was a terrible sight. Inside one of the houses, we found a torso of a completely burnt female person, who had been a disabled person too. The elderly woman who could not have escaped from the house set on fire. I also saw the killed cattle, a cow and a dog..."*

Court hearing commenced in criminal proceedings against the person accused of crimes in Baranja following his extradition to Croatia from Germany

On 12 March 2014, court hearings/trial commenced in the criminal proceedings against Ibrahim Kovačević, who was arrested in Germany in October 2013 based on the international all points bulletin and extradited to Croatia on 10 January 2014 in accordance with the European arrest warrant.

Kovačević is the 11th-accused person listed in the indictment laid by the Osijek County State Attorney's Office in 2001 against as many as 58 persons for the crimes committed in the Baranja area. Kovačević was specifically charged with (unlawful) arrests and physical abuse of several persons, issuing threats to one family which caused the family to leave Baranja, as well as with transfers of detainees/prisoners from Beli Manastir to prisons/detention facilities in Borovo and Dalj.

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Indictment for the crimes committed in Beli Manastir and other towns and villages in Baranja

Following the indictment laid by the Osijek County State Attorney's Office on 03 April 2001, Svetislav Vranić and other 57 persons were accused of commission of criminal offence of war crime against civilians stated in Article 120, Paragraph 1 of the Basic Criminal Code of the Republic of Croatia.

The accused persons who were present at the trial, majority of them had been members of various paramilitary or police forces, were tried in separate criminal proceedings. In that way, Stokan Sekanić was convicted to 8 years in prison. After conducting the trial and amending the indictment – altering legal qualification of the criminal offence into the armed rebellion – the charges were dismissed against Branko Mumlek, as well as against Nikola Alaica, Drago Karagaća, Mile Bekić, Milan Prusac and Sreto Jovandić. After a tardy and delayed criminal proceeding, which was repeated on several occasions, Petar Mamula was sentenced to 3 years and 6 months in prison.

Zoran Vukšić, Branko Hrnjak and Slobodan Strigić have been tried before the Belgrade Higher Court for unlawful arrests, abuse and killing of at least six persons. Following the judgement delivered by the same court, Velimir Bertić was sentenced to 1 year and 6 months in prison, and, in the meantime, the judgement became legally valid and final.

Meanwhile, the indictment was amended (i.e. the legal qualification was altered) in respect of 17 accused persons and the case was dismissed. Other accused persons have been unavailable to the judicial bodies of the Republic of Croatia. It is interesting that among those unavailable persons is also Željko Milovanović, the direct perpetrator of the murder of journalists Ivo Pukanić and Niko Franić, which took place in Zagreb in 2008 and for which crime Milovanović was tried in Croatia and sentenced *in absentia* to 40 years in prison.

The Supreme Court of the Republic of Croatia quashed two first-instance court judgements of conviction (as follows):

a) in the case against accused Nikša Beara

The Appeals Chamber of the Supreme Court of the Republic of Croatia quashed the first-instance court judgement delivered by the War Crime Council of the Split County Court on 02 December 2013 according to which, following the completion of the reopened trial conducted in his presence in court, Nikša Beara was sentenced to 3 years and 10 months in prison for abuse of captured members of Croatian military forces which he had committed in his capacity as member of the Martić's Militia in Knin.

In 1993, Beara had been tried in absence for the stated crime at the Šibenik District Court and sentenced to 6 years in prison.

b) in the case against accused Milorad Momić

On 11 March 2014, the Appeals Chamber of the Supreme Court of the Republic of Croatia quashed the judgement passed by the Vukovar County Court on 21 December 2013 according to which the accused Momić had been sentenced to 3 years in prison. Momić had been charged, in his capacity as member of the Berak Territorial Defence, with physical abuse and assault against the captured Stanko Penavić in Orolik on 02 September 1991. Momić, together with other 11 members of the Territorial Defence, had rained heavy blows on the captured Stanko Penavić and kicked him (Momić had had army boots on during the assault). The injured party Penavić had lost consciousness during the assault and sustained several bone fractures.

Momić had been initially charged with the killing of three persons and physical abuse of other three persons, however, during a course of the criminal proceedings the County State Attorney's Office withdrew all the stated charges.

Momić was arrested on 31 January 2011 in the French Alps. Prior to the arrest, he had been registered under the name of Guy Monier. On 02 September 2011, Momić was extradited to Croatia. At the point when the Supreme Court of

the Republic of Croatia quashed the judgement, Momić had already served the full sentence he had been convicted to following the first-instance court judgement.

The Osijek County State Attorney's Office charged Momić also with participation in killing of six Bosniak civilians in the village of Godinjske Bare, in the vicinity of Trnovo, in Bosnia and Herzegovina, in July 1995 for which offence Momić was accused in his capacity as member of the "Škorpioni" ('Scorpions') unit which had been merged with the Republika Srpska Army. The stated case was transferred to the Osijek County State Attorney's Office from the Serbian Prosecutor's Office which also had pressed charges against Momić for the stated crime.

Concerning the fact that Momić was extradited to Croatia exclusively for commission of the crime in Berak, a motion was submitted to the Republic of France requesting the approval for Momić's criminal prosecution for the crime committed in Trnovo. Since the approval has not arrived, Momić was released from prison after serving the sentence adjudged by the first-instance court judgement for the crime committed in Berak, which was quashed by the Supreme Court of the Republic of Croatia in mid-March 2014.

The decision on extradition of the accused for crimes in Berak

On 21 March 2014, Malta extradited Gojko Eror to Croatia as the ŽDO Vukovar indicted him for the commission of war crime against civilians in Berak near Vukovar. Currently he is kept in the Osijek prison.

Prosecution of crimes committed in Berak

An investigation against 53 accused persons was conducted during the nineties in respect of the crimes committed in Berak. Witnesses, mainly expellees, were interrogated before courts in Rijeka, Pula, Zagreb, Osijek and other national courts.

On 5 April 2006, the ŽDO Vukovar laid an indictment against 35 persons (accused Mihajlo Eror *et al.*). The accused were charged that following the occupation of village Berak with the majority of Croat population, they formed the so called Territorial Defence (TO) Headquarters and, in order to make in Berak a Serb-ethnic area, they were killing remaining non-Serb civilians, unlawfully detaining and torturing the mentioned civilians and were treating them inhumanely...this was the reason why nearly all Croat families had to leave their houses and move to the free territory of the Republic of Croatia.

The names of 40 killed or missing Berak villagers were listed in the indictment. 120 Berak villagers were kept detained in an established camp. But, out of 35 accused, the indictment contained no specific acts in respect of 17 accused that they could be charged with.

Up to this point, the trial has been conducted against five available defendants. But it is striking that Stevan Perić is the only defendant who was sentenced to 3 years and 6 months in prison for the abuse of the detained civilians in 2007 (and he was barely 17 years of age at the time of the crime's commission). The prosecution dropped charges against Petar Gunj and Slobodan Vučetić during the proceedings at first instance whereas the criminal proceedings against Mirko Vujić were dismissed due to his illness i.e. his inability to stand trial.

End of 2008, the Vukovar ŽDO amended the indictment and changed the legal qualification of the offence into armed rebellion in respect of 12 defendants. As the consequence, criminal proceedings against them were dismissed on 20 February 2009. Charges for war crime against civilians remained in respect 19 defendants.

Following the extradition from France, the proceedings are also conducted against Milorad Momić (already mentioned in the preceding section (b)).

The hearing before the International Court of Justice 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.

The hearings are expected to last a month and began with the presentation of arguments by the Croatian legal team.

Croatian legal team presented its arguments in five days and indicated to the rise of Serbian extremist nationalism; the „hate speech“ against Croats, and the „vilification“ of Croatia which was conflated with the Ustasha regime of the Independent State of Croatia; the desire to establish the Greater Serbia with Slobodan Milošević as its „chief architect“; the „Serbization of the JNA“, its „false neutrality“ in the first stages of the conflict and its role in the effort to arm and control the various Serb forces engaged in the genocidal campaign in Croatia, which Serbia „instigated, organised, controlled and made possible“; that Serbia knew about „genocidal activities in the Vukovar area“, but failed to prevent and punish the perpetrators; examples of Croatian places which Serb forces looted and killed the population found there; the pattern of attack adopted by the Serb forces against Croatian villages and towns with “a clear intent to destroy” civilian population; the commission of crimes by the JNA and the regular and paramilitary formations subordinated to it; this all with the motive of seizure someone else’s territory and the desire of the Serbian leadership to establish ethnically pure Greater Serbia.

The response by the Serbian legal team followed in the second week of the hearing.

The Serbian team admitted that grave crimes had been committed in Croatia. However, it also stressed that there was no evidence that they „reached the scale of genocide“ and also reiterated that Serbia couldn’t be held responsible for the acts and omissions committed before 27 April 1992 when the Federal Republic of Yugoslavia formally came into existence.

On the other hand, the crimes against Serbs in the Operation Storm, according to the Serbian team, contained all the elements of genocide, including the specific intent. By „relying strongly” on the transcripts of the Brioni meeting between Croatian president Franjo Tuđman and Croatia's top political, military and police officials on 31 July 1995, the Serbian legal team claimed that a plan was made over there to destroy a „part of Serb ethnic group in Krajina“. The indiscriminate shelling of the Krajina towns, forcible transfer of civilians, mass murder of Serbs who had decided to stay, attacks on refugee columns, looting and destruction of abandoned houses, and eventually, the introduction of administrative measures to prevent Serb refugees from returning, all point to the existence of genocide according to the Serb legal team.

The third week began by Croatia responding to Serbia's counter-memorial... It ended with assessment by the Croatian legal team that sufficient evidence was presented on Belgrade's responsibility for genocide against Croatian population from 1991 until 1995. Croatian team also requested from Serbia to bring prosecutions against responsible persons, provide information on the missing persons, return cultural property and give compensations for the damage caused during the conflict.

The hearing will go on until 1 April 2014. It is expected that the ICJ will deliver its judgment a year later following the end of the hearing.

The echoes of the Croatia vs Serbia case hearing in Croatia and Serbia

From the beginning of the proceedings before the International Court of Justice, the media frequently cited various data on the number of victims. In doing so, lump numbers, inaccurate and unverified information was presented very often.

On the occasion of presenting the Croatian lawsuit, the figure of about 12,500 casualties on the Croatian side was repeatedly stated, although Croatia has never published the list with the names of the victims of war. The data on the civilians who were killed or murdered are particularly controversial.

On the other hand, Serbia's counter-memorial presented the number of 1,719 Serbs who were killed in Operation "Storm". And here we must also observe that there is no list with the names of the casualties, and some of the sources

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in Serbia which were mentioned by the Serbian legal team representatives when justifying the said figure, are of very questionable authenticity, and the list of victims contains many irregularities and inaccurate information.

The first days of the public hearings before ICJ sparked huge media interest. But as the hearing progresses, media interest weakens. The “traitors” who have shown scepticism toward the lawsuit are already blamed beforehand for eventual failure of the Croatian lawsuit, in some radical right Croatian weeklies. There is a perfectly symmetrical situation in Serbia.

News from the ICTY

No reconsideration of final acquittal in the Momčilo Perišić case

The ICTY prosecution's motion to the Appeals Chamber for the reconsideration „in the interest of justice“ of the (final) judgment against former chief of the Yugoslav Army General Staff Momčilo Perišić has been denied. Perišić was acquitted for aiding and abetting the crimes in Sarajevo and Srebrenica. Previously to that, Perišić was sentenced to 27 years in prison by the first-instance judgement.

The prosecution's motion was filed on 3 February 2014. This motion was the consequence of the appellate judgment in the *Šainović et al. case*, ruled end of January, in which a different opinion was made in respect of the „specific direction“ as an element of the liability for aiding and abetting when compared with the Appeal Chamber's attitude which acquitted Perišić. In the *Šainović et al. case*, the Appeal Chamber, as was stressed by the prosecution, concluded that the findings in the Perišić's judgment were based on „an obviously erroneous standard that runs counter to the prevailing jurisprudence“.

The decision in which the request for reconsideration has been denied, signed by Judge Meron, restates that the Appeals Chamber lacks the power to reconsider its own decisions because the Tribunal's Statute does not provide for the right to a second-instance appeal.

Thus, as for the ICTY, the Perišić case is finally over. However, it can be expected that, in the context of Serbia's accession to the EU, the case in which Croatia sentenced Perišić to 20 years in prison in his absence will be again actualised. Therefore, we are of the opinion that there is after all a possibility to reach justice.

The prosecution's motion to call evidence in the trial against Karadžić has been denied – the presentation of closing arguments will begin on 29 September 2014

On 20 March 2014, the Trial Chamber rejected the prosecution's motion for the re-opening of evidence procedure in order to include the evidence on the mass grave discovered near the Tomašica mine near Prijedor. It also denied the request for additional denial of certain evidence presented by Karadžić's defence and scheduled the presentation of closing arguments to be held on 29 September 2014.

The request to include Tomašica evidence was denied because the Trial Chamber was of the opinion that the trial, already in its late stage, would not be extended just by „a minimal period of time“ but for much longer. The judges also found that identification of remains has not yet been concluded and that it could only be „speculated“ on the connection of the victims with the specific crimes mentioned in the indictment against former president of the Republika Srpska.

In the area of Tomašica near Prijedor, the remains of 388 Bosniaks and Croats were exhumed in the biggest mass grave in the Balkan so far in the second half of 2013. It is thought that the remains belong to people from the villages around Prijedor - Biščani, Rizvanovići, Hambarine, Čarakovo, Rakovčani and Zecovi, but also to people from the Keraterm camp. At the dept of three to five metres, 275 bodies and 113 body parts were exhumed.

The 'scenario' of the commission of the crimes in the Prijedor area is already seen. On 31 May 1992, the Republika Srpska authority in Prijedor issued an order through the local radio broadcast to the non-Serb population to mark their houses with white flags or sheets and to wear white ribbons on their sleeves when leaving their homes. By the end of the war, more than 3,000 persons from the Prijedor municipality area were killed. More than 30,000 ended up in the camps: Omarska, Keraterm and Manjača. In this part of Bosnia and Herzegovina, more than 130 mass graves were found - and more than 60 mass graves were found just in the Prijedor area.

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