

Transitional Justice in Post-Conflict Societies of Former Yugoslavia

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Introduction

A failure to begin to critically review their role in armed conflict and responsibility for the crimes committed in that conflict is common to all states¹ which emerged on the territory of former Yugoslavia. Following operation *Storm* in Croatia, which was aimed at integration of parts of the territory controlled by Croatian Serbs and in whose wake more than 150,000 Serbs left Croatia and took refuge in Serbia, trials were launched against Serbs who stayed in Croatia, and there were also a significant number of trials *in absentia*. Following the Dayton Peace Agreement in 1995, the international community started, through the High Representative for Bosnia and Hercegovina [BiH], the battle to create state institutions in BiH, facing open opposition of Republika Srpska and covert opposition of the Croatian community.

Following the demotion of Slobodana Milosevic in December 2000, after the end of the war in Kosovo against the Albanian population and NATO, the post-Milosevic government had the chance to open a wide campaign of criticism of Serbian nationalism and to delegitimize the nationalistic policy implemented by Slobodan Milosevic. Initially, there was an impression that the government headed by Prime Minister Djindjic was moving in that direction. Slobodan Milosevic was arrested and transferred to the International Criminal Tribunal for the Former Yugoslavia [ICTY] in the Hague. However, that arrest was not linked to the international indictment against Milosevic but was presented as proof of Serbia's willingness to cooperate with the Hague Tribunal. Without establishing why cooperation with the ICTY was needed and whether it was at all related to the war crimes committed, the arrest was presented as a precondition of the international community for the acceptance of the country into international institutions and for obtaining humanitarian aid and loans.

By relinquishing criticism of Serbian nationalism the government of Prime Minister Djindjic demonstrated an inability to remove the main obstacle to the establishment of liberal democracy in Serbia. That happened mostly because the members of the Democratic Party of Serbia and similar political parties and institutions [such as the military, police and secret services] were represented in the first transitional government of Serbia. Their goal was not to discontinue the legacy of the past but rather to secure the continuity of the ideology imbedded in the previous policy. The attempt of the government of Zoran Djindjic to situate the issue of Serbia's democratic future into the context of responsibility for war crimes and to reform institutions led to a powerful bonding of nationalist parties and antiliberal groups in their open opposition to Serbia's democratization. The rebellion of the Special Police Unit [SPU] known as *Red Beretes* in November 2001, followed by public support at that time from President of FRY Vojislav

¹ Croatia, Bosnia and Hercegovina, Serbia, Montenegro and Kosovo under international administration.

Kostunica, demonstrated that such a unit has more power than the government of Zoran Djindjic and the Minister of Internal Affairs of Serbia. That rebellion made it clear that the government of Prime Minister Djindjic only formally had power, while the country was actually ruled by secret services and other defenders of Milosevic's nationalistic system. In the wake of the assassination of Prime Minister Djindjic in March 2003, the old system was ideologically restored.

However, Serbia is not the worst case on the territory of former Yugoslavia with regard to establishing justice for victims and accountability for misdeeds of the past. Given pressures from the international community, the ICTY and domestic war crimes trials, as well as the dedication of non-governmental organizations for human rights and the support of small liberal political parties and media [such as *Danas*, *Republika*, *Gradjanski list* from Vojvodina and *B92*] and independent associations of authors, there is some movement forward and there are positive challenges which unfortunately lack any significant influence on public opinion. Although the social need for facing the past is ripe, such a process has not taken roots because it has been sabotaged by the ruling elite and the oppositionary nationalistic parties which, on a platform of nationalist patriotism, account for one-third of the electorate of Serbia.

Instruments of Transitional Justice

Instruments of transitional justice are generally defined as the short-term and temporary judicial and non-judicial mechanisms that address the legacy of human rights abuses and violence during a society's transition away from conflict or authoritarian rule.

By responding to mass atrocity by embracing the rule of law, these mechanisms seek to put an end to violence and impunity by prosecuting and punishing the perpetrators of human rights violations. The aim is to channel the aspirations for vengeance by individualising responsibility and affirming the distinction between right and wrong.

Apart from backing the peace process by restoring the rule of law, they also aim to promote truth-telling in order to generate a critical reflection on the past and establish an accurate historical record of the society that would lay the foundations for a sustainable peace.

In the following sections, I will deal with four instruments of transitional justice: war crimes trials and the truth-telling process in the states on the territory of former Yugoslavia, reparations in the context of apologizing and monetary compensations to the victims of past abuse, and reforms of institutions within the framework of non-governmental vetting initiatives.

War Crimes Trials

The only instrument available for establishing individual criminal responsibility are criminal trials which, in the case of former Yugoslavia, take place before the *ad hoc* International Criminal Tribunal for the Former Yugoslavia [ICTY], the State Court of BiH, the international judges in Kosovo and the national courts of Croatia, Serbia and Montenegro and, it may be expected, also in Macedonia.

International War Crimes Trials

Owing to the establishment of the ICTY, the dangerous war leaders were arrested, such as Slobodan Milosevic and numerous generals and high representatives of civil authorities, and some of them, such as Radovan Karadzic, were demoted from power and permanently removed from public political life. Considering the fact that national media do not broadcast live coverage of ICTY trials, except for B92 which did carry the trial of Slobodan Milosevic until he died, it should not be expected that such trials could significantly promote the growth of a culture of responsibility in the states on the territory of former Yugoslavia. However, I would like to counter statements that live reporting of the trial of Slobodan Milosevic increased the resistance of the Serbian public against the ICTY and promoted a feeling of solidarity with the accused. Such solidarity was primarily demonstrated by the military, the police and the secret services through their participation in preparing the Milosevic's defence, which was done with the open consent of Vojislav Kostunica, then President of Serbia and currently its Prime Minister. As regards the resistance against the ICTY, the Serbian public was more or less in agreement with the attitude of the defenders of Slobodan Milosevic that this is an "anti-Serbian" court. It is true that television B92 did entrust the broadcast "Process", which included live reporting from the trial, to a journalist who cared more for the defence which was not primarily aimed at challenging the indictment, but it was busy propagating "the truth" of the Milosevic's regime. However, the fact that many people had the opportunity to hear, thanks to B92, the testimonies of the victims, and to learn thereby of misdeeds which took place in times of their carefree everyday life, is significant as a challenge to resistance to the ICTY trials and their influence on the local public.

In addition to preventing war leaders from perpetuating their political careers, the ICTY trials play a crucial role in establishing truth. They are essential for initiating the process of truth-telling and acknowledgment by rendering denial impossible. In that sense, the ICTY does represent an important source for writing history and for collective remembering. The truth established by the ICTY in its verdicts against indicted individuals is a court-established truth, which is not questionable by some other court, or challengeable by historical, political or moral tests.

Domestic War Crimes Trials

In addition to the ICTY trials, domestic trials are a very important step towards the rehabilitation of renegade states, which can thus prove their willingness to establish the rule of law. In this context all states on the territory of former Yugoslavia have

demonstrated the willingness to try war crimes. Domestic institutions will assume the restoration of the rule of law in the region, since UN Security Council resolutions 1503 and 1534 project the end of Tribunal's investigations in 2004, the closing-down of trials in 2008/2009, and the completion of the appeal processes by 2010.

Croatia started trials right after the reintegration of parts of the territory controlled by the rebel Croatian Serbs at the end of 1996. Mostly Serbs have been tried. The law has provided for trials *in absentia*. Observers from the OSCE and from NGOs point to two trials which, according to them, indicate a move forward in relation to the practice to organize trials of Serbs exclusively. The trial of General Mirko Norac before the Regional Court in Rijeka for war crimes against Serbian civilians in Gospić and the renewed trial of officers of the military police for the war crime against prisoners of war (Serbs) at the military prison *Lora* indicate a break with the practice prevailing in Croatia to exclusively indict and try Serbs. In the course of the trial known to the public as the *Lora* case, Serbian victims testified for the first time. These are former prisoners of war. This has contributed to recognition of this trial by the victims. This participation by Serbian victims resulted from cooperation of the Public Prosecutor's Offices from Croatia and Serbia.

The basic characteristic of all war crimes trials² in Serbia is the fact that the Office of the War Crimes Prosecutor is persistently trying to cover up all evidence pointing to the responsibility of any institutions of the Republic of Serbia, the Federal Republic of Yugoslavia, or individuals holding a position of any significance within those institutions. Aside from that, the Office of the War Crimes Prosecutor is continually delaying initiating investigations against certain individuals, so that the investigation into the death of Bitiqi brothers, for example, began seven years after the murder and investigation of the Suva Reka massacre started three years after the mass graves in Serbia had been discovered. The investigation into the gravest crime in the Zvornik municipality was initiated following adamant requests by the Humanitarian Law Center [HLC] and the Victims' Families Association from Zvornik, a year after the beginning of other trials committed in Zvornik.

By bringing the indictment for crimes committed in Suva Reka, the Office of the War Crimes Prosecutor made a positive development through its approach to those members of the Ministry of the Interior [MUP] proven to have personally participated in war crimes. The indictment was brought against a police lieutenant-colonel, deputy commander of the Serbian Special Police known as *Žandarmerija*, Suva Reka police commander, his assistant, and a number of members of the Suva Reka Police Department [OUP Suva Reka]. However, the shortcoming of this indictment is that it does not include high ranking officials of the Serbian MUP according to the principle of command responsibility, such as, for example, the former head of Special Police Unit [SPU]

² The following trials are in process: the trial of the members of *Scorpions* unit for shooting six Muslims from Srebrenica; the trial of two members of the Special Police Unit (SPU) for the killing of three Albanian civilians; the trial of the former President of the Municipality of Zvornik and others for war crimes in the municipality of Zvornik in Bosnia and Hercegovina; and the trial of eight officers of the Ministry of the Interior (MUP) of Serbia for the killing of 56 Albanian civilians.

General Obrad Stevanovic, or Chief of the MUP Headquarters in Kosovo, General Sreten Lukic, tried before the ICTY.

As opposed to the Office of the War Crimes Prosecutor which acts as a governmental institution, and not as a part of the judicial system, the War Crimes Trial Chamber of the Belgrade District Court performs its judicial duty in war crimes trials professionally and impartially. All of the justices make their rulings in accordance with the law and following guideless of fair and correct trial. However, as provided by the law, judges are unable to amend and correct the indictments, which constitute a serious danger that some of the court's rulings, as may happen in the *Scorpions* case, will be made public with truth which will be different from the court truth established in the cases tried before the ICTY.

By the end of 2005, eight war crimes trials had been held before courts in Serbia, with final judgments having been rendered in six of these cases. On December 12, 2005 the War Crimes Trial Chamber of the Belgrade District Court handed down a decision in *Ovcara* case. On December 14, 2006 the Supreme Court of the Republic of Serbia overturned the decision of the Belgrade District Court and sent the case for retrial.

At this point there are four war crimes trials underway in Serbia, two for war crimes committed against Bosniaks [*Scorpions case* and *Zvornik case*], one for a war crime committed against Albanian prisoners [*Bitiqi case*], and one for a war crime committed against Albanian civilians [*Suva Reka case*]. Apart from this, the trial of two former reserve members of the Serbian Ministry of the Interior is underway before the District Court in Nis for the murder of an Albanian man in the course of the NATO bombardment.

War crime trials are not issues which enjoy regular media attention. The commencement of the trial of *Scorpions* made big news, but the interest of the journalists was short-lived. Since the law does not provide for the recording of trials, the public has no chance to see and hear the accused and the victims. When the trial of *Ovcara* case started in March 2004 it looked like the ice had been broken and that the media would strongly support the prosecution of the war crimes and that the public would start to feel some compassion with the victims. However, after two years of the trial it may be concluded that the war crimes trials do not influence public opinion. Representatives from the Serbian Radical Party in the Assembly of Serbia openly oppose the trials of the "Serbian heroes" and often promote this attitude in the Assembly of Serbia, while there is no reaction to such allegations of theirs.

The biggest result of the war crimes trials in Serbia is that the families of the victims get the opportunity to follow the trials, which gives them a chance to personally assess whether justice has been served and if the judges have proceeded in an unbiased and professional way. In all cases thus far, the assessment of the families of the victims and of the victims/witnesses is that the trials in Serbia have been professional and that the judges have been objective.

Truth Telling Process

Serbia and Montenegro was the only country in the region to establish an official truth-telling body. The decision to set up the truth and reconciliation commission was made by FR Yugoslavia president Vojislav Kostunica on 29 March 2001, with the task of “organizing research work to unveil the records concerning the social, inter-communal and political conflicts which led to war and to cast light on the chain of these events, to keep the domestic and foreign public informed of its work and results; to establish cooperation with related commissions and bodies in the neighbouring countries and abroad for the purpose of exchanging their work experience”. The commission ceased to exist, without publishing a single report, following the adoption on 4 February 2003 of the Constitutional Chapter of the State Union of Serbia and Montenegro and the law on its implementation.

There were two attempts in BiH to establish a Bosnian Commission for Truth; the latter took place in 2006, but did not succeed. Both attempts were supported by the United States Institute for Peace [USIP]. One of the reasons for lack of success surely is the failure of the initiators to open a public debate on the needs of the victims and of the society as regards truth and justice.

The Commission for Truth about Srebrenica events established by the government of Republika Srpska following the decision by the High Representative for BiH, is so far the only body in the region in charge of truth-telling which has completed its work by publishing a report. The report has not been publicly promoted in Republika Srpska, which is one of the major criticisms made by the Bosniaks from the BiH Federation. The other criticism from the Bosniaks is that the government of Republika Srpska did not establish the Commission following its own need to recognize its responsibility and to disclose the truth on Srebrenica, but that it did this under pressure from the international community. Independently viewed, the Commission on Srebrenica has produced a valuable report which, together with the ICTY verdicts against persons accused of genocide in Srebrenica, constitutes the most important document on the responsibility of the highest officials of Republika Srpska for the killing of some 8,000 Muslims of Srebrenica.

Other Instruments of Transitional Justice

As regards reparations, apart from mutual apologies of the presidents of Croatia, Montenegro and Serbia, which was understood by the public as tokens of political courtesy and not as a recognition of responsibility, only Montenegro decided to pay, in relation to the looting and damage borne to Croatia by the volunteers from Montenegro, a monetary compensation in the amount accepted by Croatia as a fair reimbursement.

Most of the formal actions towards the identification of the perpetrators of past human rights violations have been made in BiH. Although the Commission of Republika Srpska has identified as a part of its report on Srebrenica some 17,000 individuals in the context

of Srebrenica crimes of July 1995, the process of screening and removal of such individuals from public service has not yet commenced.

The Role of Civil Society in the Transition from Conflict to Rule of Law

In this part I wish to elaborate on the Humanitarian Law Center's instruments for supporting institutions and civil society in the process of establishing transitional justice in Serbia, and also in the states which developed on the territory of former Yugoslavia. In creating such instruments HLC follows the challenge of direct support to the institutions, on one hand, and to the victims and the society, on the other. HLC applies four instruments:

i. In order to support war crime trials, HLC has developed a model of Counselling and Legal Representation of Victims/Witnesses. This consists of professional assistance to the Office of the Prosecutor of Serbia in the form of documents on the subject of investigation and indictment, identifying and providing witnesses/victims, organizing the victims and their families to follow the trials, providing for psychological support to victims and representing the victims before the War Crimes Chamber.

In all war crimes trials HLC represents the victims. Starting from the *Podujevo* case trial, which commenced in February 2003 and came into legal force in December 2005, through the four ongoing trials, HLC has provided 23 witnesses/victims and one insider/witness. The trial of the member of the *Scorpions* unit was launched owing to the video recording of the shooting made public by HLC. HLC had initiated cooperation between the Office of the War Crimes Prosecutor of Serbia and the Office of the Cantonal Prosecutor of Tuzla, which led to collaboration in the investigation of the shooting of 700 Bosniaks which has not been covered by the current indictment in the *Zvornik case*.

ii. In view of the lack of official initiatives for establishing and telling the truth, HLC has developed a model of truth-telling consisting of the promotion of the court truth through presentations of the verdicts of the ICTY and public testimonies of the victims of the crimes which are dealt with by such verdicts. HLC initiates the establishment of parliamentary committees to deal with finding the facts of specific war crimes, but the parliament did not consider any of such initiatives.

So far HLC has organized four public meetings for truth-telling: Srebrenica 1995 – Beyond any Doubt, in June 2005; The Fathom of Missing Persons in Kosovo, in December 2005, Foca 1992 – Beyond any Doubt, in January 2006, and Prijedor – Beyond any Doubt, in June 2006. Twenty five victims testified, for the first time in Serbia.

In February 2005, HLC submitted an initiative to the Assembly of Serbia for establishing a parliamentary committee for finding facts regarding the allegations that police officers had burned the bodies of Albanian victims at "Machkatica" factory at Surdulica, in the

south of Serbia. So far the President of the Assembly has not responded to this initiative of HLC.

iii. On behalf of the victims of past human rights violations HLC files charges and represents such victims before the courts in Serbia, in the processes for monetary compensation. Currently HLC represents 80 victims of past human rights violations.

iv. Reform of institutions has not been implemented in Serbia. Individuals who held significant positions in times of Milosevic are still employed with the police, military or secret services. In view of this HLC decided to launch initiatives for removal from service of persons for whom there are serious indications that they were involved in serious human rights violations in the past.

In 2006 HLC launched an initiative for removal from office and service of three officers of the Ministry of Internal Affairs of Serbia [MUP]. These initiatives resulted in the demotion of the Chief of MUP's Service for Detection of War Crimes and in removal of one inspector from that service.

Conclusion

War crimes trials in the states on the territory of former Yugoslavia are a positive development. It can be seen that such trials have been conducted more professionally when regional cooperation is available, when human rights organizations help with supplying documents and victims/witnesses, and when the victims are represented by human rights defenders. These factors have been instrumental in making the war crimes trials in Serbia professional and accepted by victims.

Post-conflict societies on the territory of former Yugoslavia are facing the challenge of securing justice for victims and remembering a common past. Whether this is achievable through national bodies for establishing facts of the past, or some regional truth-telling body might be a better solution, remains an open question.