

## The Topic of the Issue - REGIONAL COOPERATION

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

### Cooperation with victims

Marinko Jurčević *Chief Prosecutor of Bosnia and Herzegovina*



**Marinko Jurčević: I have told my prosecutors that they have to cooperate with victims, they have to approach these people and exchange information with them. The victims have the best knowledge of what really happened, where it happened and who were the perpetrators.**

When it comes to war crimes, we must have in mind that this is a complex and big issue in Bosnia and Herzegovina, since this country experienced an atrocious war. Both throughout the war and at the time of the immediate war threat, three armies were deployed here. These armies, hypothetically speaking, were respectively controlled by the BH Army, the Croatian Defence Council (HVO), and the Yugoslav People's Army (JNA). On their part, each of these armies were in control of certain territories, wherein they organized and supervised daily life through newly established military and civil bodies. This used to be an operating principle up to the signing of the Dayton Treaty.

The cases within our competence clearly indicate that in the course of the war, unfortunately, all of the three armies' representatives committed criminal offences of war crimes. It is hard to give a percentual estimation regarding each of the armies' involvement in the crimes, but it appears indisputable that most of the crimes were committed by JNA representatives and then by those of HVO, while the BH Army's involvement appears to have been the least. While the war was in progress, the crimes evidence was collected by various intelligence agencies, governmental and nongovernmental organizations, as well as by the civil police. Throughout the wartime and the time immediately following the war, a number of lawsuits were filed, which were called crime reports at the time.

### Examination of reports

However, I have to say that new reports on various wartime offences have continued to accumulate up to the present day. Further to the new law, these reports are termed as reports on the commission of a criminal offence. This type of criminal offences used to be handled on the level of entities, namely by their respective cantonal or district prosecutor's offices and courts. Looking through those crime reports, my colleagues and I concluded that some of them had been filed against single individuals, while others referred to larger groups, at times including as many as five hundred perpetrators. I do not intend to say that any of those reports have been unfounded – there is always something lying behind them, but whether this can be qualified as a war crime in each particular case is a matter that requires closer examination. Prosecutor's offices conducted investigations in a number of cases, since it was observed that the Dayton Treaty had triggered massive migrations from one entity to another, arrests and summons by the police and consequently, a number of proceedings being initiated. However, that was the time immediately after the war, when those law enforcement agencies generally lacked confidence in each other. All those who had the country's best interest at heart said – we can not go on like this. It looked as if we were arresting each others!

In 1998, the Hague Tribunal informed us that the Roman guidelines would be determined for each of the three states in the region, i.e. for Serbia, Croatia and Bosnia and Herzegovina, further to which the states' respective courts and prosecutor's offices were invariably bound to refer all cases to the Hague Tribunal, whereby they would be assessed. Pursuant to the adopted guidelines, after opening a case or initiating the investigation thereupon, the competent national prosecutor or investigating judge shall make a summary and forward it to the Hague Prosecutor, who shall subsequently assess it. Assessment «A» means that there is sufficient evidence. We in BH have thoroughly complied with the guidelines, which has resulted in a large number of our cases being favourably assessed. According to my knowledge, Croatia and Serbia have not been so consistent in following the guidelines, yet it is not my duty to comment on that, or to speculate on possible reasons.

### Court in the barracks

Now I would like to say something about the building in which we work. It was not easy for us to get this space. I would remind you of the fact that this is where military barracks «Viktor Bubanj», whose name was later changed to «Ramiz Salčik», once used to be based. When we entered the building in 2003, our entire staff did not consist of more than four prosecutors and four or five judges. The place was ghastly in its emptiness. The premises were not heated, we were freezing with cold. Today, however, as many as about 500 people work here.

This practice was universally applied until 2003, the year in which the BH Court and Prosecutor's Office were established. As for the BH Federation, 951 crime reports against 7,767 persons were filed in the period between the establishment of the Court and March 2005 inclusively. In the Republic of Srpska, 466 reports against 3,002 persons had been filed by 22 August this year. It comes up to a total of 1,417 crime reports against 10,769 persons filed in the two entities! New reports are still being filed, while over the past two months at least three hundred people have been reported to have committed the criminal offence of war crime.



### **A breakthrough**

All of us who are concerned about the benefit of BH hold that this country ought to be a truly European state, and we have been repeating this position of ours since Dayton. This is why we have created a number of institutions to carry out these integration processes. Our judicial system once used to operate on the level of entities, but then we decided that we needed a court and a prosecutor's office at the state level, as well as the state ministries of justice and the interior. As you can see, the developments are moving in that direction. We started from the overhaul of the judicial system, in order to protect it from any political or other influences.

The elections and appointments of judges and prosecutors lie within the competence of an independent body, the Council. While the Council initially exclusively consisted of judiciary and jurisprudence representatives, further to the recently introduced changes legislation representatives have also been allowed to participate in this body. Since the latter ones are but few, I honestly hope that they will not be able to influence the Council's decisions. The basic principle of the newly established practice implied that all former judges and prosecutors should apply for their jobs further to a public contest. I can assure you that the applicants underwent close check-ups. On the basis of conducted interviews, specially appointed commissions proposed successful applicants to the Council, whereupon the Council rendered decisions on the appointments of judges and prosecutors. We consider this practice as a revolutionary breakthrough, since the political influences were excluded from the appointments.

However, the question that people keep asking me is whether we are exposed to any political pressures; this is what the members of your country's delegation have asked me as well. I can honestly answer that since 1998 no one from the government or political circles has ever called me or asked me anything. Never! This also applies to the judges in charge of war crimes cases – they are not under the influence of any political parties whatsoever. Of course, we could discuss the quality of their work in terms of competence or professional education, but what I can guarantee is that they are politically independent.

### **Attitude**

When it comes to the organization of work, I would like to say that there are five regions in BH which formerly were scenes of war crimes. We have established five teams assigned to the investigation of these crimes. Each team is headed by a national prosecutor, while working together with him is a foreign prosecutor with equal authority. Besides these two professionals, each team also includes a legal assistant, a case coordinator, an investigator, a translator and a typist. All of them work together on each particular case.

It is hard to discuss the numbers of victims, and I do not know if anyone would be able to come up with precise numbers. I can, however, give you an example referring to only one of the cases currently proceeded by the BH Prosecutor's Office, wherein the this far collected evidence indicates that in one particular location as many as around one thousand civilians were killed within a single day. The location I am referring to is Srebrenica.

We attach particular importance to our cooperation with the victims of war, i.e. with their organizations. I have told my prosecutors that they have to cooperate with victims, they have to approach these people and exchange information with them. The victims can offer the best knowledge of what really happened, where it happened and who were the perpetrators. At this point, I estimate our cooperation with them as very good.

Referrals of the Hague cases to national courts are a hot issue at the moment. I expect a substantial number of cases to be referred to BH. One case has already been referred to us – that is the case of Radovan Stanković. Stanković is currently being held on remand in a detention unit which is at a mere 200 metre air distance from my office. I can generally say that we have a modern detention unit built in full compliance with the highest international standards. Both those accused of war crimes and organized crime are detained there.

The attitude of our Prosecutor's Office is that each perpetrator ought to be tried in the territory where the crime was committed, which means that local, cantonal and district prosecutor's offices have their respective competences, while the most complex cases are addressed by the BH Prosecutor's Office. A big problem of ours lies in the fact that a substantial number of perpetrators are in the territories of our neighbours, as well as in some other countries, be it European or transoceanic ones.

\* The BH Chief Prosecutor's address to the Serbian media representatives on 26 October in Sarajevo