

The Topic of the Issue

INTRODUCTION TO THE TOPIC OF THE ISSUE

FACING THE PAST – A GLOBAL PROCESS

Editorial Board

The turn of the 20th century was marked by the emergence of a post-Cold War and post-communist period which released a tide of newly created liberation and democratic energy which in many national societies throughout the world has to the utmost extent pushed up to the forefront the issue of facing the past and the responsibility for consequences of war destructions, war crimes and crimes against humanity. The international legal principle on the exemption from the statute of limitations of the crimes of genocide, war crimes and similar misdeeds that has previously already been incorporated in law, in this crucial period was reaffirmed to such an extent that the most important international organizations, individual states and also the strengthened non-governmental sector increasingly see the facing with responsibility for war related crimes in a substantial and quality manner by certain national elites and those in power as the most important criterion for evaluating the maturity of societies to join the family of democratic peoples and their integration.

Formerly blocked (except in the case of Germany) by the Cold-War equilibrium of power, facing with the past was put, somewhere even retroactively, into the forefront, meeting approval of not only the victims of violations of humanitarian law, but also of the broadest democratic public. As if the time has come in which responsibility for crimes of this type will not and must not remain unpunished, as if the time has come which will confirm that "crime does not pay" because, sooner or later, those who ordered crimes and the perpetrators will be sentenced and punished.

The process of facing the truth on war crimes is always a slow and painstaking one and most often, unfortunately, the initial energy for this facing does not come from the very societies whose individual members during the previous wars and conflicts committed gravest violations of humanitarian law, but from the outside. Here we have a process of political reeducation which lasts for years, but which if lead properly gives results. Let us remind, for example, that nowadays in Germany and Austria (as, actually, also in many other democratic countries) it is not allowed, not even in an academic way, to deny Holocaust or make it relative, with a threat of serious criminal law consequences! In order to have a successful process of facing the past and have it produce the most important thing – to guarantee, at least, that similar things will never happen again – it is necessary to have the ruling elite and its state in each society support this facing with the past; in other words, that overtaking responsibility and punishing the responsible ones becomes authentic state policy.

There are numerous contemporary examples that facing the crimes from the past has become a tendency and that the main argument in favor of convicting the responsible ones and rehabilitating the victims is seen in the need to at least subsequently serve justice in order to avoid repetition of history. Santayana's thought that "those who cannot remember the past are condemned to repeat it" is today more actual than ever. In democratic countries, but also in major international organizations from the United Nations and the Organization for Security and Cooperation in Europe (OSCE) to the European Council, the European Union and the Organization of American States (OAS), it has become a generally accepted view that an objective revalorization and reexamining of the traumatic past has become an imperative and obligation of democratic development of every country. In other words, facing the past has developed into a global process. This is also the main topic that we write about in this issue, the fourth one, of *Pravda u tranziciji*, with the basic idea to show that this is not an exclusive appearance whose "victim" are only the peoples of the former Yugoslavia, but rather a welcome process whose result is an overall maturing of the international community and certain national societies. This makes it possible to offer to the victims of crimes whatever kind of an even belated satisfaction, and it also makes it possible to create more reliable conditions for a more human treatment of participants in all kinds of international and internal conflicts in the future. This process will certainly contribute to a further strengthening and affirmation – what is of even greater significance – of a more scrupulous respect of international humanitarian law.

Nowadays the past is faced not only by establishing special courts, special tribunals for trials against those responsible and by establishing truth commissions, but also by renewing and revision, in political and academic circles, of the crime of genocide and crimes from the past whose perpetrators until today have managed to escape responsibility and the sanctions they deserve. Only a few years ago there was not even speculation on the possibility to have an already ancient and forgotten Turkish genocide over

Armenians, from almost hundred years ago, become topical to the extent to have Turkey's facing with the deed become one of the most serious obstacles for the realization of the strategic goal of Turkish foreign policy – integration into the European Union.

The most convincing axis of facing the past are, however, courts for war crimes which are established upon special decisions of either the international organizations, most often the UN (examples: The Hague Tribunal for the former SFRY and Rwanda), or by decision of national organs (examples: Special Court for trials against the Red Khmers in Cambodia, trial against Eichmann in Israel and others). Increasingly present become also mixed courts for war crimes in which there are domestic and foreign judges (examples: Special Tribunal for Sierra Leone, Kosovo-UNMIK, Bosnia-Herzegovina Court, Special Unit for crimes in East Timor, Special Tribunal for Saddam Hussein in Iraq, etc.). In this issue we devote attention to some of the above mentioned courts: the interview of Jasna Sarcevic-Jankovic with Binta Mansaray, the chief coordinator for informing the public of the Special Tribunal for Sierra Leone, shall tell us how this African country, which until recently was the arena of grave violations of humanitarian law, is facing this heritage; the text of Milan Simic on the results of the work of the Special Unit for Serious Crimes of the District Court in Dili (East Timor) raises the question whether these results, as well as the results of the ad hoc Tribunal in Indonesia, would have been better had there been established at the very beginning of the UN Transitional Administration in East Timor an international tribunal for East Timor along the model of tribunals for the former SFRY and Rwanda.

In many countries were established – regardless of whether or not there were special courts – also parallel commissions for "truth" or for "reconciliation" which, with or without international participation, dealt with drastic violations of human rights in the past with the aim to alleviate the post-conflict tensions through facing the previous events, and to enable both the ethical valorization of committed misdeeds and the punishing of the most responsible ones. Different types of reexamination of war related grave experiences from the past are very numerous in all parts of the world. Apart from the already mentioned opening of the issue of Turkish genocide over Armenians here are also the relatively recent Report of the Truth and Reconciliation Commission in Peru, the public debate on the commanding role of the former American senator Bob Kerry in the murder of a group of civilians in the Vietnam war, as well as the role of the former American State Secretary Henry Kissinger in a number of local conflicts during the Cold War, a broad discussion on the role of collaborationists and the Pettain's government during Nazi occupation, on the role of the French Army in violating humanitarian law during the occupation of Algeria, the most recent reexamination of the crime of the Japanese Army in Korea and China, etc. The best known example of the successful work of the reconciliation commission is the work of the commission in South Africa after abolishing the apartheid regime, and one of the examples of unsuccessful commissions are those which were proposed or formed in the territory of the former Yugoslavia after 1996. One attempt to form a truth commission in Bosnia-Herzegovina, namely the "commission for the establishment of confidence" as it was called by the sponsors of the initiative from the United States Peace Institute, is dealt with in this issue of Pravda in tranziciji by Refik Hodzic from Sarajevo, who is rather skeptical in regard to the possible scope and results of such an attempt.

A particularly major contribution and proof that facing with the past has become a global process and a trend is also the multilateral agreement on the establishment of an International Criminal Tribunal, which was established at the international diplomatic conference held in Rome, on July 18, 1998, after many years of attempts to create a standing international criminal court. This agreement by which the state-signatories accept the Statute of the International Criminal Tribunal establishes a new international court – the International Criminal Tribunal. It establishes the main organs, functions and main rules of procedure of this Tribunal, as well as provisions which define the crimes which fall under its jurisdiction. The fact that the major states (U.S.A., Russia, China...) do not want to sign this agreement, because they do not want to allow international courts to put on trial their citizens, gives rise to concern but does not diminish the major historical significance of the establishment of this court.

One of the possible forms in which to face the bad past – and the bad consciousness – are also apologies of statesmen given to other peoples for evils inflicted upon them as a form of not only making a distance from the committed crimes, but also as a "civilized act" which, no doubt, represents a certain, albeit not always also a sufficient satisfaction. The problem of apology, on whether it really can change anything, and on what the presumption of collective apology is based – opening also the issue of apology as an individual act of each moral individual – is dealt with in this issue in a very interesting way by Marija Sajkas, postgraduate student at The New School University of the New York University. Drago Pilsel informs us on an extremely original initiative, the "International School of Peace and Forgiveness" in Fuzine, where Croats and Serbs, but also members of some twenty odd countries, learn the reconciliation process from the Hutus and Tutsis and exchange experience in regard to facing the past.

This issue of Pravda u tranziciji, like all the previous ones as well, wants to shed light to the highest possible degree on whether or not, and to which extent, and in which way, has the society in Serbia caught up with the global process of facing the past. Although some of those who we talked with in this issue (Biljana Kovacevic-Vuco and Nadezda Gace) are rather pessimistic in regard to political

developments and the situation in the judiciary and the media in Serbia, the professionally honest work of the War Crimes Chamber of the District Court in Belgrade and the War Crimes Prosecutor – in which regard the domestic and foreign analysts alike express their satisfaction – is the fact which gives hope that the process of facing the past has headed in a good direction. Vesko Krstajic, judge of the War Crimes Chamber of the District Court in Belgrade, points at the complexity of trials for war crimes which, as he says, “are scattered around in time and space, burdened with a big number of perpetrators, numerous victims, where there are no material proofs, and where many witnesses must be interrogated, and not eye-witnesses but witnesses in the ‘second degree’”. These crimes are much more complex and represent something new in our judicial experience, and present for each judge, in the professional sense, a big challenge. If it is a comfort, it should be said that potential obstacles which Serbia is facing in organizing trials for war crimes are not unknown in the practice of other societies.

What our judges and prosecutors dealing with war crimes are insisting upon – and rightly so – is the conviction that the task of the Court and Prosecution in Belgrade, as well as in other places, is not to characterize or evaluate the broader social and political developments in these territories during the nineties, and that this is a task which should be left over to historians or some other possible future truth commissions. It is of utmost importance that the trials in Serbia remain, as was the case until now, on the highest professional level. Serbia will thus give – particularly having in mind that the work of The Hague Tribunal is coming to an end – major contribution to the global process of facing the past, proving to the “global village” but also to herself, that she is on the road of positive maturing which is to lead her on an equal footing to the family of democratic European states.