

## REPORT ON WAR CRIME TRIALS IN CROATIA FOR 2017.

The legal team of *Documenta* – Centre for dealing with the past (further on *Documenta*), Center for peace, nonviolence and human rights from Osijek (further on Center for peace) and Youth initiative for human rights Croatia (YIHR), monitored hearings in 23 criminal proceedings for war crimes trials at the four county courts in Croatia, as well as 12 public sessions in appeals before the Supreme Court of the Republic of Croatia.

The report on war crimes trials in Croatia provides an overview and key findings of all first instant verdicts as well as finished cases, which are of importance to the public. For the full insight in the course of the individual proceedings and their findings, the previous annual trial reports are also relevant. The report focuses on the work of prosecutors and specialized courts, the analysis of the indictments and verdicts in individual cases, critical observation of the judiciary, and offers conclusions and recommendations.

During 2017, 10 criminal proceedings were completed with the first instance verdicts, while 12 criminal proceedings were completed with verdicts with final force and effect. Most of the criminal proceedings in 2017, particularly during the investigation and after the indictment was filed, were conducted in the absence of the defendants. According to the information which is available to us, there have been twelve indictments against 34 defendants, of which 33 were out of reach for Croatian judiciary. Therefore, the basic postulate of any contemporary criminal procedure which must seek to ensure the effective participation of the defendant, the adversarial structure of the proceedings and the equality of arms of the parties involved in the proceedings, has been essentially compromised.

The trend of trials *in absentia*, dominant in nineties is being justified with inability to deliver criminal prosecution to the country where the defendant has a permanent residence and whose citizenship the defendant has, due to height of prescribed sentence. Namely, the Law on International Legal Assistance in Criminal Matters (OG-178/04) prohibits cession of prosecution of crimes punishable by imprisonment for more than 10 years.

Furthermore, regional cooperation, although determined by limited protocols/agreements on cooperation between prosecutors in the region, especially those concluded between Croatia and Bosnia and Herzegovina and Croatia and Serbia, is almost non-existent in the area of transferring evidence. Cooperation is also hindered Conclusion on Cooperation with Bosnia and Herzegovina in Legal Assistance in Criminal Matters adopted at the Session of the Government of the Republic of Croatia on June 3, 2015. Bilateral treaties on the prosecution and punishment of war crimes, which would as intergovernmental agreements be legally binding above the law, and whose conclusion is announced, could change the trend of trials *in absentia*.

During 2017 we have monitored 23 war crimes trials, which is the lowest number of criminal

proceedings in the phase of hearing since our legal team conducts monitoring of war crimes trials.

War crimes trials monitored before the specialized courts are characterized by seldom scheduling of the hearings, especially before the county courts in Osijek and Rijeka. Further characteristics are: length of proceedings, unavailability of the defendants before the county courts in Rijeka and Zagreb, and possible double standards in meting out criminal sentences in some proceedings, as well as low jail sentences meted out below the legal minimum, primarily for members of Croatian army units, with participation in Homeland war considered as a regular mitigating circumstance. We have only saw two cases of retrial.

First instance verdicts were rendered in 10 cases against 17 defendants. Twelve (12) defendants were convicted of war crimes, including 6 members of Croat and 6 members of Serb units. Four defendants, members of Serb units, were acquitted, while charges against one of the members of Serbian paramilitary units were dismissed.

### **CRIMINAL CHARGES**

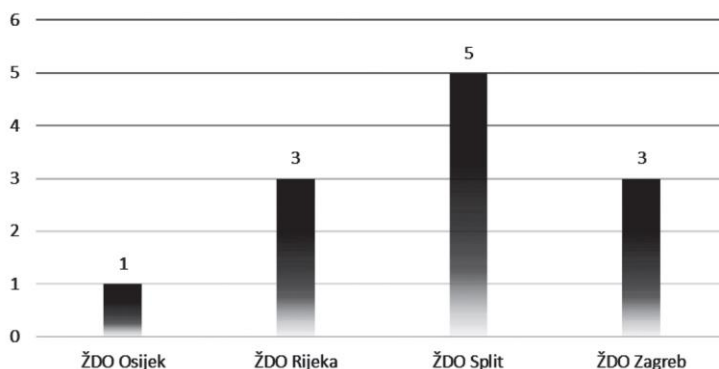
During 2017 the county state attorney's offices received 62 new criminal charges for war crimes. *Documenta* filed two criminal charges, one for crime in Uzdolje and another one for crime in Bogdanovci, but did not receive a response for them.

### **STATUS QUO IN THE PROSECUTION OF CRIMES WITH THE STATUS OF NATIONAL PRIORITIES**

The crimes committed against civilians in Sisak, Pakračka Poljana, Glinsko Novo Selo, Borovo Selo, Antin and Vukovar were mainly prosecuted on the basis of command responsibility, while there is still no progress in the persecution of direct perpetrators. However, the crimes in Varivode and Gošić and in the Dvor of Una, which have been given the status of national priorities in 2015, are still unresolved, and being conducted against unknown perpetrators. At the same time, so far no criminal proceedings have been initiated for crimes committed against Serb civilians in Vukovar and Sarvaš, committed in the spring and summer of 1991, nor the proceedings for crimes committed during Operation "Flash" and "Storm".

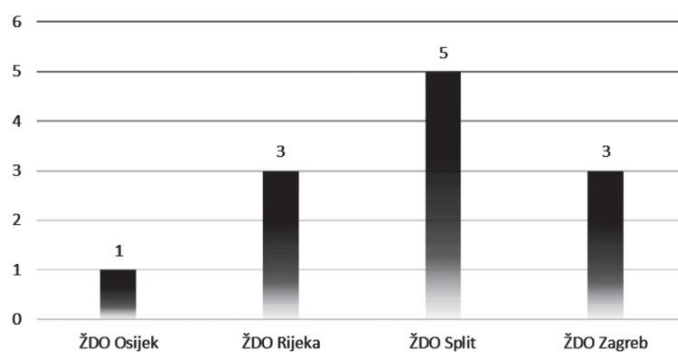
### **INVESTIGATIONS**

During 2017, 8 investigations against 25 defendants were initiated, and only one investigation resulted in the indictment being filed.



## INDICTMENTS

In 2017, 12 indictments were filed against 34 defendants. All accused were members of Serbian units. All the defendants, mostly citizens of the Republic of Serbia (some have BiH or Montenegrin citizenship) are unavailable to the Croatian judiciary.



## REGIONAL COOPERATION

We have monitored regional cooperation through four trials. Trials in Croatia took place before the Split County Court: the crime in Široki Brijeg against Ivan Hrkač commenced at the end of 2015, and was finalized in June 2017 by confirming the acquittal of the first instance verdict; the crime in camps Silos, Gabela and Dretelj, against defendant Marinko Marić

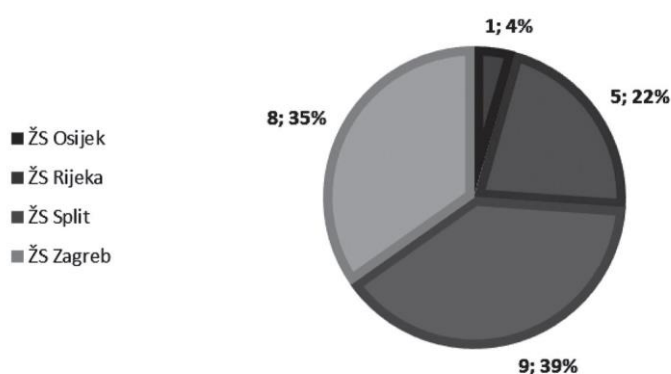
and Željko Rodin, the former members of Croatian Defense Council (HVO) brigade Knez Domagoj, charged with war crimes against Bosniak civilians. The subject of both mentioned criminal proceedings are crimes committed in the territory of BiH.

The other two trials were conducted at the war crimes tribunal in Belgrade. With the latest final verdict of the Appeal court in Belgrade for the crime in Ovčara, which was rendered on 24 November 2017, the first instance verdict in respect of the accused Mirosljub Vujović, Stanko Vujanović, Predrag Milojević (20 years) and Goran Mugoš (5) was confirmed. Ivan Atanasijević's sentence was reduced from 20 to 15 years in prison. Miroslav Đanković and Saša Radak with 20 to 5 years in prison. For Nada Kalaba, the sentence was tightened from 9 to 11 years of imprisonment. Milan Vojnović, Jovica Perić, Milan Lančuzanin and Predrag Dragović who were sentenced to 15, 13, 6 and 5 years in the first instance verdict, were acquitted. Đorđe Šošić has died during the proceedings at the Appeal court in Belgrade. For a crime in Lovas, in early January 2017, on the basis of an amended indictment, a new trial was conducted before the Belgrade War Crimes Chamber.

## REVIEW OF THE WORK OF THE SPECIALIZED COURTS FOR WAR CRIMES

In the 23 war crimes trials, 147 hearings have been scheduled, many of which have been postponed for various reasons, and some of the trials have started over again due to the passage of time longer than three months, which are indicators of the lack of concentration of the main hearing and a relatively low frequency of scheduling the hearings.

Such dynamics of scheduling the hearings creates confusion in the public and makes monitoring difficult, as well as reporting of the media. In some criminal proceedings which are in phase of trial of first-instance panel, the hearings were not scheduled during 2017 (crime in Kuline against war prisoners and crime committed by shelling Karlovac). It is an indicator of lack of concentration even in the war crimes cases before the County courts.



NUMBER OF ONGOING PROCEEDINGS BEFORE THE COUNTY COURTS DURING 2017.

## TRENDS

### TRIALS *IN ABSENTIA*

38% of the defendants were tried *in absentia* on the four specialized courts. The County courts in Rijeka and Zagreb are conducting more than half of the trials in absence of the defendants, which from the perspective of witnesses and the injured parties creates misunderstanding and rejection of the trials where there are no defendants, due to uncertainty whether in the case of convicting judgments, they will ever serve the sentence imposed.

## FINAL VERDICTS/JUDGMENTS WITH FINAL FORCE AND EFFECT IN 2017.

### CRIME IN PAKRAČKA POLJANA

Criminal proceedings against Tomislav Merčep, accused of war crimes against civilians (Art. 120(1) in relation to Art. 28 of the Criminal Code of the Republic of Croatia). On 2 February 2017 the Supreme Court partially accepted the appeal of the State Attorney and amended the first instance verdict regarding the decision on his sentence, in a way that it raised the sentence of five and a half (5.5) to seven years of imprisonment (7). This criminal procedure is an example of long-term procedure without a valid epilogue. The trial of the defendant began in February 2012.

### CRIME AT THE HILL BRŠLJENOVICA NEAR PLAŠKI

The proceedings against Dušan Kovačević for the war crime against wounded and patients (Art. 121 of the Criminal code of the Republic of Croatia). Criminal proceeding is an example of long-term proceeding without a valid epilogue. The indictment was filed in June 2011, and the trial of the defendant began in 2013.

### CRIME IN THE GAJEVA STREET AND KERESTINEC

The proceedings are an example of long-term proceedings. The trial commenced in February 2012 on the basis of an indictment filed in November 2011. The first-instance verdict issued in October 2012 was overturned by the Supreme Court which ordered a retrial. Procedure was repeated before the different trial chamber.

### CRIME IN TRPINJA – III. DEGREE

The criminal proceedings were conducted in the presence of the defendant. The Supreme Court fully upheld the first-instance conviction. Based on the appeal of the defendant M. Atanacković that was sent to the Supreme Court, as a III. degree court, a prison sentence of 15 years has been converted.

## **CRIME IN GLINA PRISON**

The Supreme Court upheld the acquittal of verdict against Miroslav Hašić, while the trial against Zoran Dmitrović returned to the first-instance council for re-deciding.

## **CRIME IN THE SURROUNDINGS OF GRAČAC**

After the trial was conducted, the defendant Dejan Milović, in the retrial, *tempore criminis*, a former member of the border police unit "Gračac" of so called RSK, was found guilty and sentenced to three years of imprisonment on 15 December. The Supreme Court rejected both complaints as unfounded and in May 2017 upheld the first-instance verdict.

## **CRIME IN SKELA NEAR GLINA**

The criminal proceedings were conducted in the absence of the accused. On 27 February 2017, the trial was terminated by acquittal of defendant Đuro Solar, due to lack of evidence while the indictment against the second accused Zoran Duruma was dismissed. The first-instance verdict was confirmed on 30 May 2017.

## **CRIME IN ŠIROKI BRIJEG**

Criminal proceedings against Ivan Hrkač for war crimes against civilians, Art. 120(1) of the Criminal Code of the Republic of Croatia and war crimes against war prisoners, Art. 122 of the Criminal code of the Republic of Croatia. By a first instance verdict on June 17, 2016, the defendant Ivan Hrkač, aka "Čikota", was acquitted of war crimes indictments. A public session on which the first-instance, acquittal verdict was confirmed, was held on 06 June 2017.

## **CRIME AT MILJEVCI PLATEAU**

The proceedings against Ante Babac and Mišo Jakovljević for the crime of War Crimes against Prisoners of War from Art. 122 of the Criminal Code of the Republic of Croatia. After the public session held on 6 September 2017, the Supreme Court rejected as unfounded the charges of the prosecution and the defense and fully upheld the first instance verdict.

## **CRIME IN SMILČIĆ NEAR BENKOVAC**

The defendant Mladen Graovac, arrested in August 2016, was found guilty of committing war crimes against civilians and sentenced to two years of imprisonment, on 11 September 2017 at the Split County court. He pleaded guilty and waived the right to appeal.

## **CRIME IN THE VILLAGES BY RIVER UNA NEAR HRVATSKA KOSTAJNICA**

On the 8 May 2015 before the amended court chamber of the Zagreb County court, all three indictees Pero Đermanović, Dubravko Čavić and Ljubiša Čavić were acquitted of charges for the commission of war crimes against civilians, Art. 120(1) of the Criminal Code of the Republic of Croatia. The Supreme Court upheld the acquittal on 9 September 2017.

## **ATTEMPTING TO BRIBE SUPREME COURT JUDGES**

Case Glavaš et al. Criminal proceedings against Drago Tadić for association to commit a crime under Art. 333/1 of the Criminal Code, and for the promotion of illegal mediation under Art. 343/5 of the Criminal Code in conjunction with Article 37/2 of the CC. In February 2013 he was given a non-suspended sentence of two years of prison in the first instance verdict. At the session of the Supreme Court of the Republic of Croatia in February 2017, the verdict was fully confirmed.

## CONCLUSIONS

Given the right of all victims of war crimes to determine the facts and circumstances of their perpetration and the fight against impunity, we expect more effective work of police and State Attorney's Office in the investigation, as well as the courts in the impartial prosecution of all war crimes. The number of unprocessed crimes for which no investigation has been initiated, is still too big. Further review of the indictment filed in the previous period is needed, as well as additional investigations and cooperation with the family members of the killed persons.

The State Attorney's Office of the Republic of Croatia publishes information on certain criminal proceedings, mainly on the occasions of memorial days of certain crimes. This practice should be welcomed and maintained, but it needs to be improved - by publishing complete information on proceedings (more complete information containing the names of the accused/convicted, factual descriptions of the crimes committed, names of victims and outcomes of the proceedings). Unfortunately, there is no website with information on all processed crimes, which would be presented in a simple and insightful way to the public.

For more effective investigation, regular exchange of experience between state attorneys and prosecutors is needed on the forums, such as the former Brijuni Forum, which was last held in 2016. For the quality of court proceedings based on the evidence provided by other countries, it is necessary to analyze the difficulties in the completed procedures, especially from the perspective of respecting the rights of victims and witnesses in accordance with the Directive on the establishment of minimum standards for rights, support and protection of victims of crime.

There is a need for regular trainings of judges of the war crimes Chamber at specialized courts, in particular due to increased number of judges in first instance proceedings that are just beginning to work on war crimes cases, as well as for prosecutors working on these complex cases to contribute to more objective and better war crimes trials. It is necessary to adopt a national program and a law on the establishment of a fund for the compensation of all civilian casualties of the war in order to remedy the damage in accordance with the Fundamental principles and guidelines on the remedies and reparation for victims of serious violations of International human rights, and serious violations of UN's International humanitarian law, as well as to write off the costs of unsuccessful litigations for damage compensation, for direct or indirect victims of war crimes.

It is necessary to evaluate the work of the war crimes departments at specialized courts and competent County state attorneys following the amendment of the Law on the application of the statute of the International Criminal Tribunal and prosecution for crimes against International war and humanitarian law from 2011 and to propose possible improvements to the legislation in accordance with the findings and recommendations of the evaluation. The

slowness of the investigations indicates the need for considering the establishment of a specialized department of the State Attorney's Office for war crimes, based on the model of USKOK.

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This report was realized within the Justice programme of EU, and co-financed by Office for cooperation with NGO-s of the Government of the Republic of Croatia and City of Zagreb. The content of the report is the sole responsibility of the publisher and under no circumstances can it be considered to reflect the attitude of the European Union, the Office for cooperation with NGO-s of the Government of the Republic of Croatia and the City of Zagreb.