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THE INTERNATIONAL ROLE IN THE RECONCILIATION PROCESS - A VIEW FROM SERBIA

The international role in the reconciliation process in Serbia can be best seen through the work of the International Criminal Tribunal for Yugoslavia (ICTY) and its impact on Serbian society. There are two main reasons to believe so. The work of the ICTY, which was established by the UN Security Council with the mission to contribute to the restoration of peace by promoting reconciliation in former Yugoslavia³²², directly affects the process of the truth, responsibility and reconciliation in Serbia. The other reason lays in the fact that there were no serious attempts to deal with these issues at a national level.³²³ An overview of the impact of the ICTY in Serbia can be given from several perspectives.

Political Environment

The attitude to the Hague Tribunal was the one of the main political issues in Serbia since democratic changes took place in October 2000. Now, it is still very highly-ranked in the agenda. One should recall the fact that one Government had to step down when *the Cooperation with the ICTY Act* was adopted. Also, when Milosevic was arrested in April 2001, the Serbian Government and the president of the then Federal Republic of Yugoslavia

³²² See ICTY objectives, www.un.org/icty.

³²³ The Commission for Truth and Reconciliation established by the then President of FRY, Vojislav Koštunica was poorly organized, without clear jurisdiction, missions and goals. Although it still operates, its effects are invisible and without influence on Serbian society. The whole strategy and work of the Commission are missing the point and one can not be wrong to believe that this Commission was just a curtain to create alleged democratic atmosphere and supposed willingness to face the past.

Vojislav Kostunica clashed over this issue. It was the beginning of the final split in the Democratic Opposition of Serbia (DOS)³²⁴, the coalition which had deposed Milosevic on 2000, which culminated after Milosevic was transferred to the prison in Scheveningen in June of the same year.

The perception of the ICTY is a subject of manipulation in political struggles in Serbia. Roughly speaking, Serbia is currently divided into two camps. One, which is pro-Western, pro-modern and oriented towards integration in Europe, and the other one which is conservative, nationalist and anti-Western. Both groups have the same problem with the ICTY. Their political representatives seem to prefer to be silent over the ICTY and war crimes because these issues are very sensitive and traumatic and their public examination can bring lower voter support. No representative of the ruling parties has ever explained the true objectives of the ICTY and especially its relevance for justice, or addressed the question of what should be done about the crimes committed. And for the purpose of this paper, it should be stressed that officials and politicians are the ones who are dominantly setting public opinion attitudes toward the ICTY.

However, while the former Government of Serbia has extradited suspects to The Hague, Vojislav Kostunica's Government so far hasn't extradited anyone to The Hague tribunal.³²⁵ The political atmosphere in Serbia since the last elections held on December 28th 2003 shows a restoration of the values from the Milosević period: traditionalism, nationalism and denial of the war crimes. The new Government sometimes encourages these trends. Prime

³²⁴ The DOS (Democratic Opposition of Serbia) was originally made up of 18 political parties differing quite widely in orientation and voter support which came to power at elections held in Serbia in September and December 2000, marking the end of Milošević's authoritarian regime. Soon after, however, a conflict broke out between the DOS's biggest constituents, the Democratic Party (DS) and the Democratic Party of Serbia (DSS), and the DSS pulled out of the coalition. The chief difference concerned contrasting views about the pace of reforms in Serbia, personified in the party leaders: the Serbian Prime Minister, the late Zoran Djindjić (DS), and the former President of the Federal Republic of Yugoslavia, Vojislav Koštunica (DSS).

³²⁵ That was the reason for the President of the ICTY to report Serbia and Montenegro's non-cooperation with the Security Council in May of 2004. See www.un.org/icty/latestdevelopments.

Minister Vojislav Kostunica, his party and their coalition partners seem not to see the importance of dealing with the problematic past of Serbia. On the contrary, the recent steps of the new Government of Serbia show the anti-modern approach of the new Government ministers, especially in the field of justice and education reforms. The tragic events from March 17th of this year in Kosovo just assisted in the creation of xenophobic attitudes of the majority of the Serbian population towards the international community and especially towards the role of UNMIK and KFOR in Kosovo.

By constantly attacking the ICTY in the media and challenging its legitimacy, Milošević's regime³²⁶ permanently reduced confidence in the institution to a negligible level, and managed to deform the idea of international justice to sheer injustice towards the Serb nation for the sake of “domination of the Western powers and the establishment of the New World Order”. The former ruling DOS coalition has not succeeded in defining a strategy for cooperation with the ICTY. Cooperation was seen as a “trade with the West” from the perspective of ordinary citizen.³²⁷ In fact, attitudes towards it differ widely within the adherents of political parties in Serbia; four major political approaches can be discerned:

1. That of parties with a civic (non-nationalist) orientation, which advocates unconditional co-operation with the ICTY and have programs calling for seeking truth and responsibility and prosecuting war criminals; such parties have relatively little support.
2. That of parties whose support for the ICTY is pragmatist, characterised by appeals to fulfil all conditions laid down by the international community towards Serbia's integration into universal and European organisations.

³²⁶ The Socialist Party of Serbia (SPS), the Yugoslav Left (JUL) and the Serbian Radical Party (SRS) were partners in Milošević's rule. The SPS is headed by Milošević himself, JUL by his wife Mirjana Marković and the extreme right wing SRS by Vojislav Šešelj. Milošević and Šešelj are at The Hague, on trial for war crimes, while the Serbian authorities have issued an international arrest warrant for Mirjana Marković, who is suspected of being behind a number of political murders in Serbia.

³²⁷ *Public Attitudes towards ICTY*, SMMPI and Belgrade Centre for Human Rights, July 2003.

3. That of parties whose attitudes towards the ICTY are extremely negative and differs little from that of the former regime, save for a somewhat softer and more careful political vocabulary.
4. That of political parties who represent Milosevic regime: the Serbian Radical Party and Socialistic Party of Serbia whose attitudes towards the ICTY are well known.

Attitudes in the population

After October 2000, attitudes towards the ICTY have immediately become somewhat more positive, but have shown little progress since. The ICTY remains, alongside NATO, among the few international institutions many people (around 40%) see as threats to Serbia.³²⁸ Government revelations about ties between the assassins of Serbian Prime Minister Zoran Djindjic, organised crime in Serbia and war crimes did induce a temporary shift in attitudes. After this temporary shock the rating of the successors to the moderniser Djindjic has slipped and support for right-wing and nationalist parties has grown. Results of the December elections are confirming these trends.

Citizens of Serbia are generally poorly informed of the basic facts about the ICTY (only 6% believe that they are fully informed) but a very high percentage hold very strong views on issues related to the ICTY. The rating of ICTY in Serbia is very poor. Attitudes towards the office of the prosecutor and those towards the court as an assembly of judges do not differ, indicating that most people do not differentiate between those institutions: this certainly also affects assessments of the ICTY's objectivity and impartiality. Much mistrust exists towards the guarantees offered to defence counsel. It is generally believed that the ICTY is biased. The reasons for this should probably be sought in the following:

³²⁸ Ibid.

1. Many years of aggressive state propaganda aimed at delegitimising the institution;
2. Lingering xenophobia, reflected on the political plane mainly in distrust of international organisations;
3. Ethnic nationalism, which includes advocacy of absolute sovereignty of states, as a leftover of Milosevic's policies (non-interference in Serbia's internal affairs, an example of which was a referendum organised in 1999, resulting in rejection of any contacts and negotiations with foreign states and organisations³²⁹);
4. Absence of consensus or political will among the ruling parties to define a firm stance towards the ICTY, as well as confusing and mainly negative assessments given by local political figures.

The alleged prejudices attributed to ICTY appear to be the following:

1. The ICTY tries only those who lost the war;
2. There is an international conspiracy against Serbs; members of other ethnic nations enjoy more support from international power centres.
3. Only Serbs are on trial and they receive harsh punishment; trials of others are farcical sham and serve as an excuse for prosecuting Serbs;
4. The ICTY is a political tool.³³⁰

Interviewed citizens of Serbia do not see the ICTY as an international court whose task is to try persons accused of committing war crimes and violating international law. They do not view it as an institution working to reconcile the peoples of the former Yugoslavia. Most people view the ICTY as an unavoidable precondition for Serbia's full return to the world community, imposed from abroad – a price Serbia has to pay. These views completely sideline the issue of the guilt of those indicted by the ICTY and attitudes towards their voluntary surrender.

³²⁹ Milosevic and his Government interpreted the results as meaning that they had the monopoly of negotiations: he continued to negotiate with foreign Governments and representatives of international organisations immediately after the referendum.

³³⁰ *Public Attitudes towards ICTY*, SMMPI and Belgrade Centre for Human Rights, July 2003.

The Potential for Changing Hostile Attitudes toward International Tribunals

An estimated 25% of the population can possibly be induced to shift to a favourable attitude towards the ICTY. Another large percentage (41%) is ambivalent. Here, it also appears possible to exert some influence and alter their views. No less than 48% say that modification of their views requires much more convincing evidence.³³¹

Identification of Difficulties

Even four years after the removal of the Milosevic regime there has been no obvious change in the Serbian public opinion on the ICTY towards acceptance of that institution and awareness of its missions and aims. The key word explaining the attitudes towards the ICTY is ambivalence. “The Hague” remains psychologically as well as geographically distant.³³² The negative attitudes to the ICTY are a consequence of the derangement still in evidence in Serbia.

For example: sanctions imposed on Serbia and the 1999 NATO intervention only increased paranoia among ordinary people. It is held that the Serbian people rather than Milosevic and his allies were victims of sanctions. The sanctions punish the Serbs, not Milosevic personally, so maybe he is right when he claims that the objective was destruction of the Serbs and not the removal of his Government.

The role and aims of the ICTY are not distinct in the minds of the people. Does Serbia “sell” its heroes or hand over indicted war criminals? The ICTY is seen rather as a tool of extortion than a contribution to reconcilia-

³³¹ *Ibid.*

³³² Scholar’s Dialog, draft report on group 10, ICTY, John Allcock, Vojin Dimitrijević, Eric Gordy and Julie Mertus with input from all ICTY team members.

tion. By demanding that Belgrade cooperate with the ICTY as a condition for granting financial aid and opening the door to certain international organisations, the international community appears to be sending the Serbian public the message that cooperation with the ICTY is a matter of bargaining rather than justice.

Two simultaneous trials appear to take place: the first trial is going on in the courtroom. The public in this trial are judges, experts, scholars and other directly interested individuals. The other trial is going on outdoors in the Serbian community. Arbitrators are the media, politicians, and public figures in Serbia. The rules which are binding within the courtroom are not the same as the rules back home. Authorities of Serbia find themselves sandwiched between the voters (ambivalence, paranoia, xenophobia, bargaining) and pressure exerted by international factors. In the final instance, this could all serve to considerably downgrade the ratings of democratically oriented parties and assist right wing and extremist parties.

Effects of the ICTY trials

The major mission of modern criminal justice should be the general prevention of crimes, not retribution and punishment *per se*. There are two effects of the international criminal justice which are affecting the Serbian society. The first one is technical cooperation with the ICTY (arrests, extraditions and meetings with the prosecutor officials). The other effect is the impact of the trials on the society in Serbia.

The Milosevic trial is a good example of failure to use the trial for reconciliation purposes. The ICTY did not take advantage of the first days of the Milosevic trial, when it was broadcast in prime time (66% of the population was watching in first three days), Some Serbian television viewers were confronted for the first time with violations by their compatriots of humanitarian law, with images of massacres, refugees and other horrors of Yugoslav wars. Instead of that, the prosecutor started from the theoretical idea of Greater Serbia and, as a former politician, a Kosovar Communist who ruled

Kosovo on behalf of Tito, now sounding as an Albanian nationalist. Milosevic took this opportunity to impose his own rules, which means: no rules. “If he were captain of a soccer team, Milosevic would enter the field with four balls and start an endless debate on why a soccer game should be played with only one ball.”³³³ Also, one of the characteristics of his appearances, was not to address judges and the public in the courtroom, but his audience in Serbia, and he was much more effective than the prosecutor. In this way, he was trying to convince the viewers that he was not only the only indicted party in The Hague but in there with the Serb nation as a whole.

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³³³ Vojin Dimitrijević, *Justice Must Be Done and Be Seen to Be Done: The Milosevic Trial*, East European Constitutional Review, 1-2/2002, p. 59-62.