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JUSTICE IMPOSSIBLE? TRANSITION TO A PEACEFUL DEMOCRACY IN CROATIA AND THE OSCE MISSION

The Legacy of War as a Warfare of Symbols

The party with the greatest capacity for organized violence will obviously inflict upon others the most severe damage. In former Yugoslavia it was the JNA (Yugoslav People's Army) that had such capacity and the majority of its officers were Serbs that overwhelmingly supported Belgrade's policy of establishment of a homogeneous ethnic state on the territory of former Yugoslavian federation. This explains the initial net military advantage that Serbs had over Croats and Bosnian Muslims and that may also explain the comparatively greater responsibility of the Serb side for war crimes. The greatest capacity for organized violence is therefore the starting point in any conflict analysis not least because it is void of any ideological bias.

In many areas the population was mixed and in order to separate the over-night enemies the new nationalist ideologists needed collaboration from local population that in many cases formed units of self-defence or other paramilitary formations. Quite often these were the perpetrators of crimes in like killings and destruction in mixed villages. This element gives to the war of disintegration of Yugoslavia a certain civilian aspect, in addition to the legacy of coexistence in a common state for a half a century and the high percentage of mixed marriages.[334] The civilian aspect of the war was also underlined by the irrationality of destruction after the military liberation of Knin, capital of former Serb-held Krajina, when not only private houses were set on fire, but public buildings as well, as acknowledged by General

[334] Michel Bougarel, *Bosnie. Anatomie d'un conflict*. Paris: Editions La Découverte: 1996, p. 87.

Gotovina himself[335]. For example, the Maslenica bridge, originally built by a Belgrade company, was rebuilt after being destroyed in the war in a place where the political climate was even worse. Symbols in a post-war society, needless to say, sprang out of a deeper psyche, pushing the reality out of rationality bounds. Quite often, however, special economic interests merge in with political and ethnic symbolism resulting in mutual consolidation conducted at the expense of society as a whole.

Croatia basically fought a self-defence war, though it might be argued that on Bosnian territory it acted more as an occupation force; evidence shows that such personalities like late President Tudjman, Croatian defence minister Susak and Herceg-Bosna president Mate Boban preferred the option of linking Herceg-Bosna and Posavina to the Croatia proper in the early days of the war.[336] Only their natural deaths prevented their appearance in The Hague.[337]

Many individuals profited from the war. If we take the tenancy rights that around 100.000 Serbs have lost running away from the country, it means that the same number of Croats benefited cheaply from almost free flats entering them and privatising them for really small amount of money, you get an impressive number that acts as a powerful lobby with its own tribunes. As a social group it definitely exceeds the numbers of those who really suffered purely for the cause of "Croatia's freedom". Human nature, which ceaselessly promotes personal interests without regard to publicly declared attachment to moral principles, and a state of war greatly help potential profiteers to use the opportunity of chaos and absence of rule of law.

According to the current deputy-mayor in Donij Lapac[338], a small town in Lika-Senj County, some Housing Commissions issued the temporary deci-

335 "Gotoina: Hrvatski vojnici u Kninu ponašaju se kao barbari i plaćenici...", *Globus*, No. 696, 09.04.2004.

336 "Stenogrami o agresiji na Bosnu", *Feral Tribune*, No. 969, 09.04.2004.

337 "Tuđman bi da je živ možda bio u Haagu", interview with Peter Galbraith, first US Ambassador in Zagreb, *Večernji List*, 17.03.2004.

338 Conversation with Mr. Dotlić, Deputy-mayor of Donij Lapac municipality, on 23.03.2004.

sions on allocation of houses to individuals rather as an authorization to loot them, after which they left the place for good. According to another deputy-mayor, this time in Vrhovine[339], out of 200 tractors left by Serb refugees only 4 were recovered, though many could be still recognized by their former owners but not recovered because the law system discriminates them. As a well-known Croatian writer Slavenka Drakulić put it

> There are few people and they know everything about each other. They know what their neighbours are cooking for lunch, from which deserted or ruined house their carpet, refrigerator or television comes, and what each of them did during the war. They have good reason to be afraid of each other. It has to do with the so-called «TV-set syndrome». If you mention this, people will know exactly what you mean. It means that the majority of them used the war to «help» themselves to TV sets and similar goods from deserted houses. There are others who did far worse things, of course, but if you dare to challenge them and demand justice, they will say: «You shut up, you stole a TV set.» As if killing a man could ever be equated with stealing a TV. Of course it could not, but the comparison is enough to keep mouths shut [340].

These individuals, whether they acknowledge their guilt or not, form the lobby behind "inadmissibility" of looking into the way the war was fought. So, the rhetoric about "outside criminalisation" of the Homeland War has clear proponents; those who profited politically and economically, and those who eagerly (consumers of nationalistic ideology – mostly poorly educated peasants and workers) or reluctantly accepted this policy (mostly urban intellectuals many of whom emigrated). Out of eight recent suspects appearing at the International Criminal Tribunal for Yugoslavia (ICTY), five are in

339 Conversation with Mr. Delić, Deputy-mayor of Vrhovine municipality, on 16.03.2004.
340 Slavenka Drakulić, *They Would Never Hurt a Fly* (Abacus: Great Britain, 2004), p. 25.

possession of property and businesses of 135 million Euro but taxpayers still have to pay for their defence[341].

Consequently, what strikes outside observers is some sort of warfare amongst symbols with all strong emotions that this implies both in the Croatian and foreign media, as well as in discussions of politicians and foreign diplomats.

Let's take Gotovina's case – from one side he is portrayed as a criminal on the run, though no Court has ever convicted him, on the other side he is portrayed everywhere as a war hero without the expected caution and restraint deployed for other suspected war criminals. For instance, one way to show it is to hang Gotovina's huge portrait on old fortress in Zadar, in Dalmatia, which apparently did not bother the Pope during his last summer visit or his arguably fervent audience thirsty for guidance to do good. The point is that symbols obliterate the very idea of justice. Gotovina as such, like other recent indictments against individuals mentioned above, is irrelevant – he might or might not be a war criminal – that is for an able court to establish. However, there are indications that Gotovina's capture would clear up the bloody mess left by the war criminals. Needless to say, the situation is far more complex. Symbols, however important, quite often overlook the problem of guilt and acceptance of responsibility from the side of Croatian society. For that, handing over Gotovina or several other generals is not really enough because that alone will not change a lot. The Croatian judiciary should be strengthened to cope with many other cases and the current *Zeitgeist* (spirit of the times) in society should be changed by policies formulated by the government and active civil society groups so that perceptions change in a way that urgency to try the crimes committed by army, police, and paramilitary is impressed on everyone. Understanding and awareness raising should therefore be the key to finalising the transition of Croatia to a peaceful and stable democracy.

[341] "Top-lista haških milijunaša", *Globus*, No. 697, 16.04.2004.

One of questions that today sparks a fierce debate in Croatia is whether the resemblance of some sort of political conclusions allegedly present in recent indictments against Generals Čermak and Markač do support the thesis of organized policy of ethnic cleansing. The sensitivity implied is determined by the inability or unwillingness to share the same expressions used by the ICTY in the case of Serbian war criminals that do bear the biggest responsibility in the Yugoslav war. However, Tudjman's policy was also directed at cleansing ethnically the former Krajina, although killings were used at a lesser extent. This kind of ethnic cleansing could be called a "soft" one by informal agreements to exchange populations, by erasing houses and infrastructure in Serb areas to contain return, and by populating formerly Serb-dominated areas with Bosnian Croats or even settlers from other parts of Croatia. Killings of old people that decided to stay on the outskirts of Knin also sent a powerful message to refugees to "never return". The Croatian Helsinki Committee in its report from 1999 reveals that 410 people were killed on the area of responsibility of Čermak and Markač by the end of 1995[342]. The Croatian army and police killed 140 civilians in sector South in non-combat operations, mostly old individuals that decided to stay in Croatia.[343] Steps were undertaken such as launching investigations and informative talks with the former heads and members of special police force regarding the killings of Serb civilians in Grubori, on the outskirts of Knin, on 25 August 1995, after operation "Storm" in the wake of the removal of obstructionist individuals and in the context of EU integration.

War Crimes: Justice Impossible?

The OSCE Mission's core mandate[344] stipulates the provision of assistance and expertise to the Croatian authorities and interested individuals in the fields of human rights and rights of national minorities; assistance and advise on the full implementation of legislation and monitoring the proper

342 See www.hho.hr

343 "HHO: 410 civila ubijeno na području odgovornosti Čermaka i Markača", *Jutarnji List*, 06.03.2004.

344 See www.osce.org/croatia

functioning and development of democratic institutions, processes and mechanisms in order to promote reconciliation, the rule of law and conformity with internationally recognized standards; assistance and monitoring as well as making specific recommendations with regard to the implementation of Croatian legislation and international commitments on the two-way return of all refugees and displaced persons and on protection of their rights.[345]

As mentioned above, full cooperation with the ICTY remains a main responsibility of the Croatian authorities and has become an important benchmark for the EU pre-accession negotiations.[346] In light of the ICTY's "completion strategy" and its increasing reliance on the domestic judiciary, the OSCE Mission prepared a comprehensive war crimes report reviewing all event proceedings it monitored in 2002. A second report for 2003 is due soon.

> Since its establishment in 1996, the Mission has been monitoring war crime cases before Croatian courts, primarily through its field staff. Initial concerns mainly focused on the lack of basic fair trial guarantees (*in absentia* trials, questionable evidence etc), the vast majority of whom were Serbs accused of crimes against Croats. Since 2000 the Mission observed increased efforts by the domestic authorities (police, prosecutors, and judiciary) to pursue all individuals responsible for war crimes, regardless of the national origin of the defendants and the victims. Yet, observations indicate that these cases remain highly charged and require particular attention to assess impartiality and professionalism. At all stages of procedure from arrest to conviction, the

345 Decision no. 112 adopted by the OSCE Permanent Council on 18 April 1996 and Decision no. 176 adopted on 26 June 1997.

346 1996 Constitutional Law on the Cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) and October 2003 Law on the Implementation of the Statute of the International Criminal Court and Criminal Prosecution for Acts against War and Humanitarian International Law. These, as well as other Croatian laws, could be viewed at www.nn.hr

> application of a double standard against Serb defendants and in favour of Croat defendants continues as a general rule.[347]

As a recent OSCE press release[348] put it, based on the monitoring of some 75 war crime trials during 2002 at 12 county courts and the Supreme Court it was possible to conclude that defendants of Serb ethnicity are disadvantaged at all stages of judicial proceedings compared to Croats. Further reform is badly needed in order to achieve the even-handed administration of criminal justice in war crime cases. The proceedings monitored by the Mission account for 80 to 90 per cent of all war crime proceedings reported by the Chief State Prosecutor in his 2002 Annual Report. The Mission's findings[349] are that:

- Serbs are much more likely than Croats to be convicted when put on trial. 83% of all Serbs put on trial for war crimes (47 of 57) were found guilty, while only 18% of Croats (3 of 17) were convicted. According to preliminary findings, the differential appears to have decreased somewhat in 2003.

- While there is no imperative that an equal number of Serbs and Croats should face prosecution, Serbs represented the vast majority of defendants at all stages of judicial proceedings. For example, in 2002 Serbs represented 28 of 35 arrests; 114 of 131 persons under judicial investigation; 19 of 32 persons indicted; 90 of 115 persons on trial; and 47 of 52 persons convicted. From preliminary data, this trend appears to continue in 2003.

- Trials *in absentia*, used primarily for Serbs, continued. Many of these trials have a large number of defendants, which means that the principle of individual guilt is often not observed. Nearly 60% of all Serb convic-

347 http://www.osce.org/croatia/human_rights/domestic_war_crimes.php3

348 OSCE Mission to Croatia report finds ethnic Serbs "disadvantaged" in war crime trials, Zagreb, 1 March 2004.

349 See Mission to Croatia Report http://www.osce.org/documents/mc/2004/03/2185_en.pdf

tions were convictions *in absentia.* This trend continues, according to preliminary data for 2003, particularly in Zadar.

- Procedural shortcomings in lower courts are proven by the high reversal rate (95%) of Serb convictions that are examined by the Supreme Court. Also, in re-trials, a majority of Serbs previously convicted are exonerated. The Supreme Court's reversal rate in 2003 appears to have decreased, but more than half of all verdicts in war crime cases were sent back for re-trial due to errors by the trial courts.

Half of the Serbs arrested for war crimes in 2002 were recent returnees, the trend continued in 2003 and the lack of even-handedness in the treatment of war crimes in the courts continues to be an obstacle to refugee return. It occurs often in some counties that the state security officers in some municipalities misuse the situation when Serb returnees come to state institutions to pick up documents in order to interrogate them in the absence of any legal reason. Moreover, Croatian law-enforcement bodies somehow irrationally assume that perpetrators of Serb origin would return to the country to face justice. Disregarding such an assumption and basically attempting to find scapegoats does not of course do justice but hinder return.

The Chief State Prosecutor has acknowledged irregularities and has mandated a review of approximately 1,850 pending war crime cases. He had also to terminate 249 criminal cases for war crimes, claiming that in many cases there is no substance for such indictments but there is for less serious types as participation in the enemy's army or armed revolt that fall under the Law on General Amnesty.[350]

To support the above mentioned thesis and numbers it might be also instructive to bring one of the most biased and simultaneously bizarrely formulated indictments that occurred in Gospić where the county court sentenced Svetozar Karan to 13 years for "...exerting genocide for 500 years together with

[350] "Baić: Optužnice podizane sa slabim dokazima", *Novi List*, 19.12.2003.

his ancestors that came with along with Turks. (…) One reason for his return was the final destruction of Croatia"[351]. The sentence, originally for beating prisoners in 1991-1992, was abolished by the Supreme Court and sent back for retrial by another judge.[352] Comparing this case with another one when only one unimportant perpetrator was sentenced to 12 years for the crime in Paulin Dvor where one Hungarian and 18 Serb civilians were murdered in 1991, their corpses being kept for 6 years at the Lug military depot and buried in a different county[353], it shows clearly the great difficulty of Croatian judiciary to cope with the challenge of conducting judicial proceedings impartially.

In addition and complementary to the fact that the Croatian judiciary has many problems in processing war crimes, the high number cases brought by Croatian citizens before the Human Rights Court in Strasbourg is also a concern.[354]

The Return Issues Reconsidered

The double-standard policy in processing the war crimes is mirrored by the repossession and housing care procedures, although the complicated body of laws and regulations make it more difficult to see clearly the similarity between the two.

To support the allegation, let's look into a concrete example. On 12 July 2002 the Croatian Parliament passed the Law on Changes and Amendments to the 1996 Law on Areas of Special State Concern.[355] The law was published on 24 July 2002 and came into effect 8 days later, on 1 August

351 Verdict of County Court in Gospić, No. K-4/03-185.

352 "Optuženik s precima nad hrvatima već 500 godina vrši genocid", *Jutarnji List*, 26.09.2003 and "Vrhovni sud ukinuo 'povijesnu presudu' Svetozaru Karanu na 13 godina zatvora zbog ratnog zločina", *Jutarnji List*, 06.02.2004.

353 *Feral Tribune*, No. 970, 16.04.2004.

354 "Semneby: Potreban pomaci u reformi pravosuđa", *Novi List*, 25.02.2004.

355 Official Gazette, 88/2002.

2002.[356] While the law repealed the property repossession scheme contained in the 1998 Return Program and related legal provisions, it continued the policy that was the main obstacle to Return Program implementation, namely the subordination of the rights of owners to the interests of occupants.[357] The amended law did not accelerate properly the pace of property repossession, and it provided no guarantee for actual repossession by the end of 2002 as earlier envisaged by the Government. The law was arguably contrary to constitutional and human rights standards including those for the protection of property.

Consequently, the property return and the return of refugees and internally displaced persons remain multifaceted issues with important political, economic, regional, psychological and legal aspects. The Mission's *Return and Integration Unit* focuses on resolving administrative and practical issues as well as on monitoring government plans and programs. The *Rule of Law Unit* focuses on legal issues involved in return, in particular the judicial restitution of private property and judicial decisions related to the issue of terminated occupancy/tenancy rights. The European Court for Human Rights (ECHR) has agreed to review cases that may provide guidance on several of these long-standing questions in 2003 and early 2004.[358]

The repossession of homes is among the key concerns to the OSCE Mission. The repossession process is delayed and suffers from both legal and political

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356 OSCE and UNHCR Report on implementation of the *Law on Areas of Special State Concern*

357 While the Croatian Danube Region (CDR) is included within the "Areas of Special State Concern" since July 2000, the amended law's property repossession mechanism, which refers to properties allocated for temporary use only under the 1995 LTTP (which was not applicable in the CDR) apparently was not to be applied where owners are usually Croats while temporary users are of Serb ethnicity. Authorizations for use, issued by the authorities of the Serb-held territories between 1991 and 1995 are not recognised/validated by the Croatian authorities as the basis for legal occupation. Courts routinely recognize the owner's right to seek repossession under the Law on Ownership. Alternative accommodations have not been provided for thousands of Serb families which were forced to vacate Croat properties since 15 January 1998. According to the Office of Displaced Persons and Refugees (ODPR) they may, however, apply for housing care in the ASSC.

358 http://www.osce.org/croatia/human_rights/

impediments. Generally speaking, the legislation and policies in place favour the interests of the occupants over the interests of owners. In early 2004, the ECHR agreed to review the case of *Kostic v. Croatia* that presents the question whether Croatia's delay in returning occupied private property violates the European Convention.[359]

One of the most significant housing-related human rights concern and obstacle for refugee return is, however, the lack of legal and practical redress available to families who lived in socially owned apartments and whose occupancy and tenancy rights were terminated, either by law or by court decision. The legal and human rights aspects of occupancy and tenancy right terminations in Croatia are expected to be addressed by the European Court of Human Rights (ECHR) in the case of *Blecic v. Croatia*. The Mission as well as the Mission to Bosnia and Herzegovina submitted an *amicus curiae* brief.[360]

The enforcement of administrative decisions and court verdicts ordering the eviction of temporary users and the reinstatement of owners into their property remains ineffective.[361]

Looting, defined as destruction of both fixtures and moveable property, by occupants prior to their departure from private homes allocated to them by the Government, is another problem related to the repossession process and occurs on a routine basis. The legal remedies for owners currently provided by Croatian law proved to provide ineffective redress. Ideally, the *ex-officio* compensation approach for looted property would have been much better if it is taken into consideration that it was the State's responsibility to keep the houses habitable. That did not happen with very few exceptions mastered by more so to speak civilised temporary occupants. Currently, there is almost no compensation for looted property. The procedure is such that the ODPR officials while returning the property to the owners must fill in a form that

359 http://www.osce.org/croatia/human_rights/otr.php3
360 http://www.osce.org/documents/mc/2003/12/1976_en.pdf
361 http://www.osce.org/croatia/human_rights/otr.php3

should be signed and where the claims could be written on. However, quite often these officials knew to suggest strongly that in case of any claim the house must be sealed and a construction expert in some distant future will conduct an assessment to determine the degree of damage inflicted. With so many years of travail returnees usually opted for the return of property regardless its status at the moment of hand-over procedure.

The so-called international community should face it clearly – some decisions will not be possible to change or reverse – in some instances it would be even late to do justice because of the simple reason that individuals were deceased. It is also doubtful whether it makes sense to reverse decisions that compensated people only partially. For example, according to the *Law on Reconstruction*, the State reconstructs a house of 35 square meters plus 10 square meters per family member regardless whether the house was of a different size. Another example is the payment of an arbitrary compensation for non-returned property starting from 2002 and not from the moment the State gave the house to temporary occupants (starting from late 1995) which would be logical. In determining the degree of damage (there are six categories, 1 being the lowest one) ODPR officials in many cases downplayed arbitrarily the extent of it. Some owners did the reconstruction by their own means, especially when there were 1-2 categories and/or with the help of Lutheran World Federation, so to be able to move in without any further delay.

According to the governmental sources, since 1995 315 000 people returned home; 209 000 Croat internally-displaced persons (IDPs) and 106 000 Serb refugees, or far 66% of Croats and 34% of Serbs. However, it must be noted that the number of latter category of population is derived from the number of identity cards issued, not from actual returns. The government also alleged that it reconstructed in the last 3½ years 28 400 houses and flats and since 1991 the overall expenses for reconstruction and infrastructure as well

as for welfare to IDPs reached 25.2 billion Kunas out of which the contribution of the international community was 15%.[362]

ODPR and other state institutions had a discriminative policy towards Serb returnees compared to other citizens. For instance, the current one-year deadline was established for the submission of requests for former tenancy/occupancy rights holders in awareness of the fact that this period is too short for refugees abroad to act upon the information.

Theoretically and practically this way of "partial justice" worked because it is difficult to criticise it in particular when it is supported by the principle of due process of law that state officials use selectively. When confronted with grosser and more evident discrimination, things changed. However, this has made the government's lack of sincerity even more obvious. The Croatian legislative structures need permanent adjustment and a proper implementation for returns. To this end the assistance of the OSCE was beneficial despite certain occasional misperceptions or unease from state authorities which are otherwise characteristic of any relationship between a state and an international organization.

A final example of partial justice is the issue of state compensation of damage caused by terrorist acts. The abolishment of provisions of the *Law on Obligations* with regard to the responsibility of social-political community for the damage caused by death, physical injury and destruction of property that resulted from the acts of violence in 1996, and the adoption in 2003 of three laws on state compensation of damage caused by terrorist acts during and after the Homeland War meant basically to avoid compensating up to 30 000 citizens whose houses were blown up after operations "Flash" and "Storm".[363]

362 "Pejković: Vratilo se 315 tisuća prognanika", *Novi List*, 15.10.2003.

363 "Damage compensation laws should be consistent with European Court ruling, OSCE Croatia says", OSCE Mission Press Release, Zagreb, 21 January, 2003.

What next? Policy recommendations, Building Up and Strengthening Institutions

1. The issue of Croatia's war for independence. The Hague indictments as well as foreign diplomatic statements should avoid any engagement into discussions about the character of the Croatian State – be it a thousand or ten thousand years of dreaming about independence – there are crimes committed by army, police and paramilitary and these crimes must be processed to the benefit of the Croatian state and society.

2. The establishment of a proper Zeitgeist in society. According to a recent survey by Metron/Vectura, 56.9% of respondents don't trust the loyalty of Serb returnees regarding the Croatian state.[364] However, any perception is subject to change and steps undertaken by politicians are extremely important. For instance, Prime Minister Sanader's congratulations to the Serb community on Orthodox Christmas, whether opportunistic or not, shows a change in perception and sets up a trend to be followed by other politicians and contributes to a warmer attitude towards this community. These gestures indeed are appreciated by international community and also show the Prime-minister's vision of an European Croatia.

3. Encouraging and assisting the implementation of agreement with Serb MPs. Following an agreement with the SDSS (Serb MPs) the Government undertook the responsibility to solve 10 500 requests for reconstruction until the end of April; to return 420 illegally occupied properties; to return ownership rights over private property of 2 680 houses by the end of 2004.[365] However, against this background, in February 2004 three houses of Serb returnees were either damaged or set on fire in Biljani Donji and Lišani Tinski.[366] Another Serb refugee was attacked in March 2004.[367] The govern-

364 "Srbi: druženje da, šefovanje ne - istraživanje",Obzor, *Večernji List*, 20.03.2004.

365 "Pupovac: Provedbu sporazuma Vlade i SDSS-a koči Pejković", *Jutarnji List*, 25.03.2004.

366 "Ako ne spriječi uništavanje imovine Srba, Sanader više neće imati našu podršku", *Jutarnji List*, 12.02.2004.

367 "Napadnut povratnik u Zemuniku Gornjem", *Novi List*, 17.03.2004.

ment should be supported in sticking to the terms of the agreement concluded as well as in its attempt to find the perpetrators.

4. Policy of excluding Bosnian Croats. Zagreb should be encouraged to dismantle the powerful lobby of Bosnian Croats settlers and to accept not only formally the idea of an independent Bosnia and Herzegovina but to contribute to the consolidation of its statehood. More control over property issue so as to prevent the misuse of tax-payers' money to finance housing projects for Bosnian Croats or to offer temporary allocation without checking seriously the property status in Bosnia.[368]

5. The OSCE's presence. When it comes to size it must shrink the closer Croatia moves to the EU. Field Centres could be transformed into Field Offices as soon as next year international and local staff dealing with democratisation, politics, police, could be easily reduced by half. Focus should be placed mostly on return and reform of legal system.

6. More contacts with the EU, developing some sort of synergy. In the past cooperation was virtually non-existent. The OSCE can provide a lot information and expertise. The EU Delegation in Zagreb as well as diplomats from Embassies of EU Member-States could draw heavily on the Mission's expertise because the OSCE has a field presence that offers a unique opportunity to comprehend the country's political and legal situation. Also, more cooperation with the Council of Europe would benefit both organizations and Croatia as well.

7. Strengthening Croatian legal institutions. The policies outlined above should definitely be supported by strengthening Croatia's legal system. There is a need to assist Croats to cope domestically with war crimes (establishment of special courts), to train staff, and equip courts. For instance, the clumsiness of witness protection programs in one court has shown the inability to run such a requirement efficiently. A proper witness protection

[368] Interest in promoting returns and returning property to rightful owners is unequal if not partial in some cases.

programme could prevent the elimination of witnesses. There is a need to train judges, some of them directly at The Hague, so that the Croatian Courts could take over war crime cases and process these in country.[369] The ICTY has shown trust in indicating that several high-profile cases could be tried in Croatia: Generals Ademi and Norac for alleged war crimes during the Medak pocket operations and Tomislav Merčep for the murder of Serb civilians in Vukovar in July-August 1991.[370] But the ability to properly process war crimes is crucial and the judiciary needs concrete programs and training, as well as equipment to run some more specific legal procedures.

8. Establishing a practice of sustainable cooperation between the law enforcement bodies of Croatia, Serbia, and Bosnia and Herzegovina on processing war crimes. Domestic courts in Croatia and Serbia have already tried to prosecute war criminals but success is modest by all accounts. Some practices should be developed as well as accompanied by mechanisms to process war crimes more efficiently. The EU could be of great assistance in this regard both technically and institutionally. The OSCE could also be of help when it comes to expertise and advisory role.

Between Rhetoric and Reality

In analysing the transition towards rule of law in Croatia as it moves towards an internally peaceful society, there is no way to avoid the dilemma that lawyers and human rights activists are commonly faced with in other cases where civil war or other types of conflict have resulted in mass murder, destruction of property, and mass migration of population. So, is justice possible? This is a question that idealists would treat differently from realists. Without getting into theoretical debates between the two the author of this report would rather base his conclusions on the experience gained in OSCE Missions, and conclude that the idea of justice is rather based on acknowledging guilt. However, to which extent reparations should go bearing

369 "Hrvatski suci uskoro idu na obuku u Haag", *Jutarnji List*, 21.02.2004.
370 "Merčepu i Ademiju će se suditi u Hrvatskoj", *Jutarnji List*, 10.03.2004.

in mind both the financial ability and passage of time that makes reconciliation possible is an open debate. Quite often in pursuing justice the idealists overlook the great shock the society went through while the country was at war. However, the realists may tend to accept some realities that are based solely on injustice and this is a dangerous way to treat the political and social environment.

Our task is rather to find a balance whereby the living can pursue a way of life they have a reason to value and whereby the dead are remembered in a way that would prevent a similar catastrophe. Here the assistance of international organizations is badly needed and accepted with the idea that learning is a process that benefits all parties involved and that is the only way to achieve progress.

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