

Oglašavamo se zbog nekih izjava i poteza Vlade Republike Hrvatske ili pojedinih njenih članova koji zasjenjuju iskorake prema izgradnji povjerenja u Hrvatskoj i kvalitetnijim odnosima sa susjednim državama, te dovode u pitanje mukotrpno građene preduvjete za nepristrano i učinkovito procesuiranje ratnih zločina.

Neprihvatljive izjave ministra obrane

Prosvjeduemo zbog izjave Ante Kotromanovića, aktualnog ministra obrane RH, objavljenog 5. kolovoza 2012. godine na portalu *Politika+*, u kojem je između ostalog rekao: „Mislim da smo naprosto na licu mjesta trebali strijeljati neke bandite koji su ubijali nedužne ljude, pljačkali po selima i kompromitirali ovu besprijekornu vojnu akciju“, te niza neprimjerenih poteza Vlade Republike Hrvatske.

U ponedjeljak su se u više medija pojavile dvojbe je li ministar doista dao novu izjavu ili je portal prenio stari razgovor s njim. Čak i ako je g. Kotromanović navedenu izjavu dao prije imenovanja na sadašnju dužnost, štetno je u Vladi Republike Hrvatske, na pragu ulaska u EU, imati ministra koji svojim izjavama dovodi u pitanje postulate pravne države, načela neovisnosti pravosuđa te poštivanja ljudskih prava.

Za razliku od mnogih, pa i g. Kotromanovića, organizacije za ljudska prava osuđivale su ratne zločine od 1991. do 1995. čim se za njih saznalo, upozoravale su na pogubne posljedice nekažnjavanja direktnih počinitelja, kako na mogućnost ponavljanja takvih zločina tako i na destrukciju hrvatskog pravosuđa i stvaranje jedne sramotne atmosfere u kojoj se prešutno znalo da se takva nedjela tretiraju kao malo radikalnije domoljublje. Organizacije za ljudska prava nikada nisu predlagale tako drastične mjere za kakvima sada, a posteriori, žali sadašnji ministar obrane, uvijek su inzistirale na pravnoj proceduri; da je bila pravovremena, što je bez daljnega mogla biti, većina zločina se ne bi ni dogodila. Međutim, Hrvatska je godinama živjela u ozračju u kojem su počinitelji ratnih zločina slavljani i promovirani („Svi smo mi Mirko Norac“ – osim vas izdajnika), a oni koji su na zločine upozoravali bili su u najmanju ruku proskribirani i klevetani, ako ne i nešto gore (poput Josipa Reihla-Kira ili Milana Levara). To se osjeća i danas.

Na obilježavanju obljetnice 72. bojne Vojne policije ministar Kotromanović nije reagirao nakon što su s govornice negirani zločini počinjeni u splitskoj „Lori“, koji su utvrđeni pravomoćnim presudama. Javna osuda, danas i pred pripadnicima 72. bojne, takvog negiranja zločina koji su se nepobitno dogodili, bila bi mnogo primjerenija od strane ministra obrane nego zazivanje hipotetskih strijeljanja koje je trebalo obaviti prije 17 godina. Ali za to treba iskreno uvjerenje i malo hrabrosti.

Očekujemo da se ministar Kotromanović distancira od svojih neprihvatljivih istupa, a sve predstavnike Vlade pozivamo da se suzdrže od izjava koje dovode u pitanje presude, rad pravosuđa i postulate pravne države.

Financiranje obrane optuženog Tomislava Merčepa i drugih optuženih za ratne zločine

Vlada dovodi svoju vjerodostojnost u pitanje financiranjem obrane opt. Tomislava Merčepa i drugih sadašnjih i bivših policijskih službenika optuženih za ratne zločine. Osiguravajući pravnu pomoć i plaćajući visoke troškove skupih odvjetnika iz sredstava državnog proračuna, Ministarstvo unutarnjih poslova, Vlada RH, a time dakako i Država ostaje konzistentna politici iz 90-ih godina, kada je Država podržavala pripadnike hrvatskih postrojbi koji su u njeno ime činili zločine. Ne djeluje baš uravnoteženo kad, s jedne strane ministar Vlade daje izjavu da je „na licu mjesta trebalo strijeljati bandite koji su ubijali nedužne ljude“, a s druge strane, u stvarnosti, Vlada plaća obranu čovjeku koji je desetljećima simbol upravo takvih bandita.

Pogrešnom smatramo interpretaciju članka 98. *Zakona o policijskim poslovima i ovlastima* kojom Ured za pravne poslove i ljudske

Ovakvu interpretaciju, koja ide u korist okrivljenika za kaznena djela ratnih zločina i drugih kaznenih djela protiv vrijednosti zaštićenih međunarodnim pravom, smatramo pogrešnom jer je vjerojatna intencija zakonodavca bila usmjerena na policijske službenike koji u profesionalnom i stručnom obavljanju svoje dužnosti upotrijebe vatreno oružje, što eventualno dovede do tragične posljedice. Nedorečenost navedenog zakona očituje se u i činjenici da ne regulira pitanje regresa ovih sredstava u slučaju da policijski službenik pravomoćnom presudom bude osuđen za kazneno djelo koje mu se stavlja na teret.

S obzirom na precizne odredbe Zakona o kaznenom postupku koje reguliraju slučajeve obvezne obrane i postavljanje branitelja po službenoj dužnosti, kao i na odredbe Ustava RH koje optuženima osiguravaju pravo na branitelja na teret proračunskih sredstava, smatramo da je odredba Zakona o policijskim poslovima i ovlastima koja normira pokrivanje troškova obrane ovoj određenoj kategoriji okrivljenika suvišna, ali i štetna ukoliko se ne bi dodatno specificiralo na koje slučajeve se odnosi. Takva nesređenost zakonskog okvira dovodi do stvaranja disbalansa između položaja počinitelja i žrtve i žrtvu ponovno stavlja u nepovoljan, stigmatiziran i degradirajući položaj. Od nadležnog ministarstva očekujemo da hitno predloži primjerenija zakonska rješenja.

Produženje ugovora s odvjetničkom tvrtkom angažiranom u žalbenom postupku generalima Gotovini i Markaču

Vlada je produžila ugovor s američkom odvjetničko-lobističkom tvrtkom Patton Boggs LTD koju je prije godinu dana angažirao bivši ministar pravosuđa Dražen Bošnjaković za zastupanje Hrvatske pred Haaškim sudom u žalbenom postupku generalima Gotovini i Markaču. Ugovor s Patton Boggsom produžen je za još dva mjeseca, iako je jednogodišnji ugovor o odvjetničko-lobističkim uslugama sklopljen s tom tvrtkom istekao zadnjeg dana srpnja i Hrvatska prema njoj nije više imala nikakvih obaveza.

Prema ugovoru koji je potpisao bivši ministar pravosuđa Dražen Bošnjaković 31. srpnja 2011. do sada je navedenoj tvrtki isplaćeno oko 4,2 milijuna kuna. Javnosti nije objašnjeno zbog čega je ugovor produžen. Smatramo neprihvatljivim produžavati dugogodišnju praksu financiranja obrane optuženih iz državnog proračuna. Posebno je neprimjereno da Vlada donosi takvu odluku u situaciji kada hrvatsko pravosuđe nije pravomoćno osudilo niti jednog počinitelja ratnog zločina počinjenog u tijeku ili nakon VRA „Oluja“, niti je isplaćena naknada štete ijednoj obitelji ubijenih srpskih civila usmrćenih u navedenoj akciji.

Nastavak plaćanja troškova obrana generala nepravomoćno osuđenih u Haagu i pripadnika policijskih postrojbi okrivljenih za ratne zločine i, s druge strane, naplata parničnih troškova žrtvama tih zločina koje su tražile kakvo-takvo obeštećenje, ozbiljno dovodi u pitanje vjerodostojnost Vlade.

Bilo bi neusporedivo pravednije, i samim tim za ovu Vladu dostojnije, da ta proračunska sredstva usmjeri, umjesto na plaćenje obrane optuženih za ratne zločine, na obeštećenje žrtava ratnih zločina.

Želimo vjerovati da su pravi smjer budućeg rada vlade u svojim govorima na kninskoj tvrđavi najavili predsjednik Republike Josipović rekavši: „Moramo pružiti ruku sugrađanima srpske nacionalnosti, priznati i njihove žrtve i pokloniti se. Hrvatska je bila na pragu uništenja, ali je pobijedila“, i premijer Milanović naglasivši: „Ne slavimo ovaj dan da bismo se naslađivali tuđim jadima, nego da bismo proslavili svoju veličanstvenu i časnu pobjedu. Domovinski je rat bio pravedan, obramben i častan, i to su vrijednosti na kojima ulazimo u EU“. Njihovi nastupi kao i djelovanje ministra branitelja daju nadu da će u skorije vrijeme biti moguće proslaviti pobjedu u ratu i oslobađanje okupiranih dijelova Republike Hrvatske i istovremeno priznati patnju i pokloniti se civilnim žrtvama s „druge strane“.

Vesna Teršelič, *Documenta* - Centar za suočavanje s prošlošću
Mladen Stojanović, Centar za mir, nenasilje i ljudska prava, Osijek
Zoran Pusić, Građanski odbor za ljudska prava

We are voicing our concern over some statements and the moves made by the Government of the Republic of Croatia or some particular members of the Government which cast a shadow over the positive steps towards the building of trust in Croatia and improvement of relations with the neighbouring countries, and bring into question the painstakingly built prerequisites for unbiased and efficient prosecution of war crimes.

Inappropriate statements issued by the Minister of Defence

We are protesting about the statement issued by Ante Kotromanović, present Minister of Defence of the Republic of Croatia, published on the *Politika+* internet portal on 05 August 2012, in which he stated, inter alia, the following: “I think that we should have simply shot on the spot some bandits who were killing innocent people, plundering the villages and compromising this impeccable military action.”

On Monday, 06 August 2012, several media published the articles expressing a dilemma whether the Minister did issue a new statement or the portal only re-published the old interview with the Minister. Even if Mr. Kotromanović did issue the mentioned statement prior to his appointment to his present position, it is harmful to have a minister in the Government of the Republic of Croatia, in this last phase of Croatia's accession to the EU, who compromises with his statements the postulates of a legal state, the principles of independence of the judiciary and the respect for human rights.

Unlike many others, and unlike even Mr. Kotromanović, the human rights organisations have been condemning the 1991-1995 war crimes from the very moment the crimes were known to the public, and have been warning against the detrimental consequences of impunity of direct perpetrators of crimes, as well as against the possibility of repetition of such crimes, and the destruction of Croatian judiciary and creation of a disgraceful atmosphere in which it was tacitly understood that such despicable crimes were treated as a slightly more radical patriotism. Human rights organisations have never suggested anything so drastic like the measures lamented for a posteriori by the present Minister of Defence, and human rights organisations have always insisted on the rule of law and following the legal procedure. If the legal procedure had been followed in a timely manner, and without any doubt - it could have been done so, the majority of crimes would not even have happened. However, Croatia has lived for many years in an atmosphere in which the war crimes perpetrators were celebrated and promoted (“We are all Mirko Norac“ – except you traitors), while those who were warning against the crimes were at least proscribed and slandered, not to mention something much worse (such as Josip Reihl-Kir or Milan Levar). The same feeling we still have today.

At the celebration of the anniversary of foundation of the 72nd Battalion of the Military Police, minister Kotromanović failed to react to the statements coming from the rostrum which denied the crimes which had been committed in the “Lora” in Split although the actual existence of those crimes had meanwhile been established by conclusive, legally valid judgments. A strong public condemnation of such a denial of the crimes (which had undoubtedly happened) would be much more appropriate to be expressed by the Minister of Defence, in this moment and before the very members of the 72nd Battalion, than the invocation of hypothetical executions which allegedly were supposed to be done 17 years ago. However, such a condemnation does require a genuine belief and some courage.

We expect minister Kotromanović to distance himself from his inappropriate statements, and we appeal to members of the Government to restrain themselves from issuing statements which cast doubt on the court judgments, work of the judiciary and the postulates of a legal state.

Financing of the defence counsel for the accused Tomislav Merčep and others accused of committing war crimes

The Government has cast doubt on its own credibility by financing the defence counsel for the accused Tomislav Merčep and other present and former police officials accused of committing war crimes. By providing them with legal assistance and covering huge costs of their expensive lawyers from the state budget funds, the Ministry of the Interior, the Government of the Republic of Croatia, and therefore the state too remains consistent with the policy of the 1990ies, when the state was supporting members of Croatian military/police units who were committing those crimes in the name of the state. One can hardly argue that it is balanced when, on the one hand, the minister in the Government issues a statement saying that “the bandits who were killing innocent people should have been shot on the spot” while on the other hand, in reality, the same Government finances the cost of legal counsel for the person who has been for decades a symbol of such bandits.

We believe that the Ministry of the Interior’s Legal Affairs and Human Resources Office’s interpretation of the Article 98 of the Act on Police Operations and Police Powers is utterly incorrect since it holds that the torture and killing of civilians is “a regular use of force or other actions while performing police duties”. We consider such an interpretation, which is in favour of persons accused of war crimes and other criminal acts against the values protected by the international law, to be incorrect since a probable intention of the legislator might have been directed towards the police officials who get to use firearm in the line of their duty which may possibly lead to tragic consequences. Incompleteness of the stated Act can be seen also in the fact that the Act does not regulate the issue of regress of the funds (provided for the defence counsel for the accused) in case when the police official is found guilty and is convicted for the offence as charged following the conclusive and legally valid court verdict.

Having in mind the precise regulations of the Criminal Procedure Act which regulate the cases of obligatory defence and the issue of court appointed defence counsel, as well as the regulations of the Constitution of the Republic of Croatia which grant the accused persons a right to cover the expenses of defence counsel from the state budget funds, we believe that the very regulation of the Act on Police Operations and Police Powers which stipulates the coverage of defence counsel’s costs for this specific category of the accused persons is not only superfluous but also harmful if it is left without additional clear specification which cases the regulation is to be applied to. Such a disorder within the legal framework leads to the creation of imbalance between the status of a crime perpetrator and a victim and it repeatedly puts the victim into an unfavourable, stigmatised and degrading position. We expect the competent ministry to urgently propose more appropriate legal solutions.

Extension of the contract with the law firm hired in the appeal procedure in the ICTY case against generals Gotovina and Markač

The Government of the Republic of Croatia has extended the contract with the U.S. law firm Patton Boggs Ltd. which was hired a year ago by the former Minister of Justice Dražen Bošnjaković to represent Croatia before The Hague Tribunal in the appeal procedure in the case against generals Gotovina and Markač. The contract has been extended to another two months’ period although the one-year contract for providing legal counsel and lobbying services concluded with the stated firm expired on the last day of July 2012 thus making Croatia free from all liabilities towards the Patton Boggs Ltd.

According to the contract signed by the former Minister of Justice Dražen Bošnjaković on 31 July 2011, the mentioned firm has received approximately 4.2 million kunas so far. The general public has not been given any explanation as to why the contract has been extended. We deem it unacceptable to continue with a long-term practice of using the state budget funds for financing the defence counsel for the accused. Moreover, utterly unacceptable is the fact that the Government has made such a decision in the moment when the Croatian judiciary has neither convicted a single perpetrator of the war crime committed during the very action or shortly after the “Storm” military operation, nor a single decision has been passed yet to make the Republic of Croatia pay the restitution of damages to families of the Serb civilians killed during the stated military operation.

Continuance of usage of the state budget funds for covering defence counsel’s costs for the generals convicted (following a non-final

hand, ordering the plaintiffs/victims of those crimes/victims' family members/ to pay huge court fees after losing civil lawsuits for restitution of damages, has cast a serious doubt on the Government's credibility.

It would be incomparably far more correct, and it is more fitting thereby that this Government should direct the state budget funds towards payments of damages to the war crimes victims, instead of using those funds for financing the defence counsel for the persons accused of war crimes.

We wish to believe that the right direction of the future work of the Government was announced in the speech given at the Knin fortress by President Ivo Josipović stating the following: "We must take initiative to approach our fellow citizens of Serb ethnicity in order to shake hands with them, we must recognise their victims too and bow in respect. Croatia was on the brink of destruction, but Croatia won.", and the speech given by Prime Minister Zoran Milanović emphasising the following: "We do not celebrate this day to gloat over someone else's misfortunes, but to celebrate our glorious and honourable victory. The Homeland War was a just, defensive and honourable war, and these are the very values with which we are entering the EU." Their speeches, as well as the actions taken by the present Minister of Homeland War Veterans, give hope that it would soon be possible to celebrate the war victory and the liberation of the occupied territories of the Republic of Croatia, and at the same time, to recognise the suffering and bow in respect of civilian victims from the "other side/enemy side".

Vesna Teršelič, Documenta – Centre for Dealing with the Past
Mladen Stojanović, Centre for Peace, Nonviolence and Human Rights-Osijek
Zoran Pusić, Civic Committee for Human Rights

(/yams-select:50001)