

U kolovozu i rujnu 1995. u Varivodama i Gošiću, selima nedaleko od Kistanja, pripadnici hrvatskih vojnih i redarstvenih postrojbi ubili su starosjedioce srpske nacionalnosti i to znatno nakon prekida ratnih djelovanja i završetka vojno-redarstvene akcije Oluja, kada se istima trebala zajamčiti sigurnost življenja. Brutalno i bez povoda smaknut je veći broj starijih osoba od kojih je najmlađa imala 55, a najstarija 85 godina.

Dana 27. kolovoza 1995. godine, oko 16,00 sati u selu Gošić, ubijeno je sedmero civila. Županijsko državno odvjetništvo iz Zadra podiglo je optužnicu br. KT-83/96 od 13. veljače 1996, protiv četvorice optuženika za kazneno djelo ubojstva radi koristoljublja.

Dana 28. rujna 1995. godine, u selu Varivode, oko 17,00 sati, ubijeno je devetero civila. Županijsko državno odvjetništvo iz Zadra podiglo je optužnicu br. KT-84/95 od 15. veljače 1996., protiv četvorice okrivljenika za kazneno djelo ubojstva radi koristoljublja.

Spajanjem kaznenih postupaka, za navedene zločine u Gošiću i Varivodama teretilo se šestoricu pripadnika hrvatskih vojnih i redarstvenih snaga. Postupak je pokrenut pred Županijskim sudom u Zadru, potom ustupljen Županijskom sudu u Šibeniku. U veljači 2002. godine kazneni postupak za navedene zločine, pravno kvalificirane kao ubojstvo radi koristoljublja, je obustavljen radi odustanka tužitelja – Županijskog državnog odvjetništva u Šibeniku, od daljnjeg kaznenog progona. Time je istraga vraćena na početak, protiv nepoznatih počinitelja. Ni deset godina nakon završenog postupka pred šibenskim sudom nema novih saznanja te progona počinitelja tog zločina.

U danima kada će se obitelji ubijenih civila u selima Varivode i Gošić, kroz komemorativne skupove prisjetiti svojih najmilijih, želimo još jednom podsjetiti javnost i relevantne vladine institucije na činjenicu da su ti zločini počinjeni i da za njih nitko nije odgovarao te time i na neizvršenu obvezu otkrivanja i procesuiranja počinitelja ratnog zločina nad civilima.

Odgovorne želimo upozoriti i na porazne činjenice da još uvijek nije na zadovoljavajući način riješen problem priznavanja patnje i gubitaka rodbini ubijenih kroz naknadu štete i druge vidove reparacija, te još uvijek prijeteće naplate parničnih troškova članovima obitelji usmrćenih koji su izgubili parnice u kojima su od RH tražili naknade nematerijalne štete zbog usmrćenja svojih bližnjih.

S tim problemom se susreću mnoge obitelji ubijenih civila u Gošiću i Varivodama kao i u cijeloj Hrvatskoj, stoga Vlada RH treba donijeti Odluku kojom bi se na nedvojben način otpisali troškovi izgubljenih parnica svim tužiteljima/oštećenima koji nisu uspjeli ostvariti naknadu nematerijalne štete zbog smrti bliske osobe te omogućiti povrat sredstava onima koji su već platili parnične troškove ili čija je imovina zaplijenjena ovrhom. Uredba Vlade RH iz srpnja 2012 (Uredbu o kriterijima, mjerilima i postupku za odgodu plaćanja, obročnu otplatu duga te prodaju, otpis ili djelomičan otpis potraživanja), je recesijska mjera koja može omogućiti otpis parničnih troškova najsiromašnijim građanima, ali nije djelotvoran pravni put svim žrtvama ratnih zločina.

Po pitanju naknade štete i otpisa parničnih troškova obiteljima žrtava, Vrhovni sud RH je u siječnju 2012. donio ohrabrujuću odluku u slučaju Jovana Berića (sin ubijenih civila iz Varivoda) kojom je ukinuo presude nižih sudova u Kninu i Šibeniku, te predmet vratio na ponovno suđenje. U rješenju Vrhovnog suda RH navedeno je da su otac i majka Jovana Berića ubijeni iz vatrenog oružja u dvorištu svoje kuće, da je istog dana u Varivodama ubijeno 9 starijih osoba srpske nacionalnosti, stoga sud smatra da je smrt roditelja tužitelja uzrokovana terorističkim aktom s ciljem izazivanja straha, užasa i osobne nesigurnosti građana, za koju, temeljem Zakona o odgovornosti za štetu nastalu uslijed terorističkih akata i javnih demonstracija (ZOŠT), odgovara Republika Hrvatska.

Mada hrvatski pravni sustav ne funkcionira presedanski, spomenuto rješenje Vrhovnog suda RH odašilje jasnu poruku po kojoj i niži sudovi u ovom i drugim slučajevima mogu, ako procjene da postoji odgovornost RH, donijeti presude u korist tužitelja bez obzira na to je li počinitelj poznat ili ne, jer navedeni zakon (ZOŠT) također propisano da obveza naknade štete postoji nezavisno o tome je li

I ovom prilikom pozivamo aktualnu Vladu RH na proaktivno djelovanje kako bi se ispravila nepravda koja se čini neobeštećivanjem civilnih žrtava rata. Nužno je donijeti Nacionalni program i Zakon o osnivanju fonda za obeštećenje svih civilnih žrtava rata, a što zagovaramo i putem aktualne medijske kampanje "Žrtve su predugo čekale", www.civilnezrtve.hr

I ovom prilikom podsjećamo hrvatsku javnost i odgovorne kako još uvijek nema niti jedne pravomoćne presude za ratne zločine počinjene u tijeku i neposredno nakon vojno-redarstvene akcije "Oluja".

Vesna Teršelič, Documenta – Centar za suočavanje s prošlošću

Zoran Pusić, Građanski odbor za ljudska prava

Mladen Stojanović, Centar za mir, nenasilje i ljudska prava Osijek

(lang:50001:en)

In Varivode and Gošić villages near Kistanje, during August and September 1995, Croatian military and police formation members killed indigenous inhabitants of Serb ethnicity considerably after the cessation of war activities and the conclusion of military-police action Storm [Oluja]. They were killed during the period when they were supposed to be guaranteed safe. The killing was performed brutally and for no apparent reason. A large number of elderly persons was executed, the youngest person among them was 55 and the oldest was 85 years of age.

On 27 August 1995, seven civilians were killed in the village of Gošić at approx. 16:00 hours (Milka Borak, aged 80; Dušan Borak, aged 56; Kosovka Borak, aged 77; Sava Borak, aged 70; Grozdana Borak, aged 70; Vasilj Borak, aged 75; Marija Borak, aged 81./ Report "Military Operation Storm and afterwards" issued by the Croatian Helsinki Committee Zagreb in 2001; Indictment No. KT-83/96 issued by the Zadar County State Attorney's Office on 13 February 1996). The Zadar County State Attorney's Office laid the indictment no. KT-83/96 of 13 February 1996 against four defendants for a criminal offence of murder committed for personal gain.

On 28 September 1995, nine civilians were killed in the village of Varivode at approx. 17:00 hours (Dušan Dukić, born in 1937; Špiro Berić, born in 1940; Jovo Berić, born in 1920; Jovan Berić, born in 1939; Radivoj Berić, born in 1926; Marija Berić, born in 1926; Milka Berić, born in 1924; Marko Berić, born in 1913; Mirko Pokrajac, born in 1911 / Report "Military Operation Storm and afterwards" issued by the Croatian Helsinki Committee Zagreb in 2001; Indictment No. KT-84/95 issued by the Zadar County State Attorney's Office on 15 February 1996). The Zadar County State Attorney's Office laid the indictment no. KT-84/95 of 15 February 1996 against four accused persons for a criminal offence or murder committed for personal gain.

With the merging of criminal proceedings, six members of Croatian military and police forces were charged in respect of the aforementioned crimes. The trial commenced before the Zadar County Court and was later transferred to the Šibenik County Court. In February 2002 the trial, which was legally qualified as murder for personal gain, was discontinued because the prosecutor – the Šibenik County State Attorney's Office - decided to withdraw prosecution. For that reason, the investigation had to start anew against unidentified perpetrators. Today, even ten years after the Šibenik Court concluded the trial, there is still no new evidence and no prosecution of the perpetrators.

commemoration gatherings, we wish to remind the public and relevant governmental institutions of the fact that these crimes were committed and that no one has been held responsible for them. Therefore, this presents an unresolved liability of disclosing and prosecuting the perpetrators of war crimes against civilians.

Herewith, we also wish to warn the responsible parties about discouraging facts that the issue of recognising the suffering and loss of the relatives of killed persons through damage compensation and other forms of reparation has still not been resolved in a satisfactory manner. In addition, family members of killed persons who lost their lawsuits in which they requested non-pecuniary damage compensation from the RC still face the charging of court expenses.

Many families of killed civilians in Gošić and Varivode and in the entire Croatia as well are facing this problem. Therefore, the Government of the Republic of Croatia needs to adopt a decision in which it would in an undoubtful manner write off lost lawsuit expenses to all plaintiffs/injured persons who failed to receive compensation of non-pecuniary damage due to the death of their family member, and ensure a refund to persons who already paid related court expenses or whose assets were confiscated by court enforcement. The Regulation of the Croatian Government, issued in July 2012 (Regulation on the criteria, measures and the procedure for deferred payments, debt return by instalments, the sale, write-off or partial write-off of receivables), presents a recession measure which may enable write-off of charged court expenses to the most vulnerable category of citizens, but this is not an efficient legal remedy to be applied in respect of all war crime victims.

In January 2012, the Supreme Court of the Republic of Croatia adopted a decision in the case of Jovan Berić (the son of killed civilians from Varivode) which is encouraging, as regards damage compensation and the write-off of charged court expenses to the victims' family members. In this decision, it quashed the rulings issued by lower-instance courts in Knin and Šibenik (Lower instance courts rendered decisions in which litigation claims by the victim's children/the plaintiffs was rejected and they were ordered to pay court procedure expenses (HRK 54,000.00)) and remanded the case for a retrial. In the decision of the Supreme Court it was stated that Jovan Berić's mother and father were killed from firearms in their house yard, while 9 more elderly persons of Serb ethnicity were killed in Varivode on the same day. For that reason, the Supreme Court was of the opinion that the death of plaintiff's parents was caused by a terrorist act with the purpose of spreading fear, terror and personal insecurity among citizens, for which the Republic of Croatia is held liable pursuant to the Act on Liability for Damage Resulting from Terrorist Acts and Public Demonstrations.

Although Croatian legal system does not function on precedents, the aforementioned Supreme Court's decision sends a clear message pursuant to which lower courts in this and in other cases may, if they assess that the Republic of Croatia is to be held liable, render rulings to the benefit of a plaintiff regardless of the fact whether a perpetrator was identified or not, because the aforementioned Act also stipulates that the obligation to compensate damage exists independently of the fact whether a perpetrator was determined, criminally prosecuted or found guilty, or not.

We use this opportunity to call upon the current Government of the Republic of Croatia to act proactively in order to rectify injustice caused by not-indemnifying civilian war victims. It is necessary to adopt a National Programme and the Act on Establishing the Indemnification Fund for all Civilian War Victims – and we also push this issue through the media campaign Victims have been waiting far too long (www.civilneztvte.hr)

We would also like to use this opportunity to remind the Croatian public and responsible parties of the fact that not a single final and conclusive ruling has still been rendered for war crimes committed during and immediately after the military-police action "Storm"

Zoran Pusić, Civic Committee for Human Rights

Mladen Stojanović, Centre for Peace, Non-violence and Human Rights-Osijek

(/yams-select:50001)