



HUMAN RIGHTS ACTION | AKCIJA ZA LJUDSKA PRAVA

## HUMAN RIGHTS ACTION'S STATEMENT ON THE FINAL JUDGEMENT FOR WAR CRIMES IN MORINJ

*The final judgement for war crimes in Morinj is the third convicting judgement for war crimes in Montenegro. Previously, Montenegrin courts convicted five members of the Republic of Srpska Army in 1994 for murdering the Klapuh family in Plužine, and citizens of the Republic of Srpska in 2002 for the mass crime committed in Štrpci, on the territory of BiH. Meanwhile, all the defendants for the crimes Deportation of refugees and Bukovica were acquitted by final judgements. The persons accused of crimes in Kaluđerski laz were acquitted by first-instance judgements.*

In the judgment published in late April 2014 (date of the session 27 February 2014), the Appellate Court of Montenegro confirmed the lenient sentences for four defendants (Ivo Gojnić, Bora Gligić, Špiro Lučić and Ivo Menzalin) in the Morinj case. We draw attention once again to improper application of rules on aggravating and mitigating circumstances, contrary to the practice of the ICTY and courts of the region, and particularly to the inadequate, practically nonexistent reasoning of the judgment of the Appellate Court in this part. The Appellate Court thus continued the trend of superficial reasoning of its judgments in cases of war crimes, which are not only inadequate in regard to substantive law, but also formally shorter several times and with less detailed reasoning compared to second-instance judgements in cases of similar complexity of the Appellate Courts of Serbia and Bosnia and Herzegovina. **Superficial reasoning of judgements for war crimes, in addition to being of insufficiently high instance, demonstrates that courts in Montenegro do not care about convincing the citizens of Montenegro and citizens of other countries that were at war - Croatia and Bosnia and Herzegovina, that justice has been served with these judgements.**

The Appellate Court gave improper importance to mitigating circumstances that are of secondary importance in the practice of the International Criminal Tribunal for the former Yugoslavia (ICTY), such as prior convictions, marital and parental status, medical condition<sup>1</sup>. At the same time, it disregarded that there were no mitigating circumstances in favour of the defendants in case Morinj, which rightfully have the highest importance in the practice of the ICTY and the Appellate war crimes chamber of the Court of Bosnia and Herzegovina, such as: admission of guilt, sincere remorse and efforts of defendants to reduce the suffering of prisoners. Also, the Appellate Court disregarded the aggravating circumstances that the ICTY considered crucial in trials for crimes committed in camps: the helplessness of the victims, a large number of victims, persistence in committing the

<sup>1</sup> <http://www.hraction.org/?p=3780>

offense and the continuing suffering of survivors from trauma, abuse of position by the superiors of guard commanders..

In addition, the Appellate Court, as well as perviously the High Court, gave no reasoning for its decision to accept less significant mitigating circumstances, and ignore the lack of substantial relevant mitigating circumstances. Moreover, the Appellate Court accepted the stance of the High Court that there were no aggravating circumstances in relation to defendants. Instead of reasoning, the Court provided the usual platitude that "the first-instance court properly determined and assessed all the circumstances relevant to the sentence, so the sentences pronounced to defendants were properly established, according to finding of this Court...".

Such a superficial reasoning for the key issue in the judgment for serious criminal offenses - war crimes, is improper for a high judicial body in a democratic state.

The practice of the Appellate Court for war crimes so far, shows that unwillingness to thoroughly analyze and reason the relevant issues is the systematic approach of the court. Three judgments of the Appellate Court for war crimes - Bukovica (22 March 2012), "Deportation" (17 May 2013) and Morinj (27 February 2014) - refer to a number of events included in the indictment, and it would be logical that they contain good arguments. However, **they are all very short, by far the shortest among similar judgments in the region and without elaborated arguments in relation to key issues that determine the responsibility of the accused.** Human Rights Action in its report "War Crime Trials in Montenegro", published in May 2013 emphasized the practice of the Appellate Court to laconically deal with factual issues in cases of war crimes.

The mentioned three judgments of the Appellate Court of Montenegro have less than 10 pages of text<sup>2</sup> with no detailed reasoning, compared to judgements in cases of war crimes with similar factual and legal complexity, eg. by the War Crimes Chamber of the Belgrade Court of Appeals and the Appellate war crimes chamber of the Court of Bosnia and Herzegovina, which are longer several times and provide a more detailed reasoning.

For example, judgments of the Court of Appeals in Belgrade in case Zvornik II (Branko Grujić, Branko Popović) and case "Gnjilane group", have over 50 and 30 pages<sup>3</sup>. Even when the case involves a single event during which a war crime was committed, the Court of Appeals in Belgrade, as a rule, provides more detailed reasoning of judgments than the Appellate Court of Montenegro in cases relating to a series of events over a long period. Thus, in case Ovčara, the execution of captured Croats near Vukovar in November 1991, the judgment of the Court of Appeals in Belgrade is twice longer than all three aforementioned judgments of the Appellate Court of Montenegro. The same situation is with judgments of

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<sup>2</sup> Expressed in number of words and characters, the Bukovica judgement contains 26,601 characters, the "Deportation" 25,337 characters, and Morinj - 17,911.

<sup>3</sup> They have 116,988 and 62,826 characters.

the Appellate war crimes chamber of the Court of Bosnia and Herzegovina in the same type of cases.<sup>4</sup>

**The Appellate Court of Montenegro owed to the injured parties and the public, as well as the parties in the proceedings, a detailed and meaningful explanation for its decisions to acquit the defendants of war crimes cases ("Deportation", "Bukovica") and to sentence them to inadequately short prison terms, as in case "Morinj".**

**Superficial reasoning of judgements for war crimes demonstrates that courts in Montenegro do not care about convincing the citizens of Montenegro and citizens of other countries that were at war - Croatia and Bosnia and Herzegovina, that justice has been served with these judgements.**

Human Rights Action Team

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<sup>4</sup> Mejakić Željko and others (16 February 2009) – 50 pages; Kurtović Zijad (25 March 2009) – 32 pages; Božić Zdravko and others (5 October 2009) – 55 pages; Bundalo Ratko and others (28 January 2011) – 104 pages, Andrun Nikola (19 August 2008) – 44 pages, Lazarević Sreten and others (22 September 2010) – 66 pages, Savić Krsto (11 April 2011) – 130 pages, etc.