

World & Regional Issues

CROATIA: CARELESS INDICTING FOR WAR CRIMES

FEAR OF THE STATE, EVEN WHEN EXTENDING MERCY

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Dragoljub Savic, a storekeeper from Dalj near Osijek, spent 318 days in custody because he was accused of war crime, and when there was no evidence to this effect, the Prosecutor's Office changed the qualification to armed mutiny, and applied to Savic – who was never in any army – the Law on General Amnesty.

"In Croatian courts there must be one standard for criminal responsibility, which will be applied to all accused, regardless of their national or religious affiliation." This sentence was spoken out by Peter Semneby, the former head of the OSCE mission in Croatia, in view of the analysis of the judicial practice of Croatian courts which this organization made in regard to war crimes trials in Croatia and presented to the public. And the facts collected by the OESC, which related only to trials in 2002, showed how distant this principle of equality before the courts still is from the ongoing practice.

In the mentioned year out of 131 persons under investigation for war crimes in Croatia 114 were of Serb nationality; out of 32 indicted, 19 were Serbs; among 115 persons which stood trial 90 were Serbs, and out of 52 convicted persons 47 were Serbs. As much as 83 percent of all Serbs which stood trial for war crimes in that year were pronounced guilty, and in the case of Croats this number was incomparably smaller and amounted to only 18 percent. Although the figures themselves are sufficiently indicative, they do not, however, give a complete view of what the war crime trials incorporate, on what ground and upon which evidence the indictments are based, and what is happening with persons which were so easily sent to court for war crimes.

What happened to Dragoljub Savic, a storekeeper from Dalj near Osijek, who was arrested on January 23, 1999, due to accusations of war crimes and remained in detention till December 7, 1999, hence as much as 318 days, illustrates not only the careless haste with which the indictments were completed, but also the hesitation of the judicial authorities to confess their faults even when they are completely evident.

Intimidation with indictments

Savic was arrested on the basis of a collective indictment of the County Prosecutor in Osijek on 14 December, 1998, registry number KT-14/96, by which 23 individuals were accused of "forceful overthrow of the state system of the Republic of Croatia", and for crimes against civilians in Dalj. They were accused that in violation of the rules of international law in times of armed conflict they "ordered attack against civilians and the settlement, ordered to kill civilians, torture them and treat them in an inhuman way", and "organized displacement, plunder, destruction and seizing of property", and also that they "killed prisoners of war". In short, they were accused for war crimes against civilians and for war crime against prisoners of war.

At that time in Croatia, and particularly in the County Court in Osijek, there were a big number of similar indictments which, as activists of nongovernmental organizations for human rights protection claimed, were based upon insufficiently verified statements of witnesses and upon very little evidence. The aim of these indictments – it could also be heard from these same sources – was to scare the Serbs in the Croatian Danubian region which on January 15, 1998, after two years of provisional administration of the United Nations (UNTAES), was included into the constitutional and legal system of the Republic of Croatia. Many Serbs who participated in the armed mutiny, but did not commit war crimes and to which the amnesty applied (Law on General Amnesty, enacted in September 1996) were scared of possible prosecution and left the Republic of Croatia.

However, Dragoljub Savic stayed in Croatia, in Dalj, a village between Osijek and Vukovar, in the area known as the Croatian Danubian region, confident that he will have no problems when the Croatian authorities take over, because not only has he not committed war crimes, but he also was in no military units.

"Although I never was in any army, either the Yugoslav People's Army or the 'Krajina Army', because I

was declared unfit for military service since my left eye is completely blind, although I worked through the whole war in Dalj as storekeeper in the "Ratarstvo" of the Osijek-based IPK, although I had done no harm to anyone, but have on the contrary helped my Croatian neighbors as much as I could, they burdened me with war crime for revenge", says Dragoljub Savic. "And revenge wanted those whom, after in 1996 the peaceful reintegration started, I did not let take oil and lubricants for which I, as a storekeeper, was responsible. Behind all this was a police officer from Dalj whose dislike I earned because of this and who was sufficiently powerful to have been able to make such revenge."

Revenge of the local powerful man

After they had during his arrest on 23 January 1999 spilled out a bucketful of curses on account of his chetnik mother and had thoroughly beaten him in the premises of the police department of Osijek-Baranja, Savic was taken – in blood and beaten – with two pairs of handcuffs to the investigation prison. "However, they would not have me there, because the deputy chief of the Osijek prison, Jozo Majacic, told the policemen that he had no grounds to keep me in detention. They insisted he should keep me and told they would bring from the police department everything that was necessary, and they returned with a piece of paper. Majacic further resisted, but they persisted until they managed to put me behind the bars. Behind all this stood that policeman who came to dislike me because I would not give him the fuel and lubricants without receipt. I still do not want to mention his name, because after everything I went through I will also inform USKOK" (Office for Suppression of Corruption and Organized Crime), says Dragoljub Savic.

His brother Milan, volunteer in the Croatian War for Independence, who fought on the Croatian side in the 160-th Osijek brigade, says that when his brother was arrested under the accusation of committing war crime he went to intervene to the then County Prosecutor in Osijek, Miroslav Jukic, and to the President of the County Court in Osijek, Petar Kljajic. "I knew both of them from the war, with Jukic – I can say that – I am a friend. Jukic told me that with my brother "there is nothing", but that behind the whole affair is that policeman and that he cannot do anything about it. Kljajic was rude, and would not tell me anything, but later, after he was dismissed as President of the County Court, he called me and told me: "There was nothing with your brother, but we had to keep him in detention."

Dragoljub Savic was in detention without being interrogated for 318 days. Not once has he seen the investigation judge, and he met Judge Dragan Poljak for the first time when he engaged his own layers and asked them to represent him instead of the layer appointed by court. "In 318 days these were all my contacts with officials, no interrogation, no disputes, nothing. I languished in detention without having anybody to ask for my statement", says Savic.

After almost a year in detention, Savic was released on December 7, 1999. On that day the County Court in Osijek decided to repeal detention and, as said in the explication, had done so on the basis of the changes and amendments to the Law on Criminal Procedures in accordance with which, in Savic's case, there no longer existed reasons for detention.

How arrests took place

The case of Vladimir Makivic from Dalj, a person who at that time was 61 years old, is also an illustration of how easy it was to end up in detention under war crimes charges. Makivic was arrested at the same time as Savic, on the basis of the same collective indictment of the County Prosecutor in Osijek, only his name was listed under number 16, and Savic was listed under number 19. Although Vladimir Makivic was persistently stating that he was not the person accused of war crime, and that he only had the same name and family name as the accused one, nobody believed him until the OSCE interfered in the case. Only after the statement of one witness who declared that this Vladimir Makivic was not the one he has been seeing around the jail in which Croats were held in detention, was Makivic released from prison.

Then, upon new investigation, it became clear that the Vladimir Makivic named in the indictment was a person carrying the same name and family name, and even the same father's name, only this was a person 35 years old, who has left Croatia and at that time was residing in Sweden.

Act of mercy

Only a week afterwards Savic was interrogated by the investigation judge of the County Court in Osijek, Ilija Bernatovic. So he got to know what he was accused of: he was seen in camouflage uniform, as guard in the jail in which Croats from Dalj were beaten and tortured; he participated in the execution of persons brought to Dalj by the Yugoslav People's Army after the fall of Vukovar; he ordered blasting Ivo Kovcalija's house and other houses in Dalj, which afterwards were plundered. However, he remained free, and no trial was even at sight.

At the end of December 2001 he got the decision of the County Court in Osijek by which criminal proceedings were withdrawn. The explication said that after 'additional investigation' the state prosecutor 'revised the indictment', and 'due to changes in the factual description and the legal qualification of the act' now accused Savic of the criminal act of armed mutiny instead of war crimes. The County Prosecutor in Osijek suggested in the same explication to apply the Law on Amnesty, so Dragoljub Savic, upon the generous act of mercy by the state, became a free man, and the criminal proceedings were withdrawn.

"I do not understand which mercy we are talking about", says Savic. "Not only have I not participated in any war crime, I am also no participant of armed mutiny. How can I be given amnesty for something that I have nothing to do with. During the entire war I was doing my job and there are numerous witnesses, my fellow-townsmen, who can confirm this."

Savic's lawyers Sreten Baljak and Radojica Vuckovic on December 3, 2000, appealed to the County Court in Osijek, stating that there was no evidence of his participation in armed mutiny against the Republic of Croatia. They demanded that the proceedings for war crime be withdrawn on account of lack of evidence, and not on the basis of qualifying anew the crime as armed mutiny to which the Law on Amnesty was applied. However, the appeal was dismissed, and all legal possibilities for Savic to prove that he did not take part in armed mutiny were thereby exhausted.

In October 2002 Savic's lawyers filed charges to the Municipal Court in Osijek against the Republic of Croatia, claiming indemnity of 627,000 Kunas (around 85,000 thousand Euros) for the 318 days of unfounded detention, as well as for the fact that due to detention he lost his job as a storekeeper in IPK Osijek, and that even today he cannot find a job. Savic's lawyers mentioned also a crucial fact: not only was the detention in which he spent 318 days unfounded, but at that time also the Law on General Amnesty was in force.

Waiting for Strasbourg

The State Prosecutor's Office, hence, revised the indictment after Savic stayed in detention 318 days, and cited armed mutiny for which – even if he had taken part in it – Savic because of this mentioned law could not have been put in detention. However, the Municipal Court in Osijek has rejected Savic's charges in October 2003, and the County Court in Osijek four months later decided the same. In June 2005, within deliberations on the request for revision of the judgment, the Supreme Court of the Republic of Croatia also dismissed Savic's claim for impediment. The Supreme Court gave the following explanation: "declaring the act of mercy, which is the case here, can in no way be classified as 'confession of mistake' by the bodies in charge of criminal proceedings, which means that these acts of mercy cannot be a basis for the recognition of the right to indemnity for the damage inflicted by these proceedings."

Thus, instead of being compensated by the Republic of Croatia for 318 days of unfounded detention, Savic will now have to pay to this very same state the expenses for court proceedings in the amount of almost 15 thousand Kunas (two thousand Euros)!

"If necessary, I shall go to jail again, because I do not have this money. I am unemployed, as well as my wife, and we live on the children's allowance that we receive for our two minor children", says Savic. He adds that he shall wait a little longer to see what USKOK is going to do, to which he shall report how he came to detention because of charges of war crime due to revenge of a local mighty man - because he would not let him take fuel and lubricants without evidence. If USKOK, too, will not act, and having in mind that in Croatia he will have exhausted all legal possibilities, there is still the European Court of Human Rights in Strasbourg. Savic says he will look there, too, for justice.