

INTERNATIONAL ASSOCIATION OF PROSECUTORS

10th IAP European Regional Conference War Crimes – whose crime is it? The Hague, 3 – 5 March 2010

Dear ladies and gentlemen, honourable colleagues,

My name is Dušan Knežević. I have served as a Deputy War Crimes Prosecutor since the foundation of the Serbian War Crimes Prosecutor's Office in 2003.

In the context of this Conference, which looks into the war crimes issue, I would like to share with you some observations about the work of judicial institutions in the country that I come from.

Let me start with a couple of brief (introductory) remarks.

When we talk about trials addressing war crimes committed in the territory of the former Yugoslavia, a prevailing attitude in my country is that cases against individuals from the highest levels of command responsibility, which were originally opened before the Hague Tribunal, should also be adjudicated by that court. All other war crimes proceedings should be conducted and completed before national, i.e. domestic courts.

It is perfectly clear that national prosecutions are not possible without full cooperation among judicial institutions of the countries in the region. The leading roles in that cooperation belong to Serbia, Croatia and Bosnia-Herzegovina, since these states were the scene of the majority of war crimes committed in the former Yugoslav territory.

It is a generally accepted opinion that Serbia's judiciary fulfils all conditions for the organization of fair and impartial war crimes trials before national courts. Some arguments in support of the said opinion will be presented here.

Let us start from the beginning.

Firstly, the *organizational / technical aspect*:

In Serbia, war crimes trials are held in Belgrade, in a building specially suited to high-risk trials. With its area of 7,000 m² and the latest technological infrastructure, the building is equipped with the most advanced safety systems and all operational facilities needed for war crimes proceedings. Its five

courtrooms are well suited to trials that address the most delicate organized crime and war crimes cases. Beside the equipment that enables the transmission of statements via a video conference link, the building has a modern media centre that can accommodate up to 35 journalists. Within the building compound, there is also a detention unit – part of the Central Prison.

Secondly, the aspect relating to the legal framework:

In the aftermath of the changes introduced in the 2004 Act on Organization and Competence of State Authorities in War Crimes Proceedings – which now accepts the validity of evidence collected or presented by the ICTY and by its investigators before national courts – evidentiary proceedings have been significantly facilitated. The only condition that has to be fulfilled in that respect is that such evidence has been obtained in the manner envisaged by the ICTY Statute, and in accordance with its Rules of Procedure and Evidence. Through our contacts with officials of the ICTY Prosecutor's Office, we have learnt that they are in the possession of extensive evidence which has been unfamiliar to us. Since such evidence is now admissible in domestic war crimes proceedings, we shall certainly use it.

As a result of the new Criminal Procedure Act (passed in 2002) and changes in war crimes legislation (made in 2009), several new institutes have been introduced into our legal system – namely those of protected witness, witness collaborator and plea bargain, all of which have opened new prospects for better operational effectiveness and faster disposition of ongoing cases.

The same refers to the 2006 Act on Protection Programme for Participants in Criminal Proceedings, which has contributed to a more comprehensive protection of this sensitive category.

The third aspect touches the competence of legal professionals to cope with war crimes proceedings:

Judges and prosecutors who deal with war crimes cases have been selected from among experienced and most prominent professionals specialized in criminal law, who have handled the most complex cases of serious crimes, including organized crime and war crimes matters. This far, all war crimes trials before the Belgrade court (e.g. *Ovčara*, *Scorpions* and *Zvornik*) have been conducted in compliance with the topmost internationally recognized standards and with firm adherence to the legal principles of independence and fairness. There has been no single instance of a miscarriage of justice, or selective accusations on any grounds whatsoever.

The foregoing facts have also been confirmed by independent observers and international experts, as well as by victims' families.

There is no doubt that – like it is the case in any other job – members of the Serbian national judiciary have to face certain objective difficulties and problems. It should be noted that in most cases, war crimes were committed in the territory of one state, perpetrators are in the territory of another, whereas evidence and witnesses are frequently scattered all around the world.

The foregoing facts clearly indicate the importance of cooperation with judicial and law enforcement authorities of other states, and primarily of those in the region. Such a positive example is cooperation between Serbia and the Republic of Croatia: a memorandum signed between our two States, as well as the Agreement on Cooperation, have resulted in the referrals of criminal prosecutions in a number of cases.

Likewise, the improving cooperation with BH has resulted in the referrals of several cases, of which one has been resolved in the first instance, whereas some others are still under way.

If such cooperation were established with the EULEX judicial authorities in Kosovo and Metohija, that development would certainly represent a new breakthrough in the area of war crimes prosecutions.

In conclusion, we do believe that full and comprehensive interaction of the states in the region – along with the valuable role of the international community – is the only way to bridge the 'impunity gap' and bring war criminals to justice, whereby some of the wrongs done to victims and their families could be duly redressed.

Thank you for your attention and patience.

Dušan Knežević
Deputy War Crimes Prosecutor