



Monitoring of war crimes trials – Certification for the process of dealing with the past and sustainability of the judicial reform in Croatia

Croatian Journalists' Hall, Zagreb, 28 March 2013

How to increase the efficiency of war crime trials and ensure the right to effective remedy for victims / Round Table

It is becoming more and more difficult to prosecute crime perpetrators. The quality of evidence material is diminishing due to investigations which are carried out in an unduly and below-quality manner. Our society is still lacking the atmosphere in which people would be willing to testify against crime perpetrators who were “on our side“ - are some of the major conclusions from the **Round Table** on which, along with presenting key recommendations from the Annual Report on War Crime Trials in 2012, other issues were discussed such as the importance of further investigation and prosecution of a large number of war crimes that have not been prosecuted up to now, while particularly stressing the social position of civilian war victims, especially of victims of rape and sexual abuse.

The Round Table titled **“Ensuring the Right to Effective Remedy for War Crime Victims“** held at the Croatian Journalists' Hall in Zagreb, was organized by *Documenta - Centre for Dealing with the Past*, *Civic Committee for Human Rights*, and the *Centre for Peace, Nonviolence and Human Rights-Osijek*.

Keynote presenters at the Round Table were **Branko Hrvatin**, President of the Supreme Court of the RoC, **Gordan Markotić**, Assistant Minister of Justice in Croatian Government, **Paul Vandoren**, Head of the Delegation of the European Union to the Republic of Croatia and **Vesna Teršelič**, **Head of Documenta**.

Vesna Teršelič, Head of *Documenta – Centre for Dealing with the Past*, stressed during her presentation that the **judiciary managed to rise above the muddy waters of hate in which certain**

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politicians are still swimming, for instance Ruža Tomašić, President of the *Croatian Party of Rights dr. Ante Starčević* who, in her most recent appearances, cried out for a time in which executions of civilians, nowadays prosecuted before judicial bodies and sentenced with final judgments, were covered-up. According to the Head of *Documenta*, there is a growing concern because war crime victims, who filed lawsuits against the Republic of Croatia expecting justice, are still facing the payment of litigation costs, although there are hints at the existence of a political good will to write-off these costs. Another encouraging sign, as emphasized by Teršelič, is the judgment rendered in the court case of Jovan Berić, pursuant to which Croatia is obliged to pay indemnification in the amount of HRK 540,000.00 to the injured persons on behalf of non-pecuniary damage, i.e. killed parents in the village of Varivode at the end of September 1995. During her presentation, Teršelič also recalled this week's reaction of the European Commission which in its latest report regarding the monitoring of the Republic of Croatia warned that an adequate manner of compensation needs to be found in the future and that it is necessary to establish a systematic solution to provide compensation to civilian war victims. The Head of *Documenta* stressed that not a single final judgment has been rendered for war crimes committed during and immediately after the Military Operation "Storm" and emphasized that witness testimonies provided in war crime proceedings during the last year and at the beginning of this year were particularly important in revealing the heritage of the 90's. Teršelič also touched upon the issue of unresolved crimes of sexual and gender violence while mentioning the fact that "women who survived rape or other forms of sexual abuse publicly requested justice, efficient prosecution of perpetrators and recognition of status of war crime victims. The legislation in force and court practice has thus far proved to be inefficient, as evident by a small number of registered crimes and court judgments. According to DORH data, the competent County State Prosecutor's Offices prosecuted a total of 27 identified perpetrators, 13 of whom were convicted of a war crime committed by rape. **60 victims of rape have been registered so far** in criminal reports filed with **the competent County State Prosecutor's Offices**".

"This gathering and the commitment by the three organizations which drafted the Annual Report on War Crime Trials in 2012 are, in my opinion, useful civilian – public test of the work of courts and in this regard the role of the aforementioned civil society organizations is irreplaceable" - stressed at the beginning of his presentation **Branko Hrvatin**, President of the Supreme Court of the RoC. He continued by saying that war crime trials carry special weight bearing in mind the number of the people affected by those criminal offences, all in the light of a need to look at the broader social context which judgments should have on the process of true dealing with the past. The judiciary, as an impartial and independent system, must provide satisfaction for the victims, continued Hrvatin stating that "while doing so, one needs to look at the needs not only of direct injured parties/victims but also of that part of sufferer's population which is indirectly, through family ties, connected with certain crimes, which represents an important step forward in relation to previous practice. In the last part of his presentation, President of the Supreme Court of the RoC highlighted the necessity to indemnify all civilian war victims, which ensues from certain solutions rendered by the Supreme Court of the RoC which contained very clear standpoints in favour of injured families of civilian sufferers with this regard.

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Gordan Markotić, Assistant Minister of Justice, spoke in his part of the presentation about the manner in which war crime trials influenced the negotiation process of Croatia's accession to the European Union. He emphasized the coordination role of the Ministry itself in terms of providing logistical support to Croatian courts along with the indispensable influence of the international and regional cooperation. In that part of the presentation, Assistant Minister also mentioned a joint commission established between two Ministries, the Ministry of Justice of Croatia and the Ministry of Justice of Serbia, which primarily serves as a means of exchanging data related to war crimes suspects and which should bring to an end the existence of internal arrest warrants as well as precipitated arrests at border crossings between the two countries. In the end, the commission already renders possible transparency in war crime trials on both sides, continued Markotić and paves the way to an agreement between the two countries which would raise all issues related to war crimes at the inter-state level.

In their presentations, the President of the Supreme Court of the RoC and the Assistant Minister of Justice touched upon the system of providing support to victims and witnesses in war crime trials while emphasizing the assistance provided by the UNDP in all necessary activities in order to create an efficient and sustainable system of support. The Assistant Minister of Justice **Gordan Markotić** reported that the Ministry will take upon itself the issue of transport of witnesses and victims to war crime trials and that, as of 1 July, in cooperation with the UNDP, the National Call Centre for Support to Victims and Witnesses will become operational.

Paul Vandoren, Head of the Delegation of the European Union to the Republic of Croatia, stressed that, in spite of positive tones contained in this week's Monitoring Report on Croatia's preparations for joining the EU, there is a clear warning to Croatia that war crimes prosecution is an important topic which judicial institutions should systematically deal with. He highlighted the significance and importance of dialogue between civil society organizations and representatives of judicial institutions. As he did during last year's Round Table, the Head of the EU Delegation to the RoC especially stressed that war crime victims must receive satisfaction and compensation for everything they had endured in the past, while the payment of litigation costs, as a form of secondary victimization, should be the matter of unacceptable practice of Croatian courts. As a good example he stated the compensation of damage for the families of victims in the case of crime in the village of Varivode near Kistanje, which should serve as a good example of systematic resolution of this issue, while also mentioning the necessity to indemnify all those victims whose perpetrators will never be prosecuted.

Deputy Chief State Prosecutor **Jasmina Dolmagić** assessed that a visible progress has been achieved in prosecution of war crime perpetrators – out of 8 cases from the list of national priorities 5 have been resolved, while success has also been recorded in terms of resolving regional priorities. She dismissed certain objections contained in the Annual Report by the three organizations, for instance the qualification that the atmosphere in which people would be willing to testify against crime perpetrators who were **“on our side“ is still lacking**. She also dismissed the objection that there exists

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unwillingness to prosecute crimes for which members of Croatian formations were charged. “The criteria is neither ethnical nor ideological affiliation, but exclusively the amount of evidence“, replied the Deputy Chief State Prosecutor.¹

Later in the text we provide speeches by some participants at the Round Table on which the Annual Report by the three human rights organizations which have been jointly monitoring war crime proceedings before the courts in the Republic of Croatia since 2005, was discussed through two thematic sessions, *the Report on Trial Monitoring for 2012 – Key Findings and Recommendations* and *the Non-prosecuted Crimes and Other Severe Violations of Human Rights during the War. Sexual Violence and Rape as a Form of War Crime*.

/ Report on Trial Monitoring for 2012 – Key Findings and Recommendations /

Mladen Stojanović / Centre for Peace, Nonviolence and Human Rights-Osijek /

Mladen Stojanović presented the key findings related to monitoring war crime trials in 2012. During his presentation, he assessed as positive the commencement or resumption of several war crimes trials, which had for years been held-up due to a lack of willingness to prosecute and which involve cases where a large number of persons of Serb ethnicity were killed or abused (Crimes committed in Sisak, in the prisons located in Gajeva street in Zagreb, in Kerestinec, Pakračka Poljana and at the Zagreb Fair). As negative occurrences Stojanović singled out the stalling of proceedings in which suspects were **Mihajlo Hrastov**, charged with committing a criminal offence of unlawful killing and injuring the enemy at the Korana Bridge, and **Petar Mamula**, charged with committing a war crime against civilian population in Baranja. Among the negative effects, Stojanović included non-prosecution of those persons who unlawfully planted explosives in houses during the 90's and the unresolved status of a part of population who were evicted from their homes². Later on, he stressed the significance of cooperation between the most important political actors in the region as a necessary precondition related to prosecution of war crimes. He emphasised that March 2012 marked the start of a praiseworthy initiative of the President of the Republic of Croatia Ivo Josipović which was supported by the-then President of the Republic of Serbia Boris Tadić, to sign an interstate agreement to facilitate cooperation between judicial authorities of Croatia and Serbia in the prosecution of war crime perpetrators. In addition to the existing unresolved problems between Croatia and Serbia, continued Stojanović - mutual lawsuits for genocide, the unresolved missing persons' issue, the issue of return and/or providing housing care for refugees and the *Croatian Act on Nullity of Certain Legal Acts of the Judicial Bodies of the JNA, Former Yugoslavia and the Republic of Serbia* - relations between the two states additionally deteriorated after the acquittal of Croatian generals Ante Gotovina and Mladen Markač by the ICTY. Mladen Stojanović deems that the event which certainly left a mark on prosecution of war crimes committed in Croatia was the pronouncement of the second-instance verdict

¹ "It is important to indemnify war crime victims", Radio Free Europe, author Enis Zebić, 28 March 2013.

² "Hate speech brings us back into the 90's", H – alter, author Tamara Opačić, published on 21 March 2013.

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by the ICTY in the Gotovina and Markač case. Namely, the ICTY Appeals Chamber overturned in November 2012 the convictions at first instance rendered in April 2011 in which Croatian generals Ante Gotovina and Mladen Markač were found guilty of committing a crime against humanity and a violation of the laws and customs of war, by participating in joint criminal enterprise the objective of which was permanent removal of the Serb population from the so-called Krajina region. The cited first-instance verdict sentenced Gotovina to 24 years and Markač to 18 years of prison. In the last part of the presentation, he stressed that “the Croatian judiciary and other authorities must necessarily demonstrate that all defendants and victims are treated in an equal and unbiased manner, the courts continue to assess participation in the Homeland War as extenuating circumstance in respect of accused members of Croatian formations when determining the sentence against them, while extremely high defence expenses of certain accused members of Croatian formations are covered by the State budget. On the other hand, **the issue of obliging family members of killed persons**, mostly of Serb ethnicity, **to pay litigation costs** for the lost lawsuits in which they requested compensation of non-pecuniary damage from the Republic of Croatia due to the killing of their close relatives, is still not resolved. **Although the Croatian Government adopted a regulation in July 2012 according to which litigation costs can be written-off in case of socially handicapped plaintiffs, this pressing issue is not entirely resolved and certainly not in a satisfactory manner**”.

Zoran Pusić / Civic Committee for Human Rights /

This Annual Report is an illustration of the current status of the Croatian judiciary and is the result of many years of work of the three non-governmental organizations on systematic monitoring of war crime trials in the RoC. Independent and unbiased judiciary is a precondition without which it will not be possible to ensure basic human rights. One of the most severe forms of violation of human rights occurs when institutions supposed to protect the right to a fair trial lead to the violation of those same rights with their activities.

Eugen Jakovčić / Documenta – Centre for Dealing with the Past /

“In my presentation, I would like to remind all Round-table participants on the **tragic fate of Radivoje Berić and Marija Berić**, as well as about the judicial course of a civil lawsuit through which Jovan Berić and his sisters, children of the tragically killed, sought indemnification from the Republic of Croatia on behalf of their killed parents”. In the village of Varivode, near Kistanje, members of the Croatian Army killed the indigenous citizens of Serb ethnicity almost two months after the cessation of war activities. Among the victims of crime in Varivode there are also parents of Jovan Berić, the aforementioned Radivoje Berić and Marija Berić. Unfortunately, the Berić couple responded to the public invitation by the Croatian President that it was safe to stay in the territory of the Republic of Croatia, because of which on 28 September 1995 they were killed by members of Croatian police forces, almost at the end of a two-month intensive campaign in which numerous Serbs, elderly persons, disabled persons and persons unfit for a refugee exodus, were tragically killed.

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The injured persons, Jovan Berić and his two sisters, in August 2005 sought, through direct settlement with the State Prosecutor's Office of the RoC, indemnification pursuant to the provisions of the Act on the Responsibility for Damage Caused by Terrorist Acts and Public Demonstrations. The County State Prosecutor's Office in Šibenik did not agree with the request for peaceful solution and entered the dispute with the victims' family. The conclusion of local courts in Šibenik and in Knin in a civil litigation filed by Jovan Berić was that during the proceedings itself it was not established that the plaintiffs' parents were violently killed, with the objective of severe disturbance of public order, intimidation and causing the feeling of insecurity among citizens which was fully revoked by the Supreme Court of the RoC in January 2012. The Supreme Court concluded in its ruling that **“the death of Radivoje Berić and Marija Berić was caused by a terrorist act with the objective of causing fear, terror and personal insecurity among the citizens for which, pursuant to the Act on the Responsibility for Damage Caused by Terrorist Acts and Public Demonstrations, the RoC is responsible on the principles of social solidarity, uniform distribution of public burden and the fair and expeditive indemnification.**

The case was brought back before the Municipal Court in Knin which, after two court hearings held in January of this year presided under the judge Ana Jelač Pecirep, after full seven years of litigations ended the agony of Jovan Berić and his sisters. Along with the conclusion that the damage in this particular case was indisputably caused by a terrorist act, it awarded indemnification in the amount of HRK 540,000.00 (each of the children of the killed Berić couple was awarded HRK 180,000.00). Pursuant to such decision, the plaintiffs avoided the payment of the already threatening HRK 54,000.00 of litigation costs and received indemnification in the amount of HRK 540,000.00 which was awarded, as emphasised by the judge in her explanation, pursuant to the Orientation Criteria of the Supreme Court of the RoC. As the appellate procedure continues, the DORH still invokes the statute of limitations pertaining to the initiation of the indemnification proceedings itself, while the plaintiffs lodged an appeal pertaining to the amount of awarded indemnification.

We believe that, **in the footsteps of the aforementioned judgment of the Supreme Court of the RoC, the issue of indemnification of all civilian war victims will be systematically resolved in the future as well, which is also a quotation from the latest Monitoring Report of the European Commission on Croatia's preparations for membership in the EU in the context of forthcoming tasks which are of crucial importance for the credibility of reforms and successful functioning of Croatia under conditions of full-fledged membership.** We believe that the decision reached by the Supreme Court of the RoC will render it possible for other families of victims from Varivode to obtain indemnification if they initiated their lawsuits on time, but this is also encouraging for all other cases which are ongoing because it has sent a clear signal to judges that in litigation cases they may assess the broader context in which individual crimes occurred and award indemnification regardless of the fact that crime perpetrators were not identified and prosecuted, which has not been the case so far.

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/ Non-prosecuted Crimes and Other Severe Violations of Human Rights during the War. Sexual Violence and Rape as a Form of War Crime /

Veselinka Kastratović from the Osijek-based *Centre for Peace, Nonviolence and Human Rights* spoke about the issue of non-prosecuted war crimes and shortly presented the results of investigating work on *Documenta's* project titled "Human Losses in Croatia 1991-1995" in the area of Eastern Slavonia. **Milena Čalić Jelić** from *Documenta* and a psychologist **Marijana Senjak**, Medica Zenica, touched upon the issue of sexual abuse and rape as a form of commission of a war crime and stressed the importance of systematic psychological support to victims and additional education of judicial officials, police, social workers and health workers.

During the discussion which followed after the speakers' presentations within the two thematic sessions, the emphasis was largely put on the issue of payment of litigation costs, bearing in mind the practice of Croatian courts which mostly reject indemnification requests filed by victims' families in civil lawsuits initiated for compensation of non-pecuniary damage. **Marko Sjekavica** from the *Civic Committee for Human Rights* stressed that "What is important is not only formal justice, but the effect on the society as a whole. It is important to insist not only on further improvement of the legal framework which is good, but on the continuing prosecution of war crimes and pointing at the circumstances under which they were committed. Without this, there is no reconciliation", Sjekavica concluded.

/ Report prepared by /

Biljana Alavanja, *Civic Committee for Human Rights*
Maja Kovačević Bošković, *Civic Committee for Human Rights*
Eugen Jakovčić, *Documenta*

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