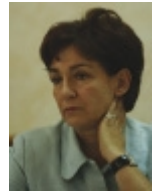


Interview

The right of a victim is a priority.

Vida Petrović – Škero *President of Supreme Court*



A victim is always endangered in any criminal procedure, and much more in the procedures for the offences of war crimes, since various types of the offence have been made to the same persons suffering damage. It is prosecutor's office that will carry out the protection of all the victims' rights and make it possible for them to be witnesses not victims again.

The Prosecutor's office for war crimes has the support of the highest instances on the country. The President of Supreme court of Serbia and the Minister of (Serbian) Justice visited the prosecutor's office on the 16th of September. At the press conference they sent the message that the proceedings and sentences have a specific weight to the war criminals?

By the former work, Prosecutor's office and the Board of judges for war crimes proved the competence and decision of home justice institutions and the state on the whole to achieve the highest standards that would enable domestic courts to judge for the offences of war crimes, estimates Vida Petrovic-Skero.

During the talk immediately after the press conference in the court room 3, the President of Supreme court repeated that her position (of the president) doesn't let her comment (make comments) the work of Prosecutor's office for war crimes.

- The quality of work of Prosecutor's office and the court are evaluated of each side in the proceeding by the upper court. But for the state; its legal system, the wish for the rule of right to be a priority in the system of the formation of Prosecutor's office certainly presents a big step forward, good progress, that's been proved by the results. Forming, within the existing prosecutor's institution, the wards with the specialized prosecutor's for war crimes who will be able to work on it specialization will certainly, from one side, help the efficient discovery of the doer, then the start of the proceeding, then participation in the trial, at the court with the formed specialized boards, what can be noticed first is the readiness and will of the state to enable the work of such a specialized ward, with all the necessary high profile experts who work there. Work in those wards requests (requires) high specialization, the knowledge of all international instruments relevant to the leading of such proceedings-Geneva, the Hague Conventions, their protocols. It is necessary to get to know the practice work of the court during Nirnberg process, Tokio and any other which would be of relevance for this type of trial. The holders of judiciary system, especially in this ? .of course it will be very difficult to achieve all this, because the court practice at the Hague tribunal is still built and presents the discussion topic and legal evaluation of the theoreticians and practitioners from the whole world.

Besides, prosecutors and judges will have to get to know the practice of Strasburg Court to provide in their work maximum of the protection of the human rights respecting all European standards. The importance of leading and finalizing these processes is to protect human rights particularly of those who are the victims. On the other side; for those who may have committed crimes to provide the proceeding respecting their rights and regulated legal procedure in all the stages of the trial: provide the presumption of innocence, the right to adequate legal defense, the adequate proportional right to privacy and the right to publicity during the trials, providing impassionate trial. Only a very high degree of objective and expert professional work will enable all the participants in the process to have fair trial, strictly respecting the terms. Late justice isn't efficient and good. Most of the work is now at the prosecutor's office and its results show that the work has evidently been done well. If we haven't been criticized by our strict media, it means that the degree of human rights of the victims, the witnesses or the accused, is kept in a high degree mainly. Some subjects from the Hague tribunal have been given to our court that proves my conclusion.

Before the special organs and the Prosecutors office founded, two very serious and important sentences had been received at the district court in Belgrade, "Sjeverin" and "Podujevo"

- A judge, namely a prosecutor, who takes part in such a case, must be absolutely specialized for it. Besides the knowledge of material law, process law, he/she must be acquainted with the specific trial treatment (technique) needed for this sort of case. Perfect knowledge of all these mentioned things is necessary. If it isn't the case, the rights can be broken easily; the rights of the victim, the rights of the accused person and all that will cause many problems to these persons, legislature system and whole state system. It is a very difficult job to take part in the trials for war crimes in our environment today. There are the conflicts of interests? and consequences of some people's activities that in the definite periods in that past did something for the reason of patriotism or doing justice to someone. Public opinion even in the case of a possible war crime or command responsibility, does not accept the responsibility of certain people. In this situation we have to be very careful not to create antitheses that a possible committer of the crime becomes a victim, and the victim or the witness becomes accepted and treated as a guilty person. To prevent that a high-quality trial and a very professional functioning of a prosecutor are necessary during the proceeding. Knowledge of Standards? knowing and the knowledge of practical work at the courts and the knowledge of material law, including the international standards, will surely make the work easier for a prosecutor or judges. The work can be facilitated by the decisions made at the international courts that have treated some of....law problems that will certainly be in the functioning of our legal system.



Legal framework. The law is changed for the third time for the future war crimes.

- Facilities for the work of a prosecutors and a judge during the trial are seen in their possibility to apply directly, besides the national law, the international instruments, all ratified conventions and contracts. This is easier for work, in the situation when there are not the solutions for all the legal situations or answers to all the legal problems, in our national legislature. The Article 16 of the Constitution, which directs to the application of ratified conventions and contracts, makes easier the functioning of legislature system and when the internal law is in conflict with the legal provisions of some international instrument. The complete quality of the national law, will be seen when all conflict cases are regulated by it and when there will be no need to apply international instruments (for this reason) the change of the law that will be applied to the trials for the subjects of war crimes, to mind, presents a positive sign because it develops and improves the legal framework for the work (of the court). It also shows that with legislature system of the country and as well policy of the state takes care of the improvement of the procedure for the trials of war crimes and presents certainly the quality itself. I think that most of the prosecutors and judges share my opinion that the ideal system and the way of regulating the procedure concerning especially very difficult and complex war crimes is that one formed on the basis of the Hague tribunal work. The participants in the process and the Court, primarily, are the first ones that, in the best way, can see what is necessary to be improved to avoid complicated procedure, the procedure that has some other faults. Focusing the problems from its practice, it should be improved and made for a more efficient and high-quality trial. Very long and complicated procedure for the change of the law that exists in our state will always make the practical work difficult. I think that the high-grade changes of the law in a quick and high-quality change can contribute to a better trial and a faster end of the proceedings quicker that are supposed to be found in a larger number at our courts. If the Hague tribunal had had an adopted formalistic and a very complicated procedure for the change of the statute and the rules of procedure by the United Nations organization as its founder, that would have had a negative effect to the length of the proceedings and more difficult the work of the prosecutor's court and the court. Of course, taking into consideration our present constitutional and legal? of legislature system the conditions have not been fulfilled yet, but it is evidently good that the laws, leading to positive consequences, change as soon as possible. It will enable and easier detection of the doers, more functional and efficient trial with high quality. I hope that one day we will have such a legal framework and such a qualified prosecutors and judges, as well as the system that will

Procedure changes if there is something that slows or makes impossible the efficiency of the proceeding and that violates human rights by the legislature itself based on its efficiency and work quality.

What's your opinion, relating to the context, about the trial open for the public and that the president of the Board can decide on audio-visual recording during the main trial? Here the Hague experience is very inspirative.

- Publicity is something that presents one of the basic elements of law for a fair trial. The Article 6 of the

Convention involves publicity as an element of law for a fair trial. Our process laws also take publicity as a rule in their work. But, disregarding and increased importance of audio visuals, I think that camera in the courtroom isn't the only element of publicity and not certainly one if all the perfect conditions are not fulfilled (if there are not perfect conditions for it). Publicity is achieved if the trial is available to the observers. If the State isn't able to supply court rooms with technical conditions as in the Hague or as in the courtrooms of the building of Belgrade District Court, where the trials for organized criminal and war crimes are held then a camera in a courtroom will probably violate the right to somebody's privacy. Every judge, when admits the possibility of recording during the judicial proceeding must think for the proportionality of the two rights of each citizen, the right to privacy and right to publicity. It is necessary to have a large understanding and to be very cautious. If some mechanisms are not applied to protect a witness or a victim during the trial from a camera which will follow his/her mimics, pain or fear and when the fact is neglected that every participant in the proceeding is not equally capable of functioning perfectly, expertly while the camera is turned to him/her, all this can lead to negative consequences, so everybody who is for the introduction of camera as an element of publicity at any rate, may endanger a fair trial, privacy, and the result of the whole proceeding. Camera should be allowed in the cases of perfect technical conditions and with the special protection of the victim. I would remind you of the case "O J Simson" that caused the change in the attitude to the legislature work in America because the camera in the courtroom and the way of judging largely changed the results of the trial. The Hague has publicity, we have publicity. Publicity means that a journalist can listen, watch, report and draw. As far as the War crimes are concerned, the problem of publicity is especially sensitive. If a perfect mechanism of a victim's privacy protection of the damaged or sometimes the accused person is not established, then such publicity can endanger the spectrum of rights of these people. I, as a citizen, of course, have need to know the proceedings will go on, particularly those connected with war crimes, but the kind of information and publicity creation should be proportional to the needs of those who should be protected and supplied with the possible and necessary information. If it is hard to witness, experts facts about the unpleasant cables, wires, search lights among. It is difficult for a prosecutor to act and the judge to judge under these conditions.

I am repeating that we can talk about the degree of publicity, when the camera is taken into the courtroom, only when all the technical conditions are fulfilled. Publicity must be present, but the degree of publicity, namely, technical devices brought in are some other question that must be discussed within the range of human rights. We forget that in a courtroom a camera, metres of cord, search lights disturb the regular work of a judge, a prosecutor, an attorney who if not used to it, can be endangered while doing his work. All this is secondary but the worst consequence is that one which can endanger the victim.

The right of victim to justice.

- These are the proceedings where the right of a victim is a priority. It is much more important but often more endangered than in any other process, criminal proceedings. A victim is always endangered in any criminal procedure, but in the case of war crime he/she is often a victim in the prolonged criminal acts. It has been proved that the victim puts up some resistance, has a great fear concerning the trial and its consequences. For years there has been neither much understanding for the right of a victim nor a mass media have taken part in reporting the trial in the adequate way. The victims' testimonies have been published; the victims have been listened to in an inadequate way. The consequence is that the victim doesn't want to witness, his/her rights are violated, especially to privacy, to fair trial that he/she also has. If there isn't much care about the victim besides its endangering, the family of the victim and the environment can be in danger too. The way of reporting up to now shows us that media, not thinking much of the consequences, published names, addresses, and intimate data of the witness victim thinking of causing sensational news only, not thinking of the consequences of the news. That is why a high degree of responsibility is needed in the proceedings of war crimes and of those that will take part as publicity in the procedure and enable publicity from the trials to a common citizen. The victim must be thought of most, must be protected and mustn't be commented taking his/her testimonies as an act of unpatriotism. If the victim is not protected, if there is no respect for his/her rights we will not have the sentence to the right law breaker, for without proofs, the prosecutor will not be able to proceed the procedure, nor the judge will judge and possible if finds somebody guilty to sentence.

Interviewed by Jasna Jankovic