

## **VIEW FROM THE HAGUE**

### **JUDICIARY WITHOUT A WITNESS PROTECTION SYSTEM**

When local politicians claim that cooperation with the International Criminal Tribunal is only one way, they are absolutely right. The Tribunal is cooperating with the judicial authorities of Serbia and Montenegro dedicated to the investigation and prosecution of war crimes and assisting them by transferring the know-how and expertise that will hopefully assist them in tackling this daunting task.

As part of this on-going process, last week a delegation from the Chamber for War Crimes of the Belgrade District Court ("War Crimes Court") and from the War Crimes Prosecutor's Office was at the Tribunal for a series of professional consultations. The visit was sponsored by the Judicial Training Centre of the United Nations Development Programme in cooperation with the Tribunal's Outreach Programme and all the meetings were very productive. The focus of the discussions between judges, prosecutors and spokespersons and their ICTY counterparts was the obstacles that currently face Serbia's war crimes judiciary in investigating and trying war crimes cases and how the Tribunal can assist in overcoming them.

The numerous obstacles include the following:

First, Serbia's judicial institutions at present lack an effective system of witness protection. Just like witnesses in organised crime cases, witnesses in war crimes cases are often subject to threats and have good reason to fear for their safety or that of their families, regardless of whether they are 'crime base' witnesses or 'insiders'. Serbia's judicial system must be provided with the legislative means to protect them, which in rare cases involves relocating them to a different country and providing them with a change of identity, but most often involves providing them with police protection before, during and after testimony and/or shielding their identity from the public. The laws must also reflect the fact that witness protection cannot imply immunity from prosecution.

Second, under the current Code of Criminal Procedure of Serbia and Montenegro, Tribunal evidence is not admissible in Serbian courts. This would prevent the Serbian judiciary from using the thousands of pages of documents and witness statements already collected by the ICTY and hinder the Tribunal from transferring its evidentiary material to the Serbian War Crimes Court.

Third, there is unresolved debate in Serbia about the ability of its judiciary to prosecute alleged perpetrators who are charged with command responsibility, that is, individuals in positions of authority who allegedly knew, or should have known that crimes were being committed, and failed to take measures within their authority to prevent such crimes and/or punish the perpetrators. Although the Tribunal is focusing on the highest-level accused, there are still many individuals at all levels of the military, police and political chains of command who had a legal duty to ensure that civilians were protected and failed to do so. They must be held accountable.

Fourth, Serbia's War Crimes Prosecutor and Court need regional cooperation, in order to be able to question witnesses, and access crime scenes and documents located in other countries.

Fifth, there are serious concerns that the Serbian police are willing or prepared to fully assist and support Serbia's war crimes prosecutors and judges, as alleged perpetrators may be among their own ranks.

Finally, in view of the lack of cooperation provided by the government of Serbia and Montenegro to the ICTY, when such cooperation is an international obligation under threat of sanctions, the

Tribunal notes with concern criticisms from international and local observers that the same government is failing to provide an adequate framework and support necessary for conducting local war crimes prosecutions.

The Tribunal is committed to assisting Serbia's judicial institutions in overcoming these obstacles. In addition to its consultations with the Serbian delegation last week, the Tribunal hosted, together with the Organization for Security and Cooperation in Europe, representatives of Serbia's judiciary in The Hague in December for discussions on its witness protection system. The Tribunal is also supporting the OSCE's efforts to assist the Serbian government in drafting a witness protection law.

The Tribunal's Office of the Prosecutor has already shared information and evidence in relation to the Ovcara case, investigations into financial transactions related to Slobodan Milosevic as well as other investigations. However, in order for all these efforts to bear fruit, Serbia's government and legislature must prioritize resolution of all obstacles which stand in the way of trying war crimes cases in Serbia in accordance with international standards.

The efforts of Serbia and Montenegro's government to overcome these obstacles, needless to say, cannot be a substitute for fulfilling its obligations to the Tribunal. According to both international and domestic law, the government of Serbia and Montenegro is obligated to cooperate with the Tribunal in arresting indictees, providing access to documents, witnesses and crime scenes. Due to its failure to do so, the President of the Tribunal, Theodor Meron, was forced to report Serbia and Montenegro to the U.N. Security Council. (see "View from the Hague", 12 May 2004)

Tragically, there are many thousands of victims of crimes, which were committed in the former Yugoslavia since 1991, who still await justice. The Tribunal, together with a number of international institutions and states, is committed to assisting Serbia's war crimes institutions to do their job, and to work in partnership with them to meet the needs of the victims. The Tribunal expects the same commitment from the government of Serbia and Montenegro so that it can complete its mission of bringing to justice those most responsible for these crimes.

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