

The Topic of the Issue - REGIONAL COOPERATION

THE COURT OF BOSNIA AND HERZEGOVINA

Justice can not be evaded

Meddžida Kreso *President of the BH Court*



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Among other issues, the regional conferences on cooperation held in Belgrade, Palić, Stockholm, the Brijuni Islands and Mostar, addressed the issue of extradition. While a number of solutions were proposed, we finally concluded that there were significant constitutional and legal obstacles to extradition, in both of our countries, as well as in Croatia. We agreed that, apart from its legal conotation, the problem has strong political implications, and should therefore be settled at a higher level, e.g. within the European Union. Regardless of this, we realized that no state was capable of fighting all forms of crimes on its own, since the crime does not recognize such categories as borders, nations or religions.

War crimes trials are expected to bring justice and reconciliation in the territories where such crimes occurred. Still, it is not sufficient merely to try and penalize the crimes. Much more than that, an affirmative climate ought to be created, for an affirmative collective perception capable of leading us towards reconciliation. Judges and prosecutors alone can not reach this goal. Governmental and nongovernmental organizations, politicians and the media are also expected to support such developments.

Without the investigating judge

We established war crimes chambers early this year. The Court consists of three departments – war crimes department, organized crime department, as well as the one dealing with economic crime and corruption; there is also a department for other criminal offences falling within the competence of this court. Each panel within the war crimes department consists of three members – two foreign judges and a local one. Because of the language, the panels are presided by the local judge. The proceedings are conducted in the Serbian, Croatian or Bosniac language. Each defendant is allowed to choose the language in which he or she wants the proceedings to be carried out. Written communication is also conducted in the language chosen by the defendant. Upon the lapse of a three years' period, the ratio between local and foreign judges within the war crimes panels is going to be changed, whereby one foreign judge is going to be withdrawn and replaced by a domestic one. Upon the completion of five years, the panels will exclusively consist of domestic judges. These judges are elected from both entities. The cases are randomly assigned to particular panels by means of the computer. We are the only ones in the region to have adopted the adversarial system, while some elements of the continental legal system have been retained. This means that we do no longer have the investigating judge, instead of whom the prosecutor is entitled to carry out the investigations. Furthermore, during the trial, the prosecutor is confronted with the defence, whereas the court's role has more or less been reduced to that of an observer regulating the course of the trial. Although the law provides for such a possibility, the court rarely intervenes. The proceedings are predominantly managed by the prosecutor and defence.

Each case that comes to the court goes through a number of stages. First, if the prosecutor proposes certain measures, such as a search order, special investigatory actions, special measures of control, wiretapping, search of dwelling, seizure of documentation etc., such orders are issued by the pretrial judge. Upon the «consumption» of this judge, the next stage involves the confirmation of the indictment. This stage is conducted by the preliminary hearing judge. Likewise, there are criminal chambers dealing with complaints further to those individual decisions. By the time the case reaches the trial stage, several judges have already been «consumed». The conduction of all these stages involves the engagement of a sufficient number of judges.

Shattered mistrust

We have often been contacted by representatives of war victims' associations, both from the Federation and the Republic of Serbska. While the formers have always approached us with faith, the latter were mistrustful in the beginning – they had information that this place once had been a military court and that Serbs had been killed here. On the basis of their information, however, we were not able to prove that war crimes had been committed here. That fact stirred their doubts in our impartial position and resulted in their general mistrust in the court and in some judges, who, as it turned out, do not at all work in the war crimes chamber. Following our meeting, the association president felt relieved and, along with others, said that he was ready to believe us. We enormously appreciated that.

Going through the mill

Prior to the establishment of the war crimes chamber, there were strong objections on the part of the public in relation to the fact that the cases within the organized crime department were conducted in English. Both the defendants and their defence councils insisted that, further to the legal provisions, the proceedings should be conducted in one of the languages spoken by the three ethnic groups in BH. This is why we decided that in the war crimes chamber the proceedings should be conducted by local judges, while the foreign members of the chamber are enabled to ask questions through a regular interpreters' service.



Availing themselves of the opportunity offered by the constitutions of our neighbouring countries, many defendants have sought refuge there. Thus, according to our information, Ante Jelavić left for Croatia immediately upon the completion of the first instance proceedings against him. I have already referred to this issue in a number of scientific meetings. Why are these people trying to escape from justice, I have asked, when justice is going to reach them anywhere? There is even a possibility of transfers of certain cases; however, this possibility does not apply to the war crimes cases, since there are no legal grounds for transfers of cases involving crimes punishable by sentences longer than ten years of prison. I believe that these people are mistaken in their calculations that they will be less severely punished in other countries. Justice is the same everywhere. Judicial bodies in each of our three states – BH, Serbia and Croatia – are being closely monitored by international organizations. Each of our states has undergone certain personnel and legal reforms. Those who tended to judge according to any criteria other than legal, have been removed. Likewise, there are appropriate removal mechanisms for those who have remained, in case they ever try to judge in any other way but according to the law. In such a transparent environment, I could not imagine that anyone would dare to judge otherwise than according to the law. Additionally, the legal systems of our three countries will soon become fully compatible, which means that any attempts to evade justice by escaping from one country to another will be doomed to failure.

As for the crime reports and possible proceedings resulting thereof, I would say that we have received too many reports lacking any substantial grounds. There are a lot of unfounded crime reports, and it is the job of the respective prosecutor's offices to select them. All of the reports have to be put through the mill, i.e. to undergo a careful selection procedure, since they have all too often been motivated by pure revanchism. In any event, regional prosecution teams carefully assess all of the cases referred to them and subsequently categorize them as delicate or less delicate. The particularly delicate ones remain in the competence of this court. The less delicate ones, usually those involving lower-ranking perpetrators and smaller-scale crimes, are distributed on a regional basis. Estimations are often heard that the trials in BH will take the longest time. War crimes can not become obsolete. Unlike the Hague Tribunal, our court is not an ad hoc body. We are a permanent court. Once indicted, each perpetrator shall be tried, whenever and wherever he or she might be found.

We have signed the agreement on international cooperation. Besides that, we have regular meetings with legal experts from Serbia and Croatia. These interactive relations are currently gaining momentum, and relevant documentation is exchanged in these meetings. In many cases, we can simply telephone our counterpart from another state and inform him or her that particular documents or requests have been forwarded. We are now able to exclude from our communication all those institutions which caused unnecessary delays, such as ministries of justice, those of foreign affairs, etc. It is far more efficient to do things this way!

*Address of Meddžida Kreso to the Serbian media representatives on 26 October in Sarajevo