

INTERVIEW MIT IRISA ČEVRA

Irisa Čevra arbeitet als Rechtsanwältin in Sarajevo. Sie ist spezialisiert auf Strafrecht und insbesondere Kriegsverbrechen. Von November 2007 bis Februar 2010 leitete sie die Legal Advisory Section in der staatlichen Anklagebehörde von Bosnien und Herzegowina. Von Juni 2009 bis Juni 2010 nahm sie für diese Behörde als Visiting Professional teil am Projekt Joint European Commission and ICTY Training Project for National Prosecutors and Young Professionals from the former Yugoslavia. In diesem Interview spricht sie von ihren Erwartungen an das internationale Strafgericht für das ehemalige Jugoslawien (International Criminal Tribunal for the former Yugoslavia, ICTY), und wie dessen Arbeit ihrer Ansicht nach zur Versöhnung in Bosnien und Herzegowina beigetragen hat. Das Interview führte Marie-Ursula Kind (in englischer Sprache).

1. As a lawyer and citizen of BiH, what did you personally expect from the ICTY?



I closely followed the work of the ICTY since it was formed by Resolution 827 of the United Nations Security Council of 25 May 1993, in the midst of the terrible events in BiH. At that time, the news of its estab-

lishment was perceived as a glimpse of hope that the war could end soon and war crimes would not go unpunished.

It is well known that a large number of grave violations of the international humanitarian and criminal law, including genocide and crimes against humanity were committed during the 1992-95 war in Bosnia and Herzegovina. To me as a lawyer and citizen of BiH, establishment and functioning of the International Criminal Tribunal for the former Yugoslavia (ICTY) gave hope that most serious crimes committed during the wars in BiH and other countries of the former Yugoslavia since 1991 would be prosecuted and perpetrators would be brought to justice.

I have seen the ICTY as an independent, international judicial body which would investigate, prosecute and adjudicate the most responsible perpetrators of grave breaches of the Geneva Conventions, violations of the laws or customs of war, genocide, and crimes against humanity in accordance with the highest principles of the international criminal and human rights law. The purpose of the Tribunal was to uncover judicial truth of what happened during the wars in 1990s, sanction the perpetrators, and at the same time serve to

develop judicial practice that would help other courts and tribunals to better prosecute similar atrocities.

2. Were your expectations met?

I believe that the ICTY has largely fulfilled its mandate to prosecute most grievous violations of the international humanitarian law and the laws or customs of war. The numbers speak for themselves, 161 persons were indicted, 111 trials were held and 90 persons were convicted and sentenced by the ICTY. Victims of war crimes certainly felt that justice was done when some of the notorious war lords, including Radovan Karadžić and Ratko Mladić, were arrested, tried and convicted by the Tribunal. I think that the ICTY has done a tremendous job in collecting, categorizing and analysing large volumes of documentary evidence, investigating suspects, questioning witnesses that all were reflected in detailed and complex judgments. Each judgment served to describe historical events surrounding the counts of the indictment, as well as included comprehensive account of applicable legal theories and standards relating to the alleged criminal activities and individual criminal responsibility.

It should be said that the question of war crimes processing is still a somewhat political issue in every country of the former Yugoslavia which resulted in the fact that these countries were reluctant to investigate and prosecute crimes committed by the "right" side. The ICTY provided an independent and objective approach to the issue of war crimes prosecutions. In this sense, the ICTY helped the national judiciaries to firmly tackle the issue of the vast majority of unprosecuted war crimes following the methods of the ICTY Office of the Prosecutor and court practice of trial and appellate chambers.

Put in simple words, the ICTY paved the way for national jurisdictions in the former Yugoslavia to continue investigations and prosecutions of war crimes.

In terms of what should have done better, perhaps, the ICTY should have adopted a strategy guiding its work at a much earlier stage, possibly before initiating investigations and issuing first indictments in 1997. This strategy would have helped to structure the work and focus the resources around the most complex cases. Some of the first indictments and trials included less complex cases of individual perpetrators which could have been avoided should the strategy have been developed.

I also think that the ICTY relatively late started with outreach activities. Outreach was one of the most significant steps in the process of reconciliation. The absence of a strategy also contributed to the fact that the project of the ICTY legacy, i.e. transferring of knowledge and achievements of the ICTY to domestic judiciaries, started with delays.

3. When you were the Head of the Legal Advisory Section at the Registry for the Prosecutor's Office of Bosnia and Herzegovina, what were the main aspects of cooperation of this office with the Office of the Prosecutor (OTP) of the ICTY in The Hague?

The Prosecutor's Office of Bosnia and Herzegovina (PO BiH) cooperated with the various organs of the ICTY on several different levels. This cooperation has been in place since the establishment of the Special Department of War Crimes of the PO BiH in 2005 and has increased since that time. Together with representatives of the ICTY OTP the Chief Prosecutor of the PO BiH developed a strategy on the manner in which to establish the Special Department for War Crimes, the organizational structure and how future cooperation would be coordinated. Today, cooperation and coordination with the ICTY occurs on a daily basis.



ICTY-Gebäude
Bild ICTY

Cooperation with the ICTY mainly included access to ICTY evidence, requests for assistance, the transfer of cases and the issue of variation of witness protection measures imposed by the ICTY. Since 2006, the ICTY transferred to the PO BiH 10 cases, in which the indictment was confirmed and a number of cases in which the ICTY did not conclude the investigation before September 2004. Members of the Prosecutor's Office of BiH received training in international humanitarian law and the practice of the ICTY and discussed specific cases with ICTY Prosecutors.

The PO BiH frequently required to solicit assistance from primarily the OTP, but also from the other organs of the ICTY such as the Registry, Chambers and Office for Legal Aid and Detention. Such requests for assistance concerned many matters including the search of ICTY databases - ICTY OTP Electronic Disclosure Suite and the ICTY Registry Judicial Database, transfer and certification of documentary material and evidence, trial transcripts, material evidence, trial exhibits and access to ICTY witnesses and accused. The ICTY responded to such requests in a timely and successful manner.

4. From June 2009 to June 2010 you were the liaison prosecutor for BiH at the ICTY. What did you enjoy about this time and what were the main challenges?

I was privileged to participate in the implementation of the Visiting National Prosecutors Programme as a first national liaison prosecutor for BiH. The main purpose of the Visiting National Prosecutors Programme is to strengthen the capacity of national prosecutors to deal with the large number of war crimes cases stemming from the conflict

in the former Yugoslavia through "on the job" training. This training includes the use of electronic databases and the procedures to be followed to access confidential material pursuant to the Rules of Procedure and Evidence of the ICTY. At the end of June 2009, I was among three prosecutors/legal advisers from the region (one from Croatia, one from Serbia and one from Bosnia and Herzegovina) who began working as liaison prosecutors at OTP.

I enjoyed conducting researches and consultations with staff in OTP on cases investigated and prosecuted at the national level. I had the opportunity to learn about methodologies of searching and reviewing large volumes of material as applied by OTP criminal analysts. I also enjoyed the close interaction and cooperation with my regional counterparts where we exchanged knowledge and experiences in war crimes prosecutions.

The biggest challenge to face was that there were large number of open war crimes cases in BiH, in which searches of the ICTY databases needed to be conducted. Even though OTP provided maximum support and cooperation, its resources were limited and sometimes it took several months to answer voluminous requests for assistance.

5. Has ICTY case law had an influence on the development of substantive and/or procedural criminal law in BiH?

The ICTY case law had a huge influence on the development of substantive criminal law in BiH. This conclusion mainly refers to the establishment of the JCE doctrine in the judicial practice in BiH, especially the systemic type of JCE that was applied in cases of detention centres. The ICTY practice helped in the development of national adjudication of crimes against humanity and genocide. For instance, the conclusion of the ICTY chambers that rape was considered a crime against humanity was applied in many national war crimes cases including wartime sexual abuse. Use of electronic evidence from the ICTY became regular practice in domestic war crimes trials. Expert reports of the OTP analysts were starting points for analytical reports of the PO BiH. These reports were also used as evidence in trials. Adjudicated facts by the ICTY, particularly those related to the existence of wide spread and systemic attack on the civilian popula-

tion, as part of crimes against humanity, were regularly proposed and adopted by the court panels in war crimes cases.

6. Has ICTY through its work been able to contribute to bringing justice to the victims of BiH?

I think that the ICTY through its work very much contributed to bringing justice to victims of BiH. ICTY judgments in which the accused was convicted for the crimes contained a detailed account of individual crimes against identified victims. Perhaps it is worth mentioning the case against Milan and Sredoje Lukić where victims filed civil complaints for compensation before local courts. In general, victims felt that the ICTY OTP represented their interests in the prosecuted cases. This feeling was stemming from the practice of the OTP to organize meetings and consultations with victims' representatives. Based on this practice, the PO BiH also started to regularly meet with organizations and associations of victims of war crimes relating to the ongoing activities in these cases.

7. Has ICTY through its work been able to contribute to reconciliation in BiH and in the region?

I would say that the work of the ICTY represents a solid basis for the reconciliation process in BiH. The ICTY case law included a comprehensive database of crimes committed in BiH and to a large extent provided for factual description or judicial truth of what happened in certain places. Reconciliation is a long-term process that would require involvement of local communities and media to allow victims to tell their stories that would be acknowledged by all three ethnic communities in BiH. In 2008, I was also involved in a national attempt to develop a strategy for transitional justice. We participated in a number of meetings and consultations with victims, where we presented the concept of transitional justice and how it should be addressed in BiH. During those interactions, it was almost a unanimous demand from the victims that BiH needed judicial truth first. I became aware that the majority of participants in the consultation process only believed in judicial truth as the most ultimate form of transitional justice to them.

8. If you could design an international tribunal for a situation like it was in

BiH, would it be like the ICTY or would it be different?

I think that the ICTY was cleverly designed. Its structure and organization could serve as a model to any international tribunal, which it did for tribunals in Cambodia and Sierra Leone. I believe that the International Criminal Court incorporated some of the ICTY structures and procedures into their organs and mechanisms. Some of the lessons learnt from the ICTY would be to establish tribunals in countries where war crimes were committed and develop effective prosecutorial strategies that would transfer knowledge and practice to national courts and enable a reconciliation process to take place.

9. What are the biggest challenges you are facing as a defence attorney on war crimes cases in BiH today?

I think that the trials before the Court of BiH in war crimes are highly organized and the procedures adopted by court panels are generally well developed and effective. The biggest obstacles in practicing law on war crimes cases would be the lack of consistent and reliable court practice. The case law seems to vary depending on the court panel that is trying the case. It is also not uncommon that appellate courts take different stances in cases including identical factual circumstances. Another issue that impedes the work of practitioners is that war crimes trials usually take several years to complete, which additionally

complicates the effective and efficient administration of justice in these cases, considering the old age of defendants and how much time passed since the crimes took place.



Sarajewo

