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BOFAXE



Gotovina and Markač acquitted: Croatia celebrates while Serbia is shocked

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Fokus

From 24 years' imprisonment to an immediate release – Croatian "war criminals", Gotovina and Markač, were acquitted on November 16 2012 by the Appeals Chamber of the ICTY leaving the Serb community in bewilderment.

Latest press releases:

ICTY Case No. IT-06-90-A,
November 16 2012.

In May 2001, Ante Gotovina and Mladen Markač were initially charged with Crimes against Humanity and Violations of the Laws or Customs of War. From October 1992 to March 1996, Gotovina was the Commander of the Split Military District of the Croatian Army (*Hrvatska vojska "HV"*), as well as the overall operational commander of the southern portion of the Krajina region during the military offensive known as "Operation Storm". This offensive was carried out by the HV and the Bosnian Army in order to retake control of the Krajina region which had been in Serb hands since 1991, when the Croatian Serbs in the areas declared their independence from Croatia and proclaimed a Republic of Serbian Krajina. Following the offensive, approximately 200,000 Croatian Serbs fled and a variety of crimes were committed against the remaining civilians in which a total of 324 people, both civilians and soldiers, were killed. Markač was the Commander of the Special Police of the Ministry of the Interior of the Republic of Croatia from 1994. This position gave him overall authority and responsibility for the operation and functioning of the Special Police. In 2007, the Prosecutor of the International Criminal Tribunal for the former Yugoslavia ("ICTY") formulated the amended joinder indictment against Gotovina, Markač and Ivan Čermak. Čermak was the Assistant Minister of Defence in the Croatian Government from 1992 to 1993 and the Commander of the Knin Garrison during the "Operation Storm". In 2011, Čermak was acquitted while Gotovina and Markač were sentenced to 24 years and 18 years imprisonment. Subsequently, Gotovina's and Markač's Defence filed a notice of appeal, and on November 16 2012 the shocking news was revealed: acquittal!

The Appeals Chamber recalled the Trial Chamber's conclusion that the appellants were members of a Joint Criminal Enterprise ("JCE") with the purpose to permanently remove Serb civilians from the Krajina region. The existence of a JCE was based on the conclusion that unlawful artillery attacks targeted civilians and civilian objects in Knin, Benkovac, Obrovac and Gračac (the "Four Towns"), and eventually caused the deportation of large numbers of civilians. The Appeals Chamber, however, found that this conclusion was premised on the analysis of individual impact sites within the Four Towns. This analysis was in turn based on the finding that there was a 200 metre range of error for artillery projectiles fired at the Four Towns. Therefore, the Trial Chamber concluded that all impact sites located more than 200 metres from a legitimate target served as evidence of an unlawful artillery attack. The Appeals Chamber held that the Trial Chamber erred in adopting a margin of error without linkage to the evidence it received. Since this margin of error was the standard the Trial Chamber applied to all impact sites in each of the Four Towns, the Appeals Chamber considered that this was insufficient to accept the existence of a JCE and reversed the appellants' convictions.

Regardless of the findings of the Appeals Chamber, this outcome does not help to promote reconciliation among the Serbs and the Croats. It might even exacerbate tensions. In Croatia, the two Generals are regarded as war heroes embodying the stereotype of a Croatian outlaw – the *hajduk* – with football games being played and songs being written for them. In the eyes of the Serbian public, however, they were responsible for the death and exodus of hundreds of Croat Serbs. The Croats and the Serbs hold completely opposite views and this judgement rather severely tarnishes their doubt in the Tribunal's integrity and the tenability of its legal proceedings, thus not contributing to reconciliation.

Another Appeals Judgement in the case against the Kosovar "war heroes" Haradinaj, Balaj and Brahimaj with regard to the Kosovar war is anticipated on November 29 2012. This case has a similar meaning for the Kosovars and Serbs as the case against Gotovina *et al.* has for the Croats and the Serbs. There is no doubt that if a similar judgement is to be made before the month is over, tensions could rise amongst the southern Balkan States, with prolonged unrest fueled by the absence of justice.

Verantwortung

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