

World & Regional Issues

The Court and Prosecutor's Office of Bosnia and Herzegovina

A CHANCE FOR VICTIMS

Refik Hodžić *Head of the Public Information Department The War Crimes and Organized Crime Registrar's Office*



Unfortunately, the brutality of the crimes that Šimšić is charged with appears common to a vast majority of the cases facing trials before the Court of Bosnia and Herzegovina in the years and decades to come. However, this is not the only common feature qualifying this case as an appropriate illustration of the complexity of war crimes proceedings in a country burdened by more than 10,000 crime reports on grave breaches of international humanitarian law.

On 14 September this year, the reading of the indictment related to Boban Šimšić, a Bosnian Serb accused of persecutions of Bosniak civilians from Višegrad during 1992, marked the beginning of a first war crime trial before the Court of Bosnia and Herzegovina.

According to the indictment charges, Šimšić (42), acting as a member of a paramilitary unit headed by Milan Lukić, killed, raped, tortured and severely beat Bosniak civilians from Višegrad and the surrounding villages, thereby participating in a systematic large-scale campaign launched by the Serbian authorities and aimed at the elimination of ethnic Bosniaks from the region.

Beside other charges specified in the indictment, Šimšić is claimed to have killed Ibro Šabanović in the night of 28 June 1992, while he was aided and abetted by Milan Lukić. Šabanović, who had been held confined together with hundreds of other persons on the premises of primary school »Hasan Veletovac«, was pulled by Lukić and Šimšić from one of the classrooms into the hall. In the hall, while Šimšić was holding Šabanović's head, Milan Lukić sliced his throat, thereupon throwing the victim's cut-off head among the other detained civilians.

Additionally, the indictment is supported by the evidence that, throughout the latter part of June 1992, Šimšić, regularly acting during the night hours, took young female captives away from the school premises, whereupon, acting either alone or with other Serbian army members, he raped the victims or procured them to others, while he severely beat and otherwise humiliated them.

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The Šimšić case in the best way illustrates the extent to which the capacity building of the national judicial institutions is important to Bosnia and Herzegovina. Unlike the International Criminal Court for the Former Yugoslavia at the Hague, whose work has largely been determined by its limited term of office, the national judicial institutions, being essential for successful proceeding of war crimes, should be established to operate throughout an unlimited period. The Šimšić case also indicates the efficiency of the approach adopted by the BH Court and War Crimes Department of the State Prosecutor's Office. This approach is unique for its openness to the victims, who are encouraged to take an active part in the investigation and pre-trial stages.

A trained locksmith, Boban Šimšić had been working as a policeman in Višegrad all the way through to 2003, previously having undergone check-ups prescribed by the United Nations International Police Task Force (UN IPTF), and receiving a UN IPTF certificate, proving his full compliance with the international standards of performing a policeman's duty.

As a policeman, Šimšić was supposed to ensure the personal safety of each Višegrad citizen, which among others included ethnic Bosniaks who had returned to the town and its surroundings. Without trying to analyse his motivation to dedicatedly and professionally perform such duties and protect the people in whose persecution, further to the indictment, he was personally involved throughout 1992, one can not help noticing that his very presence in the Višegrad police station is likely to have prevented many ethnic Bosniaks from returning to the region.

Unnumbered appeals for the removal of policemen suspected of war crimes came from the Female War Victims Association, whose membership includes a significant number of eastern Bosnian women, victims of rapes and tortures performed in the course of the war conflicts. The association members have invariably drawn the public attention to the policemen on duty in the Bosniak returnee settlements, claiming them to have been involved in some of the worst war crimes. Šimšić was among them. He had not been removed before it became clear that in the Goražde cantonal prosecution department there was a case against him, labelled by the Hague Tribunal with letter »A«, meaning that the evidence against the suspect provided sufficient grounds for his detention.

The Šimšić example in the best way reflects the situation in Bosnia and Herzegovina. In the local communities throughout the country there is still a number of highly influential people responsible for war crimes, ranging from those who planned, instigated and organized the crimes, to the direct perpetrators of killings, rapes, tortures, beatings, persecutions and plunders.

Some of these men are now political and local leaders, policemen and bank managers, local barons and newly fledged »businessmen«, sports officials and editors... They exert enormous influence on the relations within the community, while being safely harboured within a structural network that has so far guaranteed them impunity and control over political processes, financial flows and other levers of power.

On the other hand, the war crimes victims have been pushed back to the margins of society, left to themselves, lacking a unified initiative directed against the perpetrators, often manipulated by false protectors from the political circles and, at times, by their own representatives.

This is Bosnia and Herzegovina's reality, amidst which the Court of Bosnia and Herzegovina appears as a promise of justice; the institution which, in contrast to the Hague Tribunal, has a permanent mandate and unlimited term of operation, a track of hope for the victims, who expect deserved punishments for each of the perpetrators.

However, without efficient police, prosecution and courts capable of professional and impartial proceeding of war criminals, such expectations appear highly unrealistic.

While it is clear that similar expectations are not likely to be fully met by a judicial system, however efficient or far-reaching it might be, the BH Court and Prosecutor's Office have taken the role of the engine in the judicial machinery currently being constructed in Bosnia and Herzegovina.

Closely following the establishment of the Special War Crimes Department and wanting to avoid the problems that the Hague Tribunal's Prosecutor has been faced with, the BH Prosecutor's Office elaborated a strategy resulting in the establishment of five investigating teams, each covering one of the five BH regions. The teams, which consist of both local and international staff, apply a uniform method of analysis.

Parallely, the Special War Crimes Department harmonized a whole series of criteria with cantonal/district prosecution departments, that will universally apply to the examination and evaluation of war crimes cases. These criteria serve as a basis for categorization, further to which each case will be qualified either as »highly delicate« and therefore withheld by the Special War Crimes Department of the BH Prosecutor's Office to be investigated and potentially indicted, or simply as »delicate«, and therefore referred to the competent cantonal/district prosecution department for investigation.

The thus formulated strategy should result in a consistent and transparent selection policy determining the cases due to be addressed by the Special War Crimes Department. This far, around 200 war crimes cases have been withheld in the competence of the BH State Prosecutor's Office, whereas more than 600 have been referred to the cantonal and district prosecution departments of the BH Federation and the Republic of Serbska for further proceeding.

Since the very beginning, the awareness has existed in the BH Court and Prosecutor's Office that successful proceeding of war crimes will not be possible unless these institutions are fully integrated in society. A gap between the social community and its institutions, like the one existing between the Hague Tribunal and the social communities within the former Yugoslavia, would seriously undermine the credibility of these institutions and leave them without the support necessary for their successful performance. Communication with war crimes victims has been identified as mandatory for such integration.

As a rule, court institutions engaged in the proceeding of war crimes are not open for an interactive communication with the victims. These institutions are mainly restricted to »outreach« projects promoting their activities. There is no feedback to the information presented through such concept, since it is merely aimed at informing the community about the work of courts and prosecution bodies, while

remaining inaccessible to the community, which is thereby too often deprived of a possibility to express its own views of their work and offer its assistance. Comments on the work of courts are often seen as pressures, whereas the information flow from the victims to the prosecution bodies is exclusively realized through investigators.

The Criteria

Further to the provisions of the adopted criteria, all cases estimated as «highly delicate» shall be proceeded before the Court of Bosnia and Herzegovina. The case shall be assessed as «highly delicate» if it relates to the crimes of genocide, ethnic cleansing, multiple murders, rapes and other sexual assaults in the context of organized attacks (e.g. in concentration camps or after military attacks), acts of oppression, torture, systematic and large-scale persecution and massive internment in concentration camps; the cases wherein the perpetrators are current or former high army officers, political leaders, members of judiciary, police commanders, camp commanders, extremely aggressive persons and multiple rapists; the cases involving the participation of witnesses liable to exceptional risks, such as insiders or those witnesses who may have been personally involved in the criminal offences; the cases which provide grounds for the belief that the witnesses might be exposed to intimidations; and finally, the cases where the local authorities may tend to protect the perpetrator for particular reasons. If the case meets any of the aforementioned criteria, it is labelled as «highly delicate» and is therefore proceeded before the BH Court. Other war crimes cases are classified as «delicate» and thereby referred to the locally competent cantonal or district prosecution departments.

The BH Court, and especially the Prosecutor's Office, have been fully open to the victims since the very beginning. More than in any previous situation, victims from Bosnia and Herzegovina have been given a chance to directly communicate with top officials and therefore fully participate in the proceedings.



There are several different projects focusing on the communication between victims and the BH Court and Prosecutor's Office.

According to one of these projects, war crimes victims from various parts of Bosnia and Herzegovina come to the Court and meet the prosecutors in charge of their respective regions, whereby they have the opportunity to disclose relevant evidence through direct contacts with the prosecutors. In addition, during their visits to the Court, the victims have the opportunity to get familiar with the testifying procedure, talk to the staff of the Witness Support Office and see the courtrooms, thus in the best way demystifying the court and the very trial.

The project of establishing a network of nongovernmental organizations, whose main aim is to create a strong support initiative for the victims and potential witnesses within the community, is unique for its nature and scope.

Devised and implemented as a joint project of the BH Civil Society and War Crimes&Organized Crime Registrar's Office, the network is based on the need to view and accept the war crimes issue as a problem concerning the whole of the society, and not only judicial authorities.

The network consists of several nongovernmental organizations operating through eight information centres covering the whole of the BH territory. Currently operating are centres in Tuzla, Prijedor, Mostar and Sarajevo, while the establishment of similar offices is soon expected in Bihać, Bijeljina, Banja Luka and Travnik.

The role of these centres is to provide, through the work of its coordinators and activists, detailed information on the prosecution of war crimes for all organizations and citizens interested in the process, as well as on the ways of their possible involvement in it; further, the role of the centres is to expand their network on other organizations, which would thereby offer their capacities to war crimes victims and potential witnesses, and evaluate the competence of local institutions and organizations to provide support and protection to the victims and potential witnesses, thereby enabling them to participate in the process. Where such competence is lacking, the coordinators will engage in the projects together with interested network members, with the goal to upgrade the existing capacities.

In addition, each centre will be provided with a telephone line, which will enable the citizens to get informed about the work of the judicial bodies on war crimes proceedings and the ways of their possible involvement therein, be it as witnesses or otherwise.

The ultimate goal of these activities is to create a feeling within the community of control over the judicial institutions and over the process of war crimes sanctioning.

This far, following a period barely longer than five weeks, over 120 organizations and institutions have joined the network, thus placing themselves at the disposal of victims and prospective witnesses. The interaction involving the civil society, victims, potential witnesses and the BH Court and Prosecutor's Office is now carried out on a daily basis, unambiguously demonstrating the gradual creation of a front against war crimes perpetrators, directed towards the proceeding of war crimes and the rule of law.

Boban Šimšić is a showcase for this interaction. Namely, the case against him, initiated by the Goražde prosecution department, contained evidence labelling the case as »delicate«, and was therefore referred to the Eastern Sarajevo prosecution department. Through the interviews conducted with the victims from this region, the BH state prosecutors gained access to some new witnesses and evidence that originally had not been included in the case. Within no time, sufficient evidence had been collected whereby the Boban Šimšić case was clearly classified as »highly delicate«, and therefore subject to the competence of the BH State Court.

A sight all too rare at the Hague, about ten Višegrad women – wartime victims of rapes and persecutions were sitting at the public gallery on the first day of the Šimšić trial. They are certainly well aware that it is impossible for the BH Court to try all of the war crimes perpetrators who harmed them. Perhaps some of them will never be punished. However, it is of immense importance that the victims view the BH Court as a place which belongs to them and where they can feel at home, as this largest regional institution for proceeding war crimes is entirely dedicated to serving their best interests.