

Ways towards Justice

PORTRAIT OF A JUDGE

AWARE OF HIS RESPONSIBILITY

Vesko Krstajic *JUDGE OF THE WAR CRIMES COUNCIL OF THE DISTRICT COURT IN BELGRADE*



War crimes are scattered around in time, in space, burdened with a big number of perpetrators, numerous victims, where there is no material evidence, where many witnesses must be interrogated, not eye-witnesses, but witnesses in the “second degree”. Professionally speaking, to follow these traces and build a mosaic is a big challenge and I could not resist it.



The professional biography of the judge Vesko Krstajic begins in 1986 in the Municipal Court in Vrbas. Because of a lack of judges in 1994, when the court was left with only four judges out of the former nine because the judges joined the Bar, a year and a half he was dealing with investigation and civil cases. In 1997 he began to work in the District Court in Novi Sad as the judge in criminal matters in the first degree, and in 2003 from there he moved to the War Crimes Council of the District Court in Belgrade.

At the beginning of the talk for *Pravda u tranziciji* he says that for him this was “a kind of professional challenge”.

- In district courts, in criminal proceedings in the first degree, we dealt with serious crimes, complex

in regard to their facts and legal aspect, with a big number of perpetrators, we judged in cases of rape, armed robbery, murders... War crimes are much more complex, something new in our experience. These are offenses scattered around in time and in space, as a rule they are burdened with a big number of perpetrators, numerous victims. These are “stories” where there is no material evidence to which we are used to in usual, regular proceedings, such as traces on the spot of crime, traces of powder particles... These are “stories” which are 10-15 years old, where many witnesses must be interrogated, not eye-witnesses, but witnesses in “the second degree” who have heard some stories and then one should follow these traces and build a mosaic. Professionally speaking, this was a big challenge and I could not resist it.

You presided over the Council which brought a verdict in the first degree in the “Ovcara case”. This was the first verdict of the War Crimes Council. How did you evaluate the credibility of statements and these witnesses “in the second degree”, there were many of them.

The bigger the time gap in regard to the event, the less and less reliable is the witness as a means of evidence, because every human being necessarily undergoes the process of forgetting, particularly if they were present at a horrible event. In this case people are inclined to suppress and forget these things even more.

In this sense, we have a big problem with reliability of these statements so many years after the event. Maybe the witnesses do not want consciously to surpass the truth, they do not consciously want to lead us in a wrong direction, maybe they are most sincerely trying to present what had happened, but after fifteen years since these crimes which are scattered around in time and space were committed, it is very difficult for them to return to each and every segment of the event.

I will mention some pub quarrels which resulted in murder. In this case we have the one who fired the weapons, we have witnesses on both sides, we are dealing here with an offense that has its former history lasting about an hour and is limited in time and space. As the second example I will mention “Ovcara”, where we interrogated over 70 witnesses during the trial. In the “Ovcara case” we have an event which started in the morning in front of the Vukovar hospital with a selection of prisoners, which then continues around noon at the barracks where the busses with the captives were coming, then it

continues in the afternoon some five to six kilometers further away, at the hangar in Ovcara and lasts afterwards almost the entire night in the locality Grabovo, a kilometer and a half further away from Ovcara.

In this event which lasted the whole day, at any moment you had many people, participants, whether near the hospital, or the barracks, or in Ovcara, or Grabovo and now we should expect the witnesses to know after fifteen years in regard to each segment of the time and each locality, when and where he was there, whether he saw somebody and who this was and what were the activities of these people that he should testify about. And even if we presume the witness's best intentions, that he does not want to lie, to consciously hide things, it is completely understandable that after so many years he has lost the orientation both in time and space. Therefore, out from the many stories, many segments, we are trying to make a mosaic of events. Therefore, it is normal that in some parts we accept what these witnesses say, because they fit into the whole picture of events which we make from these testimonies, and in some segments we do not accept it because it does not correspond with the reality.

Additionally, in the meantime during all these years people have on different occasions mutually exchanged their stories, their information, so there is objectively the question what is here after fifteen years the result of real memories, and what is a result of what the others were reminding of.

The problem is also that the witness who has not yet been interrogated reads day after day in the press what other witnesses already told, and it happened to me more than once that when in the courtroom I ask the witness how he knows something that I get the answer that he read it in the newspapers

The Hague Witness

Last year, in the "Ovcara case", we tried to get one witness who testified in the "Milosevic case" and the "Dokmanovic case". We knew his markings from the documentation and we knew that this witness has valid knowledge linked to our case. We have tried through The Hague Tribunal's office for the protection of victims and witnesses to have this witness testify here as well, but he refused to testify in any way.

As the presiding judge of the chamber in the process "Ovcara" how much were you aware of the responsibility to show to both our and the international public that our judiciary is capable of dealing with war crimes?

I was aware of this kind of responsibility the very moment I accepted to work in the war crimes chamber, although I did work earlier before also on cases that were quite in public focus. The publicity of work in courts is a constitutional, legal category, court sessions are public and only exceptionally can the audience be excluded. I think this has a positive influence upon all participants in the court proceedings and in the trial chamber, upon solicitors and prosecutors.

Increased public interest has a positive influence upon the attitude of all people in a courtroom in regard to their work, in contrast to some cases which are not interesting for the media in which situation we all are objectively a little more relaxed. I am fully aware of the responsibility. We have a law on cooperation with The Hague, the judges had certain education in the field of international humanitarian law, and we have also privately specialized. Provision 10 of The Hague Tribunal's Statute says that this Tribunal has primacy in regard to domestic judiciary. This means that at any moment The Hague Tribunal can overtake a case from us, regardless of the phase reached, and can also characterize a case that we have finalized as a case in which not all rights were respected, primarily those of the defendant. A correct and fair trial implies a correct and fair procedure, and in case that The Hague Tribunal decides even in regard to a final decision that the trial lacked this, it can take it away from our judiciary and reopen the case. The court chamber which decided on "Ovcara" was aware of that. We were aware of this kind of monitoring and of our responsibility because it would certainly be a disgrace for our judiciary, our country and us personally if something like that would happen.

In proceedings you conduct in the War Crimes Chambers, apart from "Ovcara" here are also "Scorpios" and "Zvornik", how do you see the encounter in the courtroom of the defendants, victims, victim's families, defendant's families?

We have such situations also in regard to other offenses which are dealt with in regular proceedings in the district courts - that in the same room there are the defendants, victims, relatives of the victims, relatives of the defendants and there is always animosity between these two groups of people. In this sense, this is nothing new for us. When it comes to war crimes, there is a stronger dimension because these are crimes committed in completely different circumstances.

Just as an illustration, we had a situation during the "Ovcara" trial that the witness was a man who was on the other side, so that in the courtroom there were people who had been looking at each other over

the wires, shot at each other and wanted the death of the other at those times.

In the courtroom, when the situation had it that they meet again, the witness from Croatia said – the Serbs turned to some of their ideals, we Croats to ours. We were young and we had then our ideals.

Because of these ideals and in their name, people have committed inexplicably serious crimes, people were killing those whom they did not know and in regard to whom they had no personal relationship. During regular proceedings we have the situation that somebody killed someone out of revenge, there is mutual intolerance; as a rule, these people knew each other and had some personal relationship which culminated in murder. In the case of war crimes this is not present. As a rule, the perpetrators and the victims have no personal relationship and this complicates things further in the courtroom, in the sense that the victim's relatives do not understand why the defendants did what they did when they even did neither know the victim nor had the victim done anything to them but was merely caught somewhere.

Where there threats to members of the court chamber dealing with "Ovcara"?

No. All we who work on these cases are under security measures, security estimates are made. I did not notice that I was jeopardized. No threats, not even as a hint, either to me or the members of the court chamber.

Can the death of Slobodan Milosevic in The Hague and the cessation of the process against him in the Tribunal, indirectly effect the trials for war crimes here?

I think this will have no influence upon trials here. In our chamber we also talked about this, i.e. about the statements of witnesses interrogated in the proceedings against Milosevic, which are linked to our cases and which could be interesting for our trials as well. We came to the conclusion that there will be no influence. We shall be in the situation to interrogate certain witnesses, and some not. We shall not be in the position to interrogate them if they are under protective measures of The Hague Tribunal, and in the "Milosevic case" there were many of them, which means that we shall not know the identity of the witnesses, some are displaced, hidden for security reasons and will not want to testify in our cases.

Milosevic's death and the end of his trial in this regard do not mean a thing. Because even if the trial against him were still ongoing we would be in the same situation and with the problem whether or not we can get a certain witness.

Without TV Cameras

What do you think of TV broadcasts from courtrooms with trials for war crimes?

I hope and expect that we shall not allow TV cameras into courtrooms, although there are those who support this. I do not think that the courtrooms should be exposed to public eye to this extent.

Do the war crime trials contribute to public knowledge in Serbia of events in the past?

Certainly they do. Now we are in the situation that after a long time of hiding we get to know certain things. I would be in favor of bigger media coverage of these trials. And also in regard to trials in the region. We constantly complain that we judge ours, that The Hague Tribunal judges only ours, and who is then judging those who committed crimes over our victims? It is completely natural that everybody deals with their own. What would be the public's odium if we would extradite to courts in the region perpetrators who are our citizens. I think that our courts should hold trials against our citizens, and I believe that also every citizen of ours would say he wanted to be brought to trial in the court of his own country.

How do the media cover the trials in which the accused ones belong to their country? In our country – we do not at all. How much are Zagreb, Split, Sarajevo writing about cases standing trial there? Very little. I support reporting from all courtrooms in the region as much as possible, so that we see what is really going on there.

How do you evaluate the reporting of our media from trials for war crimes?

They are correct. They can disturb us partly, in the sense that witnesses who testify after fifteen years have forgotten a lot of things, in the meantime they have heard various stories, and until they are interrogated they read in the press statements of other witnesses, so there is the question whether such a witness is really sent away from the courtroom until his testimony.

The witness is reading day by day what the others have said before him. This can disturb us, because it

happened to me more than once that when in the courtroom I ask the witness how he knows something that I get the answer that he read it in the newspapers. I do not see the appropriate way for reconciling these two confronted interests. Maybe, if the media would restrict their reports from the courtroom to general things, without details, because it is the details that we use to actually check the story of the witnesses.

Will the establishment of the office for support to witnesses and victims make things easier for the court and to what extent?

This will certainly make our work easier. From trials held up to now it is undisputable that some of our citizens participated in the war as members of voluntary units or have come from these regions and taken our citizenship, and are accused for having done something in the republics of their origin. Now you have the situation that, as a rule, you have the accused ones here, and the witnesses and victims there. The question is how to bring both the victims and witnesses to testify. To have the witnesses come alone and testify, to meet the people which are accused of serious crimes – this is hard to expect. Therefore this office for support for witnesses will be of help to us. We shall be disburdened of thinking how the witness will come, who is going to wait for him on the border crossing, where he is going to sleep, how he shall be covered in security terms, how he shall leave Belgrade.

This is what until now we had to do, and this work will be overtaken by the newly established office, so that we shall be disburdened.

Ljiljana Jankovic