

## The Topic of the Issue - REGIONAL COOPERATION

### THE AIM ARE JUSTICE AND RIGHTS

DAMIR KOS *JUDGE OF THE SUPREME COURT OF CROATIA AND PRESIDENT OF THE CROATIAN ASSOCIATION FOR CRIMINAL LAW SCIENCES AND PRACTICE*



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Many think that the reform of the judiciary in Croatia will be painful because of adaptation to European judiciary. What is your opinion in this regard?

Generally speaking, the present judiciary is to a great extent the model that we inherited from the past. The European Union demands the Republic of Croatia to structure the judiciary in a different way. Today in Croatia we are in the process of searching for best solutions. What is recognized as particularly problematic is the existing network of courts in Croatia, which is not seen to be rational. On the other hand, in Croatia we also identified the problem of territorial distribution of cases. To put it simply, the judges use to say that there are courts which wait for the documents in a case, and courts in which documents wait for their judges. This is not satisfactory. This is why we have bottlenecks in certain courts. All these are problems which are identified, and we have ongoing analyses in order to find best solutions for the network of courts, to secure that cases are quickly closed, and to avoid the possibility that Croatia be sued for the violation of the right to have trial within a reasonable time. Good is only such justice which is prompt and which serves its purpose in an adequate way.

We should not overlook the fact that because of certain processes some courts in Croatia have gained in importance. I have in mind first of all the four courts which are, or are yet to be, in charge of war crimes, particularly in view of cases that will be referred by The Hague.

There is a vague image of the territorial jurisdiction of courts which conduct war crimes trials. In principle, the law has explicitly nominated four courts – in Osijek, Split, Zagreb and Rijeka – to investigate these cases. For the main hearings the law prescribes general jurisdiction, hence, the war crime trials do not have necessarily to be conducted in these courts. Namely, the law envisaged the possibility for the Chief State Prosecutor to ask the President of the Supreme Court to delegate a case to a certain court, taking into account how burdened these courts are, the preparedness of judges and all the other elements. For instance, it is the fact that in the case referred by The Hague, the case "Ademi – Norac" the court with territorial jurisdiction is the court in Gospić, in which there are five judges altogether. Of course that such a court could not answer the challenge of such a task. By decision of the Supreme Court this case was referred to the County Court. The proceedings will start when the State Attorney formulates the indictment. Work on this case is still in the preparatory phase because it is necessary to prepare the Hague indictment and to adapt it to procedural norms of the Croatian procedural law in order to make possible the hearing in front of a Croatian court. I think that the Croatian judiciary in general, and then also each individual judge, are highly capable. We had the education of judges in the individual courts, and that not only in the four previously mentioned courts.

#### Anonymization of witnesses

When you speak of identifying witnesses, this is not unknown in Croatian legislature. Croatia has a law on witness protection, this law being an instrument of witness protection unrelated to the procedure, hence, dealing with everything that happens outside the courtroom. Witness protection in the courtroom itself, and this is the issue of anonymization of witnesses, we regulated by the Law on Criminal Procedure. This Law contains possibilities for anonymization of witnesses and envisages conditions for deciding how a certain witness is going to be made anonymous, whether only in regard to his address, or in regard to his name and address, or will he be made completely anonymous, which includes also the hiding of his both face and voice and other marks of someone's identity. This part of our procedural

legislature should be of no surprise for our judges particularly because in trials for organized crime and in some trials for war crimes up to now we have already used the method of questioning a witness whose identity was made anonymous.

How much have Croatian laws been able to adapt to trials which would be referred from The Hague to Zagreb, I have in mind first of all witness protection, the use of evidence from The Hague...?

The Hague Statute speaks of referring criminal proceedings in general and of referring cases when there is a confirmed indictment. In all cases investigated by The Hague Tribunal (and which, in view of the Tribunal's "exit strategy", will not end with an indictment confirmed in front of The Hague Tribunal) the evidence will be transferred. This evidence will be handed over to the State Prosecutor of the Republic of Croatia which will, upon this evidence and other evidence which it itself will collect, formulate the indictment in cases where there is reasonable doubt that a crime was committed. The probative procedure will originally be conducted in accordance with national law. Hence, the question of evaluating the evidence in accordance with The Hague rules is present if the case is transferred, i.e. for which The Hague Tribunal confirmed the indictment.

In regard to investigation, we had such a case in Serbia with the Zvornik group, where there still was no indictment.



The national legislature in the Republic of Croatia has, among other, enacted the Law on the Application of the Statute of Rome, hence, a statute related to the permanent court in The Hague. One of the provisions in this Law says that the norms of this Law shall apply in an appropriate way also to trials overtaken from The Hague Tribunal. When we speak of these cases, I repeat, according to the rules of The Hague Tribunal, the cases can be taken over only when the indictment was confirmed. A reading of the legal norms in national legislature and an appropriate insight into the norms of The Hague Tribunal makes clear that taking over is applicable only after indictments were confirmed.

### **Gotovina**

Croatia, as a state, had supported the establishment of The Hague Tribunal, which encompasses also all other repercussions of the establishment of this court. This means that Croatia recognizes the Prosecutor, the Tribunal and the decisions made by this Tribunal. The doubts in regard to the structure of the indictments, which have often been recalled, can be proven only there. Only, I repeat, in the courtroom, where different views in regard to the way the indictments were formulated will be confronted, and they are rather difficult to understand for the legal tradition of this region.

After wars some persons are labeled as heroes, and some as criminals. The court procedure should give the answer whether somebody has committed a criminal act or not. Has somebody had the right to protest against something? Yes. Should the state regulate, i.e. act in order to intervene when public order and peace are disturbed – the state has the right to do this, too. All within frameworks of democracy.

We witness a successful regional cooperation in cases "Lora" and "Ovcara", the signing of the Agreement on Cooperation, etc. How do you assess the cooperation between the prosecutors of Croatia and Serbia and Montenegro?

I do not want, nor can I, speak of any concrete case, but I can speak in principle about the attitude of state authorities in The Republic of Croatia in regard to ongoing trials, i.e. in regard to giving adequate assistance to judicial bodies in Serbia and Montenegro in regard to trials conducted there. It was said on numerous occasions that the war that was waged in the territory of Croatia has led to displacement of witnesses not only to territories of our two neighboring states, but also beyond. In order to have justice and law and an adequate sanctioning of all those who committed crimes, cooperation is necessary. No state can close itself within its own boundaries. As a rule, war is international, so it necessarily has implications for cross-border relations. Organized crime is getting more and more international, which makes necessary cooperation of judicial bodies from more states. The way in which the cooperation between Croatia and Serbia and Montenegro is developing at this moment, particularly having in mind the two examples that you have mentioned, as far as it is known to me through the media seems to be satisfactory. What are going to be the final decisions, I do not know. The example of these proceedings illustrates how it is possible to revive a cooperation and make it meaningful often even before there is

some formal written document. When it comes to international treaties which regulate the issue of cooperation, Croatia has until this year still been using the tools from the old law on criminal procedure. However, this year the Act on International Legal Assistance was enacted, and this Act regulates exactly the issues of cross-border cooperation of judicial bodies with the aim and function to bring to justice those who have committed war crimes, organized crimes or any other criminal act.

To what extent has the Agreement that was signed in February this year between the State Attorney, the Public Prosecutor of the Republic and the War Crimes Prosecutor's Office improved the cooperation? How much has this direct cooperation influenced the efficiency of the procedures?

Regional cooperation of the judiciary is something that is obviously useful. It existed before even without formal documents, and everything done in order to formalize this cooperation, the signing of treaties and other acts related to cooperation, can only contribute to a higher standard in preparing the materials for criminal proceedings. When, as a judge, I will be conducting trials I will recall, however, primarily the Act of International Legal Assistance (in Criminal Matters), and also international treaties which we all have signed and where this issue of cooperation has been solved appropriately.

Questions related to extradition are also being opened. Do you see it is an impediment and obstacle to bringing someone to justice?

No. In regard to Croatia, there was the demand to extradite Fikret Abdic after proceedings were instituted against him in Bosnia-Herzegovina. Here we have a person with dual citizenship, and according to Croatia's laws, in Croatia he has primarily the status of a Croatian citizen. The Republic of Croatia does not allow extradition of Croatian citizens to anyone. Hence, it could be said that there are no possibilities to investigate his responsibility for something he has done abroad. Since in this example criminal proceedings were instituted in Croatia as well, this was a case in which the proceedings were transferred. Namely, originally there was an investigation in Croatia in order to establishing his guilt; his guilt was established and the trial was irrevocably ended.

**I would remind you that you are one of the first judicial voices from Croatia to have asked the witness from Serbia and Montenegro to come to Split to testify, in order to make the proceedings, revised upon decision of the Supreme Court of Croatia, more efficient and fair. Did this contribute also to a better image of Croatia, not only in the region, but also beyond the boundaries of the region?**

It is difficult for me to judge in this regard, and I would not enter such evaluations. There has been no verdict as yet, it has not yet been validated irrevocable, but I can only repeat what I have already once said: there is often this problem of the perception of the court's work on the basis of what is spoken in back corridors and what was not said in court. The court truth is the truth spoken out in the courtroom. And the truth in the courtroom can be said only by persons which come to this courtroom. Hence, what remains is a corridor truth and the other truth is the one formalized in what is spoken in the courtroom and upon what only the court can bring a decision. The court is in no position to bring a decision on the basis of what somebody tells you as a journalist. I repeat, in all proceedings the only way to bring the real truth closer to the court truth is to have something said in the courtroom, to confront that what was said with a contrary statement, and thus to have the court bring a right decision on the basis of this confrontation.

This happened now, in the case "Scorpions", with Davidovic.

Yes, in this case, too, there should be no problems, particularly in regard to these major criminal acts which are punishable everywhere in the world. If our citizen commits murder in Germany, he will not be spared because he came here. We had a number of proceedings for our citizens who committed various criminal acts – banditry, murder in territories of foreign states – and were not extradited, but the trial was organized here instead. Every state protects its citizens, including in this segment we are talking about, but the protection does not go into the absurd to exclude the possibility of their criminal responsibility. The legal framework opens possibilities for criminal responsibilities in front of national courts. Of course, this is often connected with the need to bring witnesses which are somewhere else, but here, too, we have sought to find adequate solutions through the Act on International Legal Assistance in order to introduce in a legal way the evidence that exists in another state into our court proceedings.