

6<sup>th</sup> May 2014

## Slovenia about to face the third consecutive parliamentary elections influenced by the fabricated trial against the opposition leader

On 28 April 2014 the politically motivated process against Mr Janez Janša, president of the biggest Slovenian political party and current opposition leader, a Prime Minister from 2004 to 2008 and 2012 to 2013 and former dissident, was concluded at the Higher Court in Ljubljana. After a biased judicial process a Higher Court in Ljubljana sentenced Mr Janša to two years' imprisonment.

The sentence was a major scandal and Janša was the victim of a legal fiction. According to the Harvard-based academic lawyer **ddr. Klemen Jaklič**, the indictment did not specify time or place, or the manner in which the alleged crime was perpetrated. **The charge should never have been made, let alone formed the basis of a trial.** Jaklič, who did his postgraduate legal studies at Oxford and Harvard and was a member of the Venice Commission, says that this is a violation of the right to a fair trial guaranteed by the European Convention of Human Rights. Drago Demšar (the lawyer supporting political dissidents during a Yugoslav communist regime) described the indictment as a 'dreadfully vague piece of writing', unclear and confusing.

**Mr. Matevž Krivic**, the former judge at the Constitutional court, told the newspaper Delo: "Also because I am Janez Janša's sharp political critic I have decided to publish my honest and professional critique of this criminal charge. **The court has not presented to the public any evidence in this case.** That is why I dare to say it publicly **that I consider his conviction as an obvious violation of the principle "in dubio pro reo".** It is a well-known fact that I don't agree with Janša's politics but I will **not keep quiet if the court will try to condemn him for something it did not even prove.**"

The former head of the Department of Criminal Law at the Law Faculty of the University of Maribor and the former President of the Slovenian Association of Judges **prof. dr. Ivan Bele** also gave his opinion about the Patria ruling. "**In this case it is absolutely not possible to verify whether the promise of an award was ever accepted or not. It is completely unverifiable claim.** And in the case of unverifiable claims the **defendant cannot defend himself.** The Supreme Court has in at least three cases held that it **cannot rely on unidentified place, unidentified time and on an undetermined method**, because the accused is not able to defend himself under such allegations. The Supreme Court annulled such judgements because the defendant is simply without legal protection" said dr. Bele.

Former President of Constitutional Court **dr. Lovro Šturm** said: "Janez Janša was convicted for a criminal act that **does not exist in the law.**"

Amongst those who commented on the judgement was a well-known left wing ex judge at the Supreme court **Mr. Vasilij Polič**. “Why don’t they tell to the people what is the essence of this judgement... Unknown reasons, witnesses, at an unknown place at an unknown time – this is not something stable. **I absolutely don’t like the smell of this judgement**”, said Mr Polič.

Commenting on the judgment was also one of the best-known Slovenian lawyers Mr. **Aleksander Čeferin**. “As far as I’m aware of the case against Janz Janša, there are **neither indications let alone evidence for a conviction. We can all be very much afraid of living in such a country**. You never know who is next”, said Čeferin.

In his interview for the daily Finance, **U.S. Ambassador Joseph A. Mussomeli** said: “We have to be careful, especially in the light of the **many criticisms at the expense of objectivity of Slovenian courts**. You yourselves know how the question of objectivity and the effectiveness divides the Slovenian nation. That is why it is necessary to be **reluctant in commenting on this matter until the judgement is not confirmed by the European Court of Human Rights**”.

### The “perfect” timing of the Patria procedure

The so-called Patria affair broke out in all its dimensions just **20 days before the general elections in 2008**. On September 1, 2008 the Finnish Broadcasting Company YLE published a documentary in which they accused then Prime Minister Janez Janša of receiving a bribe from the Finnish company Patria. The greater part of the broadcast consisted of accusations from political opponents of Mr Janša. The documentary **significantly affected the upcoming elections**, as all polls until the airing of the documentary predicted a convincing victory for SDS. The elections on September 21, 2008 were then won by the socialists SD with a minimum advantage of 30.45% compared to 29.26% won by the SDS.

In August 2010, Prosecutor Branka Zobec Hrastar, namely the wife of a State Security Service staff member Zvonko Hrastar, who arrested Janez Janša in 1988, filled a bill of indictment against Mr Janša. The timing was again very convenient: Slovenia was **less than 3 months before the local elections**.

The main hearing of the ‘Patria’ case at the District Court in Ljubljana began in September 2011, **just two months prior to the parliamentary elections** with SDS leading in the polls again.

This time, the decision came exactly **27 days before the elections to the European Parliament**, while SDS is again holding a strong first place in the opinion polls.

The judgement also came out a mere two days after Prime Minister **Alenka Bratušek** announced to step down as a PM so that Slovenia can hold new snap elections. The left-wing parties want elections to happen as soon as possible - before the possible annulment of the judgement on Patria case by the Supreme or Constitutional court. The “director” of this scenario is, as always, Mr Milan Kučan, the last president of the Communist party in Slovenia and the former President of Slovenia, who promoted the

majority of current top level judges at Slovenian courts. Mr. Kučan visited and advised **PM Bratušek** in her cabinet just a couple of days before she announced resignation.

### A brief presentation of indictment and conviction

It is alleged that Janez Janša committed the offence by supposedly accepting a **promise to receive an unknown reward**, for his influence and intervention in the process of a public tender administered by the Ministry of Defence of the Republic of Slovenia for the purchase of military armoured vehicles. Specifically, it is claimed in the sentence that Mr Janša committed the offence on an “**undetermined date**”, at an “**undetermined place**” and through an “**undetermined method of communication**”, with the assistance of other people and for the benefit of somebody else, i.e. the SDS party. The reward was supposedly offered by intermediating agents of the Finnish company Patria, one of the companies responding to the public tender.

Such a general, arbitrary criminal charge against Janša has prevented the defendant from defending himself in any way and represents a violation of a fundamental human right to a defence and a fair trial that are enshrined in the Constitution of the Republic of Slovenia.

An enormous number of witnesses were heard at more than 50 hearings that took place during the two years' trial. Among others, the Defence Minister at the time, Karl Erjavec (president of the left-wing Democratic Party of Pensioners and the person that had signed the decision on selecting Patria as winner of the public tender as well as signed the contract with them), explicitly stated that Mr Janša had nothing at all **to do with the public tender or the selection procedure**. All other witnesses likewise stated that no one influenced any of the members of the expert committee that was responsible for the selection procedure, and that none of them had been in either direct or in indirect contact with Mr Janša, and that every detail of the selection procedure was conducted according to the letter of the law. The prosecution **did not manage to prove any of its accusations**.

**During the trial, the prosecutor simply ignored two clear rulings by the Supreme Court of the Republic of Slovenia**, which explicitly state that, according to Slovenian judicial system, the judge cannot condemn anyone on the basis of undetermined time, pace and method of a supposed criminal act.

The Higher Court wrote in its judgment that "an indication judgment is a judgment where **the decisive facts are not established on the basis of direct evidence, but on the basis of circumstantial evidence, the so-called clues.**"

President of the Slovenian Democratic Party Janez Janša will use extraordinary legal remedies for annulment of the politically motivated judgment in the 'Patria' case.

A parallel trial against Patria's employees who were accused of paying bribes to Slovenian officials took place in Finland. **On January 30th 2014, the court rejected all prosecutors' charges against all of them.**

## The background on the fabricated trial

Reasonable suspicions of corruption can indeed be based on the proceedings in the selection procedure of Patria in the period before Janša's Government took office in 2004. In 2004 the Government of Janša's predecessor, Anton Rop, wanted to grant the business of manufacturing and providing armoured vehicles to the company of Sistemska tehnika (led by a personal and political friend of the then-Prime Minister **Anton Rop**) with a mere letter of intent and without a public tender. This formerly state-owned company was sold to this same person for a ridiculously low price by the Government of PM Anton Rop. After winning the 2004 elections, Mr Janša's Government opted for a proper international public tender. Because of this political background of the case there is a prevailing public opinion in Slovenia that the original political motive behind the fabrication of the trial against Janez Janša lays in the described context.

Slovenia is the only former communist country, member of the EU, that has not implemented the lustration. Communists and their successors have prevented all such attempts. It is publicly known that the former secret police collaborators today still work in editorial media, they are among judges, prosecutors, parliamentarians, university professors, etc. Many judges and prosecutors that had cooperated with the Yugoslav secret political police have remained in their positions and have even been promoted. Moreover, the current president of the Supreme Court **Branko Masleša** and the State prosecutor General of Republic of Slovenia **Zvonko Fišer** were proven to have violated human rights and fundamental freedoms during the time of the totalitarian regime. The prosecutor **Branka Zobec-Hrastar**, who began and filed the indictment against Janez Janša, is the wife of a former agent of the secret police Zvonko Hrastar, who in 1988 personally arrested Janez Janša. According to records that are now publicly available, Mr. **Andrej Ferlinc**, the current prosecutor in the trial against Janša, was a collaborator of the secret Yugoslav military intelligence service. That is also why, according to all opinion polls, out of all of the state institutions, the Slovenian judiciary enjoys one of the lowest levels of confidence among Slovenian citizens. The impression of the people to be living in a country that respects the rule of law and equality before the law is at its lowest since the first democratic elections in 1990. **In its November 2013 survey the Eurobarometer shows that the trust in the national justice system in EU is the lowest in Slovenia (24% in comparison with 85% in Finland).**

The motive for convicting Mr Janša is clear – through a judicial fabrication remove a strong political rival from the political scene. Patria trial is 159<sup>th</sup> legal or administrative case that communists and successors triggered against Mr. Janša since 1984. They also sent him to prison twice, but all indictments were later proven wrong and he had always been rehabilitated and his party strengthened.